

Homeless Cultural Property in the Netherlands: The Case of the 'Liuquan Mummy'

by

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Museum Studies

University of Leiden, Faculty of Archaeology

Leiden, 15th June 2018, final version

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Chapter 1 introduction

1.1 Background of the study

Cultural property being stolen is a common concern faced by many nations, especially the countries and indigenous people that have been colonized before. After the worldwide independence movement and the decolonization movement during the 21st century, repatriation of the cultural property becomes increasingly vital to international relations, restorative justice and in some cases decolonization. It is hard to deny that cultural objects are significant cultural symbols. More recently, the objects required for repatriation have ranged from the art-like objects such as paintings, sculptures or porcelains to human remains and other sacred objects. Compared with other general repatriation, the case of human remains always involves different stakeholders and concerns, resulting in the complexity of the solution to the repatriation of human remains. Despite of the manifold categories of objects, any repatriation is a painstaking task due to the involvement of different interests from the three parties, namely government, private owners or institutions, and museums. Even United Nations Educational, Scientific and Cultural Organization (UNESCO) emphasizes the significance in the careful treatment of the act on cultural object repatriation (Curtis, 2006).

With the increasing number of appeals on repatriation around the world, a number of museums begin to respond to this issue. In 2002, 19 western museums signed the Declaration on the Importance and Value of Universal Museum (hereinafter ‘Declaration

2002'). On the one hand, Declaration 2002 emphasized that the exotic objects in museums were preserved for human purpose and the world should not focus too much on their origins. On the other hand, it only included the museums in North America and Europe, arousing the argument on the definition of 'Universal' in this discourse. Meanwhile, it reflected that western museums were faced with the ownership problem among their own collections. This forced them to directly move forward to this issue and adopted the notion of 'Universal Museum', with the aim of self-justification (Abungu, 2004). It should be noted that Rijksmuseum in Amsterdam as one of the signatories of the Declaration 2002 indirectly exhibited its attitude towards contested objects in the biggest museum of the Netherlands. As sensitive and controversial as repatriation is, the effective means to recover the objects is vital to the overall international society. In 2017, interestingly, President Macron of France promised that the repatriation of African heritage would be the priority of France in the next five years (Quinn, 2018). This change of attitudes drove lots of French museums to discuss the issue of repatriation and move beyond the rhetoric of 'universalism'.

Generally, the cultural objects with dispute on ownership are categorized into four types, including those purchased legally, acquired as the war booty or as the symbols of war trophy, obtained by the persecution and stolen from the illegal pillage (Schuster, 2004). More specifically, cultural properties under the repatriation context are divided into "cultural objects displaced during wars, hostilities or occupation; colonial cases; dismembered objects; sacred objects; human remains; objects needed for the revival of intangible heritage and, not least, archives" (Prott 2009, 151). Furthermore, there are three types of

international repatriations: museum-initiated one, government-initiated one and community-initiated one (Keeler, 2012). Similarly, different efforts in practice involved by repatriation are classified into three main approaches, including repurchasing the objects by the original nation, regaining the objects via stealing and acquiring the objects by the agreements reached by the countries of origin and present possessor (Mastalir, 1992). In most cases, the means of settling the conflict over the ownership depends largely on the first and third approaches to the repatriation. For the third one, to be more specific, both the negotiation process and the final judgement of the ownership dispute are determined by the applicable national and international frameworks such as bilateral or multilateral agreements between countries, international treaties and the reconciliation of intermedia international institutions (Cornu and Renold, 2010). The increasing popularity of tackling the dispute in legislation may be attributed to the high respect on the right of the original country and the encouragement to different sides regarding the reconsideration of the history. In this way, it tends to shape a relatively healthy relationship between countries and bring the chance for future negotiation.

As a country with ancient civilization, China is also suffered from a huge cultural loss. Since ancient times, a great number of Chinese cultural properties have got lost in the wars. As reported by UNESCO, the number of Chinese cultural relics in foreign museums reached to 1.67 million in 2006, and the number of Chinese artworks held by private collectors was even ten times more (Li. 2010). In 2010, the International council of Museums (ICOM) released the Red List of Chinese Cultural Objects at Risk, which

contained color photos of a wide range of missing objects. It hoped the red list could be an effective tool to prevent purchasing, exporting or importing in nations.¹ It also indicated that the situations of illicit Chinese objects in the black market were more serious than the assumption by most people. After the second millennium, there are an increasing number of claims from Chinese government on the issue of repatriation of cultural relics. This issue has become a significant domestic affair for the Chinese authority to solve. However, as the repatriation is so complex that always involves private law and ownership disputes, many cases are subject to a long-term negotiation or a lawsuit before the cultural objects are legally retrieved. Therefore, a better solution is in urgent need for Chinese government.

In this study, the case of the ‘Liuquan Mummy’ [*Liuquan Roushenfo* 六全肉身佛] as a highly contested cultural property between China and the Netherlands was examined. Liuquan Mummy is a Chinese Buddhist statue underlying human remains, which arrived in the Netherlands in the year of 1996. The dispute over this object started from 2015 when it was loaned to Natural History Museum of Hungary. This incident was soon brought to the diplomatic level when the Prime Minister Mark Rutte of the Netherlands visited China. Mark Rutte refused to make any comment when asked by a journalist from local newspapers on the issue of ‘Liuquan Mummy’ (Wang, 2015). On July 14th 2017, Liuquan Mummy was taken to the court of Amsterdam, marking the first trial on illegal Chinese cultural property between China and the Netherlands. Before it was taken into the court, a

¹ ICOM. (2010). *Red list of Chinese Objects at Risk*. The full text is available from: http://icom.museum/fileadmin/user_upload/images/Redlists/China/RedListofChineseCulturalObjectsatRisk-English.pdf, accessed on 9 June 2018.

number of researches and papers related to this case were published such as *Will the God Win?: The Case of the Buddhist Mummy* by Zuozhen Liu and *Protecting Non-indigenous Human Remains under Cultural Heritage Law* by Jie Huang. Yet some new changes and evidences of this case emerged at the beginning of the lawsuit. Additionally, most of the studies are more inclined to analyze the ownership dispute in terms of law rather than in cultural and heritage aspects. The specialty of this case lies in its nature of crossing the borders. This situation contributes to the complexity and difficulty of the study. Above all, Liuquan Mummy should be restudied from both the perspectives of China and the Netherlands. And its detailed analysis is demanding for the society as whole in both the two counties. This thesis not only concentrates on Liuquan mummy's trajectory to Netherlands and how it was handled in the court, but also discusses what kind of knowledge can be beneficial to its repatriation.

Firstly, it is necessary to explain how Chinese cultural objects end up in being stored in foreign countries. Generally speaking, there are three main models for the loss of Chinese objects in the history: plundering by force, illegal smuggling and illegal purchase (Zhe, 2010). 'Liuquan Mummy' is not the first controversial cultural property in the histories of the two countries. Both cultural and financial interactions between China and the Netherlands can date back to the ancient period. It is not surprised to see a great many of Chinese objects displayed in the cabinets of Dutch museums. The first origin of Chinese objects in the Netherlands was found in the ships of the Dutch East India Company. From the 16th century onwards, China and Netherlands witnessed a great demand in Chinese

porcelains in the Europe. Thus, a large number of Chinese porcelains were exported to the Netherlands by the Dutch East India Company and then sold to the Dutch families (Parthesius, 2012). The examples can be found in lots of Dutch museums, such as the porcelain stored in Keramiekmuseum Princessehof in Leeuwarden City. Mrs. Duff (Fig. 1) was a sculpture as a commodity in the 18th century, which was transported by Dutch East India Company to the Netherlands (Harrisson, 1986). The second origin of Chinese objects in Dutch museums is related to private donations. For instance, the Tibetan collection of Museum Volkenkunde in Leiden involves three collectors: Japanologue Jonkheer Philipp Franz Balthasar von Siebold, Art dealer Paul Mowis and Dutch Orientalist Johan van Manen (Pott, 1951). The attack of Mara (Fig. 2) has been stored in Museum Volkenkunde since its donation by Johan van Manen in 1948. Lastly, the third origin as the most highly-divergent in the context refers to the cultural objects on loan from private owners in museums. A number of Chinese objects in Rijksmuseum are loaned by a foundation called Vereniging van Vrienden der Aziatische Kunst. The foundation claims that the international convention on stolen objects are strictly abode by and its collections are legal purchased or donated.² However, when having a close-up view of these collections in Rijksmuseum, some objects should be doubted on their origins though the panels provide no detailed information. For instance, the fragment of a cup (Fig. 3) in Rijksmuseum is on loan from this foundation. This object is said to be stolen from ‘Yinxu ruins’, which is the first capital in Chinese history. The high similarity of the traditional Pattern ‘Taotie’ on the cup can be

² The background information of Asian Art Society. The full text is available from the official website of Asian Art Society in the Netherlands, <https://www.vvak.nl/en/asian-art-society/>, accessed on 9 June 2018.

found in other relics from the site (Li, 1986). However, it does not attain the same public attention as Liuquan Mummy and still remains unknown for the majority in both the two countries.

Throughout the history, even though Liuquan Mummy is the first lawsuit on cultural objects between China and the Netherlands, the fierce debate over the issue can be traced back to another case in 1980s. On May 1986, Christie's Auction House held an extraordinary auction of Chinese porcelains on the subject of 'The Nanking Cargo: Chinese export porcelains and Gold' in Amsterdam. The objects waiting for bid came from a shipwreck called 'Geldermalsen' which was also called 'Nanking Cargo' and owned by Dutch East Indian Company. The ship was on a mission to carry out loads of Chinese products such as porcelain, gold, tea and utensils back to the Netherlands, but unfortunately sank in the South China sea in 1752 (Jörg *et al.* 2003). It is still a mystery why Geldermalsen sank in a familiar water with a relatively good weather and where is the exact sinking location (Jörg, Tolenaar and Waard, 1986). The fortune remained unknown for centuries until Michael Hatcher salvaged it in 1984 in Chinese waters and then secretly transported it to Amsterdam. Chinese government was alarmed when seeing a foreign auction house to sell so many Chinese cultural relics. It immediately requested Embassy of the People's Republic of China in the kingdom of the Netherlands to investigate and stop the auction. However, due to the lack of applicable law in international water and underwater cultural heritage in China, the Auction was held as schedule, results in a great loss of precious porcelains which deeply hurt every Chinese (Zhang, 2017). Therefore,

when a similar case appeared in the media, Liuquan Mummy immediately caught people's attention, leading a drastic discussion in both academia and the Chinese society on its ownership.



Figure 1. Mrs. Duff, China, (1735-1740). [photography]. Keramiekmuseum Princessehof website: <https://www.princessehof.nl/collectie/oost/mrs-duff/>, accessed on 9 June 2018.



Figure 2. The attack of Mara, China, (1800-1900). [photography]. Museum Volkenkunde website: <https://volkenkunde.nl/en/collection/collection-library>, accessed on 9 June 2018.



Figure 3. Fragment of a cup, China, (1200-1050). [photography]. Rijksmuseum website:

<https://www.rijksmuseum.nl/en/search/objects?q=+Fragment+of+a+cup&p=1&ps=12&st=Objects&ii=0#/AK-MAK-2,0>, accessed on 9 June 2018.

1.2 Research Questions and Methods

Whether the Liuquan Mummy was legally purchased and can be repatriated remains to be determined. And there are still the issues over the ethics of that possible purchase. In addition, the human remains inside the statue gives rise to the questions as follows: Whether this object-like statue can be regarded as cultural property in both Chinese and international narratives? What kind of law is applicable to determine the legality of the Liuquan Mummy and solve the dispute? What factors may exert effects on the case? These problems raise the first research question of this thesis:

What are the different conflicts between the domestic recognition of legal status of 'Liuquan Mummy' in China and the Netherlands?

To answer the question, the domestic law of both China and the Netherlands are referenced to analyze the matters such as the determination on the country's court with the jurisdiction over the dispute of Liuquan Mummy and the divergence of 'innocent acquisition system' in the two countries. Of course, it is not enough to only probe into Liuquan Mummy in domestic perspective. Hence, when the domestic law fails to solve the disputes, the knowledge at a larger range is in need, leading to the second research question of the thesis:

Is there any bilateral or international convention, treaty in aid of settling the dispute over

'Liuquan mummy'?

The development of international conventions on illicit cultural property and repatriation greatly attribute to the arising attention on such issues in the world. From the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 of UNESCO to the Convention on Stolen or Illegally Exported Cultural Objects 1995 of The International Institute for UNIDROIT, international community steadily sets up regulations to mediate the contradiction between countries. Thus, it is of significance in clearly sorting out these international conventions for further discussion. Meanwhile, some countries have reached agreements on specific topics, resulting in the appearance of bilateral conventions. They provide a more detailed overview of the repatriation-related matters and a stronger and more binding relation. The investigation of these conventions will contribute to the solution to the dispute over cultural properties. Moreover, unavoidably cultural property always connects to specific cultural right and identity. Liuquan Mummy also manifests Chinese cultural characteristics; thus the historical meaning of the cultural objects is one of major focuses in the thesis. However, as mentioned above, the human remains connoted inside the statue expands the discussion scope of this object in terms of law, cultural and spiritual meaning. These concerns bring to the third research question:

When human remains are considered as 'cultural properties', what is the current state of the art regarding to human remains and their repatriations?

Human remain is a special subject in both of law aspect and ethical aspect, relating to a particular area and culture. Therefore, different laws and conventions specifically dealing with human remains should be singled out for analysis.

