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ORGANISED CRIME IN ART AND ANTIQUITIES

Edited by
Stefano Manacorda

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“Organised crime in art and antiquities”
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KEYNOTE ADDRESS

JOHN SANDAGE
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It is my great privilege to represent the United Nations Office on Drugs and Crime at this important Conference. I bring greetings and the regrets of Kuniko Ozaki, the Director of the Division for Treaty Affairs, who is unable to be here today. At the outset I would like to express UNODC's gratitude to ISPAC, the National Centre of Prevention and Social Defence and the Courmayeur Foundation for their hospitality and their unwavering commitment in offering an enabling environment for the exchange of ideas on strategies and plans to address various forms of crime. Last year Ms. Ozaki spoke on *The Evolving Challenge of Identity-Related Crime: Addressing Fraud and the Criminal Misuse and Falsification of Identity*. This year I am asked to speak on *Organized Crime in Art and Antiquities*.

The value of the international trade in looted, stolen or smuggled art is estimated at between US\$4.5 billion to US\$6 billion per year. The growing interest in art objects belonging to other cultures over the last decades has fuelled a significant increase in the demand for and trade in such objects, in particular but not exclusively in Western countries. The use of the Internet has greatly facilitated the illicit trade between persons around the world.

The illegal trade in art and antiquities has become a lucrative business for the craven and unscrupulous and a source of additional income for populations living in poverty in the countries of origin of the art. Political instability, corruption and a lack of resources to control borders and provide security at the archaeological sites or museums that exist in many developing countries leave them vulnerable to the loss of their cultural heritage. In one extreme example, it is thought that over 4000 objects were stolen from Iraqi museums during the Gulf War and that the profit from their sales was used to arm insurgent groups. Developed countries are not immune from falling victim to these crimes and countries like France, Poland, Russia, Germany and Italy are reported to be the most targeted locations for thefts of arts and antiquities from private individuals, places of worship and museums.

This illicit trade has distinct but closely related components, which may be classified as follows:

- illegal excavation of antiquities, many of which are subsequently exported;
- illicit export of art and antiquities, where laws exist that are intended to preserve the national cultural heritage by prohibiting such exports;
- theft of art and antiquities from museums, historical sites, antique businesses and galleries and private collections.

Trafficking in art and antiquities provides criminals with an opportunity to deal with high value commodities that are often poorly protected, difficult to identify and easy to transport across boundaries to disreputable buyers as well as eager but unsuspecting members of the art and antiquities trade. The market in arts and antiquities is truly international and generally high value, making it vulnerable to money-laundering. In order to disguise the true origin of their wealth, organized criminal groups often use the licit market in art and antiquities to launder proceeds of their illicitly acquired money. The illicit market is populated by a mixture of sophisticated criminal organizations, individual thieves, small-time dealers and unscrupulous collectors. However, the trade also depends to a great extent on the witting or unwitting connivance of apparently legitimate individuals and institutions, such as auction houses and antique dealers.

The illicit trade in stolen and illegally exported art and antiquities depends for its success on close links between the licit and the illicit sector. Transnational trafficking networks have grown vertically, and are dependent on links between the local population in areas where antiquities have been discovered, the smugglers who violate national legislation prohibiting their export and the dealers who sell them at great profit to private collectors. In countries where the rule of law is weak, law enforcement, customs and related Government officials facilitate the illicit trade through bribery, falsification of documents and other corrupt practices. The well-organized nature of the illicit market for art and antiquities is perhaps most strikingly demonstrated by the fact that only around 5 per cent of all stolen art objects are ever recovered. Many excavations are undertaken by individuals, working in secret and without authorization. If they find movable archaeological items, they do not declare them to the appropriate authorities. They simply sell them abroad without the country of origin even having any knowledge of them, unless and until they are discovered outside the country.

The international community has set up legal instruments to counter the destruction or trafficking of cultural property, both in times of war and peace. In times of armed conflict, there are special protections given to cultural property in addition to the more general provisions that prohibit the intentional attacks, wanton destruction or pillaging of civilian property. Violation of these prohibitions may constitute a war crime.

Many of the international conventions on the law of armed conflict, including the Hague Conventions of 1899 and 1907 and the Additional Protocols to the Geneva Conventions of 1977 contain provisions relating to the protection of cultural property. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999, reinforce and expand on these fundamental principles. The 1954 Convention, which currently has 121 States Parties, requires parties to undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism against, cultural property.

Other instruments are not restricted to conflict situations and are intended to promote international cooperation between States through their domestic law enforcement and customs control agencies in order to facilitate the seizure, return and restitution of stolen and protected cultural property. Concerned about the new phenomenon of trafficking in cultural property in times of peace, the international community, through the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted in 1970 the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, which currently has 116 States Parties. The Convention obliges each Party to, *inter alia*, prohibit the exportation of cultural property from its territory unless accompanied by an export certificate.

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which was adopted in Rome on 24 June 1995 by the International Institute for the Unification of Private Law (UNIDROIT), and which currently has 29 States Parties, complements the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property from the point of view of private law. It establishes a body of uniform legal rules for the restitution and return of stolen or illicitly exported cultural goods and it enables both States and individual owners who wish to recover a stolen object to file a complaint before a foreign court.

Finally, and from my purely selfish perspective most importantly, the United Nations Convention against Transnational Organized Crime, known as the Palermo Convention of 2000, which currently has 147 States

Parties. Trafficking in cultural property is not expressly addressed by the Palermo Convention nor by its three supplementing Protocols (against trafficking in persons, smuggling of migrants and illicit trafficking in firearms). The Convention however requires parties to criminalize four basic offences which are vital to the ability of organized criminal groups – whatever the specific trade in which they engage- to operate efficiently, generate substantial profits and protect themselves from law enforcement authorities. These basic offences are: participation in an organized criminal group, laundering of proceeds of crime, corruption and obstruction of justice, all of which are of direct relevance to the involvement of organized crime in the art and antiquities trade.

The Palermo Convention further creates for Parties wide obligations to cooperate at the law enforcement and judicial levels to suppress all forms and manifestations of organized crime. Provisions on international police and customs cooperation, on extradition, mutual legal assistance or confiscation of proceeds of crime are common features of many penal treaties. The Palermo Convention's added value lies in the fact that its international cooperation provisions broadly apply to all transnational serious crime, as long as such crime involves an organized criminal group. The 147 Parties to the Palermo Convention therefore have at their disposal detailed mechanisms, ready to be applied at the bilateral, regional or cross regional levels in any case of transnational organized criminality. There will in the course of the coming days opportunities to discuss in more detail the potential of such provisions in the investigations and prosecutions of crime against cultural property.

I would finally like to draw your attention to resolution 2008/23 of 24 July 2008 of the Economic and Social Council, entitled "Protection against trafficking in cultural property". This resolution calls for action by Member States and relevant international organizations to develop national measures and enhance international cooperation in criminal matters in order to combat the involvement of organized criminal groups in the theft and trafficking of cultural property. It indicates various directions for work in this area which are reflected in the choice of topics covered by the present Conference. The resolution also recalls the Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples, adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Model Treaty deals with measures to impede illicit transnational trafficking in movable property, the imposition of adequate sanctions and the provision of means for restitution. In the same resolution the ECOSOC has requested relevant international organizations, in particular the UNESCO and UNODC, to consider ways to

make the Model treaty more effective. I trust that the experiences and ideas exchanged during this Conference will nurture the process mandated by the ECOSOC.

In conclusion, I would like to reiterate the gratitude of UNODC to our host for offering us the opportunity to engage in a dialogue on these very important topics.

INTRODUCTION

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I am delighted today to welcome so many participants here at Courmayeur to this International Conference on “Organised Crime in Art and Antiquities”. Some hundred and fifty experts from twenty-seven countries and five continents have come together here: they represent national and international institutions, the academic world, non-governmental organizations and the private sector. I want to thank all or them most warmly, especially those who have accepted the task of presenting papers, and to express my appreciation to ISPAC (*International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme*) and to the other institutions who have supported this initiative, for all the excellent organizational work they have accomplished.

The fact that we are so many also shows how mistaken I was, when accepting, just over a year ago, the honour of co-coordinating the work of the Conference, to have some doubts about the relevance of its theme. The role of organised crime in the sector involving works of art and antiquities seemed at first to me to be basically the fruit of a convergence between the political agenda of the United Nations, ever keen to extend the scope of their conventional instruments to new areas, and the always topical issue of the protection of cultural heritage, especially in Italy where it represents a longstanding field of research.

I have to admit that my vision had been far too restricted. The interest of the subject that we will be considering in the course of these three intensive days is undoubted and it exceeds considerably the strict and intermittent framework in which I had viewed it at the outset. The few examinations of the subject that I was able to undertake in anticipation of the Conference enabled me to identify three reasons at the very least to justify our meeting, making this event not only important but indeed essential.

First, the importance of the subject derives from the criminological dimension of the phenomenon, which I would describe without hesitation

as particularly striking, both for the quantity and quality of the stakes involved.

Secondly, the interest is linked to the fact that the protection of works of art and antiquities lies in a field where there are numerous complex strategies for normative intervention, domestically as well as internationally, thus making it a veritable laboratory for different options of criminal policy.

Finally, a third reason is that the implementation of new normative instruments in this field has to contend with major difficulties, since the theme of organised crime *per se* is a source of great tensions at the heart of penal systems, destined – as it is – to look for an impossible equilibrium between the safeguards, which we who are engaged in the field of criminal law always hold dear to our hearts, and repression.

In the course of this Introduction, therefore, I would like to expand a little on these three elements, which amount to *the criminological emergence of the subject, the complexity of the instruments* of criminal policy and *the tensions affecting the values to be protected* which stand out in a perspective of reform.

1. A preliminary statement: the spread of organised crime into the field of art and antiquities

With regard to the empirical dimension, one can refer to a good number of studies, most of them fairly recent, to which distinguished specialists have devoted themselves¹. We will have the opportunity to hear

¹ On the implications of organised criminal groups in the theft and trafficking of the cultural patrimony, see *Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005: report prepared by the Secretariat* (United Nations publication, Sales No.E.05.IV.7), chap.1, resolution 1; subsequently endorsed by the General Assembly in its Resolution 60/177 of 16th December 2005, and contained in the annex. thereto. Such a link is equally established by ECOSOC Resolution 2008/23, *Protection against trafficking in cultural property*, 24th July 2008: “*Alarmed* at the growing involvement of organised criminal groups in all aspects of trafficking in cultural property”.

In more general terms on the extent of criminal phenomena in the field of cultural heritage, see, within an extremely rich literature, P.J. O’Keefe, *National Legal Control of Illicit Traffic in Cultural Property*, Paris, UNESCO Doc. CLT/53/WS-16, 1983; P.J. O’Keefe, *Trade in Antiquities: Reducing Destruction and Theft*, London: Archetype Publications & Paris: UNESCO, 1997; N. Brodie –

from some of these in the course of our work and I defer of course to them in this area.

Illegal archeological excavations, export and import of movable cultural artefacts, forgery of works of art: these are just a few of the illegal activities often perpetrated by organised criminals. They represent a *paradigm of the collectivization of crime* which goes far beyond the limits of our theme and which for several years has been attracting the attention of law-makers as well as the world of academic doctrine. Activities in the domain of art and antiquities most often require a large number of participants and techniques and a high degree of knowledge, with networks, which are usually transnational, representing an area where criminal activity seems ill-adapted to develop in the hands simply of individuals.

Nevertheless, there is a further element that I would underline, which strengthens the attraction to criminal organizations of unlawful activities in the art field: this is the contrast between the economic stakes in such activities, which can generate huge profits on a vast scale, and the *low penal risk* associated with them, which militates strongly for engagement in them.

A large part of our debate will be devoted to national experiences in this field, which should assist us in assessing this phenomenon: victim countries, transit countries and destination countries will all be represented here, despite the difficulty in classifying any of them, once and for all, in just one such category.

2. The complexity of the instruments of criminal policy and their weaknesses

With this preliminary proposition, and without being able to go beyond certain generalizations at the outset, I would like now to venture into the political field with regard to this subject, an aspect in which I find myself a little more at ease as a criminal lawyer, even though it ventures into a zone of great diversity and complexity. Far from being able to

J. Doole – P. Watson (eds.), *Stealing History: the Illicit Trade in Cultural Material*, McDonald Institute Monographs, Cambridge, 2000, especially p.16 *et seq.*; N. Brodie – J. Doole – C. Renfrew (eds.), *Trade in Illicit Antiquities: the Destruction of the World's Archeological Heritage*, McDonald Institute Monographs, Cambridge, 2001; N. Brodie – K. Walker Tubb (eds.), *Illicit Antiquities: the Theft of Culture and the Extinction of Archeology*, One World Archeology, Routledge 2001.

present exhaustively at this moment the juridical framework – to which a good part of our work here will be devoted – I will confine myself to giving an outline, making reference to the different historical stages in the evolution of international instruments.

In the interests of simplicity, I would like to look at these different stages, with the help of three significant headings: the 1954 *Hague Law*, corresponding to the Convention for the Protection of the Cultural Heritage in Situations of Armed Conflict and its various supplementary texts²; the *Paris Law*, deriving essentially from the 1970 Unesco Convention on measures for the prohibition and prevention of illicit import, export and transfer of ownership of cultural property³; and the *Rome Law*, which may be identified in the 1995 Unidroit Convention on stolen or illegally exported cultural objects⁴. So, in each twenty-year stage, if one accepts the simplification to which I am resorting, something new is added to the juridical framework.

The first stage, which takes us to the middle of the last century, focuses on the assault on cultural assets occurring in a situation of armed conflict, be this international or not. The 1954 Convention (integrated, as is well known, with its subsequent Protocols of 14th May 1954 and 26th March 1999) is a historic reaction to barbarous acts committed in the first half of the twentieth century, produced in the style of other instruments forming part of international humanitarian law. These instruments were destined to be perpetuated in later days, regrettably due to the proliferation of armed conflicts⁵. The Hague Law, in brief, corresponds to a criminological paradigm and well identifiable piece of legislation: *even in exceptional circumstances giving rise to violent acts* it is essential to ensure the

² Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14th May 1954, United Nations, Treaty Series, vol.249, No.3511.

³ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the United Nations Educational, Scientific and Cultural Organization on 14th November 1970, United Nations, Treaty Series, vol.823, No.11806.

⁴ *Convention on Stolen or Illegally Exported Cultural Objects*, adopted at Rome on 24th June 1995 by the International Institute for the Unification of Private Law.

⁵ For a recent application of the concept of crime against humanity see H. Abtahi, *The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 Harv. Hum. Rts. J. 2001, 1.

protection of the common patrimony of mankind. Such an approach demonstrates the importance the international community attaches to cultural assets, whilst at the same time permitting a limit to the area of protection to be stipulated.

The second stage, which I identify with the 1970 UNESCO Convention, marks a decisive turning-point in the introduction of international instruments guaranteeing the protection of a cultural patrimony. The import, export and transfer of ownership of property in violation to rules laid down in Conventions now became prohibited at a domestic level. The Paris Law thus marks the recognition of criminal activities occurring in this field – accompanied by a strong post-colonial vision, which moreover explains the large number of declarations and reservations – and it firmly takes its place in the repressive campaign. One may perhaps regret that recourse to penal sanctions is only provided for in Article 8, as an alternative measure to administrative sanctions, and then only for exports which lack the proper certification and for imports of stolen items.

The Unidroit Convention, *the third stage* of this reconstruction, also forms part of the repressive movement, explicitly making reference to cultural assets that are stolen or illegally exported. The Rome Law however pivots essentially, by bias towards the concept of *due diligence* or good faith, on the restitution of stolen or illegally exported items, without the Criminal Law properly speaking having any role in this scenario.

Let me therefore summarise in a single sentence the assertion that I have just made: if in the Hague Law there are exceptional circumstances during armed conflict justifying a normative response (*a right to a strong “dramatic” connotation*), under the Paris and Rome Laws, conversely, it is criminal activity on a broad front which justifies the response, but that seems to focus primarily on means of restitution and not on particularly deterrent sanctions (which presents us therefore with a connotation that is “*peaceful*” or better in French “*angélique*”).

I would not venture here to summarise the whole normative complex: I have not, for instance, referred to the deontological rules, which in their turn have a major if complementary importance, in the implementation of criminal policy strategies⁶, nor to regional Laws such as

⁶ See, inter alia, UNESCO International Code of Ethics for Dealers in Cultural Property adopted in 1999; the ICOM Code of Ethics for Museums and minimum standards of professional practice and performance for museums and their staff, adopted unanimously by the 15th General Assembly of ICOM in Buenos Aires (Argentina) on 4th November 1986. It was amended by the 20th General

those promulgated under delegated authority – for example Regulations and Directives of the European Community⁷ – but a good number of these will figure in our later discussions.

The question I ask myself, in the face of this situation, is to know whether between these two dimensions, the one dramatic and the other peaceful, the time has not come to begin to reflect in a more structured and coherent way on the battle against organised crime in the field of art and antiquities. I am therefore going to pass on to the third and final point of these introductory observations, which deals of course with the outlook for reforms and their implications.

3. Some possible leads for reform of the penal framework in addressing organised crime in the field of art and antiquities

This is not, properly speaking, an introduction to trace the perspectives for reform; perhaps this Conference – or so I hope – will manage in its conclusions to define some of them. For my part, I will just touch on one or two aspects, knowing that every facet of the penal context needs to be addressed with the utmost caution.

First it can be stated that there seems to be no dearth of international instruments which specifically demand recourse to Criminal Law, and they derive essentially from the work of the United Nations.

The 1990 United Nations *model treaty* for the prevention of crime in the field of movable assets forming part of the world's cultural patrimony is of importance to us in at least three respects⁸. To begin with, it is based on co-operation in penal matters, which is the theme of its first preamble: we will be looking again at this during our Conference work,

Assembly in Barcelona (Spain) on 6th July 2001, retitled ICOM Code of Ethics for Museums and revised by the 21st General Assembly in Seoul (Republic of Korea) on 8th October 2004.

⁷ Regulation (EEC) no. 3811/92 of the Council, 9th December 1992, concerning the export of cultural goods, Official Journal no. L 395 of 31st December 1992, p.1; Directive 93/7/EEC of the Council, 15th March 1992, on the return of cultural objects unlawfully removed from the territory of a Member State, Official Journal no. L 074 of 27th March 1993, p.74.

⁸ Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27th August-7th September 1994: report prepared by the Secretariat (United Nations publication, Sales No.E.91.IV.2), chap.1, sec.B.1.

well aware that co-operation in the widest sense is an indispensable tool in this commitment. Next, Article 3, referring to sanctions, deals with illegal acts of individuals and institutions, which raises the question of the responsibility of moral persons, one of the main stakes for contemporary penal systems. Finally, the model treaty explicitly refers to the “*international conspiracies*” to acquire, import and export the items in question, which of course brings up the issue of organised crime. The importance of this instrument in the field we are now considering is therefore undeniable; although its status as a model treaty makes it a tool which so far is of limited practical effect⁹.

The Palermo Convention on transnational organised crime in 2000¹⁰, for its part is equally capable of being applied in some respects to this field, notably in matters of money laundering, liability of moral persons and confiscation. We thus see a juridical instrument targeted on organised crime, which does not take into consideration, explicitly, the protection of art and antiquities.

The question therefore arises of knowing whether one should proceed today towards the adoption of a new Convention text with criminal content, which will be both effective and focused, so as to address the lacunae between the dramatic and peaceful visions previously mentioned.

If one respected the rhythm of evolution of the juridical framework already outlined, with a new piece being added every twenty years, it would now be time for another new development of the juridical framework for protecting art and antiquities. We would then expect in coming years to see the emergence of a new text, such as a protocol to the Palermo Convention dealing specifically with organised crime in the field of art and antiquities. The interest in such an evolution would, in my view, lie in an axiological perspective: it is the cultural heritage of humankind which needs to be efficiently protected; it is moreover the poorest

⁹ ECOSOC Resolution 2008/23, *Protection against trafficking in cultural property*, 24th July 2008: “*Reiterates its request that the United Nations Office on Drugs and Crime, in close co-operation with the United Nations Educational, Scientific and Cultural Organization, convene an open-ended inter-governmental expert group meeting, with interpretation in all the official languages of the United Nations, to submit to the Commission on Crime Prevention and Criminal Justice at its eighteenth session relevant recommendations on protection against trafficking in cultural property, including ways of making more effective the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property*”.

¹⁰ United Nations, *Treaty Series*, vol.2225, No.39574.

countries, often racked with war, who head the list of victims of such criminal activity.

Now, beyond the suggestive effect of such a temporal connexion, a reform progression along these lines calls for a beguiling reflection: I cannot conceal the suspicion that any enhanced instrument to fight crime raises the issue of fundamental rights, and I share, crucially, the hesitations surrounding the concentration on organised crime as a universal route to the repression of crime. Every reform perspective in this field, I believe and wish to stress, needs a careful study and confirmation of its necessity, its rationality and its proportionality as a response. It falls to our Conference to illuminate the route for possible reforms, while submitting all proposals in this field to a very careful critical analysis.

SELECTED PAPERS AND CONTRIBUTIONS

Part I

**ART AND ANTIQUITIES: A
CRIMINOLOGICAL
PERSPECTIVE**

FREQUENCY AND FIGURES OF ORGANIZED CRIME IN ART AND ANTIQUITIES

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Introduction

The illicit art and antiquities trade is an age-old problem dating to ancient Greece and before. Plundering is a practice as ancient as warfare itself. With the development of the world's great civilizations, the proverbial "spoils of war" often included national and cultural treasures, including priceless art and antiquities. Even in times of warfare, such as the Napoleonic Wars and wars of colonial expansion, cultural resources were a prime consideration.

However, over the past decades, illicit trafficking in cultural property has, unfortunately, grown into a problem of epidemic proportions.

Every day, irreplaceable cultural treasures are taken from the places where they belong to enter the international art market where they are traded illegally or quite openly while the authorities concerned stand helplessly by. According to Interpol, the trade in cultural heritage has reached proportions which can be compared with the international trade in drugs and they share other characteristics as well.

This is a traffic which concerns all of the world but as usual it is those who can least protect themselves that are the great losers. Quoting the Director of the McDonald Institute for Archaeological Research: "The single largest source of destruction of the archaeological heritage today is through looting – the illicit, unrecorded and unpublished excavation to provide antiquities for commercial profit".

The growth of the modern antiquities market, and the continued international hunger for plundered goods, has elevated the price of antiquities to enticingly high levels. High prices encourage the looting of cultural sites by local populations desperate for income. Despite international action, looting has become an increasing local phenomenon, but looters are better connected to dealers and antiquities markets.

During the past several decades, however, the illegal market in art and antiquities has become transnational in organization. There are a number of major transnational markets in illegal goods, including drugs,

weapons, sex slaves, illegal immigrants, precious gems, and automobiles. Art and antiquities are one of these, and a growing one.

2. Problems related to data collection

As we well know, estimates of the size of illegal markets tend to be extremely unreliable, and the market in illegal antiquities, which often includes both art and antiquities, is no exception.

We do not possess any figures which would enable us to claim that trafficking in cultural property is the third or fourth most common form of trafficking, although this is frequently mentioned at international conferences and in the media.

