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LAW AND PRACTICE REGARDING COIN FINDS

Sven GÜNTHER & Shumeng LIU^[1]

LAWS AND REGULATIONS ON COINS AND OTHER RELICS IN CHINA'S PAST AND PRESENT

The richness of cultural heritage and relics in China has not only spread knowledge of Chinese history and culture across the world but has also brought many of these objects to foreign countries in course of the last centuries, particularly through looting, smuggling but also due to the lack of detailed regulations. Thus, Chinese governments from the 20th century onwards tried to protect sites and relics.^[2] On 13 September 1928, the 'Regulations Governing Preservation of Scenic Resorts, Ancient Remains and Relics'^[3] was promulgated by the Ministry of Interior of the then Republic of China. They can be regarded as the first national legal framework classifying ancient archaeological sites, remains and relics into different categories (including 'coins and currencies' under B (relics) 1 (bronze and stone carvings)), and ordering their protection, collection and exhibition. Though heavy disciplinary measures as well as punishments for officials and private persons violating, damaging or stealing etc. ancient remains and/or objects were announced (Articles 8 and 9), the drawing up of detailed regulations was put into the hands of municipal administrations and *hsien*, i.e. district governments, what reflects the still unfixed relation between central and local administration at that time. Further regulations were enacted in 1930s, for instance the 'Relics Preservation Law' (RPL) (amended 10 November 1935) and 'Rules Governing the Excavation of Relics' (RGER) (16 March 1935). There, the Ministries of Education and Interior as well as the Central Relics Custodian Commission were involved whereby the latter was granted specific rights of definition and clarification. Important for our purpose were the regulations regarding the registration of privately-owned important relics that should not be transferred to

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[2] For a more detailed history of these regulations, cf. Lau 2011, 21–26. In the following, only some remarkable regulations are discussed, for the sake of clarity.

[3] If not otherwise indicated, the laws and regulations presented throughout the paper can be accessed in its original Chinese version and (English or French) translation at the UNESCO Database of National Cultural Heritage Laws, <http://www.unesco.org/culture/natlaws/index.php> (20.01.2019). For sake of clarity, only English (or French) translations and summaries, respectively, are provided; of course, only the original versions are legally valid. For a full reference to relevant regulations, see the (Chinese) collection: National Cultural Heritage Administration 2009.

foreigner ('aliens' in the language of that time; RPL Articles 5 and 6); the reversion of any discovered relic under or above ground to the State, with 'appropriate reward' as compensation and on pain of penalties if concealed (RPL Article 7; cf. RGER Article 8 with respect to excavations to be carried out); the registration of any foreign academic institution or private person in excavations that were only to be carried out by governmentally controlled Chinese academic institutions (RPL Article 10; RGER Article 6); and restriction of circulation of relics within the country, with strict rules regarding the transfer of excavated objects abroad for academic research purposes (RPL Article 13), also for privately-owned ones (RPL Article 14).

After the establishment of People's Republic of China, the Ministry of Culture and the Ministry of Foreign Trade promulgated the 'Reference Standards for the Exit Appraisal of Cultural Relics',^[4] which was enacted on 7 November 1960.^[5] Using 1949 as the main dividing line, it categorized cultural relics and defined the exit-prohibitions.^[6] In Chapter 12, criteria were laid down with the details regarding the export of coins and currencies. Any ancient or recent coins issued/minted before 1949 were prohibited from being exported, while individual coins in hotels which are not restricted by the existing monetary regulations, be used for decoration, are small in number and have no value were allowed to be exported (Article 1). Any bill issued before 1911 was prohibited from export (Article 2), so were moulds and printing plates produced before 1949 (Articles 3 and 4). Besides, the Ministry of Culture and Ministry of Foreign Trade also promulgated the 'Opinion Concerning the Reference Standards for the Exit Appraisal of Cultural Relics' at the same day, to supplement the aforementioned one.

The first regulations communicated to the UN by the People's Republic of China are laid down in the 'Note du conseil des affaires d'État relative à la publication du règlement provisoire sur la protection et l'administration du patrimoine culturel' dating from 4 March 1961. The regulations enacted shortly before (17 November 1960) were mainly concerned with protecting sites and relics discovered during building work, however prohibited the export of culturally important vestiges without state permission, allowed the state to acquire or, in case of fraudulent act, confiscate those relics (Article 14). In Article 15, rewards to organizations and persons who contribute to the protection of, or donate, those vestiges were promised while acts or attempts of destruction, steal, embezzlement, smuggling abroad etc. were threatened with punishments.

[4] Accessed under: <http://www.wenwuchina.com/a/23/1586.html> (10.02.2019) (in Chinese).

[5] On former regulations, cf. Lau 2011, 22.

[6] These regulations lost effect as of 3 April 2007, being replaced by 'Standards for the Exit Examination of Cultural Relics', see below.