On an initial stage of the assessment, legal analyses and definitions on the terms of cultural property and human remains in China and Netherlands will be provided. Also, the differences of their contexts in the legal documents will be explored to answer the first question, which are based mainly on the domestic legal provisions in the two countries. The definitions are helpful to improve the understanding towards the 'nature' of Liuquan mummy and hence determine the outcome of the case. Thus, a number of the articles of law will be referenced. Next, regarding the second questions, the current international treaties targeting the repatriation issue will be resorted, especially the conventions related to human remains. The relevant successful repatriations are also essential for offering a better angle to Liuquan mummy. Therefore, the advantage and disadvantages of the current legal framework will be explored based on both the treaties or conventions and scholar literature, and the examples to the Liuquan mummy will be given. With respect to the last question, the background of the case should be pieced together for the ethical discussion on the human remains, to show the significance of Liuquan mummy in the local community. Due to the insufficient information in literature, the story could only be told by adopting many different newspapers. Afterwards, the repatriation movement of human remains will be illustrated based on the data collected from academic papers, with the aim of depicting the whole process of the movement in international society. It has a close relationship with

the Liuquan mummy as human remains are also included into the objects that need to be repatriated.

1.3 Structure of the Thesis

This thesis consists of total five chapters as follows.

Chapter 1 is the introduction.

Chapter 2 gives a complete historical background and the timetable of the case. The case of Liuquan Mummy is an ongoing dispute, the storyline of which is still changing and developing. Owing to the fragmented documents of the case, few researches approach to the detailed background; the majority just dismisses the background with a few cursory lines. However, with human remains involved in the repatriation, identification on the source community and the relationship of descendants are necessary. Therefore, in this chapter, the background information will be provided as elaborated as possible. Moreover, since the case has been heard in the court, evidences and attitudes of both sides play a significant role in the trial. Thus, one section in chapter three will be devoted to the discussion on this matter.

Chapter 3 offers a literature review. The definitions of ‘cultural property’ and ‘cultural right’ in both China’s and the Dutch’s academic discourses will be given. Furthermore, the related international conventions and the history will be introduced in the terms of repatriation, emphasizing the role of the conventions in the negotiation of the repatriation. It should be

noted that even though the nature of these international conventions is law-binding but non-retroactive, it may be not as effective as the domestic law. Lastly, the bilateral law as a new approach to repatriate the cultural property in China as well as the related successful case will be analyzed. The repatriation movement of human remains in the world as well as related conventions or regulations will also be focused on.

Chapter 4 discusses the ownership issue of the Liuquan Mummy from two directions. Whether the object is in legal possession will count the largest part. Some comments on the ‘innocent acquisition system’ will be first made for the studying of the debate on the following questions: whether the cultural property can become private or national possession by the ‘innocent acquisition system’? what types of cultural properties can be regarded as the important domestic treasures in China and will be forbidden to exit abroad? and whether human remains can be viewed as property and corresponding laws toward the ownership of human remains. Additionally, other vital issues will also be analyzed, which may contribute to the successful recovery in the court. Meanwhile, the new findings and changes of the case emerge along with the continuing study of the case will also be discussed in this chapter. Lastly, the contested heritage-human remains will be also taken into account. And some examples of the successful repatriation of human remains in Dutch museums will be given, together with related law or manners towards this issue in the Netherlands.

Chapter 5 as the conclusion part sums up the whole discussion on ‘Liuquan Mummy’,

recalling all the arguments of the case and providing the answers to the three research questions. Furthermore, some constructive suggestions to the case and the prospect of other similar cases will be proposed.

Chapter 2 Historical background of the ‘lost country idol’

Buddhism is the cornerstone of many Asian religions. As early as the Han Dynasty (A.D 25-220), Buddhism had blossomed in China through the significant trade route in Chinese history- the Silk Road, connecting China with the south and central Asia. Before the Song Dynasty (960-1279), Buddhism was a relatively old and domestic religion in China. New development in this period was the emergence of ‘Chan Buddhism’ (or Zen Buddhism) [*chanzong* 禅宗], which focused on the self-illumination instead of clerical tutelage or scriptural learning (Sharf, 2002). This distinguished it from the Indian Buddhism.

Mummification or ‘abounding the body’ is a common practice after the death of monks in the Chinese Buddhism and Daoism. And the relics of Buddha have been worshiped in many Buddhism-countries where the relics are integral part of the religions (Strong, 2007). Firstly, the mummification in Chinese Buddhism finds its connection with Daoism in the dietary practice, which links the idea of attaining longevity through the daily diet in Daoism with the belief in the appearance of Maitreya in Buddhism (Ritzinger and Bingenheimer, 2006). Secondly, some Buddhism terms used in mummy cult can also be found in the Daoism doctrines (Croissant, 1990). Moreover, it was in the Song Dynasty that the whole-body relics were placed in the Chan schools. This shifted the meaning of the religious relics to something resembling idol in the society (Faure, 1991). Therefore, since the ancient time, Buddhist belief in China has already adopted various local forms in different regions, which turns the belief into a huge cultural mixture of Buddhism, Taoism and customs. Even

sometimes it is difficult for people to identify the difference between Buddhism and Daoism. In Buddhism, there are two contradictory views on death: the monk's body should be disposed of after death as soon as possible; the body remains of respectful masters should be preserved and 'served' by the descendants (Shufen, 2000). In general, the human remains after the practice are called 'whole-body relics' or 'flesh-body *bodhisatvas*'; in some cases those gilded are named as 'golden bodies' (Gildow, 2005). The examples of 'whole-body relics' can be found in two religions in China; while the Buddhist mummies are more well-known by the world. In this thesis, only the content related to Buddha mummy will be discussed. In the case of China, most of the cases of self-immolation are the eminent monks, whose bodies are preserved by the followers (Benn, 2012). It is common to see the mummy images are placed in the temples and served with a small amount of food, with the candles on the table lighted all day. This means of worship is called veneration [*gongyang* 供养] in Chinese Buddhism.

The significant value of 'fresh-body' Buddha lies in two aspects: for one thing, the worship of Buddhist mummies aims at narrowing the distance between the divine and the believers, and the corporeal remains can be regarded as a mighty respond by the living who revere the dead (Sharf, 1999). Thus, the relic is another living form of the Buddha which possesses the spiritual power. For another, in China, the number of the 'fresh-body' Buddha is considerably rare. The majority of the existing mummies has only been found in the southeast provinces and Taiwan area, such as the famous Hui-neng master (A.D. 638-713) [惠能] whose body relic is still housed in the Nanhua Temple of Guangdong Province or

the mummies discovered from the Mount Jiuhua. Before the case discussion in this thesis, a special custom in the southern Fujian province should be introduced first.

‘Patriarch belief’ [*zushigong xinyang* 祖师信仰] is an unique custom that is only worshiped by the people from the Fujian province and Taiwan. Its advent has a close relationship with Buddhism, which can be considered as a hybrid of local belief and Buddhism. To be more specific, the Patriarch belief originated from the traditional custom in Fujian area. Since ancient times, residents in this area have been used to admiring ghost and wizard in their belief, and appreciating the worship ceremony. These kinds of practices allow people to look at the world through a unique perspective. Therefore, all of the religions in that area, including the Buddhism from central China, had the function of vanquishing demons or monsters and protecting personal safety. When the wizard and Taoist are incapable of solving the troubles for villagers, they will turn to Buddha. Buddhism as a representative of foreign culture has to be more powerful than any other popular religion in this area, so as to cement its place (Xu, 1993). This contributes to the combination of local civilization with Buddhism which promotes the birth of the ‘Patriarch belief’ (Li, 2008).

The most famous patriarchs in this belief are ‘Sanping Patriarch’ [三平祖师] in the Tang Dynasty (A.D 618-907) and ‘Qingshui Patriarch’ [清水祖师] in the Song Dynasty. Historical records interestingly show that the two share some similarities in their life. Firstly, before worshiped by people, they were the common monks in the society. Secondly,

they were both worked as doctors to save people, thereby acquiring the residents' trust. Lastly, countless benevolences were made by them in the society (Li, 2008). All these factors drive the local history to divine and enable the two monks to be holy icons. When deifying a person who once lived and created their 'country idol' by history, people feel free to ask anything from it, and receive the real spiritual support in return. Therefore, the meaning Patriarch belief surpasses any other belief in these areas, which not just possesses the rich culture deposits but strengthens the self-identity of nationality's culture (Xu, 1993). The Liuquan mummy is a precious local heritage in need of careful analysis from its historical background. Yet the case of Liuquan mummy is an on-going incident. To get a better insight, this chapter will be divided in four parts, concentrating on the history of the Liuquan mummy and the related contents crucial to the trial.

2.1 Historical background of the 'lost country idol'

From what we know so far of the 'country idol', the Buddha mummy is believed to be a prestigious Chinese monk. People in China usually call this statue as 'Zhanggong fresh-body Buddha' [zhonggong roushenfo 章公肉身佛] (Fig. 4). The mummy, a golden statue which conceals human remains inside, had been placed in 'Puzhao temple' [普照堂] of the 'Yangchun' [阳春] village in the Fujian province for thousands years. As the records by the documents, the Buddha full named 'Zhang Liuquan' [章六全] with the Buddhist name of 'Puzhao' [普照]. Local People called him 'Zhanggong Liuquan Patriarch' [章公六全祖师] out of respect (Xiong, 2015). Zhang Liuquan became a Buddha during Yuanyou periods

[元祐年] (BC1086-1094). Notwithstanding the exact dates of birth and death of Zhang Liuquan are still unknown, it is recorded by the Chinese historical document that Zhang Liuquan died in his thirties (Lu, 2015). With the help the CAT scan, the international scientists team working on this case is found to believe Zhang Liuquan died in the age of thirty to fifty years old (Squires, 2015). Local people at that time admired and worshiped Zhang Liuquan for his benevolence. After becoming Buddha, he devoted himself to saving the poor, handing out the herbal medicine, and giving free medical treatment to the villagers (Xiong, 2015). This sort of history is similar to 'Baosheng the Great' [baosheng dadi 保生大帝] which is one of the most significant folk religions in Fujian province (Xiong, 2015). The values of this mummy are reflected not just in the ritual power, but also in the number of this kind of mummy. Liuquan mummy is the only 'fresh-body Buddha' in Yangchun Village, the long life-span of which can be traced back to 700 hundred years ago. Furthermore, the 'whole-body relics' in the same age are rare in China or even in the world.

As far as the ritual aspect is concerned, Liuquan mammy also exerts a great impact on the life of the villagers, who grow up hearing about the story of Zhang Liuquan. As a result, people living in the Yangchun Village develop a tradition to celebrate Zhang Liuquan's lunar birthday. In addition, during the Spring Festival, people will carry his image through doors to doors, and ignite the firecrackers when the image passes by (Lan, 2015). Being stolen was not the first time when this country idol found itself in danger. During the Cultural Revolution in 60s and 70s in China, Liuquan mummy was moved away from the Puzhao temple and hidden in different residences by the villagers in case of being destroyed

(Zhan, 2015). When Liuquan mummy was stolen in 1995, it seemed impossible to find it back. In 1997, a replica of Liuquan mummy was made and placed back to the Puzhao temple by villagers (Xiong, 2015).



Figure. 4. Liuquan Mummy. [photography]. M. Elsevier Stokmans.,

<http://www.thisiscolossal.com/2015/02/buddah-mummy>, accessed on 9 June 2018.

2.2 The biography of the ‘Liuquan Mummy’

On December 15th, 1995, around half month after the birthday of master Liuquan, a villager ran to the police station and reported the disappearance of Liuquan mummy. Even though the investigation team failed to find any clue about the case, two eyewitnesses claimed to see someone sitting on the back seat with a blanket covering the body in a white van at midnight the day before. The one with blanket was thought to be a patient who needed to transport to the hospital (Zhang, 2015). These two witnesses were the last two persons who saw the statue, and Liuquan mummy vanished without any trace until 2011. Next, in 1997, the Dutch owner Oscar van Overeem commissioned Carel Kools to restore the statue, and

the restorer found out there was a mummy inside the image that the owner had not been aware before (Hooper and Plafker, 2017). It was until 2013 that Liuquan mummy appeared in the public again. In this year, Liuquan mummy was appointed to have a CT scan at Mannheim University Hospital in Germany and other follow-up tests in Meander Medical Center in the Dutch town Amersfoort. These tests revealed unprecedented details including the estimated period of life and the remains (Ghose, 2015). From February 4th to August 31st of 2014, the owner lent the Liuquan mummy to the Dutch Museum-Drents Museum in Assen for an exhibition named 'Mummies - Surviving after death'. Later, Liuquan mummy was lent to another exhibition 'Mummy World' at Magyar Természettudományi Múzeum in Budapest from October 2014 to May 17th 2015 (Xinhua, 2015b). The news reports on Liuquan mummy travelled rapidly in the public of China and caught the attention of the Yangchun villagers. Watching the news in March, the villager Lin Leju suddenly realized the Buddha mummy exhibited in Hungary might be the Liuquan patriarch (Xinhua, 2015b). Because of the rapid transmission of the news, and the emotional response from Chinese, the Liuquan mummy was pulled from the exhibit on March 20th for no reason (Cukier, 2016).

2.3 Attitudes

Soon after the news on the appearance of Liuquan mummy spread around the world, the village started to ask help from both the government and the overseas Chinese residents. At first, the latest photos of Liuquan mummy were sent back to the Yangchun Village.

Based on the testimony of the old photos and the memory of the old villagers, the local people believed the Buddha mummy in Hungary to be the lost Liuquan mummy (Tao, 2017). On March 22nd, Official website of Chinese State Administration of Cultural Heritage issued the reports over the Liuquan mummy, preliminarily confirming the Mummy as the statue from Yangchun village (He, 2015). Since then, the long-term bargain with the Dutch owner has begun.

2.3.1 The standpoint from the owner's side

One of the conspicuous standpoints from the owner is that he continuously repudiated the identity of the Buddha Statue. Oscar van Overeem, the current owner of Liuquan mummy, a Dutch architect as well as an art collector, revealed the purchasing process to the media. He claimed to spend 40,000 guilders (around \$22,400 USD) legally buying the mummy from his art agent Benny Rustenburg in 1996; while the agent acquired the statue in 1994 from Hong Kong, several months before the report about the missing Liuquan mummy (Hooper and Plafker, 2017). Therefore, even in the negotiation, he believed that Buddha statue could be a case of mistaken identity. However, neither the collector nor Benny Rustenburg accompanies their statements with any proof. This detail will be mentioned in the later part.