In fact, it is very difficult to gain an exact idea of how many items of cultural property are stolen throughout the world and it is unlikely that there will ever be any accurate statistics. National statistics are often based on the circumstances of the theft (petty theft, theft by breaking and entering or armed robbery), rather than the type of object stolen. To illustrate this, every year, the Interpol General Secretariat asks all member countries for statistics on theft of works of art, information on where the thefts took place, and the nature of the stolen objects. On average, we receive 60 replies a year (out of *187 member countries*), some of which are incomplete or inform us that no statistics exist. (difficulties in comparison of available data *collected in different countries*).

3. Analysis of estimates and figures

It is not possible to put a figure on this type of crime, partly for the reasons mentioned above and partly because the value of an item of cultural property is not always the same in the country in which it was stolen and the destination country. Also, thefts of such property are sometimes not reported to the police because the money used to purchase them had not been declared for tax reasons or because it was the proceeds of criminal activity.

Although it seems quite impossible to assess the financial extent of the losses caused by clandestine archaeological excavations. Such excavations often only come to light when looted items appear on the international market. The 1999 United Nations Global Report, estimates the annual trade in illicit antiquities at around 7.8 billion, ranking behind drugs (160 billion) and arms (100 billion) as the most profitable black market.

For example, according to the U.S. Customs Service, the dollar value of time crime theft is exceeded only by drug sales; Scotland Yard in London estimated art theft around the world at £3 billion in the early 1990s; the Federal Bureau of Investigation which calculated the size of the illegal art market (including both art and antiquities) at about \$5 billion in the 1990s, currently gauges the art theft market at about \$6 billion. According to Interpol statistics, Italy is, together with France, the country most affected by the theft of cultural objects.

According to recent statistics of the Italian Carabinieri, here represented by General Nistri, in 2006, the number of thefts throughout Italy has been 1.212, with 716 persons under investigation.

To overcome the difficulties in collecting data on art thefts many actions and tools have been developed by the major international organisations active in the field. In 1995, the Interpol General Secretariat produced a new database for works of art combining descriptions and pictures. This database – developed by police officers for police officers – currently contains over 26,000 items.

The “Object ID”, developed by UNESCO in collaboration with the Paul Getty Trust and Interpol, is an easy-to-use standard for recording data about cultural and natural objects. It helps institutions, communities, and individuals understand how to document art and antiques in a uniform manner and can assist in recovering cultural and natural objects in the event of theft, illicit export, loss, as well as recomposing such objects in case of partial destruction or deterioration. Object ID is a minimum standard for identification purposes primarily to ensure prompt transmission of specific information to and from law enforcement authorities and customs officials.

To enable member countries to supply information in a format which can be entered in the database, the General Secretariat has produced standard forms, known as CRIGEN/ART, which are available in the Organization’s four official languages (Arabic, English, French, and Spanish). These forms, based on a very simplified visual description, help police officers with a limited knowledge of cultural property to describe the objects. The forms are essential for the circulation of information as they enable an object to be described in the same way, regardless of language or culture.

Finally, the importance of non-legal measures, like codes of conduct, training and public information campaigns, is widely recognized.

Legal framework

We often see the terms cultural “property”, “heritage”, “goods” and “objects” interchanged. There is no single, universal definition for any of these terms. Although in common parlance they generally refer to the same things, their exact definition and legal regime (alienability, exportability etc.) are to be sought in national legislation, or in international conventions.

Due to a widespread lack of awareness of the problem and a lack of priority given to the issue, many countries do not yet have laws and regulations to effectively protect their cultural heritage from excessive commercial trade, plunder and pillage. A great deal of the traffic in cultural property is not as yet covered by any legislation and is not, in the strictest sense of the word, illegal. The term illicit trafficking is, however, used both to denote trade that from an ethical point of view should not take place and trade which is de facto illegal.

For the purposes of the fight against illicit trafficking, the definition of “cultural property” is at present unified among the States Parties to the 1970 UNESCO *Convention of the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*. The Hague Convention of 1954 is the only international instrument aimed specifically at protecting cultural property during armed conflict and occupation.

The international instruments chiefly contain rules regarding the return of stolen or illegally exported cultural goods, facilitating the return of such objects to their countries of origin through simplified legal procedures. On the other hand, many are the internationally recommended prevention measures, such as the Model Export Certificate, the “Object ID”, the Interpol Stolen Works of Art Database, and various international lists of objects most likely to be subjected to illicit trafficking (e.g. the ICOM “Red List” and “100 Missing Objects” Series).

Essentially, illicit trafficking in cultural property is an international affair and only international co-operation, for instance through the adoption and adherence to international conventions, will ultimately allow a higher measure of control in this area. Around the world, most States have enacted legislation that protects their cultural heritage to some degree. Some legislations are more advanced and/or sophisticated than others, in particular taking account of and addressing contemporary illicit trafficking issues. Depending on the country, its history, cultural heritage, and legislative policies, cultural property may be covered and protected in part or as a whole, according to high, mid or low standards. This variety of

protection at the national level results – not surprisingly – in a lack of international uniformity in the legal treatment of cultural property. To curb illicit traffic in cultural property many more countries shall ratify the 1970 UNESCO Convention as well as the UNIDROIT Convention and other relevant multilateral and bi-lateral agreements. Still, unless they are supported by adequate national legislation and a comprehensive programme for protection and preservation of cultural heritage, international conventions can have only limited effect.

ECOSOC Resolution 2008/23 urges Member States in act in this direction “*reiterating* the significance of cultural property as part of the common heritage of humankind and as unique and important testimony of the culture and identity of peoples and the necessity of protecting it; *stressing* the importance of fostering international law enforcement cooperation to combat trafficking in cultural property and, in particular, the need to increase the exchange of information and experiences in order for competent authorities to operate in a more effective manner”.

The flow of artefacts in the antiquities market is entirely in a direction leading from poor to rich nations. Objects pass from Africa, Asia, Eastern Europe and Latin America to North America and Western Europe. There is no meaningful trade passing in the other direction. In poor, but archaeologically rich countries, looting has been a way of life for years. Income from selling antiquities often makes a vital contribution to the family budget. But the looters receive very little in return for destroying their own history, getting on average less than 1% of the final sale price of an item. Middlemen and dealers pocket the other 99%. To those who argue that the illicit trade brings economic benefit to hard-pressed local communities, the reality is quite different. According to “Stealing History: The Illicit Trade in Cultural Material”, “a fossil turtle bought from its finder in Brazil for \$10 fetched \$16,000 in Europe....Once “commodified” on the Western market, objects continue to circulate for years, perhaps centuries, generating money in transaction after transaction. None of this money goes to the original finders or owners or their descendants ... if culture is regarded as an economic resource, then selling it abroad is a poor strategy of exploitation. Cultural heritage is, after all, a non-renewable resource.”

War and the pillaging of art and antiquities have always gone hand in hand. The traffic in priceless antiquities, from defenceless to more powerful nations continues today. Only today the perpetrators of the destruction of a nation’s ancient heritage may well be its own people, enticed into selling off their patrimony to the highest bidder, out of the simple need to survive. During times of war or civil unrest archaeological

sites and museums are amongst the first targets for looters – they are a ready and defenceless source of ‘treasure’. And disposing of the objects in them is a quick way to destroy an important part of a country’s heritage.

The illicit trade of antiquities is often overlooked in war-torn countries, such as Iraq, as a mere side effect, and little media attention has been focused on the illicit trade’s possible ties to terrorism. The flourishing antiquities trade has spawned destruction on a vast scale. Experts estimate that there is not an ancient site left in the whole country that has not been partly or fully looted, with the contraband antiquities going to London, Tokyo and New York. In more affluent areas like northern Europe and North America, treasure hunting is more of a leisure time activity. Treasure hunters spend large sums of money on the latest equipment and finds are sometimes compared with lottery wins. Quoting Arthur Brand, a coin collector: “Dealers and collectors are not bank robbers”, Brand said. “We are talking about people who can speak seven languages, have university degrees and are highly intelligent”.

Organized crime involvement

Globalization and the end of the Cold War have thus given international criminals unprecedented freedom of movement, making it easier for them to cross borders and to expand the range and scope of their operations.

As a result, virtually every region or country in the world has seen an increase in international criminal activity – as either a source or transit zone for illegal contraband or products, a venue for money laundering or illicit financial transactions, or a base of operations for criminal organizations with global networks. Many regions or countries serve all three purposes for international criminal operations.

Globalization has meant that people around the world are increasingly connected, and advances in technology and communications have made the worldwide movement of people, goods, services, money, and information much faster and easier. However, organized criminal groups that operate on an international scale are taking advantage of these innovations; as they steadily diversify their activities, they have become more deeply involved in theft and export of illicitly-obtained antiquities and other cultural property, posing a threat to our global cultural heritage.

Quoting art. 2 of the Palermo Convention on Transnational Organized Crime: “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure”.

Organized criminal groups do not always confine their illegal activities within national boundaries. They often extend their sphere of influence beyond national borders, which then requires coordinated international efforts to combat illicit activities such as looting.

Looted goods typically are smuggled across borders and change hands many times, the item passes from dealer to dealer often in a series of rapid transactions, resulting in a chain of supply so convoluted it is very difficult for an end-consumer to unravel. Depending on means and ambitions, criminals may undertake sophisticated operations, by which they steal objects, and then directly or indirectly export them to selected countries where they can fetch high prices from willing buyers. Making their origins murky by the time they reach their ultimate destination: a museum or, far more often, the hands of a private collector. Along the way, an illicit item often acquires a fictitious ownership history, or provenance, provided by a dealer or middleman with some knowledge of art history or archaeology. Falsified documents, created to prove authenticity and provide assurance that the item has not been looted, are rarely questioned. As recently mentioned by General Nistri, Head of the specialized unit of the Italian Carabinieri and here present, several cases of archaeological and paleontological objects originating from various regions of the world have finally been recuperated in Italy. The presence of middlemen from the trade sector, on-line sales, and the frequent use of falsified declarations in Customs documentation are also quite common.

The market in illicit antiquities might usefully be split into three stages: the supply of antiquities emanating from source nations, the demand created by consumers in market nations, and the chain of transportation which links the two. The drastic increase in the current market values of antiquities has precipitated an infiltration and monopoly of the black market by organized criminal syndicates. Plunder of ancient objects has become a thriving industry for these groups. While organized criminal groups are not the only figures involved in the business of looting, their presence in this illicit business makes plunder a particular threat to both

cultural heritage and national security. When criminal groups are involved, it can be especially damaging.

In *Turkey*, for example, evidence suggests that criminal syndicates recruit people in economically depressed areas, their efforts meeting with lowered resistance. Peasant populations in these countries may consider buried artefacts to be their birthright, to do with as they please, perhaps left for them providentially by their ancestors precisely for the purpose of making money. Organized criminal groups enlist locals to scour the countryside for archaeological treasure, provide them with information, equip them with specially-prepared aerial maps and sophisticated metal detecting technology, and divert law enforcement involvement away from their illegal activities. The looting causes extensive damage to the sites themselves. Cultural materials then move from the countryside up through Istanbul, are secreted across the border, and end up on the international market, often with forged provenance documents.

The chain of looting inside *Israel* was structured like a criminal association with a division of tasks between the diggers, the leaders and the middlemen. Looted artefacts from all Mediterranean, North African, and Middle Eastern countries and possibly Southern Europe, reached the Persian Gulf (Dubai and Abu Dhabi). From there, they were shipped anywhere in the world. Items were not sent directly from Dubai to Israel, but transited through London.

According to information received by the General Secretariat of Interpol, the thieves' favourite countries are France, Poland, Russia, Germany and Italy. (The majority of thefts are carried out from private individuals.)

In 2002, for example, Italy reported 18,715 items stolen from museums, places of worship, galleries, castles, archaeological sites, and private residences. According to INTERPOL, the most popular means of cultural property theft involves breaking and entering. Private residences, museums, archaeological sites, and places of worship are popular targets among looters and thieves.

Spain has been recognized, together with the United Kingdom, Belgium and Germany, as one of the destination countries.

The type of objects stolen varies from country to country. Generally speaking, paintings, sculptures and statues, and religious items are very sought after by thieves. However, they do not spare any other category, including so different items as archaeological pieces, antiquarian books, antique furniture, coins, weapons and firearms or ancient gold and silverware.

Internet

It has been internationally recognized that the illicit trade in cultural objects via the Internet is a very serious and growing problem, both for countries of “origin” (where the theft has occurred) and destination countries. It is well known that the significance, provenance and authenticity of the cultural objects offered for sale on the Internet vary considerably. Some have historical, artistic or cultural value, others do not; their origin can be legal or illicit, and some are genuine, while others are forgeries.

In spite of attempts at tighter control from law enforcement agencies around the globe, the illegal trade persists, fueled by ever developing technological and market advancements. For instance, Internet auction sites have provided a hard-to-control forum for the illicit trade. Advanced technology, such as ground-penetrating radar and metal detectors, has given looters better tools with which to locate. Exploitation of sites using high-tech methods, particularly in Asia and Africa, is booming.

A survey carried out by the General Secretariat on the use of the Internet for the sale of cultural property. The report reflected the considerable challenge for law-enforcement authorities, mainly in relation to the large number of suspicious offers, the limited resources available and the time constraints for the investigations.

Alarmed by the increase in the use of the Internet for the illegal trade in cultural objects, a General Secretariat representative pointed out that the development of Internet sales had resulted in an increase in trafficking using mail services (e.g. FedEx, DHL) and encouraged co-operation with postal services with a view to stepping up checks on suspicious packages.

A variety of antiquities, authentic or claimed to be so, is sold online. On a given day, offerings range from points in frames (of the kind that grace a thousand country stores and gas stations) offered for several hundred dollars, to Mayan geometric painted bowls, Zapotec incense burners, and Moche ceramics offered for thousands; Old World material ranging from neolithic axes to Ptolemaic sarcophagi, and from the odd lot of Roman coins to putative fragments of the True Cross regularly pass through the Web pages of eBay and Amazon. Burial furniture often is advertised and the mortuary association adds to the appeal. And because the economics of online auctions are different than the traditional auction houses, all kinds of items previously considered to be of little commercial value are appearing for sale and as a result, sites are being stripped of every

arte-fact to fuel bulk sale of potsherds. In addition to the main online auction houses (*eBay.com*, *Amazon.com*), there are a multitude of specialty sites focusing on antiquities (e.g., *www.antiquities.net*, *www.medusa-art.com*, or *www.caddotc.com*) through either auction or direct sale.

The complexity of existing laws and regulations regarding the sale of antiquities, not to mention their enforcement, are multiplied in the global world of internet commerce. As a single, self-evident example, trade in antiquities may be simultaneously affected by state, national or international laws or conventions affecting buyers, sellers, and service providers differently depending on whose location is legally considered the point-of-sale, the source of the item, and its current location and ultimate destination. While most online houses have policies against illegal sales, determination of legality is often difficult in the largely self-policed and geographically confusing world of Internet auctions.

Terrorism

In some places, however, at the higher levels, the illicit antiquities trade funds war, oppression and terrorism directly, through its own profits, and indirectly, through its facilitation of drug smuggling and its laundering of money from drug smuggling, gun running and people trafficking. Looting and smuggling are run by paramilitaries, *militias* and *extremists*, allied with elements within states' bureaucracy and military, and it will not be stopped by rescuing the looters from poverty, because the paramilitaries' and extremist groups' illicit activities require illicit funding. They cannot practically or morally be provided with an economic alternative and they will continue to supply the antiquities market as long as there is a demand.

The way money changes hands in the trade of looted antiquities is becoming increasingly complex. In "*Terrorists raise cash by selling antiquities*", ties to terrorism and the illicit arms are well documented, according to law enforcement officials. Terrorist organizations may be financing their deadly activities partly by dealing in the illicit trade of art and antiquities which come out of the Middle East and wind up in the homes of collectors who pay top dollar for ancient arte-facts. The enormous cultural wealth that exists in countries like Iraq and Afghanistan – coupled with political unrest and warring factions – leaves many rare antiquities vulnerable prey to looters and smugglers who have discovered the art market. Terrorists groups, like any other criminal organization, have begun to take advantage of this illicit marketplace. As a result, they are not only gaining money, but they are also helping to destroy history.

U.S. investigator Colonel Matthew Bogdanos had already explained that ‘as we pursue leads specific to the trail of terrorists, we find *antiquities*’, but recently reiterated that the *Iraqi illicit antiquities trade funded extremists*, that ‘the link between extremist groups and antiquities smuggling in Iraq was “undeniable”’: “The Taliban are using opium to finance their activities in Afghanistan ... Well, they don’t have opium in Iraq”, he said. “What they have is an almost limitless supply of ... antiquities. And so they’re using antiquities”. Antiquities smuggling is necessarily a secretive business, all the more so at the higher levels, where the smugglers are paramilitaries, militias and extremists, so finding out who is smuggling what, where and how is obviously very difficult. The antiquities trade, however, is tied to the *drugs trade*, so if we can identify the drug traffickers and follow them, we can identify the antiquities’ routes and the antiquities trade’s contribution to war, oppression and terrorism.

The primary transit-and-market countries ‘laundering’ illicit antiquities and receiving the stolen goods, thus ultimately funding the entire process are *the United States of America, the United Kingdom and Switzerland*; moreover, because they provide tax deductions for donations of private objects to state collections, the states themselves subsidise and underwrite the market *with public money*.

UNICRI role and strategy

The solution to the illicit trade in cultural material is not a simple one. Protection of sites, churches and museums; good documentation; a well functioning national and international legal framework; codes of ethics; and education and awareness-raising are all important. Let me thus conclude these very introductory remarks by mentioning that UNICRI is currently planning the development of ad hoc proposals on the issue of fighting organized crime in art and antiquities, with the specific focus of post conflict situations and for this purpose we have already started discussing with other UN organizations dealing with the matter, such as UNESCO and UN Department of Peacekeeping Operations.

IDENTIFYING AND PREVENTING OPPORTUNITIES FOR ORGANIZED CRIME IN THE INTERNATIONAL ANTIQUITIES MARKET

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Introduction: the market as criminal, and criminals in the market

What is the relationship between organised crime and the antiquities market? There are two senses in which we can use the term 'organised crime' here. It would be quite plausible to suggest that the international market in illicit antiquities is to a not inconsiderable degree a criminal market, organised into a structure of relations between thieves, smugglers, facilitators, sellers and buyers of illicit commodities, and that the illicit part of the trade is therefore *in itself* (as a criminal market) an example of organised crime. That argument could proceed without reference to the presence of conventionally stereotyped organised criminals in the market, in the sense of groups or networks of professional criminals who use violence and corruption in the pursuit of illegal financial gain. I tend towards this view of the antiquities market as an example of organised crime *per se*, and an example which therefore draws us towards a 'spectrum of enterprise' approach that sees global trade as always more or less legitimate or illegitimate, moral or immoral (Smith Jr 1980). However, there are also of course many reports of antiquities being used as laundering mechanisms for drug money, as being linked to other international illicit markets, and as being colonised at the source end of the chain of supply and in transit to some extent by local political and bureaucratic corruption, the state military, other militias in conflict states, and more conventionally stereotypical organised crime groups such as mafia-type organisations in Russia, Italy and China. So we have on the one hand the argument (which I think is a good one) that the international illicit market is, even without reference to this type of organised criminality, an example of organised crime simply by dint of its organised market nature and the fact that many of its transactions are illegal according to the

criminal laws of the jurisdictions where they take place. But we also have on the other hand the question whether these various types of more conventionally conceived ‘organised criminals’ are operating within the market, and if so at which points and in what form.

I will attempt to address both of these questions here – of the ‘market as criminal’, and of ‘criminals in the market’ – while pressing the argument that one of the key points of crime reductive intervention we in market countries such as the UK have is through controlling demand for illicit antiquities within our jurisdiction. The major problem in the UK, as with other market countries such as the US, remains that illicit trading in antiquities subsists in the global and local trade relations which are part of the most basic architecture of formal and informal markets that continue to function in relatively plain view, and therefore have become normalised to the point that their organised ties to underlying wrongdoing or immorality have become effectively invisible.

In this paper I therefore want to address the problem of the presence of looted antiquities in the market as well as consider the question of opportunities for the entry of organised crime groups or networks into the market chain of supply. Rather than undertake a review of all international criminal policy responses, I want to focus on one particular policy response that I have been involved in researching over the past few years. The outline for what is to follow is therefore:

- To briefly review the UK’s recent introduction of criminal legislation which purports to ban dealing in illicit antiquities within its jurisdiction.
- To introduce the idea of sector vulnerability studies in relation to organised crime, and to apply this method as a framework for analysing the international market in antiquities.
- To consider the market-oriented crime prevention issues raised by the sector vulnerability approach.
- To note that the sort of criminal policy responses to which such a sector vulnerability analysis gives recommendation in relation to reducing opportunities for organised crime in the market are broadly the same as the responses thought to be needed to sanitise the market of looted antiquities more generally.

Criminalising the market in looted antiquities in the UK

I began my studies of the criminal elements of the antiquities market by interviewing dealers around the world in respect of their wrongdoing, and I found them to be using various among the classic criminological techniques of neutralisation to justify and excuse their participation in a market in which they knew illicit objects circulated (Mackenzie 2005). Towards the end of that study, in December 2003, the UK passed into law the *Dealing in Cultural Objects (Offences) Act 2003*, a piece of legislation with one main operative provision, creating a new criminal offence in the UK. The Act in Section 1 provides for a sentence on conviction on indictment of up to 7 years imprisonment and/or a fine, where a person:

dishonestly deals in a cultural object that is tainted, knowing or believing that the object is tainted.

Under Section 2 of the Act, a cultural object is ‘tainted’ if it is excavated, or removed from a monument or other building or structure of historical, architectural or archaeological interest, and such excavation or removal constitutes an offence. It is stated to be immaterial whether the excavation or removal took place in the UK or elsewhere. The intended effect of this legislation is therefore to criminalise (and by implication deter) the knowing possession or trade in the UK of antiquities looted either here or abroad.

With my colleague Penny Green, a Professor in Law from Kings College London, I was funded by the UK’s Economic and Social Research Council to conduct a qualitative investigation of the London market’s reaction to the introduction of this legislation, focusing again on interviews with significant dealers and other buyers such as museums. Throughout these studies the methodological approach I have taken has been to try to bring a social scientific interpretivism to the study of the trade in illicit antiquities, with a focus on documenting the business processes and worldviews of dealers and collectors in market countries, who provide the demand for the objects the looters are stealing.

There is a range of data which is available from these projects, and I will only summarise some of the more interesting findings here. More full expositions of the whole dataset of interviews can be found in the books which have resulted from the first set of interviews (Mackenzie 2005) and the legal evaluation (Mackenzie and Green forthcoming, 2009).

We conducted a survey and a number of in-depth interviews with respondents in and around the London antiquities market to determine the market’s reaction to the introduction of the 2003 Act, and our findings can be broadly summarised as follows:

- Despite most respondents being aware of the 2003 Act, only a very small number of the trade respondents thought that they had noticed any change in trade routines which could be seen as a productive response to the Act.
- Likewise, only a very small proportion of trade respondents said that the Act would result in them changing *their own* business routines, and in many of these cases the change planned was only formal rather than substantive.
- It was acknowledged that where changes to business routines did ensue, they were likely to be purely cosmetic.
- There was a general feeling that the antiquities market was ‘under fire’ from regulators, journalists, and public opinion.
- Dealers, (some) museums, collectors and officials such as the UK’s Department for Culture, Media and Sport, have all bought into the ideology that the market is composed of ‘legitimate’ and ‘illegitimate’ dealers and that therefore if the ‘bad apples’ can be excised the ‘legitimate’ market can function without hindrance and will not be in danger of contravening any national criminal laws. This is wrong.