Hereafter, the National Cultural Heritage Administration issued the ‘Trial Measures on the Maintenance of Museum Collections’^[7] and ‘Standards for Determining First-Class Pieces in Museum Collections’^[8] on 1 January 1978, effective as of the same day. The former one regulated that museums should collect, appraise, and set up an account of their respective cultural relics, and produce a catalogue as well as an archive (Articles 6 and 7). Detailed procedures are listed (Articles 8–25). The latter one confirmed the criteria of the First-Class Collections. Later, the ‘Rating Standards for the Collections of Cultural Relics’^[9] was promulgated by the Ministry of Culture on 3 March 1987. It provided criteria for the classification of cultural relics based on their historical, artistic and scientific value. In 2005, the Ministry of Culture enacted the ‘Measures on Control of Museums’.^[10] The regulations defined the conception of museum (Article 2), ensuring the procedures of the establishment and termination of museum (Articles 9–18); it also standardized the management of all collections (Articles 19–25), and the principles of exhibition and services (Articles 26–30).

A comprehensive law came into effect in 1982 which was amended several times in the following years. Its version of 2007 forms the basis of the current statutes, statutory regulations and implementation rules.^[11] It mainly follows the principles of former statutes, however, provides a detailed framework and some new features. The guiding goals are: ‘strengthening the protection of cultural relics, inheriting the splendid historical and cultural legacy of the Chinese nation, promoting scientific research, conducting education in patriotism and in the revolutionary tradition, and building a socialist society with cultural, ideological and material progress’ (Article 1). An own administrative department in charge of cultural relics under the State Council is responsible for carrying out work with regard to protection of them (Article 8) while the ‘criteria and measures for the verification of cultural relics’, both immovable and movable, have to be approved by the State Council itself (Article 2). Immovable relics are classified into national, provincial or city/county-level sites regarding their historical and cultural value, movable relics divided into ordinary or valuable ones, the latter then

^[7] Accessed under: <http://cpll.cn/law1164.shtml> (10.02.2019) (in Chinese).

^[8] Accessed under: http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=dcf80975c6014647bdfb&keyword=%E5%8D%9A%E7%89%A9%E9%A6%86%E4%B8%80%E7%BA%A7%E8%97%8F%E5%93%81%E9%89%B4%E9%80%89%E6%A0%87%E5%87%86%EF%BC%88%E8%AF%95%E8%A1%8C%EF%BC%89&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 (10.02.2019) (in Chinese).

^[9] Accessed under: http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=f091e61e27014b86bdfb&keyword=%E6%96%87%E7%89%A9%E8%97%8F%E5%93%81%E5%AE%9A%E7%BA%A7%E6%A0%87%E5%87%86&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 (10.02.2019) (in Chinese).

^[10] Accessed under: http://www.sach.gov.cn/art/2007/10/28/art_1035_6949.html (10.02.2019) (in Chinese).

^[11] Cf. also Lau 2011, 24–25.

into grade 1–3 (Article 3).^[12] All relics unearthed within the (land and sea) boundaries of the People’s Republic of China are owned by the State, further movable relics collected, preserved, purchased by or donated to it and its institutions (Article 5). However, ownership of cultural relics etc. handed down from ancestors or obtained in accordance with laws are protected so long the owners abide by state laws (Article 6; cf. Article 50 for details regarding acquisition and circulation). Several forms of deeds with regard to the protection of cultural relics is encouraged (Article 12).

Any kind of transfer of cultural relics to foreigners or foreign institutions is, in fact, prohibited. Immovable cultural relics which are not owned by the State are forbidden to be transferred or mortgaged to foreigners (Article 25; cf. the legal liability in Article 68 (2) and 71). Any cultural relic prohibited from leaving the country is also not allowed to be transferred, leased or pledged to foreigners (Article 52; cf. the legal liability regulation in Article 64 (4) and 71). Unless allowed by special permission of the State Council, no foreigner or foreign institution can conduct archaeological investigation or excavation (Article 33).

Furthermore, the market for cultural relics is strictly regulated. Cultural relic stores and auction enterprises where private citizens may purchase cultural relics (Article 50 (2)–(3)) – of course, with strict examination of objects and record-keeping – must be permitted or get a license, whereby both businesses are not allowed in combination, and auction enterprises can only be approved by the administrative department in charge of cultural relics under the State Council (Articles 53 and 54). Foreign influence in any of both business activities is prohibited, so is any participation of workers at cultural relics–administrations (Article 55). The only specific regulation with regard to coins and currencies is Article 59 under which banks are allowed to keep those of past ages needed for research.

Chapter VI gives a general framework for taking and bringing cultural relics out of or into China (Articles 60–63). Generally, prohibited cultural relics, either state- or privately-owned, are not allowed to leave the country (Article 60); cultural relics to be taken out must be examined and verified with an exit permit, and presented to the Customs for approval (Article 61); for exhibitions, similar rules apply whereby the export of grade one cultural relics is rigorously handled (Article 62). A temporary entry of cultural relics shall also be declared, with similar examination and permit-procedures (Article 63).