Regarding to the attitude of the owner, at first, when the Chinese State Administration of Cultural Heritage got in contact with Oscar van Overeem on April 16th, 2015, he agreed to

repatriate the statue out of the emotional motives, but he also stressed that the mummy he owned was another monk (Song, 2015). Yet, in the days followed, the owner not only asked \$20 billion for his effort to preserve the Buddha for almost 20 years, but also wanted this case to be engaged diplomatically rather than in the people-to-people diplomacy. Therefore, Chinese State Administration of Cultural Heritage, China's of foreign affairs and Chinese Embassy in Den Haag were all involved in this case (Wang, 2015). Later, Oscar van Overeem declared to the media again on May 2015 that he had reached an agreement with both the local temple and a foundation which would compensate for his lost in the Buddha (Crienglish, 2015). However, five months later, on behalf of all the local villagers, Yangchun village and Dongpu [东浦] village committee initiated the legal procedure to repatriate the statue (Yu, 2016). Subsequently, Oscar van Overeem raised three requirements on the repatriation of the Buddha statue in December as follows: firstly, the mummy should be placed in a bigger temple instead of the home temple; secondly he required to establish scientific collaboration with China on the research of other fields irrelevant with the statue; thirdly, he should receive an appropriate money compensation from China. However, after a short while, Oscar van Overeem admitted that the negotiation had broken down as the bigger temple chosen by the Dutch owner refused to accept the mummy. In addition, the Chinese government had no any desire to give the money compensation even though the Dutch owner came up with the idea of putting the statue into a group of collections for sale (Huang, 2015). Eventually, only the second requirement was accepted by Chinese government (Xinhua, 2015a).

It is worth noting that during the process of negotiation, the standpoint of Oscar van Overeem on the authenticity of the Buddha statue shifted from denying its identity to admitting its origin from China and putting forward prerequisites for the repatriation. However, his ever-changing attitudes drove both the local people and the related institutions to seriously doubt his sincerity in the negotiation.

2.3.2 The standpoints from the perspective of China

In this part, most of the standpoints discussed below are from the perspectives of official organizations. In 2015, after the local government received the case, the special identification team from Fujian Administration of Cultural Heritage went to the Puzhao temple and gathered all the supporting documents (Li, 2015). On May 6th, the spokesman of the Cultural Relics Identification Center in Fujian said that this case had been forwarded to the state (Xu, 2015). In December, the Chinese government rejected the two of the conditions raised by the owner. This showed the firm standpoint of the Chinese government on the ownership's dispute of the mummy. Also, the money compensation that was always regarded as the most effective solution to the repatriation in the past similar cases did not give play to its potential.

2.4 Evidence

The evidences mentioned in this part are the crucial reference objects in the court, which

are also divided into two sides: the owner and China;



Figure. 5. Old photo of Liuquan Mummy, [photography]. <https://baike.baidu.com/item/章公祖师/16936940?fr=aladdin> website, accessed on 9 June 2018.

Primarily, from the owner's perspective, Oscar van Overeem claimed that neither there was any damage reported on the hands of the statue in the early CT scan nor the head of Buddha was missed. However, the villagers remembered that the left hand of 'Zhang gong' had a hole, and the head was lost. Additionally, the collector suspected the faith of the villagers because the Buddha should not have clothes on it, while Zhanggong had his clothes on in the photo taken before the missing (fig.5). It was assumed that there was no need for thefts to take the clothes off in stealing. Thus, the collector doubted the origin of his statue (Tian, 2015).

From the side of China, by the cross-comparison of the old photo and the current visual documents, statue in Netherlands is identical with 'Liuquan' in terms of the facial expression, the smile and the sitting posture. Secondly, it is clear that there is a Chinese character 'Fo' [佛] on the statue, which directly confirms the Dutch-owned statue is from China. Moreover, the pillow under the statue has two lines of Chinese characters, which

are written in the ancient Chinese, and describe the incident of why and how the villagers renovated the statue. The translation of the first few characters: ‘本堂普照章公六全祖师自显化后...’ is “after the *Xianhua* era year, ‘Zhanggong Liuquan Patriarch’ in the Puzhao temple...”. In this extract, it mentions the name of the Buddha, the exact date of the incident which is May 18th of 1292 (Lu, 2015). The radiocarbon test showed that the age of the statue matched the ancient Chinese documents as mentioned above. It also proved that the Dutch-owned statue was exposed in the air for approximately 200 years until it was made as a statue in around 14th century (Ng, 2015). This perfectly fits the date of renovation recorded in the two lines. Additionally, the Chinese investigation team also found a pedigree *Wang village’s pedigree · Puzhao temple story* [王村家谱·普照堂记] recording the ‘Liuquan Mummy’ as the villagers’ ancestor (Lu, 2015).

Nevertheless, with both visual and written documents, both sides were assertive for their standpoints. As a result, the ‘country idol’ was brought to the court for the trial verdict in Amsterdam in 2017.

Chapter 3 Literature review

This chapter is to discuss the concepts and approaches, which will form the theoretical framework for this thesis. The first and second sections primarily clarify the definitions of cultural objects which under the protection and cultural rights in the domestic and international legal contexts. The following section is to classify law or conventions, so that the thesis can build an international framework on repatriation, especially on the repatriation of human remains. The final section will highlight the repatriation of human remains around the world, and the relevant conventions to the recovery issue of human remains.

3.1 Cultural objects in legislation

To protect the cultural objects, many international institutions and countries have rolled out a great variety of regulations. First, it should pinpoint the idea of what type of the cultural objects can be involved in the international protection domain, and what are the general values the cultural objects share. The interpretation of cultural objects is relatively elaborated and diverse. It can fall into intangible and tangible cultural heritages or, in another way, can be approached in two main ways. First and foremost, the object is a significant part of the shared human culture, yet the locations, the origins, and the ownership of the object can be ignored. This way of interpretation considers cultural object as a collective heritage in the world. For the second approach, cultural objects are perceived

as a nation-owned possession, through which the origins of the objects will be usually emphasized (Merryman, 1986). Yet, the second approach also fosters a new thinking towards the national-owned cultural property that the cultural objects can be considered as the group-owned properties for certain communities (Moustakas, 1988). The modern and international ideas of cultural property are developed within the complement of international texts on the issue of repatriation in international community, which can date back to the release of 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict ('Hague 1954'). This convention aimed at solving the 'booty' problems between countries though this convention came out as a document of dealing the illicit cultural property after the Second World War. In the Article 1 of the Hague 1954, the scope of protection is established, containing all the cultural property of great importance to human and to the religions regardless of the forms or the physical characters. This involves not only the historical architectures but also the archaeological findings.³ Besides,

³ *Article 1:* For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

in the Article 2 and Article 3, it raises the idea of safeguarding and respecting the cultural property on their domestic territory or other parties' territory, which will expand the scope of the protection to various armed situation than ever before (Meyer, 1993). Obviously, the 1954 Hague ignores the issue of illicit trade of cultural objects. As a result, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 ('1970 Convention') was issued later, which placed the content of repatriation and the further definition of cultural property within the international law framework. In the 1970 Convention, more details were given to the term 'cultural property' than Hague 1954. In article 1, which is noteworthy that it highlights the age of an objects which are 100 years old.⁴ Indeed, the term cultural property is slightly different from the cultural heritage in the interpretation, which has been noticed by some scholars. The previous international conventions were more likely to consider cultural objects as possession and less underlined its cultural meaning for the nation or the groups (Poulos, 2000). Yet, it is clear that the contracting party agrees that the cultural objects under their domestic law can be entitled to cultural properties by signing of the two conventions (O'Keefe, 1999). Besides, after the Hague 1954, international society preferred exploiting the term cultural heritage rather than cultural property in the text because the former usage more stresses at the inheritance (Vecco, 2010), while the latter usage is

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

⁴ *Article 1:* (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

emotional and connotes monetary value and individual or state ownership. Yet in the Convention on Stolen or Illegally Exported Cultural Objects 1995 ('1995 Convention') the term cultural objects replaced cultural property or cultural heritage in the international treaty.

In terms of the domestic definition of cultural objects, this thesis only studies the term in two countries: China and Netherlands. At first, it is shown that to indicate the cultural objects required to be preserved, the 1982 Law of People's Republic of China on Protection of Cultural Relics adopted the 'cultural relic' other than 'cultural property'. In this document, cultural relics fall into moveable and immoveable types in line with the object's character.⁵ This classification is similar to that of Hague 1954. The government of

⁵ *Article 3*: Immovable cultural relics, such as sites of ancient culture, ancient tombs, ancient architectural structures, cave temples, stone carvings and murals as well as important modern and contemporary historic sites and typical buildings, may, depending on their historical, artistic and scientific value, be designated respectively as major sites to be protected for their historical and cultural value at the national level, sites to be protected for their historical and cultural value at the provincial level, and sites to be protected for their historical and cultural value at the city or county level.

Movable cultural relics, such as important material objects, works of art, documents, manuscripts, books, materials, and typical material objects dating from various historical periods, shall be divided into valuable cultural relics and ordinary cultural relics; and the valuable cultural relics shall be subdivided into grade-one cultural relics, grade-two cultural relics and grade-three cultural relics.

Netherlands issued the 1984 Cultural Heritage Preservation Act,⁶ which fixates more on the moveable objects than other categories. In the meantime, the 1984 Cultural Heritage Preservation Act adopts the idea of ‘property’ when describing the protected objects in the nation instead of the term ‘heritage’ which is often applied in the international law. Thus, to facilitate a systematic approach to the case of this thesis, the term cultural property in the later analysis should be selected rather than cultural heritage even though the term cultural heritage connotes a more social dimension. This case study will deal with the private ownership issue, and the term of property more links to the right of the possessors (Prott and O’Keefe, 1992).

3.2 The international definition of cultural rights

As for the second term required to be defined - cultural right. In a broad sense, cultural rights pertain to the scope of human rights but still rarely discussed by the society outside the human rights bodies (United, 2005). At first, for the general body - human rights, the international repatriation movement especially for the recovery of sacred objects indeed reflects the movement of international human rights because the movement started to recognize the right of different indigenous groups, which they come to be accepted as the

⁶ Cultural Heritage Preservation Act. (1984). The full text available from http://www.unesco.org/culture/natlaws/media/pdf/netherlands/netherlands_act198420022009_ento_f.pdf, accessed on 9 June 2018.

entity in the international political arena (Keeler, 2012). Accordingly, the asks for the repatriations of indigenous objects increased rapidly after the human rights movement. For the cultural right, the struggle of identity problem in the society and the local awareness both in the local community and the globalizing world are reflected by the overwhelming calls of the cultural rights (Stamatopoulou, 2012). Unlike the term human rights, cultural rights are associated with a certain specific tangible or intangible culture of a group or a whole community. Some critics state that cultural rights are exclusive and inherent, which build on the memory of the collective community and bind with a sense of belonging (Francioni, 2008). And this new perspective of cultural rights is further developed into two theories in this field, i.e., ‘Universalism’ and ‘Cultural relativism’ (Logan, 2007). This section focuses on the general information of the term, instead of bringing the contested debates on the cultural rights. The legislative process of cultural right originates from the 1966 The International Covenant on Economic, Social and Cultural Rights (ICESCR), admitting the right of self-determination of all peoples in terms of cultural development,⁷ and the rights of people to take part in the cultural life and benefit for the social cultural progress.⁸ In the meantime, the 1966 International Covenant on Civil and Political Rights (ICCPR) specifically stressed the right of cultural minorities, which provides:

Article 27. In those States in which ethnic, religious or linguistic minorities exist,

⁷ The International Covenant on Economic, Social and Cultural Rights. (1966). Article 1.1. The whole text is available from the website:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, accessed on 9 June 2018.

⁸ The International Covenant on Economic, Social and Cultural Rights, Article 15.1

*persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*⁹

These two conventions found the basis of the ‘cultural rights’ and bound this provision.

Yet ICESCR only contains Article 15 directly associated with the culture, and the definition of what is cultural rights is still confusing (Pineschi, 2012). What can be considered as ‘culture’ and what are the rights that apply into it still baffle the society. After the Millennium, the international law gained an insight of the ‘Cultural rights’ in three major aspects: releasing United Nations Declaration on the Rights of Indigenous Peoples in 2007 (‘Declaration 2007’); setting an Independent Expert in terms of cultural rights in 2009; revising the ICESCR and rolled out the General Comment No. 21: Right of everyone to take part in cultural life (article 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) in 2009 (Stamatopoulou, 2012). The new creations and adoptions in the field completed the interpretation of cultural rights, including cultural rights into the international legal system even though the ongoing direction of the cultural rights concentrates more on the ethnic groups rather than the majority in the society. In particular, the treaty General Comment No. 21 states that:

States parties are under an obligation to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial

⁹ The International Covenant on Civil and Political Rights. (1966). The whole text is available from the website: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>, accessed on 9 June 2018.

*measures, that would contribute to the realization of this right,*¹⁰

[...]

Additionally, the General Comment No. 21 explains the term of ‘access’, which states that everyone has the right to access to the cultural heritage and learn about their own culture.¹¹

The interpretations of ‘cultural property’ and ‘cultural rights’ are being progressively developed in the international legal norms, which has greatly improved the protection of cultural relics around the world, especially for the countries who have the cultural property issue that should be solved in the international community. It formulates the principle that government is responsible for helping its people to defend their cultural identify and right in the social life, and also highlights the importance of cultural right to individual.

3.3 Repatriation matters: law

The most common stakeholders associated with the dispute over the ownership of one

¹⁰ B. *Specific legal obligations*. 52.