The reason the ideology of the legitimate market is wrong is that the antiquities market is best seen as a grey market (Polk 2000; Bowman 2008). Illegitimate objects pass through the ‘legitimate’ trade and therefore any regulatory attention paid to such objects will directly affect the business of the trade generally, rather than support ‘legitimate’ dealers by eliminating their ‘illegitimate’ peers¹¹.

The issue of formal (rather than substantive) responses to formal regulatory requirements is a problem that has been observed by Max Weber, and has persisted as an issue in criminology, finding its most recent place in Doreen McBarnet’s observations on ‘active reception’ and ‘creative compliance’ in corporate and white-collar responses to regulation (McBarnet 2003, 2006). Where business ethics do not involve a strong connection with the spirit of the law, formal responses are likely to ensue which simply use documentation and other routine activities to obscure rather than eliminate wrongdoing. This is evident in the antiquities market:

¹¹ There are of course some dealers who are more pure in their legitimate intent than others, but our interviews found that even these apparently well-intentioned dealers could not always be sure they were not dealing in some looted objects.

I'm in the trade, I've seen how things have changed. Even when I'm dealing with friends of mine, I'll say to them "that's nice, you know, how about provenance?" Everybody says that now. 'Got your provenance?' Because if it has a demonstrable good provenance, that helps. It helps with the selling of it. And very often they'll say to me, "well, not really, you know, I bought it from a dealer" and that to me is okay. Because I trust them to buy in the way that I buy. And I'll say the same thing to them (London Dealer, 2005 study).

Dealers are apparently out of touch with the reality of the problem of illicit antiquities. As has been argued elsewhere (Mackenzie 2005), while cases of high-level smuggling are given high profile in the media and therefore provide the most readily-available graphic case-studies of the illicit transit of looted antiquities, these cases must be seen in the context of a market which operates in a routine manner to circulate illicit antiquities in much less remarkable ways. As well as being averse to accepting offers of goods which are clearly illicit, the 2003 Act to be successful in sanitising the market must require of dealers that they take serious steps to investigate the provenance of the objects they routinely purchase, from sources they might historically have assumed to be 'trustworthy'. I will mention at more length in due course the Market Reduction Approach (MRA) to unwinding markets in stolen goods (Sutton 1998; Sutton et al. 2001), but here it is worth noting that it predicts that it is the disruption of this routine lack of reflexivity in seeing oneself *qua* buyer as a generative part of the chain of supply of illicit commodities that can have a significant effect on the supply chain, and we might add that in the antiquities market this routine lack of reflexivity manifests itself as an assumption that open market dealing equates to lawful dealing in objects which are not tainted. In light of the evidence we have from sellers on the open market as to the depth of their investigation (or general lack thereof) into object provenance, this faith in the open market appears to be misplaced.

The model of the antiquities market as a grey market captures the reality that flows of licit and illicit objects are intermixed and therefore that rather than being a market characterised by a 'clean' public trade and a 'dirty' private or 'underground' trade, the supposedly clean public trade in antiquities is tainted 'grey' by the circulation therein of illicit antiquities. Characteristic of a grey market, dealers who would describe themselves as 'legitimate', while at times expressing (usually publicly) concern about looted artefacts in the market, are at other more private moments surprisingly complacent about the issue of dealing in stolen goods. In a

market which functions without the serious transmission of provenance, such dealing is seen as a standard risk, and remains so despite the creation of the offence in the 2003 Act:

So, stolen goods, yes, they must be here. Possibly over the course of time 10% of my stock has probably been stolen at one time or another... I don't know, but it would not surprise me if it was that high... either stolen in China, or wherever, you just don't know (London dealer, 2007 study).

We have documented various problems with the design and implementation of the 2003 Act. Many of these relate to perhaps the most well-known problem in the international regulation of the trade in illicit antiquities; that of proving the origin and transit history of a clandestinely excavated and possibly illegally exported artefact. Despite these issues of proof being routine stumbling-blocks to legal action, known to all commentators on the market, they remain as problems built-in to the 2003 Act through provisions such as its non-retroactivity, which demands that UK prosecutors have proof of the date an object was 'stolen' (i.e. in many cases illegally excavated or removed from its place as an integral part of a monument or other protected structure). The Act also does not include illegally exported objects within its definition of 'tainted'. This is problematic since stolen objects will also often be illegally exported, and it tends to be easier to prove their illegal export than it does the original theft. Increased attention to illegal export would therefore be a mechanism for catching some looted objects which might otherwise be evidentially out of reach for a UK court.

The main problem with the 2003 Act, however, is in the requirement for *knowledge of or belief in* the tainted status of the object in question. This wording serves to undermine the basic message that unites all critics of the market: that effective due diligence in relation to object provenance needs to become an essential component of any purchase of antiquities. As the DCMS guidelines state:

The burden of proving knowledge or belief that an object is tainted rests with the prosecution and such proof must be beyond all reasonable doubt. This means that a failure by the accused to carry out adequate checks on the provenance of an object will not constitute knowledge or belief (Department for Culture Media and Sport 2004: 8, my italics).

This major failing of the 2003 Act is well-known to market participants. Through the ‘publicity-vacuum’ which has surrounded the non-enforcement of the Act since its inception, the problem of proof even acts as a kind of ‘pre-emptive’ neutralisation of the MRA approach of the 2003 Act, in that ‘capable guardians’ (Cohen and Felson 1979; Felson 1994) in the chain of supply remain unlikely to report suspicious behaviour. Our research has found the most common reaction of conscientious trade figures to offers suspected of being illicit to be simply to decline to purchase the object rather than report suspicions to the police. Even among the most conscientious dealers, then, there is a culture of self-protection rather than a sense that they might individually contribute to cleaning up the market more generally.

We have accumulated considerable evidence of the ‘don’t ask, don’t tell’ culture in relation to provenance in the antiquities market. This culture of ignorance in relation to the origin of objects is no longer a fresh revelation, having been raised in almost all of the literature on the illicit market. Not asking provenance-related questions is now enshrined by the 2003 Act and the associated DCMS guidelines as a rational strategy for a dealer who wants to buy antiquities but does not want to risk being prosecuted for the criminal offence of dealing in tainted cultural objects. What is relatively under-researched, and pertinent to this conference, however, is the further suggestion that the presence of organised crime in the market is itself something that dealers do not want to probe to uncover, for reasons of fear. Whether these stories of organised crime are true or not, they still add to the problem of reluctance among dealers to ask the important, and culturally gauche, questions about provenance. Consider this, from a prominent London dealer:

The people in Hong Kong don’t tell you [about provenance] because the people who smuggle the goods out of China are not the sort of people you want to talk about. When I’ve asked about odd pieces, you know, ‘Are there any excavation notes? Can you find where something like this came from? It would be fascinating to know’. They just say, ‘You don’t ask those questions; you don’t want to get a reputation for asking questions’. It wasn’t me saying that; that’s what they say. That’s the way presumably, if you’re a Hong Kong dealer, to end up in the harbour (London Dealer, 2007 study).

The antiquities market, sector vulnerability and organised crime

In my empirical studies of the antiques market I have come across only tangential and limited evidence of the presence of organised crime in the market. This may well be an artefact of the particular research methods I have used, and the constituency I have used them on: dealers at the market end of the chain of supply are perhaps the least likely participants in the market to know anything about organised crime if it is present at more distant points further up the chain, and if they do have such knowledge it is likely to be unpalatable and therefore precisely the sort of ‘fact’ that they would tend to ignore or neutralise given their general desire to think of the market as a legitimate trading forum.

In the absence of much first-hand evidence about the participation of organised crime groups or networks in the market, a useful approach to take to the question of the relationship between organised crime groups and antiques is to try to integrate the ‘sector vulnerability’ approach with a market-oriented crime prevention approach, to provide an outline of a model that can tell us:

- whether the antiques market is particularly vulnerable to organised crime compared to other commodity markets; and
- what steps can be taken to reduce the attractiveness of the market to organised crime.

In terms of sector vulnerability approaches to organised crime, I have found two approaches to be especially helpful: those of Tom Vander Beken in Belgium and Jay Albanese in the USA (Vander Beken and Defruytier 2004; Vander Beken 2004, 2005, 2007*a, b*; Vander Beken and Van Daele 2008; Albanese 1987, 1995, 2008). Vander Beken’s model contains considerably more factors, which may make it more precise as a tool for identifying sector vulnerability but also makes it cumbersome as a vehicle either for regular use by police analysts, or for the purposes of a brief conference paper review of the vulnerability of the antiques sector. In terms of preventive approaches to organised crime I have turned to work by Henk van de Bunt and Cathelijne van der Schoot (van de Bunt and van der Schoot 2003) and considered it alongside the Market Reduction Approach of Mike Sutton and colleagues (Sutton 1998; Sutton et al. 2001).

The risk assessment approach offered by proponents like Vander Beken and Albanese declines to take current knowledge about organised criminals as its focus. Rather than being nominal or group focussed, these authors encourage us to focus on the identification of high-risk products and markets. As Albanese says; ‘put another way, if you correctly identify the high-risk products and markets, you will know where to look for the

offenders' (Albanese 2008: 269). This raises the question whether the antiquities sector can be seen as a high-risk market, or as dealing in high-risk products. A deep knowledge of the opportunity structures of that market will allow us to identify the points in the chain of transaction where we should 'look for the offenders'.

In Albanese's model, four variables contain the essence of prediction of markets which will be attractive to organised crime: supply, demand, regulators and competition. Supply factors concern product availability and ease of movement; demand factors include the level of demand and whether it is elastic or inelastic; competition factors include levels of profitability, which will be constrained by open competition; and regulation factors include the ease of entry into the market, any special skills needed, law enforcement capacity and levels of corruption among public officials.

Here is the final 10-factor model that Albanese arrives at:

Supply indicators

1. Objective availability of product or service.
2. Ease of movement/sale.

Regulation indicators

3. Ease of entry into market by its regulation and the skills needed.
4. Law enforcement capability and competence.
5. Level of local government corruption.

Competition indicators

6. History of organised crime in the market.
7. Profitability.
8. Harm.

Demand indicators

9. Current customer demand for product.
10. Nature of the demand – whether elastic or inelastic.

I will apply this multi-factor approach to the antiquities market here, in order to demonstrate that it is a high risk market in terms of opportunities presented to organised criminals. It is worth noting that although this analysis will take the form here of a review of the main weaknesses of the market viewed as something of an historical construct, as

with any risk analysis the value of the tool increases if it is not seen as a static assessment of organised crime vulnerability, but rather analysis is performed regularly and the level of risk can therefore be subjected to a time series style of analysis. In this way, we can achieve a measure of the effects of the introduction of new initiatives and legislation not in terms of a traditional social scientific outcome evaluation but in terms of effects on market structures and characteristics, and the predicted effects of these changes on opportunities for organised crime.

Supply indicators

1. Objective availability of product or service

Antiquities are a relatively scarce commodity, certainly at the high end, and this contributes to the high prices they can command. Despite this scarcity they are relatively freely available to anyone interested in looking for them, and low or non-existent levels of security at local sites of archaeological interest mean that very often the only restraint on those who wish to take antiquities is their own conscience or their reluctance to break the law. Demonstrably, these internal psychological controls have not been adequate.

2. Ease of movement/sale

Antiquities are sometimes small, and therefore relatively portable. This makes them an attractive commodity in terms of the risk of theft since they embody very high financial values per kilo of weight compared to other commodities. There are of course antiquities which are very large in size, and therefore not especially portable. These can be dismantled, however, to render relatively portable parts which are still independently of very high value, such as where heads are broken from statues or figures or designs are chiselled from temple walls. In cases where it is desirable to risk moving very large artefacts, contemporary shipping mechanisms combined with corruption among local or regional officials can sometimes accommodate this. Many other factors contribute to the ease of movement and sale of antiquities, including inadequate linking of export controls in source countries with import controls in market countries, and the infamous market culture of not insisting on detailed, explicit and reliable provenance information when purchasing an artefact. Unlike other illicit commodities such as drugs, traffickers in antiquities find an established structure in

market countries for selling these goods, which through chains of dealers and auction houses operates very effectively to maximise the price which can be obtained for art and antiquities.

Regulation indicators

3. Ease of entry into market by its regulation and the skills needed

There are no requirements to obtain an antiquities dealing licence in most countries. The closest most countries get to that is to require application for a generic second-hand dealers' licence, which does not have especially exclusive entry requirements. The private nature of many transactions means that even requirements to hold this kind of licence can be easily evaded, and the high value/low volume of the objects combined with the fact that they do not need any particularly special storage conditions means that people can set themselves up as dealers from home. The overheads are therefore low, contributing to a low barrier to entry into the market. The one most pertinent skill that is needed to function profitably in the antiquities market is to know enough about the objects in question to be able to detect fakes, and to pass objects into the market without raising suspicions (i.e. looking too much like a criminal). While there are therefore some obstacles to be negotiated by way of entry into the market, none of these is burdensome.

4. Law enforcement capability and competence

Law enforcement capability is generally low in both source and market countries, where policing and other resources are stretched and antiquities theft and trafficking is likely to be overshadowed by other criminal threats which are perceived to be more grave. Law enforcement competence varies from country to country: at best countries will have a national art and antiquities enforcement unit, and dedicated specialists within borders agencies. Even where this is the case, issues of competence tend to be overshadowed by issues of capacity, and the culture of secrecy in the trade combined with the relatively high status of dealers, plus the small percentage of shipments which can actually physically be checked by customs, combine to mean that most antiquities in transit and in the market will not be subject to extensive law enforcement scrutiny.

5. Level of local government corruption

The international market in antiquities tends to operate by taking objects from poor countries and delivering them to rich countries. Problems of corruption can be present at all levels, but are observed to be more widespread in poor countries where economic factors support cultures of bribery which may have become relatively ingrained.

Competition indicators

6. History of organised crime in the market

This conference would seem to be testament to international concerns about organised crime in the market, although it seems – as is not unusual – to be the case that more research is needed to accurately identify the extent to which organised crime operates in the market.

7. Profitability

As mentioned above under ‘portability’, antiquities can be a highly profitable commodity, particularly where they can be acquired at source for low or no cost.

8. Harm

It is not clear how an analysis of harm adds weight to the vulnerability of the market to organised crime, other than that organised crime involves harm and therefore if there is no harm caused by a certain activity it is unlikely by definition to qualify as organised crime. At any rate, it is clear from the archaeological discourse on looting that these activities do cause substantial harm to sites, to objects, and to our historical knowledge base, and therefore insofar as harm is an indicator of sector vulnerability, it is present here.

Demand indicators

9. Current customer demand for product

In my interviews with antiquities dealers, they have suggested several things about customer demand. They have suggested that the market is not as big or as active as it once was, although this seems to have been an attempt to deflect attention from their activities as I found it to be contradicted by official trade figures. As well as arguing that the market is shrinking, which I am not inclined to believe, they have suggested that the nature of consumer demand is changing, which I am inclined to believe. Dealers report that connoisseur collectors, interested in art history and in learning about the objects they buy, are being increasingly replaced by wealthy types who buy objects for speculative investment purposes, or as cultural signifiers (in the sense of mantelpiece status symbols) or both. These buyers, it is said, do not care so much about the history of the object or its place in the overall history of art. Rather than dealers educating their clients over time and cultivating a thirst for knowledge as well as for acquisitions, here as elsewhere the dealing role has become more functionally consumer-oriented, simply delivering attractive objects to rich but under-informed purchasers. So demand remains healthy, albeit changing in demographic in line with the changing times (and we shall consider the implications of this for regulation below).

10. Nature of the demand – whether elastic or inelastic

High elasticity signifies a market where when the price of the commodity goes up, demand drops off disproportionately. Low elasticity would be present if price rises did not suppress levels of demand. Demand is inelastic if despite price rises, demand remains the same. A market is taken to be more vulnerable, or attractive to organised crime, if its elasticity is low. We can see that this is most likely to be the case in markets characterised by addiction, where consumers are not in a good position to make rational decisions to suppress their demand. It is also likely to be a feature of markets where there is high finance at the demand end: in drug markets price rises might be associated with increases in thefts by users to finance the uplift, but in markets with clients who have more money at their disposal, they may simply be prepared to pay more. One would have to conduct an economic analysis of the history of the evolution in prices in the antiquities market in order to determine the level of elasticity in demand. But even without doing so we can observe that the collection of antiquities

is performed by monied individuals, and that it involves a certain kind of object fascination or fetish which can approach addiction. It is in fact a generally accurate diagnosis of the current state of the antiquities market to say that it has been, and still is, driven by buyers who want its objects no matter what, and who therefore find themselves turning a blind eye to suspicions of looting which if investigated with any real energy would probably reveal illegality in a planned purchase. It is, in other words, a market characterised by a *knowing reluctance to know*, or in a word which accurately captures that state of affairs, denial (Cohen 2001; Mackenzie 2007). Even on the occasions where a code of ethics prevents a museum from acquiring an object, that decision will be accompanied by a pang of regret.

On every measure of a sector vulnerability scale the antiquities market therefore emerges as presenting opportunities for profit-making through crime. What can we do to reduce some of these opportunities? Where criminal markets involve an interface between legitimate and illegitimate, as is the case in the antiquities market, it is often thought to be productive to focus on that interface, as a means of activating legitimate actors towards taking measures to insulate the market, and reduce opportunities for organised crime.

Van de Bunt and van der Schoot identify three categories of ‘interfaces’ between OCGs and the legitimate environment:

- the demand from the licit environment for illegal products and services;
- the abuse of facilitators in the licit environment;
- the availability of ‘tools’ in the licit environment (van de Bunt and van der Schoot 2003: 9).

These three categories of what van de Bunt and van der Schoot call ‘red flags’ therefore give rise to three associated types of crime prevention response:

- Reducing the demand for illegal products and services: for example through social and economic measures.
- An increase in awareness of abuse of facilitators and measures to increase their defensibility: for example, codes of conduct, screening of personnel and license requirements that exclude criminals from certain trades or from tendering for public contracts.
- Diminish the availability of tools in the licit environment which can be used by organised criminals: for example by strong money laundering regulations combined with regulation of alternative

money transfer mechanisms which might otherwise be used to circumvent regulations.

A study of the antiquities market reveals the interface between illegitimate and legitimate as paramount in allowing organised crime to profit in the market. The grey market nature of the antiquities trade, where illicitly obtained objects become effectively laundered by insertion into legitimate streams of supply allows them then to be sold at the high prices they would not command were it indisputable they were illicit. The obfuscation of provenance in the chains of supply of antiquities is relevant to all three of the 'red flag' categories: it allows demand for illicit objects to persist even among those who do not know, or do not want to know, that objects are looted. It involves a range of facilitators and complicit actors, including dealers themselves. In studies of other organised criminal activities, professionals have routinely been found who act as facilitators: often lawyers and accountants who can set up front companies or assist in money laundering. The facilitators in the antiquities trade are a range of actors who offer various services, such as customs officials, appraisers, dealers and museums, and even academics (Brodie forthcoming, 2009) who in extreme cases may be bribed but many of whom routinely facilitate the illicit market simply by being reluctant to exercise what power they have to stop it. And the process is constituted by various 'tools' of legitimation available to criminals, including fake documents, auction mechanisms, movement through numerous jurisdictions, and so on.

The Market Reduction Approach to tackling theft

The three types of crime reductive and preventive measures proposed by van de Bunt and van der Schoot are a useful way to think about approaches to preventing organised crime in the antiquities market, but in this market all roads lead back to Rome in the sense that each of these crime reduction measures requires that purchasers of antiquities be made to care about the origin of their purchases, and not only to reject looted antiquities but to report suspicions to the police when they have them. There is some way to go in changing attitudes and routines in this market.

In this regard, the observations made by the dealers on the new class of buyer mentioned above – the art-for-status rather than the art-for-collection purchaser – could be read in an optimistic as well as a pessimistic light. It might be thought that the new brand of purchasers,

being apparently little concerned with issues such as object history, will prove difficult subjects in whom to inculcate the importance of provenance. In truth, though, the sorts of erstwhile art-historian style collectors that dealers say they regret losing did not present great evidence of reluctance to acquire looted pieces. There may in fact be an opportunity to engage with the modern face of the antiquities trade through public education campaigns geared towards the uncommitted buyer, who might easily be persuaded to turn his or her attentions to other less problematic luxury goods as the antiquities market becomes increasingly tarred with the looting brush, as is now certainly the trend.

In our recent exposition of the 2003 Act in the UK, Penny Green and I have argued that a productive way for criminology to engage with the antiquities market is through the conceptual framework of the MRA (Mackenzie and Green forthcoming, 2009). This is a framework that has proved useful in the practical business of tackling other stolen goods markets. Jacqueline Schneider, an early proponent of the MRA with Mike Sutton, has very recently published a paper in which she explores the potential of the MRA to apply to commodity markets that are more exotic than domestic stolen goods markets, focusing on the international market in illicit wildlife. She notes that she has previously suggested at the UN Crime Congress 2003 that the MRA might be useful in tackling the property markets which are the concern of the UN Convention on Transnational and Organized Crime, including (as well as wildlife) weapons and ammunition, humans and body parts, and cultural heritage (Schneider 2008). The MRA recommends both general initiatives to reduce demand combined with practical advice for law enforcement measures aimed at key points in the chain of supply, to *maximise* their potential. We also point out that the MRA contains a philosophy of harm reduction as well as its better-known penal intervention measures.

The MRA is a 'strategic, systematic and routine problem solving framework for action against the roots of theft' that provides guidance for 'interagency partnerships wishing to tackle stolen goods markets' (Sutton et al. 2001: *iii*). The general theory of the MRA is that demand affects supply, in other words that 'reducing dealing in stolen goods will reduce motivation to steal'. The way the MRA attempts to reduce dealing is to:

- instill an appreciation among thieves that transporting, storing, and selling stolen goods has become at least as risky as it is to steal goods in the first place;
- make buying, dealing and consuming stolen goods appreciably more risky for all those involved (Sutton et al. 2001: *vii*).

This approach, which the MRA calls ‘risk projection’ seems to encapsulate quite well many commentators’ hopes for the effect of the 2003 Act in the UK, although as we have found, in practice it did not live up to these hopes. The MRA approach of raising the risks faced by those in the chain of supply is particularly apposite to our present discussion because it expressly seeks to engage with ‘crime facilitators such as business people who buy stolen goods’ (Sutton et al. 2001: *vii*). Among the ways it recommends addressing facilitators is to ‘seek to implement local legislation requiring traders to require proof of identity, and to keep records of the name and address, of anyone who sells them second-hand goods; to use test-selling to see if businesses are complying with new codes of practice; and to utilise interagency support to crackdown on any irregularities committed by businesses known to deal in stolen goods’ as well as use of media campaigns to aid clear delineation between what is and isn’t acceptable trading, arresting fences and raising awareness of the consequences of being caught dealing in stolen goods, and telephone hotlines for people to report illicit dealing (Sutton et al. 2001: *vii*).