This general framework is concretized in the ‘Regulations for the Implementation of the Law of the People’s Republic of China on Protection of

^[12] For details and discussion, see Lau 2011, *passim*. On the Chinese series-publication of the standards with illustrations, see *ibid.*, 8.

Cultural Relics', effective as of 1 July 2003.^[13] Besides more detailed regulations about recording and reporting with regard to archaeological excavations and relics in museums, some concrete requirements for obtaining a permission or license to set up a cultural relics store or auction enterprise are given (Articles 39-42). In Article 43, both are also advised to give detailed reports about the objects sold or auctioned, and the purchasers to the relevant cultural relics administrative department which has to keep the records for 75 years. Regarding the export and import of cultural relics, very detailed regulations are stated in Articles 44-53, describing examination-, verification- and decision-making procedures. However, the 'criteria of examination and verification for the exit of cultural relics shall be worked out by the competent cultural relics administrative department of the State Council' (Article 45), so are not laid down here. Exhibition of objects abroad shall not exceed one year, with the possibility of extension for another year (Article 50) while temporarily-entering cultural objects without the prescribed formalities and procedure, for instance for an exhibition, have to go through the whole examination and verification process described in that Chapter, upon discovery.

Details about the export of coins and currencies are laid down in 8th Chapter of the 'Standards for the Exit Examination of Cultural Relics', issued by the National Cultural Heritage Administration and effective as of 5 June 2007.^[14] Any ancient coin, ancient bill minted or issued before 1911 – i.e. the Xinhai Revolution that brought an end to the last dynasty, the Qing Dynasty, and eventually established the then Republic of China (1912-1949) – is prohibited from being exported (Articles 1 and 2). Also recent machine-made coins, medals/memorial coins issued before 1949, and recent bills issued before 1949, which have certain historical, artistic or scientific value, fall under this regulation (Articles 3 and 4). Moulds, printing plates, and design diagrams of any time are also not allowed to leave the country (Articles 5-7).

Offenses against the existing exit-regulations, e.g. smuggling, are dealt with by courts with regard to the complex grading system of cultural relics with gradation in punishments, respectively. Thereby, the current Criminal Law and 'explanations' by the Supreme Court have to be respected.^[15] Lau describes a case of illegal coin export where the main question was about whether the coins were so-called Third Class Cultural Relics or Common Cultural Relics; the one falls under criminal law, the other under regulatory offence. After the publication of Lau's article, the case was suspended by the court in charge and the respective anti-smuggling bureau of the custom office withdrew it. However, the accused person had been detained for 810

^[13] Accessed under: http://sach.gov.cn/art/2016/12/1/art_1034_135312.html (10.02.2019) (in Chinese).

^[14] Accessed under: http://www.sach.gov.cn/art/2008/10/14/art_1036_93831.html (10.02.2019) (in Chinese).

^[15] Details in Lau 2011, 3-4.

days; the result of his action for compensation carried out afterwards is not reported in Chinese media to date.^[16]

With an international scope, there exist some Memoranda/Agreements of Understanding between China and other countries in respect of cultural relics, their protection and restitution, for instance, between China and USA with the reference line of AD 907 for legally allowed Chinese relics-import to USA, i.e. the end of the Tang Dynasty,^[17] or with Switzerland where e.g. Chinese coins made before ca. AD 1500 belong to Chinese Cultural Property and can be reclaimed for restitution.^[18]

To sum up, in past and present, China had, and has, a strong sense to protect its cultural relics. Nowadays, the strict regulations regarding excavations and State ownership of cultural relics as well as the clearly defined rules for relics stores and auction enterprises prevent a wider circulation and market though within Chinese territory there is still the possibility of, for instance, coin auctions. However, the very strict rules with regard to export have established a 'cultural relic firewall' that one can only understand by taking into account the frequent lootings, for example, during the Opium Wars (1839-1842) or the Japanese occupation period, and the diverse policies towards cultural heritage as well as the outflow of cultural relics via Hongkong, among others.

Further Literature

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National Cultural Heritage Administration (ed.). 2009. *Compendium of Laws and Documents Concerning Affairs of Chinese Cultural Property (1949–2009)*. Beijing: Cultural Relics Publishing House. / 国家文物局 (编), 《中国文化遗产事业法规文件汇编 (1949–2009)》, 北京: 文物出版社, 2009年. (in Chinese)

^[16] Ibid., 4–5. Details of the case in: <http://news.eastday.com/s/20170219/u1a12728438.html> (10.02.2019) (in Chinese).

^[17] Cf. Lau 2011, 26. See also: http://www.sach.gov.cn/art/2009/1/17/art_722_112025.html (10.02.2019) (in Chinese).

^[18] Agreement between the Federal Council of the Swiss Confederation and Government of the People's Republic of China on Illicit Import and Export and Repatriation of Cultural Property (concluded 16 August 2013, effective as of 8 January 2014), Appendix 'Categories of Chinese Cultural Property' V.F and VI.E.