¹¹ A. Components of article 15, paragraph 1 (a): “To participate” or “to take part”. (b) *Access* covers in particular the right of everyone — alone, in association with others or as a community — to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities;

particular cultural object are the claim from multiple owners, the asks from the ethnic groups or source communities and the request from the different institutions. Broadly speaking, most of the repatriations towards cultural properties especially the cultural properties of indigenous groups are significant and required for different reasons: (1) the retention time which the claimants have already long possessed the cultural objects, and the object becomes increasingly precious to its community; (2) Historic backgrounds of the object determine its priceless value to the claim community; (3) cultural property connects the past and the present and shapes the group identity for community; (4) the connection between ancestors and the cultural objects. (5) the loss of spiritual and sacred values attached to the cultural properties can interrupt the traditional practice; (6) the quality of the cultural property is unique and incomparable for the source community (Cohan, 2004). Repatriation manages the right of a specific cultural property and the relations between different sides, which will always return to the existing legal framework to balance the profit as well as the rights of all the participants. The returning the cultural objects in the international policies in modern history started at the congress of Vienna in 1819 when the European countries were required to deal with the Napoleon's looting. The treaty presents the basic idea of cultural identity in the recovery, as well as people's relationship with their territory and specific objects (Vrdoljak, 2006). After the two times of world wars when a great number of artworks stolen by the Nazi Germany in the world, the repatriation issue in the society rose again. The shared longing of recovering the cultural objects of the new independent countries and the colonized countries improved the progress of repatriation in the international legal framework.

Responding to the calls of the recovery worldwide, the UNESCO drafted the 1970 Convention, which explicitly dealt with the illicit trade of cultural relics around the world. Thus far, 134 countries have ratified the treaty, which include China and Netherlands. It is notable that the Kingdom of the Netherlands only participated in the convention in 2009, lagging behind China 20 years as China signed the 1970 Convention in 1989. 1970 Convention is the most well-known treaty in this aspect. A great number of scholars give a high reputation of the 1970 Convention because the treaty for the following reasons: first and foremost, it recognizes the fact that the decreasing number of the cultural property caused by the looting will lead to the loss of cultural impoverishment in a nation in the Article 2;¹² next, the 1970 Convention also emphasizes the role of state parties in the repatriation dispute, and arises countries' interest in protecting and preserving the cultural objects (Gordon, 1971). This idea represents the Article 2, which provides,

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Besides, the 'Convention 1970' successfully promotes other institutions including museums or private organizations to take an action on displaying the contested objects

¹²Article 2: 1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from.

(Prott, 2011), and this manner has also been written into the Code of Ethics of the International Council of Museums ('ICOM').¹³

Yet the 1970 Convention fails to recognize indigenous rights in the issue that take up the largest proportion of recovery. Worse still, the specific terms of the conventions arouse the misunderstanding from some countries (Gordon, 1971). For instance: the Netherlands once refused to become a party of the 1970 Convention because some provisions are contradictory to the idea of domestic legal framework, In Article 7, it states:

(i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

The Dutch government made a comment on those terms, which they claimed that they were 'impractical' and 'hamper the flows of trade'¹⁴ instead of improving the situation (Prott, 1983). In the meantime, the 1970 Convention only impacts the cases of repatriation after

¹³ 4.5: Display of Unprovenanced Material: Museums should avoid displaying or otherwise using material of questionable origin or lacking provenance. They should be aware that such displays or usage can be seen to condone and contribute to the illicit trade in cultural property. The full text is available from: http://icom.museum/fileadmin/user_upload/pdf/Codes/ICOM-code-En-web.pdf accessed on 9 June 2018.

¹⁴ Comments by the Netherlands government to UNESCO, quoted in, L.V. Prott and P.J. O'Keefe, National Legal Control of Illicit Trade in Cultural Property (study commissioned by UNESCO and submitted to a Consultation of Experts held at UNESCO head- quarters in Paris, Mar. 1-4, 1983).

entering into force, which booms the underground art market in the after-convention period.

This is because for those traders who could not provide any proof for the origins of the artworks in their hands, they had to sell the artworks as soon as possible (Chechi, 2015).

Soon after the 1970 Convention, in 1978 UNESCO organized the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation ('1978 Committee'). The new organization stresses the significance that the countries should turn to the national legal systems which its mission is listed as:

To seek ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin¹⁵

The idea of the bilateral negotiations brings the new trend in this matter. Many countries start looking for the possibility of building the bilateral law on the repatriation to expedite the road of cultural objects to home. Furthermore, no matter the objects are stolen or occupied in the colonial period, the 1978 Committee expanded the illicit scope in this area (Cornu and Renold, 2010). Yet because the claims must be presented by the UNESCO member states, the committee does not have proper jurisdiction to issue a repatriation. Thus, in normal conditions, the committee would only be an advisory organization for mediation different sides and stress the solution of the claims more through bilateral and multilateral

¹⁵ Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. (1978). The full text is available from: <http://unesdoc.unesco.org/images/0014/001459/145960e.pdf>, accessed on 9 June 2018.

negotiation. Besides, committee has no direct response to the repatriation that against a national body or a private owner (Prott, 1996).

The following international convention took place in 1995 when the UNIDROIT drafted the 1995 Convention. The new advances of the 1995 Convention are reflected in three aspects: primarily, states or any private claimants can require the return of cultural property, and the scope of the claimants expands to the largest extent (Prott, 1996); next, the Article 2 distinguishes the objects with those less significant and less religious objects, which narrows the scope of protection targets;¹⁶ lastly, the convention clearly defines what can be considered as ‘illicit export’ in international society (Levine, 2010), which has been written in the Article 5.¹⁷ Yet because the Netherlands find some terms in the convention are contested, and the definition of cultural property is too wide to protect the normal art trade transactions in the market, this country does not sign the convention due to the disapproval of parliament (van Woudenberg, 2016). In brief, all these conventions contribute to the complement of the international law in terms of the repatriation. Notwithstanding, the uniform international law is always judged by the scholars for being

¹⁶ *Article 2*: For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

¹⁷*Article 5*: (2) A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported.

too general and have no chance to implement the legislation in some countries (Shestack, 1989). These conventions encourage countries not only just protect their cultural property in the domestic level, but also get involved into the international level in the repatriation (Hingston, 1989), and play a defined role in shaping the discourse even though the practice usually following at a later stage.

When analysing the repatriation in the respect of domestic domain, countries will usually use three types of law to protect their priceless treasures: restricting the total cultural objects being exported; limiting some cultural objects going abroad; and claiming the right of the cultural property internationally (Herscher, 1989). China and the Netherlands, the countries that we will need to explore in the thesis, discover their own paths to the issue of repatriation.

From China's perspective, it is clear that as a victim of the illicit trade and looting in the past decades, the Chinese government is proactively responding to the international conventions associated with the return of cultural objects, and has already signed most of the correlative conventions. Yet, as mentioned above, international treaties as well as conventions on repatriation heavily rely on the domestic implement, which suggests that their applications are limited and may not be as effective as domestic law is. Thus, the Chinese government has developed several bilateral agreements with 12 countries,¹⁸

¹⁸ The 12 countries are: Australia, Chile, Cyprus, Ethiopia, Greece, India, Italy, Peru, Philippines, Turkey, United States of America, and Venezuela. See also *the Red List of Chinese Cultural Objects at Risk*, http://icom.museum/fileadmin/user_upload/images/Redlists/China/RedListofChineseCulturalObj

which are usually agreements or memorandums of understanding on the prevention of stealing, excavation and illegal trafficking of cultural goods signed by the Government of the People's Republic of China with the other country. The memorandums greatly improve the recovery of some Chinese cultural properties. For instance, in 2009, China and the United States signed the Memorandum of Understanding to restrict U.S. imports of Chinese antiquities dating back from the Paleolithic Period to the end of the Tang Dynasty (907 CE) and monumental Chinese sculpture and wall art with a history of at least 250 years.¹⁹ The Memorandum is far border in terms of the definition of Chinese cultural property than any other relevant repatriated documents between China and the Unities States (Marton, 2009). Soon later, it greatly impacted the case of the sarcophagus of Wu Huifei of Tang Dynasty (AD 618—907), which has been repatriated from the United States in 2010. Besides, the Chinese government proposed the Dunhuang Declaration with the support of UNESCO and other countries' officers in 2014 by drawing upon its influence in the global affairs. The Dunhuang Declaration marks the first time for china to initiatively make the international regulations on the returning of cultural property. According to the Chinese resource, the Dunhang Declaration creatively stresses to break the limitation of action in tracing back the cultural property, and to expand the categories of cultural property following archaeological standards, which can break through the interpretation of cultural

[ctsatRisk-English.pdf](#), accessed on 9 June 2018.

¹⁹ The Memorandum of Understanding to restrict U.S. imports of Chinese antiquities dating from the Paleolithic Period to the end of the Tang Dynasty (907 CE) and monumental Chinese sculpture and wall art that is at least 250 years old, *supra* note 30. (2009), *supra* note 30, at art.I.

property in other international conventions (Zhu, 2014). Notwithstanding the Dunhuang Declaration inspires the legal systems of the international law on the repatriation, it will be hardly accepted or passed internationally because it encourages the different criterions since every country can have their interpretation on what is the cultural property or what should be repatriated. This is probably the reason of few English information on the Dunhuang Declaration in the internet.

As far as the Netherlands' concerned, the Dutch government set up the Cultural Heritage Inspectorate in 1993. For one thing, the aim of Cultural Heritage Inspectorate is to improve the management and care of the cultural heritage cooperating with law.²⁰ For another, it is also a vital organization for the information of illicit objects and their transit (Beurden, 2012). Besides, Dutch government established the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War ('Restitution Committee') in 2002, which aims to provide help for the returning of looting artworks during the Second World War due to the Nazi occupation. The establishment of Committee indirectly represents the ambiguous attitudes of Dutch government, who has not pass the 1995 Convention but still willing to envisage the illegal-required cultural

²⁰ The Ministry of Education, Culture and Science organized the Cultural Heritage Inspectorate inspectorates. The full text is available from website:

<https://www.government.nl/ministries/ministry-of-education-culture-and-science/organisation>,

accessed on 9 June 2018.

objects in the nation even though the Restitution Committee only deals with the cases in a specific time period.

3.4 Repatriation movement of human remains

The term human remains often suggests a deceased human body or human tissue. In the National Museum of New Zealand Policy on Human Remains, human remains should be in the unmodified state, whereas it is too restrictive that many collections in museum have been preserved in many ways, such as mummies (Watt, 1995). Thus, human remains in this thesis are suggested as having been modified and able to be viewed more or less as sacred objects or sometimes the artworks. This section will primarily focus on the international repatriation of human remains and some important legally progressive piece of law, including the Human Tissue Act in United Kingdom and the Native American Graves Protection and Repatriation Act ('NAGPRA')²¹ in the United States on this issue.

The diverse collections in museums have always been the main attraction to the visitors. Human remains take up a certain proportion in the total collections and are an important part in many museums (Swain, 2007). Yet there is always a fierce debate on the retention and archaeological excavation on human remains in international society, and many

²¹ The Native American Graves Protection and Repatriation Act. (1990). The full text available from: https://www.nps.gov/history/local-law/fhpl_nagpra.pdf, accessed on 9 June 2018.

scholars now doubt whether human remains should be displayed in the museums. The different attitudes among different countries and societies can be reflected by the changing manner towards the human remains in museums and archaeology recently. In some countries, the call for the 'ethical archaeologists' that the professions should consider the ethical obligation first while the other interests come to second (Klesert, 1993). For the museum curators, because the context of the human remains matters most, they are likely to enter to the battle of scientific significance versus cultural significant in interpretation (Jenkins, 2008). Before exploring into this direction, we should study the history of repatriation of human remains at the beginning.

From a domestic perspective, it is now clear that the drivers of repatriation of human remains and sacred objects are closely associated with the movement of indigenous people from 1970s (Jenkins, 2010). The repatriation movement was initiated in the United States, Australia and New Zealand. The movement raised a large number of controversy requirements for archaeology society, asking about the ethics of retention of indigenous human remains in the cultural institutions. The early repatriation movement changed the traditional idea of human remains in the Western world, in which the collecting of the human remains was always based on the 'interesting' and the wish to expand the 'specimens' in the museum cabinets before the movement of the 'reburial' or 'repatriation' of the indigenous groups. These days, purchasing, stealing or exchanging the human remains seem to be immoral for many people. Surely, many archaeologists still find it hard to accept the conservation idea of human remains as they will not be able to access the data

conceal in the bones (Klesert, 1993). Taking one of the examples in this Repatriation movement, Native American gained a remarkable success from the federal government. In 1990, NAGPRA confirmed the right of Native American to protect their cultural property in the legal framework (Riley, 2002), and assisted the Native American to repatriate their ancestor from several universities including Stanford, South Dakota and also the Smithsonian Institution (Garth and Harris, 1998). One year later, with the foundation of American Indian Ritual Objects Repatriation Fund ('AIROF'), the repatriation movement of human remains expanded to the sacred objects, which assisted the Native American to recover their ritual objects from the auction houses and art market (Rosenblum, 1996). At this time, the repatriation was far beyond the public domain to some more private ranges. Besides the America's case, Australia and the New Zealand also make progress in repatriation, and these two countries surpassed America in this issue. In 2000, Australia made an agreement with the British government in terms of returning the human remains from museums between two countries, which push the repatriation from domestic level to international level. Also, the New Zealand government is willing to fund the repatriation of aboriginal communities (Keeler, 2012). Later, the repatriation movement expanded to the countries with no indigenous groups, such as the United Kingdoms. Many museums in the British have a great number of human remains gained in the colonial period. In 2004, British government implemented the Human Tissue Act in nine famous national museums,²² and in 2005, the department of Culture Media and Sport rolled out the

²² Human tissue Act. (2004). The full text is available from: <https://www.legislation.gov.uk/ukpga/2004/30/contents>, accessed on 9 June 2018.