One of the key findings of the studies that underpinned the development of the MRA was that thieves and fences had very little fear of being caught when selling stolen goods, since their (generally quite accurate) perception was that nobody in the chain of supply was likely to inform on them, even strangers to whom they made offers. They also did not know many people who had been arrested for selling stolen goods, which supported their feelings of safety. There are close parallels here to the antiquities market, and there appear transferable benefits to the MRA model of periodic law enforcement crackdowns followed by periods of consolidation where progress is reviewed and alternative educative and other market reduction strategies are employed.

These other market reduction strategies relate to the harm-reduction component of the MRA, which tries to create a context in which the deterrent effects of the crackdown phases can bed in. This context involves supporting legitimate markets and encouraging consumers and facilitators to operate in those, removing the base of consumers and dealers who are willing to take up illicit offers by enhancing for them the attractiveness of legitimate offers. In translating this to the antiquities market, we would need to focus on ways to support the legitimate market in re-circulating (as opposed to looted) goods, to make dealing in these objects more attractive. Currently it is the fresh find which thrills the market, with re-circulating objects being portrayed by the dealers in my research samples as something of a dull, second-rate choice. This is a deeply ingrained market attitude, but we might consider ways to attempt to engage with dealer attitudes similar

to the ways we might engage with public attitudes. Serious sanctions attached to dealing in looted objects would provide some reinforcement here, but as well as fear of arrest there needs to be a conviction from dealers to attempt to eradicate looted antiquities from the market, and currently that conviction is not there. Most of the dealers in the 2005 sample said that they disapproved of looting in the abstract (some did not) but they remained willing to buy the objects since they attributed them with various possible but unproven histories such as being accidental finds or objects that, were it not for the market, would otherwise have been destroyed. It is these sorts of stories that we need to engage with if we want to really begin changing market attitudes, and this kind of discourse and culture based approach can support MRA-style deterrence in addressing the problem of 'facilitation' which currently characterises the market.

Cleaning up the antiquities trade and preventing opportunities for organised crime: toward productive policy responses

Our research into the 2003 Act found that in the view of some of the most prominent and successful traders in the market, trafficking in looted artefacts is central to its activity. These market actors equate the cleaning up of the market's activities with its inevitable demise. Dealers and museum respondents reported to us that in relation to dealing in antiquities '*it is now almost impossible to do it legitimately if you start asking all of the questions I think*' and that restricting oneself only to dealing in re-circulating objects as opposed to new looted objects was '*professional suicide*'.

The antiquities market is therefore caught in a serious bind. In its more reflexive moments it accepts that it is, to a not inconsiderable extent, reliant on looting to feed it, yet while it tends to try to construct a picture of that looting as benign acts of 'chance finding' by local farmers, and saving artefacts from being destroyed by infrastructure projects like road-building in source countries, it also subsists with some level of knowledge, or at least rumour-based fear, of the notion that the purchase of antiquities in the market is fuelling organised crime activity.

Somewhat ironically, it may be that this relatively new focus on the activities of organised crime groups in the antiquities market provides the catalyst for encouraging national governments in market countries such as the UK to take the issue of looted antiquities seriously. In that regard, it seems that the sorts of measures that have been identified by the cumulative work of a number of commentators as requiring to be put in place if the

antiquities market is to be able to seriously argue that it is not complicit in the looting problem, are also the sorts of measures that are likely to lend themselves to achieving a general crime reductive effect, including on organised crime in this market (see, for example Murphy 1995; Renfrew 1999; Brodie et al. 2001; Polk 2002). Protecting antiquities at source has always been a difficult proposition, in any country but especially in those with serious resource issues in relation to policing provision, and the problems associated with the policing of rural sites are compounded when the spectre is raised of organised crime gangs doing the looting. Even countries where politics are heavily crime-focussed and where a comparatively large amount of resource is allocated to policing and security, such as the UK, still suffer reports of violent organised gangs looting archaeological sites and intimidating locals. It is important, of course, to make efforts to apprehend these criminals, but in the long run the antiquities trade is inherently problematic as it currently exists, and the arrest of the key nominals in an organised criminal group will not resolve the tensions in the market which make it vulnerable.

Any measures which actually manage to achieve a reduction in the uptake of purchase opportunities in the market where there is a suspicion of looting involved would decrease the financial incentive for looting and smuggling, and therefore diminish the attractions of the market to organised crime. It is unlikely that this complementarity in approach works the other way round, however – it is by no means clear that measures targeted against organised criminals in the market would substantially impact the key mechanisms and drivers of the market. While there may be organised crime groups operating in the antiquities market, they are not a necessary component of that market, and even if they were removed we would still see the looting of objects and their transit to the market. It therefore appears reasonable to argue that in this case, as in many other cases of systems of enterprise which attract organised crime groups and networks due to their inherent profitability and the ease with which their regulations are circumvented, the central focus in approach should be on addressing those market forces and mechanisms which create and sustain the possibility of a global trade in illicit antiquities. In other words, to return to where I began, we would do well to see the trade in illicit antiquities as in some respects an organised criminal enterprise *in toto*, rather than looking first to the presence of serious, violent, organised criminals who form part of this profitable chain as they do in many other market sectors, but who do not define the essence of the system any more than they do in these other sectors.

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THE MARKET IN IRAQI ANTIQUITIES 1980-2008

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Introduction: the market up to 2003

In the wake of the 1991 Gulf War, the large scale looting of archaeological sites in Iraq started, and worsened around the time of the 2003 Coalition invasion, when the National Museum and other cultural institutions in Baghdad were also ransacked. The looted objects found a ready market in the West. Since 1974, it has been illegal under Iraqi domestic law to export archaeological artifacts from Iraq, but if any doubts existed among traders about the applicability of the 1974 law outside Iraq, or about the legality of the trade, they should have been dispelled in 1990 when the United Nations Security Council Resolution (UNSCR) 661 imposed a trade embargo. This trade embargo applied as much to archaeological artifacts as to any other class of material, but even though by 1994 notice of the embargo had been provided by the major London and New York auction houses in their relevant antiquities sales catalogues¹², the

¹² For example, the following statement appeared in the London Christie's catalogue of their 12 December 1990 Fine Antiquities sale:

A recently imposed United Nations trade embargo prohibits us from accepting bids from any person in Iraq and/or Kuwait (including any body controlled by Iraq or Kuwait residents or companies, wherever carrying on business), or from any other person where we have reasonable cause to believe (i) that the Lots(s) will be supplied or delivered to or to the order of a person in either Iraq or Kuwait or (ii) that the Lot(s) will be used for the purposes of any business carried on in or operated from Iraq or Kuwait.

Bonhams' first ever 'Antiquities' sale catalogue of April 1991 contained a similar statement, and so too did comparable Sotheby's catalogues (for example, in the catalogue for the London December 1992 sale). These statements were aimed very much at potential buyers. There was no mention of potential consignors, and no overt prohibition on consignments originating in Iraq, even though Article 3(a) of UNSCR 661 stated specifically that States should prevent 'The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution; ...'.

sale of Iraqi artifacts continued without interruption (Brodie 2006; 2008*a*; 2008*b*).

The state of the antiquities market over the period August 1990 (when UNSCR 661 was adopted) to April 2003 (when the Iraq National Museum was attacked) can be gauged from statistics describing antiquities sales held at the major London and New York auction houses. Christie's is used for the London part of this analysis because of the three major London auction houses that sell antiquities – Sotheby's, Christie's and Bonhams – only Christie's maintained sales through the period in question, holding major antiquities-only sales two or three times per year. Figure 1 shows the combined number of lots of unprovenanced Mesopotamian cylinder seals and cuneiform tablets consigned for sale at Christie's each year¹³. Both types of artefact are found mainly in Iraq, and so the figures can be taken as indicators of the larger market in Iraqi antiquities. It is clear that during the period in question, and despite UNSCR 661, the quantities of unprovenanced artefacts being offered for sale did not diminish; in fact if anything they increased over the years running up to 2003.

¹³ Cylinder seals are, as the name suggests, small cylinders engraved with a figurative or abstract design and sometimes with a short inscription. They were rolled on soft clay to create a reverse impression of their design which would function as a sign of ownership or authority. Cylinder seals were made from a variety of hard materials, and were usually in the range 2-4 cm long. Seal impressions were often made on clay tablets inscribed in the cuneiform script, which would be fired to produce a durable document. Cylinder seals and later cuneiform tablets underpinned the administrative systems of ancient Mesopotamia from about 3000 BC to 500 BC and today are found mainly, though not exclusively in Iraq. Provenance is defined here as ownership history. It is usually provided in an auction catalogue as a named previous owner, publication or sale, thus providing a means to establish at what date an object was outside Iraq. Unprovenanced means that there was no verifiable provenance included in the catalogue entry. It is important to note that when defined in this way provenance does not necessarily equate to legality, it would be possible for example for the provenance of an artefact to date back only to the mid-1990s.

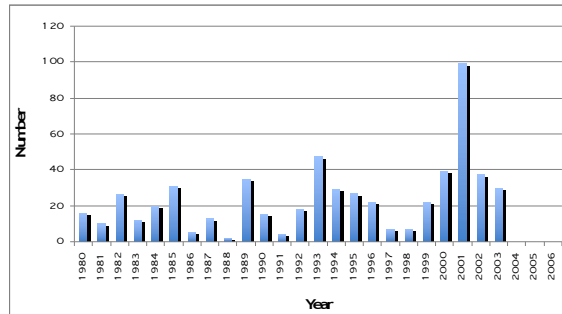


FIGURE 1. *Number of lots of unprovenanced cylinder seals and cuneiform objects offered annually at Christie's London 1980-2006.*

For New York, the largest data run available is for Sotheby's auction house, and the number of lots of unprovenanced Mesopotamian cylinder seals and cuneiform tablets offered annually at Sotheby's are shown in Figure 2. On average, fewer lots were offered at Sotheby's New York than at Christie's London. Auction statistics are not a straightforward reflection of the total antiquities market, but the ones presented here do suggest that for the period in question the New York market in unprovenanced Iraqi artifacts was smaller in volume than that in London. This observation is fully in accord with other evidence suggesting that much of the trade out of Iraq during the 1990s was passing through London (Brodie 2006: 214-222; Gibson 1997; 2008: 35-8).

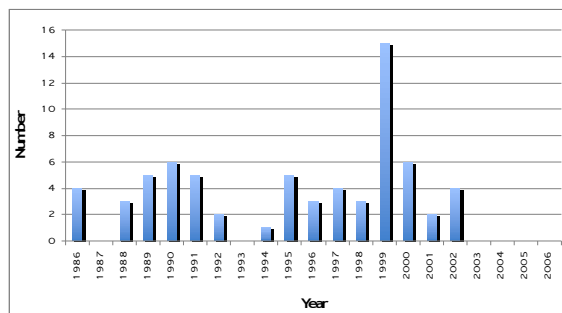


FIGURE 2. *Number of lots of unprovenanced cylinder seals and cuneiform objects offered annually at Sotheby's New York 1986-2006.*

The issue of provenance is crucial here. Provenance is known ownership history, and so when an artifact is offered for sale with provenance, a potential purchaser can easily ascertain whether the piece is legally on the market, or not. For an unprovenanced artefact, however, it is harder if not impossible to ascertain its legitimacy. Thus the unprovenanced Iraqi material being sold at auction between 1990 and 2003 might have been moved out of Iraq in part or in total before 1974, the date of the Iraqi domestic law prohibiting export, or before 1990, the date of international sanctions imposed by UNSCR 661. Equally, the material might all have been moved out of Iraq after 1974, and have entered the market illegally. As will become clear below, the second possibility is the most likely one – that a large part of the unprovenanced material appearing for auction in the 1990s was in fact on the market illegally. The absence of provenance meant, however, that the auction houses would have had no necessary knowledge of that fact.

The Sîn-iddinam barrels

Some of the unprovenanced artifacts being sold at auction were almost certainly looted. Between 1997 and 2002, for example, eight cuneiform inscribed clay barrels, dating to about 1900 BC and celebrating King Sîn-iddinam's dredging of the River Tigris, appeared for auction. Not one had any indication of provenance. The first to appear was at Sotheby's New York in May 1997. The catalogue entry stated correctly that at the time only three similarly inscribed barrels were known – one each at the Louvre, the Ashmolean Museum, and Chicago's Oriental Institute. The fact that the Sotheby's barrel was previously unknown might have raised questions about the legality or otherwise of its provenance, but, if it did, they were not enough to stop the sale. Nor were any questions asked over following five years when a further seven unprovenanced barrels turned up at auction. It is hardly credible that so many of these barrels should have been in circulation since before 1974, eluding scholarly and public view, only to appear en masse at a time when there was widespread looting of archaeological sites in southern Iraq. A more parsimonious explanation for their sudden appearance is that, in fact, they were looted after 1990 and illegally traded.

The market in December 2006

In May 2003, UNSCR 1483 lifted trade sanctions on Iraq, except for those on weapons and cultural objects. Article 7 of UNSCR 1483 specifically stated that the trade in Iraqi cultural objects would be prohibited when “reasonable suspicion exists that they have been illegally removed” from Iraq since the adoption of UNSCR 661, and that the return of any cultural objects stolen from cultural institutions or other locations in Iraq since that time should be facilitated. Since that date, the sale of unprovenanced Iraqi artifacts at public auction in New York and London has stopped entirely (Figures 1 & 2), perhaps because of the widespread negative publicity that followed on from the break-in at the Iraq National Museum, or because of UNSCR 1483. The fact that unprovenanced Iraqi artifacts suddenly disappeared from the auction market after 2003 is an important one as it reinforces the impression already formed that before 2003 a large part of the unprovenanced material on the market was there illegally. Otherwise, if it had been there legally, after 2003 it could have continued to have been sold quite openly without any fear of criminal prosecution. Absence of provenance, it seems, is a good indicator of illegal trade.

Outside the auction market, Iraqi artifacts continued and have continued to be openly traded on the Internet. On one day – 5 December 2006 – there were at least 55 websites offering antiquities for sale and that might have been expected to sell Iraqi objects¹⁴. In fact 23 of those sites were offering for sale or had recently sold cylinder seals and/or cuneiform tablets. In total there were 78 cylinder seals and 137 cuneiform tablets listed (Table 1), but the real situation might have been worse than the data suggest. There is no guarantee that what is openly offered for sale on a website represents the entire stock available for sale, and some sites specifically stated that this was in fact the case. Thus there might have been more material available for sale than was advertised, potentially much more.

Hardly any of the cuneiform objects were advertised with a verifiable provenance. It is also instructive in this context to note the named findspots of the cuneiform objects (Table 2). It is suspicious that although the modern nation states of Iran, Israel and Syria were identified as findspots, Iraq was not named once. Presumably the term Mesopotamia

¹⁴ The search included websites selling ancient Mediterranean or “Classical” antiquities, either solely or in part, but excluded websites that specialise in, for example, Precolumbian or African artefacts.

was used instead. There was no evidence provided on any website to allow any of the findspots to be verified, and some of them seem unnecessarily vague. What does Mediterranean mean? The reluctance of dealers to use the word Iraq as a geographical identifier suggests that even if they had no specific knowledge of illegal provenance they were well aware that many Iraqi objects were illegally on the market, and had also realised that specifying a findspot other than Iraq helps to confound police action. In fact, so long as care is taken when attributing findspot not to use the word “Iraq”, it would appear possible to sell illegally-exported Iraqi material with relative impunity.

	<i>December 2006</i>	<i>September 2008</i>
No. websites identified	55	72
No. websites offering cuneiform objects/cylinder seals	23	32
No. cylinder seals offered	78	142
No. cuneiform objects offered	147	332
Total no. artifacts offered	225	474

TABLE 1. Iraqi artifacts for sale on the Internet in 2006 and 2008

<i>Provenance or findspot</i>	<i>Number of pieces (2006)</i>	<i>Number of pieces (2008)</i>
Named previous owner	3	8
Mesopotamia	71	47
East Mediterranean	0	180
Mediterranean	12	9
Central Asia	0	4
Israel	8	6
Syria	8	10
Iran	1	0
Elam	1	0
Isin	1	1
Larsa	0	4
Lagash	1	0

TABLE 2. Provenance and findspot information for cuneiform pieces available for sale on the Internet in 2006 and 2008.

The market in September 2008

In September 2008, the Internet survey conducted in 2006 was repeated, with the aim of establishing whether the market had changed over the intervening period. The results suggested that the market had actually increased in volume. There were more websites offering artifacts for sale, and the total number of available artifacts had more than doubled (Table 1). As in 2006, some sites were claiming a larger stock than advertised. The Royal-Athena Galleries website, for example, carried the following notice:

In addition to the pieces illustrated above, we have an extensive array of other cylinder seals ranging from \$300 to \$2,250 and cuneiform tablets and foundation cones ranging from \$250 to \$2,750 in price¹⁵.

Also, and again as in 2006, there were no stated findspots of Iraq (Table 2). Two things in particular stand out from the 2008 data. One is the prominence of the Barakat Gallery, offering 229 cuneiform pieces – 69% of all cuneiform material on offer. The second is the appearance on the market of several “clay bricks” carrying an identical Neo-Babylonian inscription.

The Barakat cuneiform objects

The Barakat Gallery (Los Angeles and London) had on offer 229 cuneiform inscribed objects, almost all clay tablets or cones. Most of the pieces were complete, though some had been reconstructed from two or more fragments. None had any provenance and the stated findspots are listed in Table 3. When approached, Barakat stated that the tablets had been in the gallery owner’s family’s possession since 1956, when they had been bought from a dealer in Jordan.

Origin	Number
Mesopotamia	22
Syria	7

¹⁵<http://www.royalathena.com/PAGES/Under2500/neeastcat2500.html>; accessed September 23, 2008.

Israel	6
Mediterranean	9
East Mediterranean	180
Central Asia	4
None	1

TABLE 3. Stated place of origin for cuneiform pieces offered by the Barakat Gallery in September 2008.

Origin	Number
Mesopotamia	0
Syria	6
Israel	5
Mediterranean	8
East Mediterranean	159
Central Asia	3
None	0

TABLE 4. Stated findspots for cuneiform tablets dating to the first half of the 21st century BC offered by the Barakat Gallery.

AM0062	AM0063	AM0085	AM0103
Lu-dingirra		Lu-dingirra	
Shu-Adad	Shu-Adad		
Pululu	Pululu	Pululu	Bululu
Puzur-Sin	Puzur-		Puzur-Sin
Sharrum-bani		Sharrum- bani	Sharrum-bani
Shulgi-satuni		Shulgi- satuni	
		Hulal	Hulal

TABLE 5. Personal names repeated on four “messenger tablets”.

The major part of the tablets offered by Barakat (181 in total) dated to the first half of the 21st century BC. Their findspots are listed in Table 4. Included in this number were a quantity of so-called messenger tablets – tablets recording the disbursement of rations to official messengers. At least 43 of these tablets dated to the year 2027 BC, and the same personal names could be found repeated on different tablets. Table 5 shows the

names repeated on just four tablets, chosen at random. The fact that the same names appeared on these different messenger tablets shows that the tablets comprised an archive from a single archaeological site, and suggests that the larger 21st century corpus is part of the same archive. If that is in fact the case, then it is strange that according to Barakat some of the tablets had a findspot in Israel, while others had a findspot in Syria.

The Nebuchadnezzar Larsa bricks

Six websites were displaying examples of what were said to be clay or cuneiform bricks from Larsa (Table 6), carrying an identical Neo-Babylonian inscription celebrating King Nebuchadnezzar’s restoration of the temple of Shamash in Larsa. A website entry of LMLK Blogspot dated July 8, 2006¹⁶ carried images of three more bricks said to be similarly inscribed that had appeared on eBay “over the past few years” (ie the few years before 2006). Brick no. 1 on the LMLK website was the same one as the September 2008 eBay brick, but otherwise the bricks are all different. Thus there are at least eight examples of this inscribed brick that have been in circulation since 2003, and that do not seem to have been documented before that date.

<i>Dealer</i>	<i>Object as described</i>	<i>Dimensions (cm)</i>	<i>Price</i>
Aweidah Gallery	Clay brick	21x13	Sold
Treasuregate Gallery	Clay brick	20x13	\$2000
BidAncient	Cuneiform brick	21.5x14x2.5	\$1100 - sold
Harlan Berk	Terracotta brick	21.3x13.3	\$2500 est.
eBay	Cuneiform brick		\$1450 res.
Ancient Resource	Brick inscription		Not for sale

TABLE 6. Websites showing Nebuchadnezzar Larsa bricks in September 2008

There are 11 examples of this text on architectural blocks in the British Museum. The dimensions of the texts are in the approximate range 19 x 11 cm, while the dimensions of the blocks themselves are in the range 34 x 33 x 9 cm (Walker 1981, 90). There is a photograph of one of the blocks in the 1922 guide to the British Museum’s Babylonian and Assyrian antiquities (Budge 1922, pl. 30). It is notable that the dimensions of the

¹⁶<http://lmlk.blogspot.com/>; posted July 8, 2006; accessed September 23, 2008.

“bricks” appearing on the Internet in 2008 closely approximated those of the texts on the British Museum blocks, and close inspection of images shows that in fact the recently appeared “bricks” had been cut down from larger blocks with the use of circular saws. Saw marks were clearly visible on the backs of several bricks, and the front view of one brick had what appeared to a horizontal saw-cut in its top edge. Circular saws are not the tools of archaeologists, and traces of their use are clear evidence that the “bricks” had been removed destructively from their architectural context and cut down in size to facilitate their illegal transport from Iraq. The question is, when? Larsa has suffered badly from illegal digging in recent years. The site guard was murdered in 1991 and the site was heavily looted in 2003. A National Geographic-sponsored team of archaeologists visited Larsa in the immediate aftermath of the 2003 Coalition invasion and reported severe damage to some large brick buildings of a type that often contained cuneiform archives. A British Museum team visited the site in 2008 and reported little evidence of recent looting (Wright *et al.* 2003; Stone 2008, 76; Curtis *et al.* 2008, 14, 17). Nevertheless, there is no concrete evidence at the moment to show that the sawn-down Nebuchadnezzar bricks were removed from Larsa in 2003, though again, as for the Sîn-iddinam barrels, the most parsimonious explanation for their sudden appearance on the market since 2003 must be that they were looted.

Conclusion

The data presented in this paper argue strongly for the existence of an illegal trade in Iraqi artifacts. Unfortunately, the same data reveal very little about the organization of the trade. The degree and nature of the trade’s organization, and its possible links with other criminal trades or with terrorist groups, remain obscure. It is sometimes claimed that military or law enforcement agencies have intelligence about broader criminal articulations, and these claims might be true, but it is the nature of such intelligence that it cannot be made public. In its absence, the empirical assumption has to be made that although the illegal trade in Iraqi artifacts is likely to be organized, and is by definition transnational, it is organized within itself and not as part of a larger criminal enterprise.

In closing, it is worth highlighting the role played by academics in identifying and authenticating material. Of the 142 cylinder seals offered for sale in 2008, 32 had been described by Wilfred Lambert, and he had also translated 211 of the 332 cuneiform tablets on offer. Lambert is Professor Emeritus of Assyriology at Birmingham University and a Fellow

of the British Academy. Lambert's identifications and authentications, and those of scholars like him, are of central importance for keeping the market free of fakes, and so for maintaining market confidence. They also establish the quality, interest and rarity of pieces on offer, thereby supporting a credible pricing regime. Without the assistance of Lambert and his like-minded colleagues scholars the market would be less well founded and less profitable, and the social harm of its criminal associations would presumably be lessened.