Guidance for the Care of Human Remains in Museums (United Kingdom): Extracts.²³ In 2006, British Museum returned two Tasmanian bundles with the human remains contained. In the minutes of meeting of the Trustees, the museum board stated that the bundles were a significant and spiritual item for the indigenous people, and the museum and the public should respect their culture and tradition.²⁴ Interestingly, a new thought is provided in the case of British Museum on the ‘cultural continuity’ of human remains that the remains would be less associated with the current community, and the cultural bond will also be less considered if the human remains are older than 300 years in accordance with the Human remains policy (Flessas, 2008).

As for the international support on repatriation of human remains, the first clearly treaty concerned with the repatriation of human remains can be dated back to the Treaty of Versailles in 1919. In the Article 246,²⁵ which provides:

Within the same period Germany will hand over to His Britannic Majesty's Government the skull of the Sultan Mkwawa which was removed from the Protectorate of German East Africa and taken to Germany.

Yet as a significant passage of the repatriation issue, human remains in the Treaty of Versailles are more considered as the ‘trophy’ that should be given to the victor (Meyer,

²³ Guidance for the Care of Human Remains in Museums. (2005). The full text is available from website <https://www.britishmuseum.org/pdf/DCMS%20Guide.pdf>, accessed on 9 June 2018.

²⁴ Request for Repatriation of Human Remains to Tasmania. The full text is available from: http://www.britishmuseum.org/about_us/management/human_remains/repatriation_to_tasmania.aspx, accessed on 9 June 2018.

²⁵ Treaty of Versailles. (1919). The full text is available from: <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf>, accessed on 9 June 2018.

2006). The true meaning of human remains to the source countries or any other ethical problems relating to the ancestors' remains was not explored. Unlike the other cultural objects, the discussion on human remains still not be properly developed and lacking any international legal regime on this, though the repatriation of the cultural objects and human remains has been the common topic and started to be legitimized internationally.

The beginning of the modern international repatriation on the human remains of the source communities started in 1986 when the first World Archaeological congress was founded. In the congress, indigenous groups proposed the opinion that human remains can only be removed from their home soil with the permission or after consulting with the descendent communities (Hubert, 1992). The idea of human remains was of great importance to many indigenous groups would soon be spread to the field, and the meaningful collective discussion in the congress was conducive to completing the second international treaty dealing with this matter - The Vermillion Accords on Human Remains in 1989. This document can be considered as the first official document in the respect of the returning of human remains. In the provision 1, it stresses the need of respecting the mortal human remains no matter the religions, origins and countries, etc.²⁶ Besides, the Provision 3 states that the field should respect the wishes of source communities in terms of law or other aspects.²⁷ After being issued, by inviting the participation of local communities, the

²⁶ 1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.

²⁷ 3. Respect for the wishes of the local community and of relatives or guardians of the dead shall

Vermillion Accord has played a long-term effective role in the archaeology and impacted some governments to establish similar regulations when disposing the human remain of indigenous groups in the museums (Zimmerman, 2002). Although the Vermillion Accord is inclined to be a guideline for the field only, and the indigenous groups may not greatly benefit from it, this document changes the attitudes toward the human remains in the society with the basic idea of respecting the human corpses as much as possible. After a short while, in 1991, the World Archaeological Congress formulated some principals in terms of the ethical issues when studying the human remains (Powell, Garza and Hendricks, 1993). Followed later by the UN, in 1993 the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples came out (hereinafter referred to as 'Declaration 1993'). The Article 2.12 of the 'Declaration 1993' states that the human remains should be returned to the local community with the appropriate cultural manner, and the other indigenous cultural objects in museums should also be recovered, or the museums should provide the local communities with the detailed inventory.²⁸ Thus, it is noteworthy that 'Declaration 1993', to some extent, is similar with the Vermillion Accord, focusing only on the rights of aboriginal groups. Yet 'Declaration 1993' explicitly stresses

be accorded whenever possible, reasonable and lawful.

²⁸ 2.12 All human remains and burial objects of indigenous peoples held by museums and other institutions must be returned to their traditional areas in a culturally appropriate manner.

2.13 Museums and other institutions must provide, to the country and indigenous peoples concerned, an inventory of any indigenous cultural objects still held in their possession.

2.14 Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.

the exclusive ownership of indigenous human remains and cultural objects and their repatriations from museums (Kagan, 2005). It also reflects the views and manners of the international society as a whole in restoring, displaying or even returning the human remains. Additionally, another international cultural institution ICOM is also involved in the issue of human remains. The Code of Ethics, released by the ICOM, not only raises the relevant regulations on the restitution of the objects,²⁹ but also lines the elaborated rules on the returning of human remains displayed in museums.³⁰ Perspectives from all the documents concerned with human remains all put forward one specific criterion which is 'respect'. Respecting to the human remains and the source communities, this criterion impacts people's attitudes towards the human remains. In 2009, UNESCO wrote down the proposal with the detailed process of how to repatriate the human remains in this publication (Prott, 2009). Besides, the repatriation of human remains should contribute to

²⁹ 6.2 Return of Cultural Property: Museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

6.3 Restitution of Cultural Property: When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country's or people's cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.

³⁰ 4.4 Removal from Public Display: Requests for removal from public display of human remains or material of sacred significance from the originating communities must be addressed expeditiously with respect and sensitivity. Request for the return of such material should be addressed similarly. Museum policies should clearly define the process for responding to such requests.

the human right movement, as mentioned in Convention 1970 as well as Convention 1995, which forms the principles of returning the cultural objects to the people who are the culture successors.

With the rising self-recognition of the indigenous or aboriginal people, many museums now have received a considerable amount of requests from them. There are several standards manage the juridical decision in comparison with many successful repatriations of human remains. The first requirement can be found on the definition of ‘cultural affiliation’. The term is defined as ‘a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group’ in the NAGPRA³¹, which is more inclined to stress the concept that whether the descendant communities still exist in the society. Besides, NAGPRA outlined the different methods on how to build the cultural affiliation between the ancient human remains and the modern source communities, which include the biological and geographical evidence, and the cultural evidence and its manifestations inclusive of folklore, oral and historical traditions.³² It is noteworthy that this regulation neither prioritizes the scientific evidence rather than the cultural evidence, nor suggests the necessity of having the scientific proof before the establishment of cultural affiliation (Tsosie, 1999). Thus, the cultural affiliation can be established and become the

³¹ Native American Graves Protection and Repatriation Act (NAGPRA): 25 U.S.C. § 3001(2) (1994).

³² *ibid.*

supportive evidence of the dispute if the tribes can strongly prove either their cultural connotation or scientific connotation with the ancient human remains.

Hence, with respect to such idea, for Liuquan mummy, how to prove its cultural value and connotations with the Yangchun villagers will be a vital factor for other communities to accept the idea of the importance of its repatriation, and this is also the main reason why the historical background of Liuquan mummy is indispensable in the thesis. Fortunately, under the development of views on indigenous rights and other relevant aspects, repatriation gradually returned to the right path. Also, it is understandable why repatriations of the human remains usually link to the indigenous groups in many countries.

Thus, in conclusion, the aim of this chapter is to partially answer the first question:

Is there any bilateral or international convention, treaty in aid of settling the dispute over 'Liuquan Mummy'?

The answer is no. Many people may doubt that there are plenty of laws that can be applied for countries to uphold justice in the matter of repatriation, whereas we have to admit that the international law is relatively limited, and repatriation is not something that can be tackled merely relies on the existing legal framework. The difficulty of repatriation lies on the fact that none of the law can be perfectly applied in any situation, especially when the domestic law collides the international law, which the details will be discussed in the chapter 4. Yet the bilateral treaty is still a negative answer because China and the Netherlands have not made any agreement in terms of returning of cultural property.

Besides, it is also obvious that the processes are always time-consuming and adversarial though the mechanisms for the repatriation are various. Therefore, Liuquan mummy will be the case of challenging (Bienkowski, 2015).

Chapter 4 Case Analysis

This chapter is to analyse the legal issues over the case of Liuquan mummy, which will fall into two parts. The first section of this chapter will give the overview of the three major disputes of the case, i.e., the ownership problems of the Liuquan mummy, ‘good faith’ acquisition of the statue, and the new findings after starting the trial, as well as some available information of the Answer to Civil Complaint. The second section is to primarily present the vital content of the thesis, i.e., the practice and the code of conduct concerning the repatriation of human remains. Besides, the idea of ‘human remains as heritage’ will also be discussed in this section. Accordingly, this chapter will explore the core disputes of the case in terms of the law with the hope of contributing to a joint effort in sorting out many contested disputes over the case before making the final judgement of the case.

4.1 Case analysis in law

Repatriation is a considerable process in practice, especially when the case goes beyond the national border. A successful repatriation between multiple countries is always required to rely on the assistance of the legal framework. Sometimes, political factors will also intervene in the recovery. Certainly, repatriation is a painstaking process which will take several years in the negotiation before finally reaching a consensus. The first hearing on the Liuquan mummy was started on the 14 July 2017 in Amsterdam. Mr. Jan Holthuis, a lawyer who has been working in Beijing (China) for many years, served as the plaintiff’s

lawyer of the Liuquan mummy.³³ As a transnational litigation, Liuquan mummy has aroused a huge attention in both China and the Netherlands, which is expected to be a long-term lawsuit. The claim is primarily in accordance with three principles: (1) Liuquan mummy is a collectively-owned cultural property in the Yangchun village; (2) without the agreement of the villagers, no authority can be allowed to remove it from the temple, thus the disappearance suggests that the Liuquan mummy was illicitly removed or stolen; and (3) the loss of the mummy would violate the right to religious freedom.

4.1.1 Human remains or cultural property?

It is significant to study the Liuquan mummy before discussing the ownership problem of the Liuquan mummy, because some people may doubt whether the statue can be considered as cultural property. This concern exists for a reason. The traditional studies did not consider human remains as cultural objects. Yet cultural attitudes towards human remains are gaining its popularity recently in the field, and due to the connection with the past culture and the current cultural groups, people now are embracing the idea that human remains can be culturally considered (Woodhead, 2002).

Separately, the gilded statue belongs beyond all questions to one of the categories of cultural property in almost all the countries. Yet when a human body is concealed inside

³³ Information of personal profile gained from the LinkedIn: <https://www.linkedin.com/in/jan-holthuis-835654130/>, accessed on 9 June 2018.

the statue, can it still be recognized as cultural property? To answer this question, we should return to the interpretation of cultural property in Chapter 3. Clearly, from the international level, human remains are not involved in the term cultural property defined by both the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 ('1970 Convention') and UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 ('1995 Convention'). Likewise, neither Chinese law nor Dutch law has involved human remains into the interpretation of cultural property. Thus, Liuquan mummy is to some extent not a traditional item that people will undoubtedly consider as a cultural property. Since the interpretation of Liuquan mummy is contested, another problem is raised: *Is it applicable for Chinese government to use both the law designed to protect the domestic cultural property and the three major repatriation-oriented conventions to claim its proprietorship?*

First, it is clear that since the year of 1292 the statue and the mummy inside have been attached together. Afterwards, the fresh-body Buddha was placed in the temple and worshiped by the villagers. This practice brings a fix image to the villagers who still consistently admire Liuquan master. If the statue fell into two parts, i.e., the human remains and the gilded statue, the previous image in the villagers' mind will be immediately broken, and become some objects that is unfamiliar to them. In the meantime, in the Code of Ethics published by International Council of Museums ('ICOM'), the general manners of preserving any one of the cultural property are to maintain the original form of the object

as much as possible.³⁴ Besides, given the ‘from 1984 Cultural Heritage Preservation Act the scholars’, the protected objects include moveable objects which should not be separated.³⁵ Thus, it is suggested that the body and the statue cannot fall into two components under normal circumstances.

The reason for this discussion is that since the body needs to be with the statue probably forever to acquire the cultural meanings in society. It is meaningless to define this objects from the point of view of human remains and the perspective of common artwork, respectively, to identify whether Liuquan can count as the cultural property. Besides, this type of approach contributes to the fully attention on the value and meaning to the individual or groups in the process of making the definition. Thus, in respect of the cultural value, Liuquan mummy can find its legal definition on the terms as follows: In the 1970 Convention and the 1995 Convention, Liuquan mummy complies with the definition of (b)

³⁴ *2.18 Collection Continuity:* The museum should establish and apply policies to ensure that its collections (both permanent and temporary) and associated information, properly recorded, are available for current use and will be passed on to future generations in as good and safe a condition as practicable, having consider to current knowledge and resources.

2.24 Collection Conservation and Restoration: The museum should carefully monitor the condition of collections to determine when an object or specimen may require conservation-reoration work and the services of a qualified conservator-restorer. The principal goal should be the stabilisation of the object or specimen. All conservation procedures should be documented and as reversible as possible, and all alterations should be clearly in distinguishable from the original object or specimen.

³⁵ See also 6.

and (f) in Article 1³⁶ and the Article 2³⁷, respectively, which is of the ethnical and historical significance to the social life, as well as of huge importance to the local history. In the domestic domain, the Liuquan mummy matches the interpretation of what is cultural property in Article 2 pertaining to the important material objects of one specific historical period in accordance with the 1982 Peoples Republic of China on Protection of Cultural Relics.³⁸ All of these noted definitions suggest that Liuquan mummy is a precious cultural property with human remains both domestically and internationally. Laws associated with the cultural property and human remains are appropriate to Liuquan mummy.

4.1.2 The ownership of Liuquan mummy

The debates over the Liuquan mummy is dependent on whether the statue can be repatriated by the Dutch court's decision to its home soil. There are obviously many factors involved in the case, which are difficult to discuss in the thesis. Thus, the thesis only fixates on the aspects that are believed to be the key to the court case.