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THE TRAFFICKING PROBLEM: A CRIMINOLOGICAL PERSPECTIVE

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Introduction

Crime with art and antiquities often involves cross-border crime. Both stolen art and illegally excavated antiquities are often, and in the case of antiquities usually, taken abroad to be sold there (Brodie, Doole & Renfrew, 2001; Middlemas, 1975). In this presentation crime with art and antiquities will be limited to situations of cross-border crime.

First of all I will look at some other types of cross-border or so-called transnational crime. By comparing these types of crime, several crucial characteristics of these crimes can be clarified.

Secondly, I will describe a model that I developed to understand the process of laundering that often takes place with transnational crimes, and in particular the illicit art and antiquities trade

And thirdly, based on the mentioned model, I will try to point at potential preventive strategies against the illicit art and antiquities trade. To be sure, these strategies were never the aim of my study, but nevertheless appeared as interesting side conclusions.

This presentation is based on the findings from a PhD on transnational crime and the illicit art and antiquities trade. The study made use of both official data gathered in the Netherlands, France and Italy, as well as interviews with experts and open sources like academic literature and (specialized) media reports (Tijhuis, 2006).

Comparison of the illegal art and antiquities trade with other types of transnational crime

The transnational illicit trade in art and antiquities is one of many types of transnational crime. Well known types are the transnational trade in illegal drugs, as well as the smuggling of human beings and human trafficking. Many criminological studies have looked at these types of

crime and their causes, organization and other characteristics (see e.g. Soudijn, 2006; Zaitch, 2001). Far less attention is given to a range of other transnational crimes, like for example the illegal arms trade, cigarette smuggling, financial crimes and the illegal trade in ivory, diamonds, toxic waste and art and antiquities.

Although each crime has its own characteristics, some general observations can be made. First of all, the well known types of transnational crime and the other types are different in at least one crucial aspect. Drug trafficking, human smuggling and human trafficking are illegal irrespective of the place where the perpetrators are. For example, when cocaine is smuggled from Colombia to the US, the trade is illegal in both places and anywhere in between. However, most other types of transnational crime are not by definition illegal everywhere. For example, cigarette smuggling will often involve major crimes in some countries and small crimes or no crime at all in others (Auchlin & Gaberly, 1990). For different reasons, these types of transnational crimes may be 'laundered' into legitimate activities or the other way around. In case of cigarettes or arms, legitimate goods from legitimate producers are destined for either outlawed end-users (in case of arms) or the black market (in case of cigarettes). In case of art and antiquities, stolen or illegally excavated objects are funneled into the legitimate market (see e.g. Watson 2006; Atwood, 2004).

The two-sided nature of many types of transnational crime can be partly understood because of the fact that these crimes are in fact the illegal variation of legitimate trades. Furthermore, as was said before, a laundering process is crucial here. For the study of the illicit trade in art and antiquities it is necessary to understand that this type of crime belongs to the category of crimes that are functioning besides, or embedded in, a legitimate market. Whether one can understand this trade as something besides the legitimate market or really as a part of the legitimate market depends very much on the sort of art and antiquities that one looks at, as well as the way one interprets seemingly clear-cut concepts of 'legitimate' and 'illicit'.

The last major difference between the two broad categories of transnational crime is the different way of organization of these crimes. Or, to be more specific, the more varied way of organization. With these transnational crimes, several very distinct ways of organizing can be found. On the one hand the expected "organized crime" variations like huge criminal organizations or flexible criminal networks. On the other hand, however, we find very small scale operations, sometimes by single persons, which seemingly have little in common with traditional "organized crime".

In all cases, the role of legal actors is much greater than otherwise (Passas, 1999).

The lock model

As was mentioned before, a laundering process is crucial for many types of transnational crime that also have legitimate counterparts, or are part of legitimate markets. Everybody nowadays knows about the laundering of money, but the same laundering takes place with cigarettes, arms and works of art and antiquities. This latter process, however, is often neglected in studies of these crimes. Usually, the rather questionable assumption of separated markets underlies these studies. That is, that black markets and legitimate markets in certain goods are totally separated worlds. However, looking at these markets it is obvious that at least some degree of integration between the legitimate and illicit part exists. The arms that end up with boycotted regimes usually come from legitimate producers, often in countries that officially support these boycotts (Naylor, 2001). And the cigarettes that are sold on the black market are usually coming from the large cigarette producers operating in the legal market place.

In the PhD study, an analytical model was developed to understand this process of laundering. This model shows how certain transnational crimes are in fact laundered to legitimate activities. Furthermore, the opposite process is also described. While lacking a proper term, this process is called 'blackening'.

The model uses the mechanism of a lock (or sluice) in shipping to describe the whole process. A lock bridges the gap between two levels and it is used here as a metaphor for the gap between the legitimate and illicit market. These two markets do not collide but smoothly connect through the lock. And the lock itself cannot be pinpointed to belong to either the legal or illegal domain. The latter characteristic is the main explanation for the reason why transnational crimes can transform into legitimate activities. This transformation is either facilitated by certain unique individuals, legitimate organizations or jurisdictions. In many cases these three are combined to bridge the gap between illicit and legitimate.

Individuals can have this lock function because of particular qualities. One of these is a base of operation in several countries, with expert knowledge of the legal and financial system of these countries. Often the individuals involved also possess passports of these countries. And to be sure, not false or otherwise low-grade passports, but for example

official diplomatic passports. Furthermore, a network of (corrupt) contacts with for example politicians, customs officials and other civil servants, helps these individuals to connect the illicit with the legitimate domain.

Legitimate organizations can have the lock function because of their ability to bridge the gap between illicit and legitimate at least in part by passing goods through their organization. Examples here are banks laundering the proceeds of organized crime and certain charities that funnel funds from legitimate donors to terrorist groups abroad.

Finally, jurisdictions can function as a lock because of the total lack of legislation in particular areas. In that case, transnational flows of goods or money are directed through these jurisdictions. An example here is Switzerland that has played a major role in the transnational smuggle of untaxed cigarettes.

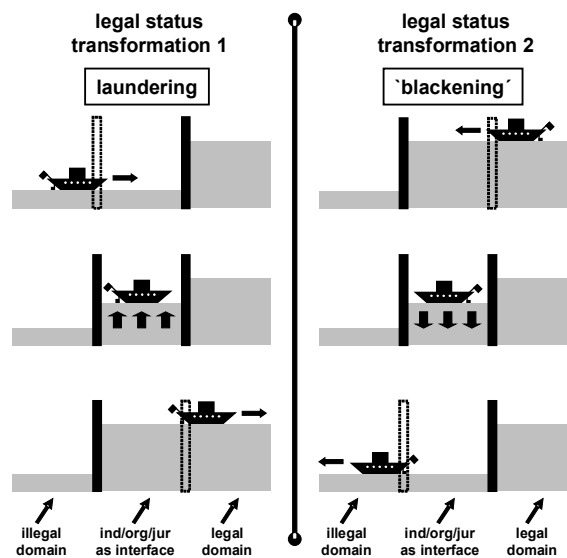


figure 7: the lock model

The lock model and the illicit art and antiquities

The lock model can be used to understand the process of laundering of stolen art and looted antiquities. The process of laundering is primarily facilitated by jurisdictions without regulation of this market, or

failure to enforce the existing regulatory framework. As a result, looted or at least illegally exported antiquities and stolen art can often be provided with a false provenance and brought into the legal market. Such notorious jurisdictions were not primarily found in exotic places, but included places like the Netherlands or Belgium, that usually are known for an abundant framework of rules and laws. The role of jurisdictions as laundering structure is completed by corruption of government officials (e.g. to grant export licenses in source countries).

As part of the study of the illicit art and antiquities trade, I looked at official files from Dutch customs and the Ministry of Culture. Here I found a number of cases in which the laundering process was clear. Antiquities from (for example) Cambodia, China, Ghana, Afghanistan and Congo were laundered through the Netherlands. In many cases it suffices to simply bring the antiquities to the Netherlands. The reason for this was the lack of adequate legislation and effective law enforcement, except for the mandatory European rules and Holland's own export restrictions.

In other cases, where theft might be proven, it sufficed to make sure the antiquities were sold through a legitimate dealer. After that, the civil code will in most cases ensure that the antiquities involved cannot be claimed back. In still other cases, the production of some paperwork may be enough to create a false provenance

To a lesser extent, works of art were also found to be laundered. Especially from France but also from Russia and other countries. In France, works of art have been stolen and taken to the Netherlands for decades. Although theft and the sale of stolen goods is illegal in the Netherlands, like everywhere, in practice this does not make much of a difference. As there is no art police to check the market, and no laws to go after owners of stolen art after they have changed hands in good faith, there's no way of fighting the trade in stolen objects

An example of the trade in stolen objects from France is the case of Cornelius Martens, A Dutch/Belgian art dealer who sold truck loads of art stolen in France by a gang of gypsies. Judging from the literature on art crime, as well as information from the French police, he is just one example of literally dozens or even hundreds of comparable figures.

Conclusions

Based on the study of the illicit arms and antiquities trade several general conclusions can be drawn. Two conclusions will be briefly mentioned here.

First of all the fact that traditional law enforcements methods have serious limitation in this field of crime and partly necessarily so. First of all, the preventive effect of successful law enforcement is smaller than in other fields. One of the reasons for this is the fact that most successes are connected with large thefts, exactly the type of crime that is often committed by criminals that only incidentally try this type of crime. Secondly, most cases of theft are never solved but cost a lot while trying. And thirdly, security of both art and antiquities is generally poor and this will not change dramatically in the future. For a part, it is even impossible to provide more than a very basic level of protection, in particular with unearthed antiquities.

The second main conclusion is partly based on the first conclusion about traditional law enforcement and deals with preventive strategies. These strategies should ideally focus primarily on the legitimate market. The still existing possibility to funnel stolen and looted objects into this market, although this has clearly become more difficult in the last decade, keeps the illicit trade interesting for thieves, fences, dealers and others. Furthermore, the costs of strategies aimed at the legitimate market will be smaller while the effect will be larger. Examples are the databases that are used by both government agencies (like the Italian Carabinieri) and private actors (like the Art Loss Register) and at least made the trade in stolen art a lot more difficult. Finally, the police can have a consulting role here for museums, dealers, collectors and other elements of the art world.

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Part II

**NATIONAL EXPERIENCES
WITH CRIMES IN ART AND
ANTIQUITIES**

THE ISLAMIC REPUBLIC OF IRAN AND THE FIGHT AGAINST
ORGANISED CRIME IN ART AND ANTIQUITIES

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*In the Name of Allah
I thank those responsible for this gathering
and the participants from different countries*

Introduction

The law in each country and for each social phenomenon or each aspect of human life and the implementation of those laws by the government's executive organizations is intended to prepare the ground for the best life for its citizens.

The domination of law and the implementation of those laws for preserving and guarding the cultural heritage of a nation is vital, because the loss or damage of a nation's art and/or antiquities could cause harm that is irreparable and permanent.

The absence of law in other areas might allow for damage to citizens, but generally these damages are often reparable and at a maximum can only damage one generation. But if there is carelessness in the execution of laws for preserving and guarding a nation's cultural heritage it is probable to cause the annihilation of a unique cultural document or a historical building or a valuable cultural historical object or ancient hill. This could negatively impact on the cultural identification or social relation or political sovereignty and economic splendor of a country and would not be reparable.

Therefore the executive and judicial and disciplinary organizations in the nations of the world must be aware of the necessity to protect both

* This article has been edited for wording and sentence structure differences in the translation to English.

their own and other nation's cultural heritage and be liable for the protection of the world's art and antiquities and cultural sites.

The law of monuments in the Islamic Republic of Iran

First the law that is related to studying and recognition (law of formation of cultural heritage):

24 years ago a single article with three bands and alternatives and notes for recognition and introduction and preparation and execution of necessary plans for preserving and keeping and repairing of valuable movable and real cultural, historical monuments was approved by the Islamic parliament.

I offer the summary of it.

The single article: the Supreme Culture and Education Ministry is allowed to establish a cultural heritage organization that is related to it and the duty of the above organization is as follows:

Study and search in the remains of deceased persons to find any hidden value.

- a. Implementation of archaeology, art and anthropology search.
- b. Study for recognition, registration and preserving the cultural historical movable and immovable heritage.
- c. Preparation and execution of necessary plans for the repair and revival of valuable collections and establishing an organization entitled: Cultural Heritage Organization.

The organization is divided into the following sections.

1. Archaeology Center.
2. Administration of all Traditional Arts.
3. Anthropology Center and Museum.
4. Historical Traces Office.
5. Ancient Iran Museum.
6. National Organization for Preserving Ancient Traces, which is attached to the Ministry of Culture and Higher Education.
7. Administration for Preserving the Cultural Heritage of Cities.
8. General Administration for Historical Buildings.
9. General Administration for Palaces, which is attached to the Islamic Guidance Ministry

10. General Administration for Homes (*Golestan Palace*¹⁷), related to the Economy and Finance Ministry.

Second: The laws concerned with the definition and aims and duties: On 28.04.1364¹⁸ according to three articles, the definition and aims and duties of cultural heritage are explained as follows:

Article 1- Definition: *Cultural heritage* includes the remaining traces of deceased persons which show human movement throughout history. In this case, the ground will be prepared so as to be recognized for the identification of its cultural movement and thus will be available for the taking of samples.

Article 2- Aims: To establish examples of human cultural movement and survival and to study the progression, identity and personality of a community.

Article 3- Duties: The duties of the Cultural Heritage Organization includes searching, supervising, preserving, revival and introduction.

Third: The law about condition of possession of cultural monuments:

Principle 83 of the Islamic Republic of Iran's Constitution states that:

The buildings and government properties that belong to exquisites are not transferable to others unless the parliament approves and providing they are not unique exquisites.

Article 26 of civil law of Islamic Republic of Iran states:

The government properties which are prepared for public interests are not qualified for personal ownership.

Fourth: Punishments: In the fifth book of Islamic Punishment, 12 articles about punishment are mentioned and was approved in 1375/1996 (about 13 years ago) which mentioned that:

- *the punishment for destruction of historical traces in addition to compensation of damages is imprisonment from 1- 10 years,*
- *the punishment for theft, is imprisonment from 1-5 years,*

¹⁷ The Golestan Palace (Palace of Flowers) is the oldest historic monument in Tehran and belongs to a group of royal buildings that were once enclosed within the mud-thatched walls of Tehran's historic citadel.

¹⁸ 12 April 1945.

- *the punishment of sending such items abroad is imprisonment from 1-3 years and payment of a fine equivalent to twice as much as the price of that smuggled historic thing,*
- *the punishment of digging and exploration for obtaining these properties is imprisonment from 6 months up to 3 years, and confiscation of discovered properties in the interests of the Cultural Heritage Organization*
- *the damage to the lands and hills and historic, religious places which were registered as national traces is imprisonment from 6 months to 2 years,*
- *the punishment for the repair and renewing and extension of buildings or the decoration of cultural places that are registered is imprisonment from 6 months to 2 years.*

The conditions of monuments

The law which is related to preserving the national traces and was approved on Aban 12th 1310¹⁹ (about 77 years ago), states:

All industrial monuments and buildings and places that were established before the conclusion of Zandiyeh Dynasty²⁰ in Iran, both movable or real properties are considered as national monuments and are supervised and preserved by the government.

The international conventions, organizations and statements that Iran joined

Iran as far as possible has joined all international agreements that protect the interests of Iran and other countries providing they are not contrary to its integrity and independence. For example I offer some of them that are related to our subject.

1. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This

¹⁹ 1931.

²⁰ 11th Century.

law contains 26 articles and on November 15th 1970, was approved by the sixteenth session of UNESCO conference.

2. Convention for the Protection of the World Cultural and Natural Heritage was approved in the 17th session of the General Conference of UNESCO on November 6th 1972.
3. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14th 1954, in English, Spanish, French and Russian, deposited in the archives of the United Nations Educational, Scientific and Cultural Organization.
4. The law joining the Islamic Republic of Iran to in October 1977 to the “Decision on the Regulation concerning the returning procedure of illegally imported and exported cultural value”.
5. International Council of Museums Organization (ICOM) approved on June 14th 1974 (in Copenhagen).
6. International Center for Studying, Maintenance, and Repair of Cultural Treasures established in 1959 in the General Conference of UNESCO.
7. International Charter for the Conservation and Restoration of Monuments and Sites in 1964.

Suggestion and guidance for preserving the cultural heritage

1. We should consider the monuments and arts as human beings’ wealth and prevent any private possession, and ratify a firm international law for it and give it retroactivity. Don’t allow this type of international law to be subjected to limitation. This way can prevent transaction of these cultural treasures by greedy and/or international thieves. We know that some countries approved ownership of monuments by private individuals if they have had them for a long period of time. These laws open the way for individuals to steal cultural properties and keep them for long periods in order to own them.
2. The Governments must be sensitive about these vital things and give importance to them and hold them from destruction in times of war and prevent attacks on these heritages and to employ their maximum power to guard them. An example of the destruction and loss of cultural artifacts took place in Iraq after the American attack, when we saw that many Iraqi antiques were sold in markets in America,

whereas the American soldiers could have prevented looting by the use of minimal military power.

3. The law of extradition of monuments should be approved among countries and all items that belong to one nation should be restored to its place of origin because historic items have their best meaning where they originated, not in a foreign nation.
4. Consider the buying and selling of historical heritage in the same manner as we look at the crime of money laundering. The offender should be prosecuted in the same way as one would be prosecuted for illegal money laundering.
5. The police and judges should aggressively attack the problem of stolen or destroyed cultural heritage and give these cases priority.
6. Because these heritages are threatened by international thieves we should consider the crime as an international crime. The international nature of these crimes is often hidden. Therefore, we need an international and comprehensive law for preserving them and naturally need an international court to try these cases impartially.

Addressing the human community

All the countries in the world have their own heritage and they try to keep them for their own people, but every country needs the help of other nations to have their art, historic and cultural items returned when they are stolen or looted.

We, as Iranians, request all countries help return our transferred antiques and arts to Iran, because every historic thing has its meaning in its place of origin. Whereas those same treasures in a foreign place are merely objects of curiosity.

INVOLVEMENT OF ORGANISED CRIME IN ART AND
ANTIQUITIES: SOME REMARKS FROM THE ITALIAN
PERSPECTIVE

GIOVANNI MELILLO
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The decision to sponsor an international seminar with such a wide and significant reach on the issue of “*Organized crime in Arts and Antiques*” and to dedicate a specific session to the analysis of the most relevant events from the perspective of key national experiences in order to develop (and coherently implement) modern strategies of prevention and suppression of crime holds a special value in the Italian contest.

In the Italian experience, the relationship between organized crime and the black market trade that threatens the cultural and artistic heritage of entire nations immediately brings to mind alarming and exceedingly serious scenarios.

The report specifically dedicated to an illustration of the Italian experience confirms the numerous and important cases that are currently in the radar of investigative organizations, providing us with the data that can be integrated with other information gathered over the years with regard to:

- the traditional role of Italian Mafia-type groups (the Sicilian *Cosa nostra*, the Calabrese *'ndrangheta*, the Neapolitan *camorra*, and similar groups active in Puglia) in respect of the illegal use of the archaeological sites located in the territories where they exert their criminal influence which consists in controlling or facilitating the organization of related services (removal, collection, transport and concealment of relics, as well as the subsequent commercial negotiations necessary along their path toward national and international clandestine markets);
- the fact that these Mafia-type groups prefer to use the underground trade of works of art and archaeological relics to launder the enormous profits stemming from other criminal activities (primarily narcotics, but also gambling, extortion rackets, smuggling and merchandise pirating and counterfeiting), as it appears to be the most effective.

However, in Italy, the relationship between organized crime and our national cultural heritage immediately brings to mind fairly recent criminal cases which involved Italian organized crime rackets plotting attacks on famous works of art and monuments symbolic of the Italian cultural identity. The plot included acts of terrorism perpetrated with the objective of obtaining special treatment and subverting the Italian constitutional order.

The final rulings have since been handed down by Italian magistrates against the members of *Cosa nostra* who devised, organized and accomplished the terrible attacks on symbolic sites around the country in the space of a few terrifying weeks (between May 27 and July 28, 1993). Terrorists hit such icons as the *Uffizi* in Florence and the ancient churches in Rome, indifferent to the high cost of human lives that was the result of their atrocities.

The sentences handed down clearly identified the motive of those terrible actions as the desire of Sicilian organized crime to influence and intimidate the Italian authorities, which had undertaken a new and decisive action to crush the Mafia's criminal activity, following the attacks the year before that had cost the lives of judges Giovanni Falcone and Paolo Borsellino, with new and more effective legislation. According to some members of *Cosa Nostra*, nothing less than attacks on the scale of those in 1993 could have caused the government to "make compromises" and give up its expectation of strict application of its laws.

Indeed, how can we look at the images of Italy's art cities so deeply wounded and humiliated and not see the hallmark of a criminal desire remorselessly bent on corroding the stability and credibility of the institutions of a democratic society?

It is essential that we remind ourselves of that painful experience in order to have a yardstick for measuring the strength and virulence of a criminal threat that will not hesitate to use the importance of works of art and antiquities for the cultural and political identity of a people, as a means in terrorist plots aimed at destabilizing a government.

However, this same criminal threat ordinarily takes on the less cruel and apparently more reassuring forms of a modern services company. The services it provides may be illegal (organizing thefts and burglaries, concealing export of stolen goods, pillaging archaeological sites and forging the documents necessary to complete their export) or legal on their face but prohibited because they are offered at conditions not envisaged by the laws of the state and professional ethics of individuals who legitimately work in the sector of artistic and cultural objects.

In this day-to-day reality, the intensity of the threat posed by organized crime is only apparently reduced, increasing the business pressure of criminal organizations that practice the massive and irreparable stripping away of values essential to the conservation of invaluable traditions and social and cultural identities.

Most of all, contamination of the legal trade due to contact with the interests and fiduciary structures of organized crime ends up influencing the relationships and contractual dynamics to the point where the principles of responsibility, transparency and legality gradually begin to vanish until it is plain to see the squalid core of the system of criminal interests underneath and the real nature of the relationships that voluntarily intertwine with each other.

This is also why it is even more urgent and vital to test the usefulness of the models of preventative and repressive action that are possible today within the diverse national systems and in the prospect of establishing cooperation in halting black market trade between countries on a transnational level. Only a complete and strict recognition of the criminal facts will help us identify the deep roots of an increasingly widespread need to update and modernize international laws and conventions and national legislation to the real nature of the phenomenon in question and together find the keys to begin to solve complex problems of legislative harmonization and organizational discipline of a necessary transnational operating agreement.

THE EXPERIENCES OF THE ITALIAN CULTURAL HERITAGE PROTECTION UNIT

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Before discussing the specific topic of my address, I feel that it would be very useful to briefly illustrate the structure and the responsibilities of the Office.

The Comando Carabinieri Tutela Patrimonio Culturale

The Cultural Heritage Protection Unit of the Carabinieri Corps (*Comando Carabinieri Tutela Patrimonio Culturale* henceforward referred to by the acronym T.P.C.) was instituted in 1969, one year prior to the UNESCO Paris Convention in 1970, whereby all UNESCO member states were invited to institute specific services with a view to protecting the cultural heritage of the individual nations.

The Unit is a part of the Ministry of Cultural Heritage and Activities and plays a role regarding the safety and protection of the national cultural heritage, through the prevention and repression of the multiple interrelated criminal activities.