³⁶ *Article 1:* (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; (f) objects of ethnological interest;

³⁷ *Article 2:* For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

³⁸ *Article 2:* (3) valuable works of art and handicraft articles dating from various historical periods;

As mentioned above, the ownership of the object rests with two different directions, i.e., Liuquan mummy as a cultural property and Liuquan mummy as human remains. From the perspective of cultural property, Chinese government has a strict regulation over the ownership of a cultural relic on Chinese territory. On the one hand, although the ownership of the cultural objects which passes down from the ancestor belong to the individual or collective groups, the owners should abide by the law and any protection regulations, as stated in the 1982 Peoples Republic of China on Protection of Cultural Relics.³⁹ On the other hand, it restricts the free export flow of the valuable non-state owned cultural objects, which is in conflict with the idea of ownership in the international society.⁴⁰ It seems that Chinese government still maintains the control over the right of the valuable private cultural relics, whereas a controversial and practical problem arises. As we all know, because the definitions are always too general for the selection, it is difficult to judge what types of cultural objects are valuable just based on the definition of the 1982 Peoples Republic of China on Protection of Cultural Relics. Whereas we can have a different angle on what may be the official explanation on the 1982 Peoples Republic of China on Protection of Cultural

³⁹ *Article 6*: Ownership of memorial buildings, ancient architectural structures, cultural relics handed down from ancestors and other cultural relics obtained in accordance with laws, which belong to collectives or individuals, shall be protected by laws. Owners of the cultural relics shall abide by State laws and regulations on the protection of cultural relics.

⁴⁰ *Article 60*: No state-owned cultural relics, valuable cultural relics among the ones not owned by the State or other cultural relics that are prohibited from being taken out of China according to State regulations may be taken out of the country, except the ones to be taken out of the country for exhibition in accordance with the provisions of this Law or for special needs upon approval by the State Council.

Relics of the term ‘valuable’ when gaining an insight in the other documents released by the State Administration of Cultural Heritage. In the Standards for the Entry-Exit Examination and Verification of Cultural Relics issued in 1960 (‘1960 Standards’), it clearly outlines three different gauges of ages, i.e., 1949, 1911 and 1795, as well as the categories of cultural relics. Any cultural property matches these two criteria should be declared when it exits.⁴¹ Furthermore, on the basis of the Administrative Measures for the Entry-Exit Examination and Verification of Cultural Relics issued in 2007 (‘2007 Measures’), the age of the cultural objects is still a vital common reference. Before exit, most of the cultural objects produced in or before the year of 1949 have to undergo verification⁴². Both the 1960 Standard and 2007 Measures may provide a new insight into the standard of the value of the cultural objects, and we can judge whether this object is valuable by simply adopting these standards. For the Netherlands, when this statue is considered as cultural property, the ownership of the objects can be verified by the Dutch Civil Code. Such declares that if the owner has legally acquired the objects, he or she can be entitled to an ownership right, and the government has no right to intervene personal property.⁴³ Likewise, it also raises doubts on the term ‘Legally’. How the cultural property is believed to be obtained legally? Instead of giving a direct response, it will be better if the

⁴¹ State Administration of Cultural Heritage. (1960). Standards for Entry-Exit Examination and Verification of Cultural Relics. The full text available from: <https://baike.baidu.com/item/文物出口鉴定参考标准/148784?fr=aladdin>, accessed on 9 June 2018.

⁴² State Administration of Cultural Heritage. (2007). Entry-Exit Examination and Verification of Cultural Relics. The full text available from: <http://www1.lawinfochina.com/display.aspx?lib=law&id=6244>, accessed on 9 June 2018.

question is postponed to the later section.

For the second direction, when the ownership problem stresses the human remains, it will become a considerably contested dispute. The Dutch law is ambiguous in the ownership of a human body. Such ownership can be considered as a 'thing' in the context, or perceived as 'property', which the person can own his or her body and has the right to decide whether to accept medical treatment (Welie and ten Have, 1998). Nevertheless, both of these definitions cannot find their clear legal statues in the Dutch law system, and these two opinions can merely be discussed when the person is still alive. Accordingly, the ownership of the corpse should cross the boundary of the mentioned two viewpoints when we face a corpse in this case. As the analysis of the Law of the Disposal of the Dead suggests, the ownership of the corpse is more inclined to the surviving relatives (Wery, 1976). Additionally, there are maybe some special interpretations in other circumstances such as the objects that deal with mummies. In the Netherlands, people tend to perceive mummy as a human asset, which it is a product of human activities (van Vliet, 2006). In this sense, Liuquan mummy can be deemed as a property in the tort (Liu, 2017). Yet, Mr. Jan Holthuis, the lawyer who represents the villagers believes, stated in the interview that:

In the Netherlands, by interpreting the Burial and Cremation Act issued in 1991 and the explanation of Minister of Justice who in charge of the Dutch Ministry of Justice and Security, no one has the right of owning others human remains, which means the statue belongs to nobody in the Netherlands. And the relatives have the right to ask to recover the relating human remains. The

Yangchun villagers have been taken care of the 'Liuquan mummy' for thousands of years, which they have sufficient justification to claim the ownership (Yu, 2016).

The ownership of human remains is always challenged and rejected in the common law system, and some scholars also argues the 'no-property' rule for the human remains with a history of more than 150 years (Woodhead, 2002). Likewise, as for the continental law, the ownership problem is controversial, which there are three different understandings: (1) human remains as properties that are able be inherited by his or her heirs; (2) human remains as no properties for which the body has no personalities, and the heirs only have the right to deal with the funeral procedures; (3) human remains as special properties that the right of the body is only applicable to the right of disposition (Huang, 2015).

In China, whether Liuquan mummy can be perceived as property. Yet in most of the influential relevant monographies, a person including the hair and teeth can be placed within the range of property, and the corpse and remains of the deceased also pertain to the notion of property (Jiang, 2000). But the ownership of the corpse as well as human remains can only be confined for the purpose of burial and Worship ceremony. Also, the successor cannot abandon the right of the dead body (Liang, 1996). Additionally, in the coverage of the estate of the Article 3, it classifies seven types of the lawful property that can be considered as legacy of an individual, such as income, cultural objects, houses, savings, livestock and other lawful property even though the Law of Succession of the People's

Republic of China does not mention that human remains can be treated as legacy for future inheritance.⁴⁴ The definition of the ‘other lawful property’ is a relatively open regulation, leaving some spaces for practically making the judgements. Thus, it is also applicable that human remains can be perceived as special property in the china.

4.1.3 Purchasing in ‘good faith’

In many interviews, the Dutch owner always defended himself repeatedly using the excuse that his intention of buying the statue was an accident, and he did not know the object had been stolen (Hooper and Plafker, 2017). Surely, such statement directly leads to another dispute: *what is the ‘good faith’ definition in Dutch law framework and will the good faith acquisition has a great influence on the final judgement?* First and foremost, in the Article 3:11 of Dutch Civil Code, which provides:

A person has not acted in ‘good faith’ as a condition for a certain legal effect if he knew or in the circumstances reasonably ought to have known the facts or rights from which his good faith depends. The impossibility to conduct an inquiry does not prevent that a person, who had good reason to doubt, is regarded as someone who ought to have known the relevant facts or rights.

This article lays a very advantageous condition that the property can be treated as purchase

⁴⁴ Law of succession of the People’s Republic of China. (1985). The full text available from: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1383956.htm, accessed on 9 June 2018.

in good faith if no one has a reasonable doubt on the ownership of it. Thus, *what kind of the argument can be considered as a 'reasonable doubt'?* To answer the question, we should first look back to the idea and the regulations of 'Valuable' cultural relics in China. As mentioned above, the two documents have the regulation simultaneously on the process of export or exit instead of affording a constructive criterion on identifying the 'valuable' cultural objects. In the Article 4 of the 1960 Standards, to smoothly exit, the cultural relics should be identified by the government.⁴⁵ And in the Article 5 of the 2007 Measures, the identified cultural objects will have their exit permit after the identification.⁴⁶ Yet the Dutch owner still cannot submit any exit document of the statue to the court. In the meantime, the Dutch owner also recalled the purchasing of Liuquan mummy in an interview that the Dutch owner claimed the former art trader of the statue purchased the statue in Hong Kong, whereas the art trader failed to give him any document at that time, and he just paid the cash without asking any details (Hoopern and Plafker, 2017). If the Dutch owner told the truth in this part, it probably makes sense and still can be ruled as 'purchasing in good faith'. Yet the lawyer Mr. Jan Holthuis also states that,

Everyone who is engaged in the art business knows that an ancient statue like the Liuquan mummy cannot be exited legally without the exit permit. Professional buyer will have no doubt check the original document and the exit permit. Obviously, the Dutch owner did not do that (Li and Li, 2016).

⁴⁵ see also 41.

⁴⁶ see also 42.

Interestingly, there is a contested part in the Dutch owner's statement which raises a new doubt. In the study of the modern Chinese art market, Hong Kong absolutely cannot be ignored in the history. Since the 1980s, Hong Kong had progressively formed its reputation as the biggest art market in Asian as well as the biggest art market for selling the Chinese art. Famous art auction houses including Christie's and Sotheby's all established their offices in Hong Kong. The booming art market in that period contributes to the three factors, which are the geographic location where connects Asia and the Pacific areas, and free port in the world which benefits the import and export of goods (Gallagher, 2017). Yet these advantages become one of the reasons for Hong Kong acting an important role in the smuggling of Chinese artworks in the contemporary age, for instance, a more easily customs inspection than the mainland. Besides, due to the 'one country, two systems' policy, the legal statue of the Hong Kong in China is distinct from the mainland, which maintains the colonial legal systems. This special political difference in the area makes Hong Kong not involved as a party in either the 1970 Convention or 1995 Convention (Gallagher, 2017). Accordingly, for a long period, the word 'Purchase in Hong Kong' is an implicit way of saying to 'purchase in an illegal method'. It is considerably susceptible that the Dutch owner, who has been developing interest in collecting the oriental artworks for many years, did not understand the special situation when his art trader gave the ancient statue purchased in Hong Kong. Then, he just finished the transection without asking further information of the object. Yet on the one hand, in the Dutch Civil Code, acquisitive prescription of a good faith owner can have a legal right on the disputed objects. On the other hand, the law stipulates that whether the stolen objects are acquired in good faith or not (Article 3:105),

the owner can eventually have the full legal title of the stolen objects if the stolen objects have been obtained for more than 20 years (Article 3:306). The possible extinctive prescription forces the Chinese government reacted quickly and initiated the lawsuit in 2016, the exactly 20-year period of the disappearance of Liuquan mummy, right before the prescription regulation coming into force. In the meantime, in the dependence, counsel for the defence claimed that Mr. Overeem has the occupation as an architect, neither work as a professional Asian art dealer nor an art collector (Xinlang, 2017). Yet *is it really contradictory for someone has two different positions in the daily life?* For the active professional collectors like Mr. Overeem, they should more comply with the strict rules and codes of conduct in the field to fulfil their obligations. Thus, it is reasonable to conclude that his purchase was not in good faith based on the location of the transaction and the transactional price in this case.

Besides, according to the statement handed by Dutch owner in the court in January, he claimed that Yangchun Village and Dongpu village committee are not the Nature person and Legal person, respectively, defined by the Dutch Code of Civil Procedure, which they cannot be identified as the effective entity with legal personality. Thus, the defendant claim should be rejected by the verdict. the lawyer Mr. Jan Holthuis stated his opinion:

The Dutch judge may not be aware of the requirements of litigation qualifications and special legal person statues of the village committee under Chinese legal system, and the plaintiff will make statements on this subject. This is a key issue for judges to adjudicate the admissibility of the case (“Two key

points of, ” 2017).

Some other scholars also stress that the Dutch court should not only base on the domestic legal system, but also reference Chinese law and regulations. For Chinese law, undoubtedly the village committee has the qualification of being the plaintiff (Liu and Yang, 2017).

In brief, as a statue from Song Dynasty, a unique cultural relic which is unlikely to be exported without any document, and the behaviours showed in the transection hardly justify the Dutch owner for following the rule of ‘good faith acquisition’, which is probably the critical factor to greatly impact the case in the court.

4.2 New changes in the case

As mentioned above, Liuquan mummy is not only a case waiting for the trial, but also a current affair that persistently drives the public’s attention both in the China and the world. Many new situations keep pushing the case forward, whereas the first significant change appeared before the trial. The new change partially causes the failure of the initial negotiation between the Chinese government and the Dutch owner. *Why the negotiation will be unsuccessful and why the dispute has to be solved through the court rather than the private solutions?*

At the early stage of negotiation, when the Dutch owner claimed three conditions on the

recovery, there was a chance for both sides to tackle down the dispute privately. But, the Chinese government refused the plan and announce the breaking of the talk. As the director of the State Administration of Cultural Heritage answers that:

The State Administration of Cultural Heritage has been coordinates and negotiated with the Dutch's side through many ways. But the current owner neglected our legitimate demands, requested high compensation, and assigned the specific location for displaying which we cannot accept ("Liu Yuzhu, director," 2016).

Yet if we recall the case of twelve animal bronze heads of Old Summer Palace again described in the chapter 1, and further study the case, the first new change in this case can be better understood: the Chinese's attitude towards the repatriation. In 2000, the ox head, monkey head and tiger head were purchased by Poly Groups, a state-owned company, in the Christie's (Hong Kong) and Sotheby's (Hong Kong), at the cost of nearly USD 3.99 million. Later, when costing was around USD 9.67 million, the boar head and the horse head were purchased and donated to the nation by a famous Chinese businessman Stanley Ho in 2003 and 2007, respectively from Sotheby's (London) (Li, 2012). Yet situation changed in the 2009 in Christie's (Paris), when a Chinese man Cai Mianchao made a fake bid on the rat head and rabbit head in the name of patriotism (Weil, 2013). This case immediately infuriated Chinese from the civilian level to government level. Interestingly, the Christie's (Shanghai) was supposed to come into the mainland market in 2009, whereas after the two heads were successfully return to China for free, the Chinese government

deliberately postponed the announcement date of Christie's (Shanghai) to 2013.⁴⁷ Such action can be considered as a revenge from the Chinese's side. Because the constantly increasing prices on the looting cultural relics over the past few years forced the government make a remarkable shift on the means of the repatriation, the unsuccessful bid on the looting Chinese cultural objects clearly reflects the new Chinese policy towards repatriation. The changing attitude contributes partly to the Notice on the Stolen or the Looting Cultural Objects issued in 2008. In the notice, it discourages the museums, cultural institutions and individual from bidding or purchasing any looting or stolen Chinese cultural relics. In the meantime, it advocates to recover the cultural objects through the diplomatic level and resorts to law ("The director of the," 2009). Thus, with the strong tendency on the way of repatriation, which is likely to be the one of the major factors of the failure of negotiation when the Dutch owner requested high money compensation, which his behaviour seemed to be selling the statues to Chinese government.

The other new findings are embodied in the defence submitted by the Dutch owner. In the defence, the defendant admitted that he had exchanged the mummy with the third party who he refused to disclose the name on November 29th, 2015. The Dutch owner claimed that he neither held the statue nor had the ownership anymore, thus the request for returning the objects should be rejected by the court.

⁴⁷ Christie's started its business in mainland China, is it the start of the battle among different auction houses?. The full text available from: <http://topic.artron.net/newtopic/christie/>, accessed on 9 June 2018.

To contradict the defence of Dutch owner, Chinese side handed in three emails sent by the Dutch owner from December 2015 to May 2016. In these emails, the Dutch owner stated that he can still represent the current holder to take action and make decision. In this complex circumstance, Mr. Jan Holthuis considers that:

Such behaviours can be recognized as 'fraudulent exchange' because he can designedly exchange the mummy to other and obstructs the arbitrament's enforcement. Additionally, the Dutch owner unequivocally states that the third party understands the dispute over the Liuquan mummy, which means the exchange is no under the situation of 'innocent acquisition' (Liu and Yang, 2017).

Accordingly, after the conclusion of all the doubts, it is hard to believe the Dutch owner is not guilty in terms of the 'purchase in good faith', without knowledge of the Chinese cultural relics' exit regulations and other relevant regulations. Yet there are many processes undergoing right now of this case such as whether the identity of this statue has been confirmed by the court, and this is still be questioned by the Dutch owner.

4.3 Human remains with respect to repatriation

The discussions above revolve around the topic of cultural property, considering the Liuquan mummy as private property or national protected cultural relics. In this part, it will delve into the direction of Liuquan mummy as human remains, and seek out the examples to support the return in the terms of policies and practices.

In the Western society, recent critics about museums always fall on the depot of the human remains in museums collection. For the case, the history of repatriation on human remains in the Netherlands started in the 1990s when the Kunsthall museum in Rotterdam displayed an Inuit remains in an exhibition named *bone by bone: Human remains from Dutch museum collections*. This exhibition drove people from Greenland to protest against the display of their ancestors in the museum. Yet Kunsthall museum rejected the request as they did not want to be the first example for such issues (Beurden, 2012). But the human remains and repatriation issues finally became discussable in Dutch museums and progressively brought to the museum agenda in Netherlands after the incident, 10 years later than the other western colonial countries. The first successful repatriation on the human remains in Dutch museum can date back to the year of 2002 when the Maori communities from New Zealand requested the National Museum of Ethnology in Leiden to return a Maori head (“Netherlands Return Maori Head,” 2005). The success should contribute to the support of New Zealand government which had released the policies on the repatriation of human remains of aboriginal people in 1990s, and had conducted many similar cases in many years. The legal progress in the Netherlands still remained unchanged after the first repatriation even though the Dutch museums started to involve in this international matter. The government neither implements any regulations that aim at the reparation on the human remains nor develops any relevant practices in this issue. Two years later, in 2004, two important members of museum society in Netherlands, the Ethics Code Committee and ICOM Netherlands approved the ICOM Code of Ethics, and this document later became a

significant instruction for Dutch museums to manage the daily works.⁴⁸ In 2009, there were two repatriation cases in the Netherlands. First, in the support of the Committee Skulls of Urk, Utrecht University returned six Urk skulls to the source community. And in this case, the successful repatriation can contribute to four reasons. First and foremost, the Urk local people are still the existent offspring of the skulls. Secondly, the practice of displaying the skulls has caused pain to the local community in terms of spiritual and cultural meaning. Thirdly, the involvement of the source community keeps putting pressures on the government, and becomes the driven force to push the negotiation forward. Lastly, the wrong management of the skulls in the museum cannot fit the tradition of the source communities (Arvanitis and Tythacott, 2014). In addition, at the same year, the anatomical collection of Leiden University Medical Centre returned the head of the King Badu Bonsu II to the claimant community of Ghana unconditionally (“Dutch return 171-year-old,” 2009). Thus, *can the case of Liuquan take these successful repatriations in the Netherlands to defend itself in the Dutch court?*

Yet the case of the Liuquan mummy is quite distinct from these three repatriations. The Maori head, king’s head or the Urk skulls are all owned by the public institutions or Dutch government other than the private owner. The government certainly has the right to suggest and guide the public institutions in displaying or repartitioning the human remains. Besides, the Dutch government can even tell the cultural institutions on how to dispose these human

⁴⁸ Ethische code. The full text available from: <https://museumcontact.nl/artikelen/ethische-code>, accessed on 9 June 2018.

remains under the advice from Ethical Code Commission.⁴⁹

Indeed, there is a recently recovery between two countries ignoring the repatriation of human remains between two countries for a while. In 2011, Dutch government returned a rare incense burner to China, which the burner has been placed in the Royal Netherlands Embassy for hundreds of years (Ye, 2011). In this case, diplomatic effort was crucial for its repatriation (Beurden, 2012). It raises the doubt that whether diplomatic pressure can be put into dispute of Liuquan mummy. Yet Liuquan mummy is not held by government but owned by a private collector. Any department will have no authority to request the owner to return the statue without the judicial decision. Besides, in the Netherlands, as mentioned above, there is no law associated with the repatriation on human remains, and museums return the human remains always in the consideration of the feeling of living people. The active role that museums play in the repatriation stresses the negotiations and consultations in the process. Besides, the successful repatriation creates a tighter relation with museum communities and communities of origin and increases the possibilities of future studies (Smith, 2004). Yet for private collectors in the art market, usually monetary value or aesthetic value will be prioritized than the scientific value as well as cultural value of the objects. And by looking back to second condition put forward by the Dutch owner, it is ironically suggested that he is more interested in the research on other objects instead of the statue with a mummy. Thus, in this sense, the pain induced by owing a human body as a private owner is more serious than the public institutions. Besides, in a normal sense, the

⁴⁹ Ibid.

individual will consider the ownership of others human remains as an immoral conduct, and the studies between the private owners and human bodies is unusual in terms of the ownership. When increasing international conventions or domestic regulations contribute to the repatriation of human remains from cultural institution, the field also needs to engage into the context of private collections where the origins of private artworks in the art market are more influenced by globalization and capitalization.

Back to the Liuquan mummy. Interestingly, for the case, the Liuquan mummy has a considerable drawback, and it might impact the final judgement. First and foremost, it is noteworthy that in the current legal frameworks, neither the domestic legal frameworks nor the international conventions fixate on the repatriation of non-indigenous' human remains. Most of the treaties or domestic policy just highlight the indigenous groups and their claims, which, unfortunately, marginalizes the urgent need of non-indigenous communities in the society. All the treaties or laws consider the human remains of the indigenous people should be returned with the respect for their culture as well as their tradition, and should be identified as the properties different from the other cultural property. Nevertheless, the non-indigenous human remains can still be considered as cultural properties and purchased from the market as private items (Huang, 2015). Admittedly, indigenous people have been long suffered from the unfair treatment in terms of their cultural property. The colonial countries looted, stole or even 'purchased' their objects by force were common in this period. Thus, undoubtedly indigenous communities are more eager for fighting their ancestors and cultural relics back. Yet these arguments do not justify for not caring the human remains of

the majorities and repatriations should be fully respect people's feeling rather than just a political consideration. When we look back Liuquan mummy's life in the Western countries, the statue was once displayed in two museums, which were Drents Museum and Magyar Természettudományi Múzeum. The ways of treating Liuquan mummy in two museums failed to fully respect the statue and promote its cultural value to the audiences. In Budapest, the Liuquan mummy was merely considered as a scientific object with a mysterious mummy in the statue, and the panel of Liuquan primarily stressed the natural part of the mummy, which provides,

Encased in the relic there, is a mummy of a 30-40-year-old Buddhist monk who lived around AD 1100. The mummy wear ceremonial robe. His right hand holds a ceremonial scepter which was exclusively used by masters of the Chan school of Chinese Buddhism (Wen, 2017).

In the meantime, the brief introduction of the exhibit in the official website, which follows,

From wherever it comes, every mummy has its own story. From these personal histories, we can learn about life, lost ages and distant cultures. The mystery of mummies raises thousands of questions in everybody. In the exhibition, why and why we seek answers - the means of science.⁵⁰

The contents dominantly stress the importance of the mummy collections to science rather than mummies' religious roles or cultural roles. Likewise, in Drents Museum, the

⁵⁰ *Öt kontinens. Évezredek és közelmúlt.* The full text is available from the official website of the Magyar Természettudományi Múzeum: http://www.nhmus.hu/hu/rovatok/mumia_bevezeto, accessed on 9 June 2018.

interpretation of the content of ‘worship’ states that,

In Buddhism, it is also common to worship deceased masters. It is believed that the bodies of such monks are preserved as a result of the power of faith. As a consequence, the faithful worshipping these mummies and honouring them with gifts are strengthened in their own faith. Many monasteries in China, Tibet, Taiwan, Vietnam and Japan possessed such a mummy, which attracted faithful pilgrims from far and wide (Waifong Yuen, personal communication 2018).⁵¹

Yet as the thesis has mentioned in the chapter 2, Liuquan, an exclusive folk religion in China, is the ‘creation’ of Patriarch belief. Thus, the interpretation in Drents Museum was not actuated. By providing the incorrect and biased interpretation to the visitors, the cultural value of Liuquan mummy never would have chance to reach its highest in the Western world.

Furthermore, the person conceals inside the statue is a ‘Han’ Chinese, and ‘Han’ is the biggest ethnic group and the only majority in China. He was just a man in the street before becoming a doctor and starting to save lives in the village. Kind hearted as he is, he was admired and believed by villagers. Thus, when he died, the villager decided to worship Liuquan in the manner as they always did, and displayed Liuquan in the temple for consecrating forever. Liuquan soon became one of the prestigious Patriarchs in the area. The Patriarch belief they hold is unique and special not only in China but also in the whole world. Liuquan is the symbolic representative of their culture, their ancestor and their belief,

⁵¹ Information gained from the personal communication with Drents Museum, the Netherlands.

and only the villagers share the cultural bones with the Liuquan mummy. It is stated that any means of depriving indigenous people cultural property can be considered as violating and abusing the cultural rights of the suffering communities when we look at the joint statement on cultural rights and the protection of cultural heritage which both China and the Netherlands are the member states in 2016.⁵² The cultural right of the Yangchun villagers are being assaulted by those who stole it and those who collect it by stealing a 'god' from its temple and then displaying in the Western countries. The villagers lose their access to the Liuquan mummy, their cultural rights were denied by the Dutch owner and the two museums which displayed the object. The belief and the tradition still remain the same as that 20 years ago, and nothing had changed after the missing, even though the statue mysterious 'disappeared' for 20 years, and the villagers used the replica to fix the empty temple. Like the Maori, Urk or the Ghana tribe, the villagers are now facing the same 'torture' when seeing their 'Country idol', their ancestor displayed in somewhere he does not belong to. Interestingly, one of the requirements that the Dutch owner put forward was that the state need to be placed in a bigger temple rather than the original location which refused by the Chinese government when the negotiation with Dutch owner was in progress. In response to this requirement, the vice chairman of the Restitutions Committee Professor Inge Cornelia van der Vlies stated in the interview, which provides,

In the case of repatriation, if the object is very precious and fragile, it is acceptable that the returning side can choose a museum that meets the

⁵² United Nation of Human Rights Office of the High Commissioner. (2016). Joint Statement on Cultural Rights and the Protection of Cultural Heritage. The full text available from: <http://www.ohchr.org/Documents/Issues/CulturalRights/JointStatementCyprus21Mar2016.pdf>, accessed on 9 June 2018.

conditions for protection and display. Yet Liuquan mummy is not a merely statue, but an object is of cultural and religious importance. For a Buddha statues, it does not matter whether the temple is big or small, new or old. The only person who can judge whether a Buddha image is properly treated and protected is its users and followers (Huang, 2015).

Accordingly, the statue should not just be returned to China, but also hand back to Yangchun Village. There should be other ways to approach the case in the world, even for the non-indigenous people. The law and the regulations are undoubtedly significant to solve the repatriation. Yet besides the law aspect, the case should be restrained by the ethic and morality because we need to always bear in mind that the statue, the Liuquan mummy was once a real human being, a Chinese who lived in the ancient period. And in the Chinese philosophy, the desire to be buried back to hometown or dying in the origins is still very power until now. Thus, unconditionally return the human remains to its home soil is the best manner to threat both the living people and the dead ancestor. Luckily, there are increasing museums or museum association roll out guidelines on the repatriation of human remains such as the Manchester Museum issued the Human Remains Policy, and in most of the circumstances, public responds to the repatriation on human remains are inclined to return to the source communities. Yet, these developments are insufficient as compared with the repatriation of art-like objects in terms of legitimate regulations both nationally and internationally. Accordingly, if legislation can have clear define on the problems such as whether there is ownership of the human remains and whether human remains can be perceived as heritage and applicable to the common repatriation law. All these

achievements and changes of the attitudes may navigate the road to home for the Liuquan mummy. On a larger scale of the case and other stolen objects, indeed, the disputes over the stolen objects are the process of rebuilding the international order of global society and culture after the breakage of relationship of former colonial powers and the colonized countries in the post-colonial era. Stealing leads to the outcome that some countries cannot reveal and analyse a complete art history to the local public and the world. And the interpretation of objects will be used by different political opinions and ideologies. Thus, the museum society should form the idea of 'cultural relics should stay put' and the 'culture can be shared but not co-owned'. Today, not just the Liuquan mummy has underwent a series of destructive and spiritual analysis, many stolen objects also experience the poor preservation or the deprivation of the original context during the storage or display. The cultural interaction in the world should be a developing, completing and multi-cultural communication, rather than the interaction of mono-culturalism and other cultural fragments.