The particular sector of protection is a speciality Department which was assigned to the Unit with the decree of the Ministry of the Interior on 12 February 1992; with a subsequent decree of 28 April 2006, the same Ministry confirmed the pre-eminent role attributed to the Unit, by identifying the T.P.C. as a centre of information and analysis for all Italian law enforcement units.

The Unit, comprised on a central level of a Centralized Office, a complete staff and an Operating Department (split in turn into three Sections) and, on a territorial level, of 12 Branches with regional or interregional jurisdiction. It also has a Section in the Region of Sicily that reports to the T.P.C. Unit Branch of Palermo. The T.P.C. performs its duties to recover cultural artefacts that have been illegally removed, which consist in the following activities:

- monitoring archaeological sites, including by aerial surveillance;
- monitoring the commercial activities of the sector, both fixed and transitory;
- monitoring security measures applied by Museums, Libraries and Archives;
- monitoring the catalogues of the auction houses;
- monitoring internet sites dedicated specifically to “e-commerce”.

The Unit also performs duties related to landscape protection, which is part of the national Cultural Heritage.

As regards its international scope, in addition to working in the sphere of international police cooperation through INTERPOL, it also has the following responsibilities:

- providing specialized support to peace-keeping operations, such as in Iraq from 2003 to 2006;
- training of police officers and customs officials in countries that submit such a request (as many as 15 in 2008 – Bolivia, Ecuador, Colombia, Guatemala, Panama, Cuba, El Salvador, Costa Rica, Nicaragua, Honduras, Dominican Republic, Chile, Argentina, Paraguay, Iraq);
- consulting to the Ministry of Cultural Heritage and Activities, in respect of activities centred on retrieving archaeological relics belonging to the national heritage and exhibited in museums and private collections abroad.

In addition, the T.P.C. Unit participates in a variety of ways in training and research and development initiatives in Europe, such as:

- the Twinning Project Romania, for development in that country of legislation on this issue and creation of operating instruments;
- training activities at the European Police Academy (CEPOL) and the Centre for Excellence for Training Stabilization Police Units (CoESPU);
- the “Discovering Magna Grecia” project, for satellite monitoring of archaeological sites in Calabria;
- the “Combat Online In Numismatic Sales” (COINS), for protection of the numismatic heritage on the Internet;
- the “Authentico” project which identifies methods for authentication of metal artefacts.

Since the 1980s, the T.P.C. Unit has used an auxiliary instrument in its investigations: the “*Database of illegally removed cultural artefacts*”, set forth recently by Article 85 of the Legislative Decree no. 42 of 22 January 2004, which contains information on the artefacts to recover, of Italian or foreign provenance, and on related criminal events. The database includes a record of 123,284 events, more than 2,773,987 objects, with more than 343,105 images.

Furthermore, use of sophisticated computer technology has made the database a reference point for the entire Unit and for the other Italian and foreign law-enforcement agencies; it also makes it possible to conduct a careful analysis of events of “art theft” as well as other types of crimes, providing specific information that can more precisely address the investigative activities of the various departments.

Updated daily, the database:

- is constructed on modules that make it possible to enter and research events, people and objects and their relationships to each other, while also computing statistics;
- since it is set up on the web interface and with a multilingual support, it can visually research and compare images and georeference events as well as provide a graphic representation of the connections;
- it interacts in real time with handheld computers and laptops, making it easier to draft reports right on site; it also makes it possible to consult and enter new information.

The database has, since many years, been easy to consult on the institutional web site, www.carabinieri.it, which can be reached through the web site of the Ministry of Cultural Heritage and Activities, in order to make it even more useful for citizens, who can also take a look at the useful “recommendations” (for example, what to do to avoid purchasing stolen or counterfeit works of art; what to do if you find an artefact or have stolen one, etc). In addition, through the links on the web pages of the Unit, you can download the “Object ID”, a simple form to be filled out by individual owners, that gives a detailed description of the works of art. It can be extremely useful in the event of theft, since it enables an easy computerized link with the database in order to promote the constant comparison with objects under daily control. The database is now open to selective consultation by Associations of merchants working in the sector, with a view to improving market transparency.

The Italian situation, in brief

After briefly illustrating the T.P.C. Unit, the specialized instrument set up by Italy, I would like to refer to the greatest threats to our national cultural heritage, on the basis of the evolution of criminal events taking place in recent years, and illustrate the data concerning what is being done to counteract these events, with particular attention to the last three years.

Organized crime and cultural heritage

The countless objects which form part of the Italian cultural heritage and are located on the national territory, in many cases easily accessible (consider the easy access to art-filled churches, for example), the interest in them both in Italy and around the world, their great saleability through multiple channels that have also recently increased disproportionately with the explosion of “e-commerce”, as well as the extremely high profits that can be made from these “goods”, represent the most evident reasons for the enormous development of illegal trafficking in cultural artefacts. Just as an example, remember that in terms of annual income, in the year 2000, the volume of business relating to works of art and artefacts, according to estimates made by the international organizations, was valued at around 2 billion dollars a year, second only to drugs and weapons trafficking). Consequently, it is obvious that the sector also is of interest to organized crime. In fact, only in the period from 2006 to the end of last year, the T.P.C. Unit has made 17 arrests for criminal association, with a total of 261 persons referred to the judicial authorities.

It should however be specified that the term “organized” refers largely to networks whose task it is to handle the numerous changes of hand that take place from the time of the theft (or the clandestine excavation) to the time the objects reach the final users (major collectors, museums, art institutions, etc); while these networks have coordinated activities and even use the same channels, this does not necessarily denote the involvement of “traditional” criminal associations and even less so the presence of a “mafia”.

We should also underline, at least as regards our own experience, that no proof has ever been found of an involvement of mafia-type organizations in the direct and continuing organization of the activities related to the traffic of cultural artefacts, despite the fact that investigations have often demonstrated a link between mafia organizations and the

specific criminal sector regarding both the monitoring of the territory and the selection of objectives, i.e. in some cases the involvement – either directly or on behalf of third parties – of individuals affiliated with local mafia-type clans was demonstrated or suspected.

An example of this can be found in the results of the investigations relating to the theft of the “Nativity” by Caravaggio from the Oratory of San Lorenzo in Palermo in 1969, which was never recovered. In fact, according to legal records, a prominent member of the Sicilian clan who turned an informant to the police attested to his involvement in organizing the theft of the masterpiece.

In the same way, major investigative leads have led to a justified belief that members of the Neapolitan Camorra were involved in the theft and subsequent possession of two paintings by Van Gogh (“View of the Sea at Scheveningen” and “Congregation Leaving the Reformed Church at Nuenen”) taken from the Van Gogh museum in Amsterdam in 2002.

Having said this, we will now examine some recently conducted investigations, listed by type of crime and/or by type of cultural artefact, which were found to be the work of organized crime (including in the broad definition illustrated here). The differentiation was made only for the purpose of clarity, since experience shows that some groups commit a string of crimes which often involve multiple types of objects.

Types of crime

a) Clandestine excavations

These criminal events represent one of the greatest blights that afflict Italy and many other countries with a wealth of historic relics. In this forum, we will not discuss the incalculable damage that clandestine excavations can bring to the scientific, historic and cultural area of reference. We will only state that, in the Italian legislative framework, anybody who takes possession of any archaeological material in a clandestine excavation site can be charged with the crime set forth and punished by the regulation on the protection of cultural artefacts (Article 176 of the Leg. Decree 42/2004), while anybody who purchases such objects can be charged with receiving stolen goods (Article 648 of the Penal Code) or with purchase or acquisition of objects of uncertain provenance (Article 712 of the Penal Code).

Clandestine excavation is not a crime that can be quantified in absolute terms, just as it is impossible to pinpoint exactly which and how many ancient relics are removed from sites each year. However, a general idea might be given by the numerous relics recovered by the T.P.C. Unit.

There has been a gradual decrease in the number of clandestine excavations discovered, whose numbers have dwindled from a peak of more than one thousand per year, identified in the 1980s and 1990s, to 207 in 2007. Despite this good news and aside from a slight increasing trend registered in the early months of 2008, the fact remains that this type of crime continues to be serious and the sector is still “at risk”, as it can rely on a significant internal demand and a flourishing international market, albeit with very different quantity and quality characteristics compared to the past.

The circuit of clandestine excavations is complicated and varies according to the geographical area in question, but chiefly involves the zones with a rich ancient history (Lazio, Puglia and Basilicata, Campania, Calabria and Sicily).

Clandestine excavations are defined as occasional when they are the work of local farmers or land owners whose land is involved in building works, or take place sporadically by individuals in digs; in these cases, the person who has found the relic decides to keep it for himself or resell it rather than deliver it to the competent authorities.

Another story is the problem of systematic pillaging, which is much more destructive and is carried out by “tomb raiders” who frequently work in organized groups and use heavy machinery in their digs. They set up local “collection centres” which are controlled by one or more individuals, which in turn report to a local “collector” in the area. The collector is generally a seasoned professional in the rules of the black market and knows exactly the best time to place the relic on the black market. He is therefore also the reference person for export and sale abroad.

One of the investigations conducted by the T.P.C. Unit that has brought to light these dynamics was the “*Ghelas*” operation (from the ancient name of Gela, from where the intercepted team of tomb raiders originated). The operation was conducted between late 2003 and April 2007 and made it possible to dismantle an organized crime racket dedicated to international trafficking of archaeological relics excavated clandestinely from major digs in Sicily and in Spain.

The organization was founded on a rudimentary and at the same time complex structure in which every player performed specific tasks. Indeed, the association – which was modelled on the Mafia clans, despite

not having their “technical” attributes – could rely on various trusted members of local groups in the areas of interest whose job was to organize and control the numerous phases of the illegal activity, including research, collection and distribution of relics, preparing them for sale, and making reproductions of pieces of highest value; assessing the value of the pieces, organizing their transfer to potential markets, and searching for buyers and contacts abroad, this latter job assigned to a very well known local delinquent.

The “bosses” of the various groups provided each other with their expertise on the territory, including the tools needed for clandestine excavations and the knowledge for receiving the stolen artefacts, and even traded among themselves authentic material to use as templates to create counterfeit works for sale.

Another important investigation ended in 2005 and was code-named “*Mozart*”. This investigation made it possible to delineate a criminal pyramid operating in Italy and made up of tomb raiders, receivers and accomplices belonging to an association, whose ramifications spread across the country and around the world. These “suppliers” worked in parallel with certain groups of brokers and private collectors. The investigations shed light on the illicit conduct of an Austrian travel agent, who had set up a business relationship with several tomb raiders in archaeological areas in and around Rome. During his numerous trips to Italy, he managed to hide and transport to Austria thousands of relics excavated clandestinely, many of which are currently located at private Austrian museums.

b) Theft of cultural heritage

This type of criminal activity comprises a diversity of illegal actions and *modus operandi* as well as objectives, which we generally group together in the antiques sector, of sacred art and other genres. Even in this framework, it should be noted that over the past few years there has been a slight but gradual decline in the phenomenon (-10.5% in 2007 versus 2006, a trend confirmed in the first ten months of 2008), which is closely related to the more general trends of the specific crime. This is true especially for thefts from museums and art galleries while the trend is the reverse for libraries and archives (it is difficult to make an exact assessment of the materials stolen except by indirect estimates based on the materials recovered, since the theft is frequently only discovered after the material is recovered).

In general, the authors of these crimes can be split into three categories:

- criminal groups, primarily specialized in the theft of church objects, which work in numerous regions and hide the booty in warehouses close to the place of origin awaiting its subsequent sale, or the booty might be resold immediately in localities far from the place of the theft;
- individuals who occasionally steal objects to get money to fuel their drug addiction or are engaged specifically by unscrupulous merchants and/or collectors;
- foreign nationals who make their living off illegal activities.

It is important to remember that theft “on commission” generally displays very particular characteristics and that, as such, represents a very limited, niche type of crime. If we leave aside the crimes committed by petty criminals living on the fringes of society, those who commit crimes of theft of cultural heritage usually move in specific spheres of criminal activity, where criminal organizations are involved in every stage of the operation, from the actual theft to the subsequent sale of the stolen goods.

The special nature of the theft often requires a certain skill and specialization by the “thieves” and the receivers of the stolen property, since both must have the ability to recognize the value of the artefact to steal and, often, also a knowledge of the export techniques, in order to avoid damaging the object, and its restoration, to make it easier to sell on the market. The scope of this activity extends beyond the national territory especially for higher value artefacts or for niche articles (ancient books).

The investigation code-named “*Piovra*”, conducted between June 2001 and May 2003, demonstrated the existence of a criminal association in Calabria made up of offenders in Campania and Calabria whose objective was theft and misappropriation of cultural artefacts. In particular, the investigations demonstrated the involvement of parties included in the local organized crime rackets which provide the organization with a consolidated logistics network.

Another investigation was conducted between 2002 and 2004 in Calabria, code-named “*Arberia*”, which allowed investigators to dismantle another criminal association involved in the theft and misappropriation of cultural artefacts which acted on behalf of third parties. Under this scheme, the organization was required to obtain authorization from the head of the local “*ndrina*” to commit criminal acts in a certain territory and pay a 5% commission on the total profits.

The investigation code-named “*Tarlo*”, conducted between 2006 and 2007, made it possible to identify and define operating strategies of a criminal organisation centred on thefts perpetrated in homes and places of worship, made up of well-defined “batteries” of parties entrenched in the outlying areas of Naples and operating across the country, especially in central and southern Italy. These batteries used local base units to which they would deliver part of the stolen property for broader sale on the antiques market, using a well established circuit of receivers. Finally, the operation coded named “*Arte protetta*”, the most recent in chronological order, ended last June and made it possible to dismantle a criminal organization based in the Marche, specialized in the theft and subsequent introduction onto the black market of works of 17th and 18th century art, as well as in the falsification and subsequent sale of the counterfeit works of art, falsely attributed by experts to major names in contemporary art. Among other things, the investigation also discovered the foundry where members of the association had been fabricating fake bronze artefacts. The investigators seized the moulds used to reproduce them.

c) Counterfeiting

The statistical data in the possession of the Office and the information acquired lead to believe that this particular criminal activity is in constant expansion, since it is very remunerative and, on the whole, not very risky. The operating results, aside from the quantity figures on the seizures and confiscations made, in many cases have made it possible to stop particularly prolific production chains with confiscation of the moulds. The results have also given a more precise indication of the breadth of the problem as regards the diverse artistic expressions (sculpture, graphics, painting) and the methods of execution and the parties involved. In particular, *approximately 75% of the crimes discovered involve contemporary art*, for obvious reasons of organizational and executive simplicity.

According to prevailing legislation, counterfeiting of cultural artefacts can be effected in different ways, all carried out with a view to making a profit (Article 178 Leg. Decree 42/2004). In particular:

- counterfeiting, which is defined as meticulously imitating a work of art in order to sell it as if it were the original;
- alteration, which means changing the essence of an original work by tampering with it (which can include sectioned paintings, those in which details have been added or removed or those which, by making

certain modifications, are dated back to a certain author, while they were really executed by someone else);

- reproduction, which entails the mechanical multiplication of copies of an original work which is then sold as the original: this is used in lithographs, etchings, xylographs, silk screens and multiples of sculptures in excess of the number originally authorized by the artist.

Other activities which can be considered criminal include: circulation or possession of counterfeited works with the intention of selling them despite not actually being involved in or contributing to the actual act of counterfeiting; authentication of a work known to be false; accreditation as authentic of a work known to be false.

Since there is no absolute list of the ways to counterfeit art, an act is considered a crime when there is the knowledge of the falsity of the work by the person involved.

The significant differentiation and specialization of the acts that comprise the crime in question means, therefore, that counterfeiting can be carried out by persons who “deal” with works of art in a professional way (consider gallery owners or art merchants) as well as by official actions or private agreements, by collectors and art lovers who sell or trade works of art.

However, the division of tasks and responsibilities necessary to reach the illegal profit, on certain levels, makes it essential to create specialized organizational chains in the particular area of falsified cultural artefacts. For example, an investigation conducted in 2007-2008 in Northern Italy in cooperation with the F.B.I. and the Spanish police, directed by the district anti-Mafia Unit of Milan, revealed the existence of a close relationship between Italian organized crime and certain Spanish citizens. With the assistance of scores of complicit galleries in California and Florida, they were able to export counterfeit works of art produced illegally in Italy and Spain, forging a trail of counterfeiting that stretched from Italy to Spain to the United States. Under those circumstances, the judicial authority, for the first time in Italy and in the particular sector, considered it necessary to apply the specific legislation concerning transnational crime under Law 146/2006.

d) Laundering and use of dirty money, artefacts, or black market objects

The crimes under Article 648-bis and 648-ter of the Penal Code, namely, introduction on the legal market of monies from black market

transactions or illegal activities, are “intrinsic” with the growth of criminal associations, which conceal and recycle illicit capital to avoid taxation and to evade investigative activities that use the artefacts to trace back to the organizations themselves. While this conduct has always been examined as part of “traditional” criminal investigations, it is important to underscore the rising importance of money laundering that involves the reinvestment of profits from the black market traffic of cultural artefacts. This finding arises from the increasingly widespread occurrence of this type of crime and the increasing awareness of the investigators, judges and police.

In this context, we should make mention of the supporting activities supplied by T.P.C. Unit to the anti-Mafia investigative Unit of Milan in the operation code-named “*Metallica*”, which began in February 2007 and is still progress. The investigation tracked down criminals based in Lombardy and members of Mafia-like criminal associations. The investigation was launched pursuant to specific leads and in fact revealed an international racket involving counterfeit works and original works procured on the black market from foreign countries, introduced onto the legal market in order to launder money obtained from other crimes committed by members of Mafia-like associations. Furthermore, the specialized involvement of this unit in the investigation, vital to accomplishing the verifications and providing technical and operating support, represents another confirmation of the success of the existing model of coordination, which assigns the execution of specialized activities to the national unit most competent in the relevant sector. Another operation that shed light on money laundering activities centred on cultural objects carried out by this Unit between 2005 and 2008 is the one code-named “*Boucher*”, which was conducted in close association with another investigation by the Unit’s French counterparts O.C.B.C. and the Swiss financial police.

The investigative activities have revealed a criminal organization comprised of several groups of tomb raiders working Puglia and Lucano, with ramifications in France. The groups cooperated with each other, despite belonging to different realities, thus forming a dense network of contacts in order to conceal black market trade. The investigation revealed a money laundering activity, already under examination by the French investigators, which consisted in depositing monies in a French bank in exchange for archaeological relics taken from Southern Italy, relics that were sold by complicit “front men” in public auctions and in art galleries, and in reinvesting the large sums of money obtained in real estate.

e) Illegal export

This type of crime is much more common than one might believe and involves cultural artefacts traded on the black market as well as artworks whose export is restricted due to their historic and artistic value. It is facilitated by a diversity of strategies that can be implemented to avoid checks and is “stimulated” by the differences between laws on a European level and the fact that the market outside of Italy promises much higher profits than what could be obtained in this country. This crime is committed generally by professional art traders and by individual collectors, in addition to receivers of stolen property, experts on foreign markets.

In looking at the various cases under examination, we find that black market export takes place through the use of:

- international shipping companies (many times unaware of the illicit merchandise they are carrying) with the use of lorries and refrigerated trucks for road traffic or in containers for shipping by sea, with merchandise hidden among other completely unrelated goods;
- leisure craft, taking advantage of the characteristic geography of Italy’s coastline, which is a destination for tourists from around the world;
- hollow spaces in campers and mobile homes;
- international trains, with goods held in luggage or bags located in compartments far away from the person transporting them;
- hand luggage, in air traffic.

Furthermore, in the illicit export of particularly valuable paintings, one technique involves painting a contemporary design over the original painting in order to more easily obtain the necessary permits for export, as well as other fraudulent methods.

The investigation code-named “*Guardinghi*”, launched last year, has shed light on numerous criminal activities undertaken by the same criminal group, which submitted major paintings to the Export Offices, falsifying the attribution and painting quality in order to deceive the officials in charge of issuing certification, or to illegally move them out of the country (onto European markets and on other continents). Once exported, they would be sold by several select auction houses, purchased directly by individuals and shell companies, only to be reimported temporarily back to Italy after having falsified their origin so as to significantly raise their value

Conclusions

From all the information above, it is clear how crimes involving cultural artefacts are no longer, admitting they ever were, crimes only concerning the intellectual elite or wealthy billionaires with a weakness for art or narrow circles of professionals in the sector. On the contrary, they have become the basis for a considerable business that requires the use of sophisticated tools and highly developed organizations to earn increasingly greater profits. These organizations – even if they are not mafia-style in the traditional sense of the word – use operating methods very similar to these organized crime rackets and are developing multinational characteristics.

As a result, the instruments that law enforcement agencies require, especially specialized corps such as the T.P.C. Unit, must be adapted to the rapid evolution of the threat. This is also true for international legislation.

The time we have here does not allow us to make an in-depth analysis of the problem. Therefore, I will only comment on a few proposals that could represent an excellent starting point and which are already included in a legislative proposal which was brought to the attention of the parliamentary committees in the last administration. Some of the operating instruments are already available in our system because they are applicable in other criminal sectors and because they are already included in international regulations that have been implemented in Italy or are awaiting implementation. The measure was made with a view to modernize the current system of criminal protection of the cultural artefact, which considers the cultural value as an ancillary quality of the object and as a result, sets forth an indirect protection, solely by adding aggravating circumstances to the key crime. It included strong direct criminal protection of cultural artefacts, based on a legal concept of the cultural object as distinct from the material object underlying it, and therefore, worthy of protection in its own right.

In this perspective, criminal protection of the cultural heritage might be achieved through a modification of the sanctions contained in the prevailing “Code of the Cultural and Landscape Heritage” by setting forth that theft and receiving of stolen cultural artefacts are separate offences, by making illegal export of cultural artefacts a permanent wrong, by specifically mentioning the offence of receiving counterfeit objects, by instituting a special charge for money laundering when the activity centres on counterfeited cultural artefacts and by shoring up the investigative instruments. In particular, more specifically:

- the inability to punish officials and law enforcement agents in carrying out undercover investigative activities, modelled after narcotics trafficking laws;
- the ability to proceed with simulated purchase of cultural artefacts; on par with the matters indicated above, this instrument is already used in relation to cultural artefacts by the Naples II Convention, based on Article k3 of the Treaty of the European Union regarding mutual assistance and cooperation between customs agencies, signed in Brussels in 1997;
- the ability to make delayed arrests for justifiable reasons, here also, implementing measures already set forth in narcotics trafficking laws;
- use of undercover operations, including setting up web sites, to create or manage areas of communication or exchanges online if the crimes are committed by the use of computerized or other electronic means, modelled after the laws counteracting child pornography;
- seizure of real estate, property and sums of money which are instrumental to perpetrating crimes on cultural artefacts, requiring seized assets to be surrendered to the Ministry for Cultural Heritage and Activities or to the legal custody of the police if they require them to stop activities in the specific sector;
- applying preventive and prohibitive measures (concerning the issue of licenses, permits, registrations, authorizations etc) in relation to individuals considered a danger to the community, when the criminal activity is believed to centre on cultural artefacts.