Chapter 5 Conclusion

Before finishing this thesis, the Amsterdam court had not come to any decision of the ‘Liuquan mummy’, fierce discussions on this case still carry on in both countries. In an interview, Liu yang, the chief lawyer of the Lawyer’s team of the case of stolen heads in Yuanmingyuan, also participated in the repatriation of Liuquan mummy voluntarily. He believed the Liuquan mummy can be recovered successfully due to the direct evidence from villager’s side, and if China wins the case in the end, the outcome will have an effect on the repatriation history in China, which would greatly enhance the confidence of those who support the legal repatriation and have a positive impact on the repatriation of other homeless cultural properties (Wang, 2015). Yet, ‘Liuquan mummy’ just like other on-going contested objects in the world, the dispute over it cannot be solved by the court or probably would still lead to a further negotiation or a mediated solution, which the judgement of the court not always guarantee the end of the dispute (Chechi, 2012).

By analyzing the repatriation movement of human remains, laws, historical background and other influential factors, the purposes of the thesis are to offer new information on the case of Liuquan mummy and a more specific narrative on the repatriation between China and the Netherlands. To sum up, this thesis attempts to answer three research questions, which are as follows:

What are the different conflicts between the domestic recognition of legal status of ‘Liuquan Mummy’ in China and the Netherlands?

At the beginning, if Liuquan mummy is regarded as cultural property, then in both China and Netherlands, Liuquan mummy should belong to the private property of the Dutch owner or the collective cultural property of the Yangchun villagers because this statue satisfies the definitions of valuable cultural object in two countries and also the conditions of private property. However, as the thesis has pointed out in the chapter four, even though Liuquan mummy is the collective cultural property of the Yangchun village, Chinese government still restricts the export of valuable cultural objects in the nation, obviously it would not be possible to export the statue to the foreign border without any official documents to prove its legal exit. In that sense, the statue was illegally transported in the year of 1995. Hence, the legal statue of the Liuquan mummy will be protected by Chinese government according to the Law of the Peoples Republic of China on Protection of Cultural Relics. As for the Dutch law, if the Dutch owner can prove his possession is legally acquired, then Dutch civil code gives full control right of the private cultural property to the owner and protects the ownership of the private possessors. Actions to the objects such as the latter exchange with other buyers or the method of storing the statue will find its legal statue in the Dutch legal framework and will not be intervened by the government. Additionally, if Liuquan mummy is recognized as a corpse rather than an artwork in the court, then neither China nor Netherlands has a clear definition on the ownership of the corpse and whether it can be treated as property. As a result, the ethic consideration is more or less should be taken into consideration to make a judgement on which country will be more suitable to dispose the Liuquan mummy for the sake of the descendants and society as a whole.

The answer to the second question: *Is there any bilateral or international convention, treaty in aid of settling the dispute over 'Liuquan Mummy'?*

For one thing, international conventions such as Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 ('1970 Convention') and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 ('1995 Convention'), provide provisions on the repatriation of cultural property. Two countries have signed these two influential conventions. However, due to the principle of non-retroactivity of law and exception retroactivity of these two conventions, the real trial, 1970 Convention and 1995 Convention can only have the reference value for the judgement rather than actually being applied into the verdict. On other hand, China and Netherland have not yet signed any bilateral convention yet. Hence, there is not any bilateral agreement that can contribute to the case, Liuquan mummy can only resort to the international conventions.

Here comes the answer to the third question: *When human remains are considered as 'cultural properties' what is the current state of the art regarding to human remains and their repatriation?*

It is true that the repatriation of the Liuquan mummy will be much easier if the statue was merely an artwork without the human remains inside in it. And it is quite clear that any property related to the human body will be challenged by both the law and the ethics. For one thing, private cultural property with human remains which need to be repatriated is

rare in the world and there is no clear answer in the legal framework in either of the countries in terms of ownership. Hence, this ambiguous attitude towards human remains will always result in the debate on whether human remains can be treated as no-property or quasi-property in the court (Gallagher, 2010). Notwithstanding museum society, some countries have made effort and have come up with many policies that aim at solving the display or store issue of human remains in their collections and the repatriation process, the number of the return of public collections involving human remains is actually increasing in these years such as the case of Maori Mokoikoi heads that the Smithsonian Institution agreed to return 54 Māori heads to New Zealand (Eleanor, 2016), which we can see that the museum society more or less start to work actively and positively towards the repatriation of human remains in the public domain. However, Netherlands seems to lag behind its European counterparts in this issue. Although there are a few successful repatriation cases in recent years in Netherlands, the only instruction of dealing with the human remains is still the Code of Ethics revised by the ICOM in the Dutch border. Furthermore, Liuquan mummy is the first official repatriation claim in terms of the cultural property between China and Netherlands, let alone the statue is a private collection and with human remains. Therefore, there is not any case that can assist in the court for the final verdict. Thus, it can be very difficult to trail in the court.

For another, Liuquan mummy and its descendants still share a strong cultural and emotional tie with each other, the replica of the Liuquan statue in the temple reflects the fact that the belief does not change because of the loss of real body. Out of the consideration of ethic, it

is not the appropriate manner to deprive the descendants of something that is important to their life, especially exhibit or store the objects of ritual significance without consulting the communities who matter. And this is may be one of the reasons that the dispute of ownership of Liuquan mummy is fierce between the villagers and the private owner because the ownership always means that one can have the right to dispose the object in the way she/he may want.

However, the biggest problem that lies in this case is that for a long time, in Christian popular and Humanism popular society, human remains gain their reputation through being associated with certain identities such as the victim of the war, and without the associations, they will be merely considered as the important scientific evidences or a strong practice of interpretation in museum (Swain, 2007). Western societies still are not familiar with the ritual and spiritual representations of human remains from other culture, which lead to the movement of repatriation of human remains not achieve to its best. Besides, repatriation has a strong inclination on the indigenous societies, most of the successful cases and related repatriated policies only emphasize their rights and needs, neglecting a large percentage of non-indigenous communities in this matter. Therefore, in general, the world, or to be more specific, museum societies still make no consensus as to what will be the best solution towards such special cultural property-human remains.

The best prospect of the case is the Buddha statue which will be placed back to its original resting place because the Liuquan mummy is still a 'living cultural property' with believers

and is being worshiped on daily basis in the village. As a collective cultural property of great ritual importance to the local villagers, the unexpected journey in a glass cabinet in Netherlands has transformed this living cultural property to a ‘cultural-isolated’ property without any followers. The private collector, the museums in Drents as well as Budapest did not build any spiritual and emotional connections with the mummy in nearly twenty-three years in the circumstance of possessing the statue. Conversely, many villagers’ life have been changed because of the case, after the disappearance of ‘Liuquan mummy’ in 1995, some villagers were assigned to different cities in search for the statue by the village committee since then. Villagers who worked in the Customs keep watching the exit record of the cultural objects. Some even disguised as buyers and went to the black market to search for the mummy (Yang, 2015).

On July 14th, although it was the busiest season for farmers, hundreds of villagers gathered to the Puzhao Temple in the day of the first hearing. When the Dutch owner claimed that the statue had been exchanged to another buyer, villagers could not hide the feeling of disappointment. Worst still, after the starting of the dispute, a few old villagers passed away due to the undulating emotion towards the Liuquan mummy, thus, this time the detailed content of the lawsuit did not be relayed to many elderly believers (Ye, 2017).

In Yangchun Village, instead of a dead cultural object, Liuquan statue lively took part in the social life of the villagers. For thousands of the years, he has been enshrined in the temple, and became a specific socio-cultural phenomenon. The statue transforms itself to

a local cultural property with symbolic meaning to the local society. From the year of 1995 onwards, the Buddha statue was forced to separate itself with the life of the local villagers, and became a real 'dead' cultural property during this time period. It was locked in a glass cabinet, greeted with the illumination of X-ray rather than the burning joss stick of worshippers in the Netherlands. Such exploration on Liuquan statue is more about the consideration of scientific research but is seldom linked to the culture and social aspects. After that, Yangchun village had to divide itself with their tradition, and the memory of Liuquan mummy that can be inherited was deprived by its disappearance (Dan, 2015). Thus, it is understandable that how excited the villagers were when they heard about the mummy once again, and their urgent demands for the repatriation. What matters the most, the loss of the Buddha statue, at the same time, means the discontinuity of folk religion in this region, it is such a pity that many new generation grow up without knowing this country idol, being deprived of the opportunity of their cultural rights.

Therefore, more and more museums start to consider the ethic issue of their collections and were actively involved in the repatriation of human remains. Private collectors and many other individuals who engage in the art industry should also rethink their roles in purchasing or selling the ritual objects. Ethic of the collections also matters in the private domain where the transactions of cultural property flurry in recent year with more and more individual participate in the global art market. Moreover, both museums and private buyers should insist on the proof of legitimate ownership before displaying or purchasing the cultural objects. Meanwhile, it is explicit now that selling and buying the ancient human

bones for museums are increasingly failing to justify themselves in many countries in terms of morality and legal aspects. Thus, the restrictions should also implement in the art market where many individuals get engaged. Besides, the manner of treating human remains in museums has changed evidently since the reburial and repatriation movement in the west, curators have the ethical responsibility to study and collect the right information of the remains which is needed to display the object in terms of historical or religious background, avoiding the second injury to the source community just like what have happened in the Liuquan mummy in two museums.

On the one hand, resembling the other stolen cultural property in the world, the educational and research significance of the case of Liuquan mummy emphasizes on how to recover the stolen cultural property that transcends the national border in terms of the existing legal frameworks and its enlightenment on China and Netherlands because there are many homeless Chinese cultural properties in the Dutch museums and private cabinets. On the other hand, the case is far more about the repatriation as it contains profound inspiration that how China or the world as a whole to protect their cultural property. The information behind the disappearance is the insufficient preservation effort which leads to the loss of the mummy in the village.

What is more, we still do not know how much previous cultural property is scattered in folk, how they are being managed or how valuable they are. All these loopholes in the protective system attribute to deliberate destruction, stealing and smuggling of cultural

properties in not just the case with China but the whole international society. The repatriation movement of the cultural property in the world should enable every country to acquire the sense of crisis. Furthermore, the case of Liuquan mummy, in other way, provides a consideration on why there is not any successful judicial recourse of repatriation in China. The reasons for that may be because the public has still not formed the idea of resorting to legitimate process in repatriation or the fact that China lack of the effective institutions to conduct the repatriation. Some other factors may exist that can hinder that road of juridical recourse in China, and this is what we should keep improving.

In the end, just like what has been mentioned at the beginning of this chapter, even if the evidences from villagers' side are strong as well as credible enough to prove the Liuquan mummy was stolen; it never promises the case will have a happy ending. But if so, on all counts, Liuquan mummy should be given back to the country of origins because apart from laws and regulations, ethic and morality consideration should be also taken into the repatriation matters in reality. Until now, the human remains and ethnographic objects trades are still continuing in the auction houses, online galleries and in the hands of private dealers, purchasing majorly by dealers from European or North American countries (Huffer and Chappell, 2014). Therefore, hoping that this thesis and the final judgement of the case will have a positive effect on other such cases in the future, that many descendant communities and non-descendant communities can have their ancestors of ritual and cultural importance back to home.

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Abstract

The thesis analyses the case of Liuquan mummy, which marked the first repatriation trial between China and the Netherlands in history. The thesis first gives an overview on the attitudes towards the repatriation in the world and the history of some Chinese cultural properties in the Netherlands. Secondly, the thesis provides the historical background of Liuquan mummy because with the human remains involved in the repatriation, identification on the source community and the relationship of descendants are necessary. Meanwhile, the historical background emphasizes how the Liuquan mummy was stolen and how it ended up in the Netherlands. Moreover, the thesis also studies the different attitudes and the evidence held by both the Chinese government and the Dutch owner. The importance of the case is on the issue of ownership and Liuquan mummy enables the thesis to discuss the ownership in two directions: cultural objects and human remains. The thesis will consult both the international legal framework as well as the domestic legal framework on the issue of repatriation in order to build a theoretical perspective on the current repatriation of cultural objects especially in China and the Netherlands. In here, it introduces the related international conventions and the history in the terms of repatriation, which emphasize the role of the conventions playing in the negotiation of the repatriation. Yet, Liuquan mummy is not just about a cultural object, it also contains human remains. Therefore, the thesis uses the legal framework on the repatriation of human remains to build another theoretical perspective, which concentrates on both the indigenous human remains and the non-indigenous human remains. Furthermore, the thesis also concludes some

significant factors which may contribute to solve the ownership problem such as the 'innocent acquisition system'. The three research questions of the thesis are: *What are the different conflicts between the domestic recognition of legal status of 'Liuquan Mummy' in China and the Netherlands?*; secondly, *Is there any bilateral or international convention, treaty in aid of settling the dispute over 'Liuquan Mummy'?* and *When human remains are considered as 'heritage' or 'cultural objects', what is the current state of the art regarding to human remains and their repatriations?*. Besides, after the case has been brought to the Amsterdam court, there are many other new changes appear. Thus, the thesis concludes the new findings and analyses the role of these new changes to the lawsuit and the repatriation. In the end, the thesis provides some constructive suggestions to the case and the future of other similar cases.