Also as regards the illustrated evolution of the trend, as mentioned above, it would be appropriate to cooperate with other nations. This could be achieved by strengthening the relationship already in place between the various national law-enforcement agencies and evaluating the feasibility of direct relationships between specialized data bases. At the same time, it would be necessary to review European legislation (for example, EEC Directive 93/7) and harmonizing relevant national legislation, so as to extend the tools already available in civil law to the area of criminal law and facilitate the legal procedures between countries.

Finally, it would be useful to reconsider the regulations in some important sectors on the art market, such as the auction houses and specialized web sites, in the first case by passing laws that implement the codes of ethics established by international organizations such as UNESCO and ICOM, and in the second, by setting up standard agreements aimed at a

faster acquisition of information on users and a better regulation of the individual “virtual markets”.

AFGHANISTAN, A VICTIM OF TRANSNATIONAL CRIME IN ART AND ANTIQUITIES

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Afghanistan has endured prolonged and devastating wars, invasions and internal fighting. These upheavals resulted in, apart from social and economic losses, destruction and looting of museums and plundering of national heritages.

In 2004, the Government of Afghanistan passed a law to protect historical and cultural heritage and antiquities in view of the following UN Conventions:

- convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (“1954 UN Convention”);
- convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (“1970 UN Convention”); and
- convention for the Protection of World Cultural and Natural Heritage 1972 (“1972 UN Convention”).

Article 1 of the Law on the Protection of Historic and Cultural Heritage (“Afghan Law”) provides: *The historic and cultural heritage of the country belongs to the people of Afghanistan and is a demonstration of their participation in the evolutionary development of mankind’s cultural heritage. Protection of historic and cultural heritage is the duty of the government and the people.*

The above provision, in addition to resting the responsibility of its protection on the State, regards historic and cultural assets in Afghanistan as the property of all mankind.

The 1970 UN Convention contains a similar provision:

“It is incumbent upon every State to protect the cultural property within its territory against the dangers of theft, clandestine excavation and illicit export”.

Paragraph 3 of Article 4 of the 1954 UN Convention calls on the State Parties to prohibit theft, looting and destruction of cultural heritage.

Article 3 of the Afghan Law makes the unauthorized removal of historic and cultural heritage a criminal activity. In addition, Article 8 of the Afghan Law provides:

“All historic and cultural relics both movable and immovable whether discovered or hidden underground are the property of the State in accordance with this law and their unauthorized removal or transference is regarded as theft”.

Article 4 (4) of the 1954 UN Convention calls on the State Parties to prohibit the transfer of historic and cultural heritage. While Article 12 of the same Convention permits the transfer and transportation of historic relics under special protection. The level of protection must meet international standards.

The Afghan Law (Article 55) also prohibits the removal or transfer of the national museum and its contents or part of its contents without the approval of the Council of Ministers. This arrangement demonstrates the importance attached to the protection of historic relics, that is to say that any removal or interference requires the highest approval.

The 1970 UN Convention in Article 5(e) provides:

“establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules”.

To fulfill the obligation of the above provision the Afghan Law (considering the benefit of dealers) allows the sale of historic objects in the hand of dealers provided such objects are listed and registered.

The issue of stolen relics from the Kabul Museum by criminals and their export to foreign countries during the prolonged war and infighting, is very important for historians and the people of Afghanistan. The Afghan Government has undertaken the commitment to return any stolen relics belonging to other countries and expects other countries to do the same. Transnational organized criminals, taking advantage of the insecure situation in the country, looted the museums inside Afghanistan and are engaged in the excavation and export of historic and cultural objects.

Article 69 of the Afghan Law provides:

“If an object is identified by a member of UNESCO on the basis of the UN Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, as being owned and forming part of the heritage of that country, where its illegal export and import to Afghanistan is prohibited, such import will be regarded as illegal and the objects are returnable”.

The 1970 UN Convention says: the protection of cultural heritages can be effective only if states are organized both nationally and internationally and work in close cooperation.

Efforts of the international community to develop international instruments against transnational organized crimes arise from the recognition that the problem has become much more serious. New forms of transnational co-operation between organized criminals groups emerged in the closing decades of the 20th Century. The globalization of the economic systems, and developments in transportation and communications technologies have created enormous opportunities for human communication and economic developments, but they have also created significant new opportunities for organized crime. The participation of over 100 member states in the negotiation of the UN Conventions and Protocols reflects the fact that countries recognize transnational crime to be everyone’s problem, and that it will require international co-operation to solve it.

The United Nations Convention against Transnational Organized Crime has the purpose to promote cooperation to prevent and combat transnational organized crime more effectively. Various provisions are intended to provide instruments for law-enforcement and prosecutorial agencies to encourage prevention efforts and to support and protect victims. Many countries have in their national laws preventive measures, but not all. The Convention is intended to encourage those who do not have such provisions in their national law.

The Convention defines “organized criminal groups”. Such a group must have at least 3 members, take some action in concert or in some coordinated manner for the purpose of committing “serious crime” for the purpose of obtaining a financial or other benefit. The group must have some internal organization of structure, and exist for some period of time before or after the actual commission of the offences involved.

Under Article 5, participating in the activities of an “organized criminal group” and organizing, directing, aiding, abetting, facilitating, or counseling serious crimes involving organized criminal groups must be made offences under domestic law.

Under Article 6 of the Convention, money laundering is a crime. This extends to not only cash, but any form of property which is the proceeds of crime, and includes any form of transfer or conversion of the property for the purpose of concealing its true origin. Simple acquisition or possession is also included.

Under this article the expression of “any form of property” can cover proceeds of artifacts, cultural goods and museum objects.

It was apparent to the governments involved in the negotiations that it is necessary for the law-enforcement and other agencies to work together in co-operation to deal effectively with organized crime groups. This means that many of the obligations imposed on States Parties involve some commitment to assess one another in dealing with transnational organized crimes as a general problem, and to assist in dealing with specific cases. Co-operation under the Convention includes extradition and mutual legal assistance. The Convention asks for other more specific measures, such as law-enforcement co-operation and collection and exchange of information.

The Convention obliges States Parties to maintain adequate national expertise in dealing with transnational organized crime problems. This has obvious resource implications for developing countries. The Convention and its protocols make provision for technical assistance projects in which developed countries assist developing countries. An account has been specifically designed for the purpose in a United Nations fund mechanism to support such efforts.

Training must include not only methods and techniques for investigating and prosecution offenses, but also background intelligence-gathering and crime prevention.

Afghanistan has been and is the victim of organized crime in many areas. Organized criminal groups are operating in this country mercilessly. In addition to the traffic of drugs they benefit a great deal from the theft and export of cultural and historical artifacts. Taking advantage of the security situation in the country, groups of criminals are involved in the excavation of cultural goods at historical sites.

The great archaeological heritage of Afghanistan is of universal importance. It is now at serious risk from organized destruction and plundering at the hands of criminals.

The National Museum of Afghanistan in Kabul has been looted and is missing a great part of its collection, much of which has found its way into the art market.

Ancient sites and monuments, ranging from the Old Stone Age to the 20th Century are being attacked and systematically looted.

Objects of all types and materials, from prehistoric times to the Indo-Greek, Buddhist and Islamic periods are being lost.

Sculpture, architectural elements, ancient manuscripts, bronzes, wooden objects and ceramics are being illegally exported at an unrelenting rate. It is the duty of the international community to unite in protecting this unique cultural heritage.

The people of Afghanistan are witnessing the slow dispossession of their cultural heritage by looters who are pillaging archaeological sites and traffickers who are smuggling artifacts out of the country, frequently in connection with other criminal activities. The situation will continue as long as these traffickers have access to foreign markets of buyers of illicit antiquities.

To assist in stopping the looting and destruction of Afghan archaeological sites the international cooperation is needed in the protection of the cultural heritage of Afghanistan.

We call on the customs officials, police officers, art dealers, museums, and collectors to recognize objects of possible illicit provenance. Potential buyers are advised not to purchase these objects unless they are accompanied by verifiable ownership and provenance documentation.

UNITED STATES VS. ART THEFT

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The illicit trade in art and cultural artifacts is a major category of international crime. This includes theft of individual works of art, illegal exportation of objects protected by international laws, and pillaging of archaeological sites. Art theft is an international problem requiring cooperation at all levels of law enforcement. To aid in this endeavor, the Federal Bureau of Investigation (FBI) established the Art Crime Team and the National Stolen Art File (NSAF).

The rapid deployment Art Crime Team was formed in 2004 and is composed of twelve Special Agents, each responsible for addressing art and cultural property crime cases in an assigned geographic region in the United States. The Art Crime Team is managed and directed through FBI Headquarters in Washington, D.C.. Art Crime Team Agents receive specialized training and assist in art and cultural property investigations worldwide. The Department of Justice assigned three Special Trial Attorneys to the Art Crime Team for prosecutive support. In addition to conducting investigations, Art Crime Team Agents are responsible for the following: coordinating with other law enforcement officials for the sharing of intelligence; identifying industry experts for purposes of expert testimony and authentication works of art; handling and preservation of evidence; art related undercover operations; international police assistance; and any other matter pertaining to art or cultural property investigations.

Since its inception, the Art Crime Team has recovered more than 900 items of cultural property, valued at more than \$130 million. In addition, Art Crime Team members contributed to numerous successful prosecutions, with restitution and forfeitures exceeding \$14 million.

The National Stolen Art File (NSAF) is a computerized index of stolen works of art and cultural property as reported to the FBI by law enforcement agencies throughout the world. The NSAF consists of images, physical descriptions of stolen and recovered objects, and investigative case

information. The primary goal of the NSAF is to serve as a tool to assist investigators in recovery of stolen art and cultural artifacts. The NSAF also functions as an analytical database to aid law enforcement officials in the coordination of investigative efforts.

The criteria for an object to be eligible for entry into the NSAF are as follows:

1. The object must be uniquely identifiable and have historical or artistic significance. This includes fine arts, decorative arts, antiquities, Asian art, Islamic art, Native American art, ethnographic objects, archaeological material, textiles, books and manuscripts, clocks and watches, coins, stamps, musical instruments, and scientific instruments.
2. The objects must be valued at more than \$2,000. If the objects are associated with a major crime, the value can be less.
3. The request must be submitted by a law enforcement agency and must be accompanied by a physical description of the objects, a photograph of the object if available, and a copy of any police report or other information relevant to the investigation.

All requests for searches of the NSAF must be made through a law enforcement agency in support of a criminal investigation. Individuals or organizations in the United States wanting to query or submit to the NSAF should contact their local FBI office. Foreign organizations should contact and FBI Legal Attaché office.

Due to the international nature of the art theft crime problem, the Art Theft Program maintains extensive liaison with international law enforcement agencies and the international art community. Through the FBI's Legal Attaché offices overseas, the Art Theft Program has assisted in numerous foreign police cooperation cases and coordinated with the Department of Justice, Office of International Affairs (DOJ/OIA), in processing of letters rogatory.

The FBI's Art Theft Program has represented the United States regarding art theft issues in numerous international conferences, including Croatia, El Salvador, France, Greece, Hungary, Italy, Jordan, and Romania. In addition, the Art Theft Program was requested by the FBI's Legal Attaché office in Moscow to conduct a one-week art theft training program at the St. Petersburg University of Internal Affairs, Russian Federation. Most recently, the U.S. Department of State sponsored Art Crime Team training for local law enforcement offices in Chile, Peru and Montenegro.

The Art Theft Program maintains information regarding specialized legislation relating to cultural property crime, including the Theft of Major

Artwork Statute, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

As of October 2002, the United States Sentencing Commission (USSC) instituted harsher penalties for the theft of cultural property based on recommendations from the Department of Justice and the Department of the Interior. The amendment to the sentencing guidelines covers a variety of offenses involving the theft of, damage to, destruction of, or illicit trafficking in cultural heritage resources. The commission maintained that the theft and/or damage of cultural property and archaeological sites should be more severely punished than general property crimes due to the fact that cultural heritage resource crimes transcend monetary considerations and involve irreplaceable objects.

Recovery of stolen cultural property is very low. Of the objects reported to the NSAF, approximately 5% are recovered. This does not take into account the objects which cannot be registered, such as archaeological material, which would make the recovery rate even lower. One of the major problems in investigating cultural property cases is the lack of documentation of the property at the time of theft. Victims are often unable to provide an image, description, artist name, or any other information which would make the object uniquely identifiable. This is particularly true in source countries where resources are limited and collections maintained by museums and churches have not been documented or inventoried. Without adequate documentation, the objects cannot be registered in the stolen art databases and a recovery cannot be made. The Art Theft Program makes presentations to the public and members of the art community regarding the need for documentation of cultural property in an effort to educate collectors and improve the chances of recovery.

PERSPECTIVES ON THE ORGANISATION AND CONTROL OF THE
ILLCIT TRAFFIC IN ANTIQUITIES IN SOUTH EAST ASIA

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When asked if an Indian object he had obtained was smuggled, the late Norton Simon was reported to have said: “Hell, yes, it was smuggled. I spent between \$15 and \$16 million over the last year on Asian Art, and most of it was smuggled” (as quoted in Burnham, 1975, p. 168).

Introduction

We intend addressing three issues in this paper. First, we will describe in detail not available elsewhere the patterns that are found in the illicit traffic in antiquities that flow out of Southeast Asia, in particular from Cambodia, China, Laos, Myanmar, Thailand and Vietnam. Second, we shall examine the forms of organized crime that have emerged in order to support that traffic. Third, we will propose initiatives that are both focused on the demand end of the market chain (rather than on the supply end), and on those approaches than give emphasis to “persuasion” rather than punishment and prohibition.

Limitations

We should begin by recognizing that study of the illicit traffic in cultural heritage material, especially in Asia, is at a much earlier, and therefore cruder, level of development than studies of such illicit markets as those involving drugs or the trade in women. This is not because the traffic itself is new. In fact, one could easily argue that the plunder of antiquities pre-dates such problems as the current issues with illicit drugs since it extends back through the centuries. The tombs of the Egyptian pharaohs were often plundered almost as soon as they had been sealed. In China, a catalog of what were even by then ancient bronzes appeared as early as 1092, and a similar catalog of the antiquities collection of the Song court was published in 1123 (Debaine-Francfort, 1999, 15). No “grand tour” was complete without the learned gentleman returning home with various plundered trinkets to demonstrate his intimate acquaintance with Greek and Roman culture. In short, the antiquities traffic is much older than the more recent problems of the traffic in alcohol in the United States in the early 20th century, and the on-going drug wars that have their origins in developments in the mid to late 20th century.

What is remarkable is that the commentary on the plunder of cultural heritage has been so slow to evolve, and that there has been almost no major research grant money devoted to its study. Our work, for example, has been done almost exclusively out of our own resources. This is a major issue when it is recognized that the traffic itself is truly multi-national and transnational in scope. There are many different countries that yield up, however unwillingly, cultural material for the market. The chains involved from initial plunder to ultimate sale are lengthy and extend potentially across many national boundaries. Those involved represent many different languages and cultural backgrounds, languages and backgrounds that these investigators do not speak and are ignorant of.

Further, we are not helped in any way by the existing criminal justice system in terms of knowledge or even data. Virtually all art crime, including cultural heritage crime, belongs to the well known “dark figure” of crime, that is, it resides outside of the reach of current crime statistics. While there have been some who have struggled to find some information from sources such as customs records, in fact we have no solid evidence of the size of the traffic in plundered antiquities (despite rather extravagant claims about the volume of that this traffic). In addition, as university researchers, there are constraints imposed upon us by “human ethics” procedures that limit approaches that can be taken to study illicit traffic patterns. Investigative journalists such as Peter Watson (1998), despite his connection with Cambridge University, have much greater freedom to ask questions that we as university researchers are not permitted to ask (for

example, of antiquities dealers who obviously are selling plundered objects). In Watson's case he could, as a journalist with funding from television sources, actually entice major market players (including Sotheby's) to engage in a range of illegal behaviour involving the smuggling and preparation of false export/import documents of proscribed cultural material (for an all too brief discussion by a criminologist who actually went "undercover" and worked with police in the investigation of the antiquities trade, see Wilson, 2000).

Finally, it also must be pointed out that there are situations where close investigation of this illicit traffic could become exceedingly dangerous. As is true of many forms of illicit traffic, there is much money to be made, especially in the source nations. Those making that money are often well connected to police or military authorities, and take a dim view of interference in their lucrative activities.

Illicit antiquities traffic in southeast Asia

The focus of this paper is on the illicit traffic in antiquities that originates in the south and east of Asia (two important sources of material on this traffic are the excellent books by Murphy, 1995, and by Mackenzie, 2005). We have located our investigations on the gateway portals of Bangkok, and Hong Kong, with some attention paid to Singapore and Macau as well.

Bangkok as a Portal

Our work, and that of others, suggests that Bangkok is a major transit point for cultural heritage material flowing out of Cambodia, Myanmar, Laos and Thailand, although it seems also to be a secondary portal for material from China. The actual chain of movement can be complex, and depends upon such factors as the nature of the objects being transported, their origin, and their destination. Consider, for an example, Cambodian material that originates in the Khmer sites of Cambodia, most of which transits through Bangkok. Many of the Khmer objects are large stone statues, whose bulk and weight pose major problems in terms of the trans-shipment. Our field work suggests that much of the transport is accomplished by road with trucks crossing the border into Thailand, with an intermediate destination of Bangkok from where they are shipped to market centres around the world (see also Beech, 2003, p. 56). There also

have been other reports of crated material weighing several tons being shipped from the Cambodian port of Sihanoukville by freighter via Singapore, and from there onward to Bangkok (Doole, 1999, 7; see also Thosarat, 1999, 107). Even smaller objects from Cambodia, such as ancient beads, apparently make their way to markets in Bangkok (Thosarat, 2001; O'Reilly, 2005).

There is less firm documentation of the patterns of movement of material from Myanmar and Laos, although Bangkok appears to serve as the major market portal. There certainly over recent years has been a large amount of material from these two countries on offer in the antiquities shops in Bangkok, and at least one informant in an interview suggested that a major source of income for the “generals” in Myanmar was derived from cultural heritage material shipped by truck to the border with Thailand. Naturally enough, the venues around Bangkok also offer a range of material from various parts, and archaeological periods, of Thailand (many important Khmer sites, for example, are found in Thailand, see Freeman, 1996). Bangkok also seems to serve as a secondary source of material from China, since there can be found there a number of shops offering what appear to be high quality, expensive Chinese objects.

One factor which contributes to the role played in the region by Bangkok is that the criminal sanctions on export apply only to materials originating in Thailand, so that trade in objects that originate from Cambodia, China, Laos and Myanmar are not covered by the legislation (Mackenzie, 2005, 66). Raids on museums made in Los Angeles in early 2008 by authorities investigating illegal smuggling of material which had originated in Bangkok identified objects from China and Myanmar as well as Thailand (Serjeant, 2008).

Hong Kong and Macau as Portals

China provides a major source of cultural heritage material in the Asian region. Given its rich and long history, sites are to be found throughout the country. It should be noted that plundering also has a long history in China, with written evidence of the problem extending backwards at least to the Han Dynasty (206 BC-220 AD, see discussion of Murphy, 1995, 52-53), and also there are iconographic sources such as the painting of two gentlemen “*Enjoying Antiquities*” (presumably plundered) painted by the Ming Dynasty artist Tu Chin (active ca. 1465-ca. 1509) which is in the collection of the National Palace Museum in Taipei (Hearn, 1997, 98). The size of the country is huge, and the patterns of movement of

plundered material complex. Commentators of identified numerous sources of illicit material, including sites in Hebei, Xingjiang, Hubei, Inner Mongolia, Shaanxi and Shanxi provinces, among many others (Shuzhong, 1999; 88-91). The trail of antiquities is complicated, since a large amount of material flows to a huge domestic market in the major metropolitan centres of China. From these centres, the evidence indicates that a major route of some of the material is outward through the duty free ports of Hong Kong and Macau. As Murphy notes, Hong Kong is:

... an ideal conduit because of its proximity, its local expertise in Chinese antiquities and large number of dealers and buyers, its position as a financial and transportation centre, and its relatively open border (Murphy, 1995, 58).

Similarly, Shuzhong (1999, 92) states simply that Hong Kong is the "... most important staging post for the illicit traffic" out of China. There also appears to be, from our observations, a secondary traffic from Hong Kong to Singapore, Taipei and Bangkok, since large venues offering Chinese material can be found in those locations. Murphy and other observers have pointed out that there are risks involved in this trade of material from China, since there are some customs seizures of material, occasional arrests of those involved, and for the tomb robbers in China the penalties can include capital punishment

Mackenzie (2005, 140) has argued that one issue that makes transit points like Hong Kong important in the market chain is that while extraction of the material is in violation of source nation laws and regulations, in most market nations (such as the United States, England and France) the sale of antiquities is open and legal. It is the passage of goods through portals such as Hong Kong that provides the illicit objects with what he terms a "mask of legitimacy" since they will be transported onward with what appear to be legitimate export/import documents (their status as stolen objects, Mackenzie is careful to point out, does not change despite having such documentation).

Singapore as a Portal

While it does not appear to be a major player (partly because of its own limited domestic market), Singapore as a duty free port seems to play some role in the flow of cultural heritage material in this region. Evidence of others, as noted earlier, has documented the movement of material from

Cambodia into Bangkok via Singapore. The various antiquities venues in Orchard Road and the Tanglin Shopping Complex offer a range of quality antiquities from China, Tibet, Cambodia, Thailand, and Laos, among others, and there appear to be links between establishments in Singapore and both Hong Kong and Bangkok. In comparison to Bangkok at least, an advantage of Singapore is that once the material has been shipped into that port, few problems are presented in the export of material.

Other Asian sites

While our attention has been directed primarily at material flowing through the major Asian portals such as Bangkok, Hong Kong, Macau, and Singapore, other regions merit attention. Vietnam was the centre of Cham culture (which for much of its existence was at war with the Khmers in what is now Cambodia, and then with the Vietnamese), but most of the important material from that culture was plundered either when the country was under French control, or during the Vietnam wars (see Guillon, 2001). Indonesia has in the past had a rich cultural heritage, including important sites showing Hindu influence that are from a period slightly earlier than similar developments in Thailand and Cambodia. Much of the material was plundered long ago, although we observed in recent years an exhibition (and attempts to sell) a large selection of stone objects (much like the Khmer material) on sale, with limited provenance, in Singapore. Korea had a large amount of cultural objects removed during the colonial occupation by Japan from 1910 to 1945, and a second wave of loss occurred during the Korean War from 1950 to 1953. As a consequence, as one observer notes "...Korean cultural objects are very rare" (Kim, 2001, 5), but there is apparently a small traffic in the few objects that are available, and the loss of any of these is important since there is little left of such cultural heritage material in its original and true cultural context. For somewhat different reasons, Japan similarly seems to see a relatively small traffic out of the country of unique cultural heritage material, in part because that culture prizes to a very high degree is cultural heritage, and has long been known for its willingness to protect its history. On the other hand, Japan occasionally becomes involved as a destination for other nation's cultural material, as in the case involving the Miho Museum in Kyoto which found it had purchased a rare Buddhist statute which had been stolen from China, which the Museum then returned (an interesting development because at the time Japan had not signed the various UNESCO and Unidroit

conventions so there was no legal obligation to take this step) (Doole, 2001, 15).

Features of the illicit traffic in antiquities

Our previous research (see, for example, Alder and Polk, 2005) into the traffic in antiquities suggests that there are many similarities with other forms of illicit markets. (see also Mackenzie, 2005) Like most of these other markets (for a description, see Chawla and Pietschmann, 2005), the antiquities traffic has a strong international component. The demand from purchasers is the basic economic force which drives the market (and the consequent destruction of sites), and a significant component of that demand is found in such market centres as London, New York, Paris, Brussels or Amsterdam, among others. Particularly, but not uniquely, in Asia there is as well as strong domestic and regional demand for these objects which, as we shall see, complicates how we look at the control issue.

Given the international reach, the trade must contend with the problem that the movement of material out of the country of origin is illegal. In turn, this tends to generate two problems common to illegal markets. One, smuggling operations are required given that export is illegal, and these often involve complexities imposed by the nature of the goods being transported. In the case of some of the Cambodian and Chinese stone objects which often are quite large and exceptionally heavy, both the size and weight issues complicate the movement process. Huge crates, and the equipment necessary to move them, are expensive, and not easily either hidden or disguised. Two, if there is to be consistent and repeated movement of material across national boundaries, assurance of the success of the endeavors can be improved through the corruption of public officials. Both of these problems are addressed through the natural development of forms of organized social activity that we are likely to term “organized crime”. There certainly is evidence in terms of the movement of these large objects through China, Cambodia and Thailand of some level of corrupt organization that resembles what is seen elsewhere in terms of organized crime.

Complicating all of this is the problem common to illicit markets is the fact that there are actually many different kinds of objects, and markets rather than just one “antiquities market” (this is true throughout the antiquities markets). One of our earliest informants, for example, was a dealer in jade objects from China. These items are actually quite small, and a relatively large “volume” of material can be carried easily on the person.

In this case, there is no need for the complication of an “organization” to assure a constant supply of material since a dealer can obtain a reasonable supply of material on a single trip, carrying a large inventory on the person. Similarly, we have found that dealers in Chinese ceramic material indicate that their yearly needs for material do not involve large volumes, so that as little as one container a year might be sufficient to satisfy the needs of a moderate sized antiquities shop. In short, while some form of “social organization” might be necessary to assure a sustained and vital market of any particular form of cultural heritage material, those needs may not require the full range of organizations that might be implied in the term “organized crime”.

There are some differences, however, between the traffic in antiquities and other major illicit markets. One of the most important is that while the movement of material from source may be illegal, the sale of cultural heritage objects in the major market centres is open and legal. We have found Khmer objects from Cambodia, and various forms of ceramic and stone material from China on sale in venues in London, New York, Paris, Amsterdam and many other western locations, objects whose absence of provenance suggest illicit origins. In fact, it is not uncommon for the dealers, when approached by naïve potential customers, to have various devices or stories which are used to convince them that the objects are plundered and illegally smuggled, in order to counter the possibility that the objects in question are fakes. While doing field work out of Phimai in Thailand, we were taken by archaeologists to a burial site in a remote province which had been plundered. Some months later, in visiting a shop specializing in Thai objects in Singapore, we saw a photograph taped to a display case that bore a remarkable resemblance to the site we had seen. The picture was taken to show the “dig” in process (which was in fact a photo of the plunderers at work). The objects on offer were distinctive bronze age ceramics of the exact size and type we had seen at the site. Once again, what the shop owners were doing is presenting evidence of plunder as a way of assuring the “authenticity” of their merchandise, since faking is an endemic problem throughout the industry.

Forces influencing changes in the market for south east Asian antiquities

In the years that we have been observing the movement of cultural heritage material, we have begun to see that significant changes take place over time in the forms of illicit traffic. There are a number of factors that seem to be shaping this market. *Economic developments* play an important

role, since the demand for antiquities in the market centres depends to some degree upon the health of the economy. When the Asian economies went through a major downturn a few years ago, there seemed to be a marked slowing in the demand for antiquities from the region. It can be presumed that the current economic crisis will have a similar effect, although it may be much greater since it involves a world-wide economic recession. *Political developments* play their role, as we find in the changing in the relations between Cambodia and Thailand. Since much of the Khmer material passes through Bangkok as its main gateway, if the Thai authorities decide to take a stronger stand against that traffic, as they did in the period 5 to 6 years ago, there is a slowing in the movement of material, at least through the major venues such as the River City shopping complex in Bangkok. Currently there is a high level of tension between the two countries, however, and it should come as no surprise that it seems to us that much more Cambodian material is on public display in Bangkok. Equally important are the steps taken by the individual governments against the traffic, and these seem to rise and wane with the movement of different individuals in key political positions. Recently we have noticed a marked increase in the flow onto the market of material from Tibet, and this probably can be traced to the strained relations between the central Chinese government and the culture of resistance that still exists among native Tibetans. *Fads in the market* also play a role, since events such as the Chinese Warriors exhibitions a few years ago tend to result in an increased demand for Chinese objects, with that demand falling off as the fad fades. *Changing technologies* play a role as well, as seen in the role in the market now played by such internet based sources as eBay (one of the places where the presence of Tibetan material is so obvious in the middle of 2008). Finally, theoretically at least one might presume that *developments in the criminal justice system* would play a role, since it is reasonable to assume that major players in the antiquities markets will be aware of such events as the conviction and three year sentence handed out to a well-known New York dealer (for a commentary on the Schultz case, see Gerstenblith, 2008. pp. 70-74), or the dramatic arrest and then death in jail in Seattle of a well known Bangkok dealer (Felch, 2008). The conclusion of all of this is that these markets have to be viewed as dynamic, and in a constant process of change and development, an observation which can complicate enormously our attempts to bring this traffic under some amount of control.

Illicit antiquities and organized crime

Any complex criminal activity that involves a long chain of individuals linked internationally from initial plunders in supply environments, to agents, to buyers, to smugglers, and then to antiquities dealers in market states will require some degree of “organization.” Whether that fits into traditional conceptions of organized crime is another matter. A number of issues seem important in shaping this discussion. First, there is no doubt that the type of activity we have described does in many cases match the requirements of the UN Convention against Transnational Organized Crime (UNODC, 2004. see also Bowman, 2008) to be considered as being carried out by an ‘organized criminal group,’ namely:

...a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (Article 2).

Despite this match, unlike many other forms of illicit traffic covered by the Convention, the efforts of an established criminal enterprise is not required to keep the activities flourishing but hidden since the sale of antiquities in most market locations is legal. Most of our images of organized crime, as in the media stereotypes found in movies or TV, feature the “mob” working in the destination market. Emphatically, the “Sopranos” are not part of the sale of elegant Chinese antiquities in the high end venues in London, Paris or New York.

Second, as we have already indicated, much of the traffic in antiquities is of a relatively low volume (since many of the objects are small, and not a great number are needed for a reasonable profit to be made), and does not require a large infrastructure for the support of equipment, personnel and subterfuge. Some overlap might still be expected when the need for organization in antiquities occurs in geographic proximity as it does in the Middle East with opiates (and a long history of classical antiquities), Latin America with cocaine (and Pre-Columbian objects), or perhaps sections close to the “Golden Triangle” in Asia (with proximity to at least some cultural heritage sites). And, indeed, one does pick up some anecdotes of such overlap. In a television program some years ago there was a short clip of a van stopped at a customs check point somewhere in the Middle East, and agents were in the process of removing a cache of both drugs and small antiquities. One of our informants in

Bangkok alleged that the military authorities in Myanmar routinely sent trucks down to the border with Thailand, loaded, it was said, with “girls, drugs and antiquities”.

Some observers have pointed out that physical items such as art and antiquities can provide objects that might prove useful as a way of “laundering” the wealth in cash obtained from the drug traffic or other illicit activities. While authorities worldwide have sought to curb the flow of ‘black money’ by tightening regulations regarding banking and allied financial bodies the use of such objects for money laundering has grown. As Fidler (2003) has noted:

Ferrying cash across borders is difficult, and carrying diamonds or bullion creates suspicion. Moving works of art or antiquities is much easier. Even big works can be moved; ancient friezes, for example, can be exported as Italian tiles. For money launderers, antiquities [also] have an advantage over prominent paintings; it is often impossible to determine if they are stolen (Fidler, 2003, 1).

The lack of any documentation regarding the provenance or provenience of a particular antiquity is an issue we discuss in more detail below. But in general, unless an object has been taken from an established site or museum it is unlikely to have any verifiable identification which would reveal to a suspicious border control or customs official whether it came from a legitimate or illegitimate source. Further, most of these officials at the exporting and importing level are unlikely to have an expertise in archeology or cultural studies which might prompt their curiosity or suspicion about the origins of an object. Thus the risk of detection for any money laundering or other related offence is usually at a minimum.

The broad conclusion that we have come to as a result of our field work is that there is little evidence coming through at the present time of major involvement of traditional elements of organized crime in the illicit trade in antiquities within the geographical region of interest. In fact, as we have suggested, there is for much of the trade scarce need for complex organization because of the nature of the objects being dealt with (some small, and others of moderate size and volume of trade). Large criminal organizations are quite expensive to maintain and require reasonable volumes to justify the expense. This is consistent with the observations of Mackenzie (2005), who found that for most dealers the transport problem was mundane, commenting that while drugs such as heroin are not usually trafficked by FedEx, “... this was the method of shipment recommended to me by an antiquity dealer I spoke to on Hollywood Road” (Mackenzie, 2005, 137).

This is not to say that there is no “organized crime” involved in the antiquities traffic. The movement of large, bulky and heavy items involves a number of complications, and steps. Extraction of the material may require manpower and expertise at removal (especially in terms of large stone objects). Payment has to be arranged for the extraction by agents who then must work through the transit problems. The objects have to be lifted and carried from site of origin to some transit point (for example, being lifted by a crane so that they can be carried by truck to a point where they are placed in a container for shipment by sea). Papers have to be arranged which permit some form of access to both export and import procedures. Dealers who are complicitous in this process must then be found so that the items can be placed on wholesale and ultimately retail markets in destination countries. In turn, buyers must be found who are willing to purchase cultural heritage material without asking questions about provenance.

The criminal organization for antiquities in these circumstances *at the source end* likely will be surreptitious and involve individuals who know they are taking risks but for whom the financial rewards are great enough justify taking those risks. In the less developed regions of Asia, there is not a large range of sources that can provide the transport infrastructure that will be required for the large objects in terms of cranes, trucks, containers and ships. It is not surprising that the military often appears in accounts of traffic at this end of the market (eg, regarding the involvement of Cambodian military authorities in the traffic of Khmer objects, see Beech, 2003, 56; and Thosarat, 1999, 69 comments on a “General” who was making “...a very lucrative profit off the sales of artefacts ...”), as do police (Doole, 1999, 7). Mackenzie (2005, 19) describes a situation where the looting of a Cambodian temple site involved several hundred soldiers and heavy machinery, with the objects reportedly being stolen to order by the army in response to a request by a Thai antiquities dealer operating out of Bangkok. One of Mackenzie’s (2005, 141) informants pointed out the obvious fact that in China, ‘... the army has the lorries with which they can transport the objects’.

There is, thereby, some amount of organization to the illicit traffic in antiquities. Watson and Todeschini state in their analysis of looting in Italy that the illegal “... trade in antiquities is *organized*” (Watson and Todeschini, 2007, 340, emphasis in original). A key element in their analysis was the way the networks (“*cordate*” in Italian) are crucial to the successful accomplishment of the sale of plundered goods. While these might not correspond to stereotypic notions of drug-centered organized crime, in fact, emerging criminological conceptions of organized criminal

workings are widening to incorporate such activity. Edwards and Levi (2008) argue that one of the major ways criminologists today look at the phenomenon of organized crime is focused precisely upon the notion of “networks”, this approach serving:

As a way of describing the structure and/or everyday workings of the market as a whole, in the sense that the market can be regarded as a complex social network (*singular noun*) within which different participants have to network (*verb*) (to carefully seek out and interact with traffickers who may be like or unlike themselves, etc....In other words, through networking, traffickers [and other offenders] construct the market (Edwards and Levi, 2008, 364, emphasis in original).

Put in other words, the evolving conceptions of organized crime appear to be widening (for another example, see Coles, 2001), and the kinds of processes involved in the traffic in antiquities contain such elements as networking, smuggling, and political corruption that are consistent with at least some of these theoretical perspectives.

During our research the senior law enforcement officials within the region with whom we discussed the possible links between organized crime groups and the antiquities trade tended to share our general view of the situation. Many admitted to a lack of knowledge at large about the trafficking of cultural objects, seeing it at best as a minor law enforcement issue and at worst as a possible distraction in the ‘war against drugs’. Some acknowledged a particular interest and concern about the money laundering aspects of the antiquities marketplace.

One former crime agency head who now spends most of his time advising governments throughout the region about anti money laundering measures told us recently that he suspected the ‘dark figure’ of cultural objects laundered by persons involved in the trafficking of drugs and humans was far greater than many believed, and that organised groups of traffickers were well ahead of law enforcement in recognizing the benefits of this particular ruse to wash clean the products of other illicit endeavors. The same source told us that in his view a significant weakness in the anti money laundering arsenal was the ease with which cultural objects from the region could be trans-shipped around the globe by established air freight couriers with few questions asked at the point of shipping or receipt, usually because of the ignorance of the officials involved about the cultural significance of particular objects, or through corrupt practices such as the use of false documentation.

In the absence of detailed studies of the antiquities marketplace throughout the region views like those just expressed must remain speculative. Nonetheless, it would be misleading to give the impression that

law enforcement is at a total standstill when it comes to tackling the problems of looted antiquities. For example, in Cambodia international law enforcement agencies like the FBI have been invited by the Cambodian Government to advise a new national heritage police force established to end the systematic pillaging of the country's ancient monuments (De Launey, 2007). This development was preceded by an agreement between the US, a nation which has been one of the main recipients of plundered Khmer art, and Cambodia aimed at stifling the illicit trade in cultural objects. As part of this agreement the US has placed import restrictions on ancient stone, metal and ceramic objects from Cambodia (BBC News, 2003).

The failure of punishment and the need for persuasion alternatives

Each form of illicit traffic presents its own set of problems in terms of the harm caused, and how that might be addressed. A major aspect of the harm in terms of the plunder of cultural heritage material consists of the loss to human knowledge about our past that results from the destruction of heritage sites. The need for urgency of action can be found in the words of Professor Colin Renfrew who has argued that the looting of archaeological sites is an "... unmitigated and continuing catastrophe for the world's archaeological heritage" (Renfrew, 2006, 15). Anything that is done must be assessed against the hard criterion of whether or not it contributes to a reduction in this destruction.

The current response has evolved to consist primarily of various forms of legal prohibition. Most source nations have created a number of layers of protection. Many of these began by creating a range of laws which prohibit the export of material without state approval. When these proved insufficient, additional laws have been created in the major source states which define the removal of cultural heritage material without approval as a form of theft, in some cases reinforcing this with heavy penalties (in China, for example, convicted offenders may be executed). At the international level, a number of supporting conventions and treaties have been developed by the UN, including the important UNESCO Convention of 1970 as well as the Underwater Cultural Heritage Convention of 2001 (this last convention aims to close down entirely the market, providing that there be "no commercial exploitation" of underwater material). It needs to be pointed out, however, that one of the unique aspects of the traffic in antiquities is that the sale of antiquities has not been criminalized in most market nations (although many have signed one or another of the UN

sponsored conventions), and today antiquities without documentation (and therefore presumed to be plundered) can be found on open and legal sale in the various sale centres, such as New York, Paris, Amsterdam, Stockholm and London.

In short, the major response to try to counter the illicit traffic in antiquities has been the passage of various laws which are aimed at prohibition of that traffic in the source environments, while the demand has been allowed to continue virtually unabated. For criminologists, there are major questions to be asked about the effectiveness of prohibition as the primary or sole form of public policy, especially given the record of failure of major attempts to restrict supply, in the face of continued demand. Where rich demand communities are willing to pour vast sums of money into the purchase of the goods, those trapped in lives of squalor and hopelessness in the poor communities where the cultural heritage sites are found are likely to be willing to consider the risks posed by even the most draconian laws. Mackenzie (2002) has stated the conclusion as succinctly as anyone, observing that when it comes to antiquities existing laws appear to be "... creating problems rather than solving them", going on to comment that:

Ineffective prohibitions by source States combined with complex and hugely expensive civil mechanisms for recovery of looted artifacts, all amount to a system of legal governance which is demonstrably failing to stop the plunder (Mackenzie, 2002, 160-161).

From our perspective, it is unfortunate that many in the archaeological community do not share in these conclusions, and in fact place considerable faith in those policies which are based primarily in prohibition. Writers such as Kersel and Luke (2003) comment that there have been great advances in the way individual source nations strive to protect their cultural heritage (for example, by training their own archaeologists, and restricting access of outsiders, including scholars, to cultural heritage sites), and instead of seeking other options, state their belief that "... protection efforts must continue to focus on international and national legal frameworks for cultural property protection" (Kersel and Luke, 2003, 30).

We agree that a primary goal is the protection of archaeological context, and if the existing policies were achieving that goal, there might be more support for these propositions as a basis for building the major effort to control this illicit traffic. From the perspective of criminology, however, it has to be said that there is no reason to have faith in penal tactics based in prohibition and deterrence, especially given the particular set of factors that shape the traffic in antiquities. One of the most important of these is that

the trade in antiquities in market centres continues to be legal, and vigorous.

However one might wish it to be otherwise, there is, and will continue to be, a robust trade in antiquities. In part this is because there is in private hands a huge amount of heritage material that can not be prohibited from being placed on the market. Antiquities have been traded for decades, even centuries, and any attempt to restrict the access to the market of those who own this property (for example, heritage material with a provenance extended back before 1970) will run afoul of a number of economic and civil rights issues. Equally important, while from the standpoint of prohibitionists there might have been some gains (such as the conviction of Schultz in New York) that may have some effect on the market, in general there continues to be a huge volume of material on the current market that clearly comes from cultural heritage sites and is being sold with no provenance or provenience information whatsoever.

We are not, however, calling for an abandonment of the existing prohibitions in the source nations. Rather, we are asking whether it is possible to widen the policy framework to add into the present regulatory approaches a framework that we believe might add to our ability to control this illicit traffic. Specifically we suggest that at the same time we attempt to close off supply at source, new kinds of policy initiatives be considered which address the basic force that powers this trade, that is, the demand that is exerted in the market environments.

An obvious solution, especially given the directions followed by those trying to increase the protection of cultural heritage, might be to impose prohibitions in the demand environments comparable to those now found at the supply end of the market chain. We do not suggest such a step for two reasons. One, from a criminological perspective there is no reason to believe that prohibition without strong public support (which it would not have) would be any more successful in controlling the trade in antiquities than it has been in the failed attempt to control the consumption of alcohol or prohibited drug substances. Two, as stated above, there are a number of ethical and civil rights issues that would arise with any attempt to impose naked and strong penal sanctions onto a trade such as antiquities.

The alternative proposals that we suggest are founded in calls for models of regulation that incorporate a mix of (mostly) persuasion and (scarce) punishment. The “pyramid” model (Braithwaite, 1993; Ayres and Braithwaite, 1992) which heuristically captures this emphasis on persuasion in the regulation of complex commercial behaviour has been applied primarily to classic situations involving the control of corporations by government regulatory bodies (for example, with reference to

occupational health and safety). The model has been extended to global business regulation (Braithwaite, 2000; Braithwaite and Drahos, 2000). To capture the complexity of regulation Grabosky (2000) suggests expanding the dimensions of the pyramid metaphor to include “third parties” such as public interest organizations and other commercial actors influencing corporate bodies.

The central assumption of the approach being proposed is that control of the illicit antiquities market requires an expansion of “persuasive” efforts within a more responsive and responsible regulatory framework. The investigation follows Braithwaite’s (2000, 222) call for “new ways of thinking about crime and crime control ...” in the “...new regulatory state” (Braithwaite, 2000, 227-230). It is Braithwaite’s argument (see also Braithwaite, 2002) that the traditional focus on crime control based on legal prohibitions enforced by police, court and prison mechanisms are decreasingly relevant to today’s needs. Much of that analysis examines the transformation, for example, of policing from traditional public law enforcement to new patterns of private policing and emerging patterns of regulation such as those concerned with “risk management” of nuclear energy, transport companies, and space industries (as in Vaughan, 1997).

It is the present argument that a central focus should be on demand, and should address those initiatives which would result in a market where consumers take an ethical position that there should be no purchase of heritage material that lacks adequate provenience. The “persuasion” here, we believe, should be aimed at increasing the awareness of consumers and dealers of the importance of provenience, and the consequences of continued consumption of material which has been plundered from archaeological sites. Such an approach is both aimed at demand, and would be based on persuasion rather than deterrence from coercive penal sanctions.

We have observed that the continued trade of plundered cultural material is supported by the shared understanding among sellers and buyers that issues of provenance, or more exactly, provenience, will not be raised when articles are purchased: thereby avoiding questions about illegal digging and export practices. Consistently, for cultural heritage material reviews of auction house and private dealer catalogues demonstrate that little or no information is provided regarding the previous history of the object (Chippendale and Gill, 2000; Mackenzie, 2005). Provenance in the art world generally refers to the ownership history of the object. For cultural heritage material, archaeologists require more exact information regarding where the material was found, when and by whom the dig was

conducted, any published information about the material, and its entry onto the commercial market, and the term “provenience” has been suggested for this more exacting form of provenance (for a discussion of the use of this term, see Mackenzie, 2005, or Lapatin, 2002). One of the features that permits the trade to continue to flourish is the collective indifference of purchasers, dealers and antiquities traders to this issue of provenience (for an elaborated discussion of this problem, see Mackenzie, 2005). If dealers would not sell, and customers not buy, cultural heritage material that lacked provenience information, there would be no market for illicit antiquities.

Since the persuasion approach to address this problem has not been tried in terms of its application to the antiquities traffic, at present the model provides only a sense of direction. To be sure, applying what Grabosky, or Braithwaite are attempting in their regulatory regimes is qualitatively different than the antiquities markets. The classic regulatory situation is like that found regarding occupational health and safety. In that context, there tend to be a clear set of potential victims (workers), a set of possible offenders (companies), and a specific regulator that has responsibility for addressing the problem (an occupational health and safety unit). To apply a persuasion model to the antiquities trade requires more than a little innovation. The victims can be seen either as the sites that are being destroyed, or perhaps the nations that have responsibility for protecting these sites (for an example of an argument that focuses on a nation as a victim of cultural heritage crime, see discussion of Sassoon, 1999). The offenders are the various market players, including both dealers and consumers. There is no exact fit in terms of a regulatory agency, but that role might be played by individuals or units who have a stake in the control of the problem.

One example of the “persuasion” approach might be, then, for seminars to be held in major market centres that bring together representatives from nations and locations where looting has been a problem, a gathering of market participants such as dealers and potential consumers, and the setting could be organized by groups such as archaeologists, or representatives of ethnographic units or museums, or cultural heritage agencies, who seek to limit the impact of the illicit traffic. Such seminars could present vivid evidence of the consequences of illegal digging of objects, and also present clear understandings of the meaning and application of issues of provenance and provenience (this is similar to an idea suggested by a Nordic research team addressing cultural heritage crime, as reported by Korsell, et al, 2006, 175).

Another example of a non-punitive, collective agreement across demand and supply nations is found in the ethical code of the International

Council of Museums (ICOM) which provides that museums will not buy looted material. An illustration of the work of ICOM can be found in their publication *Looting in Angkor* (ICOM, 1997) which lists “100 stolen objects” taken from Cambodia (ICOM, 1997). The strategy is a practical one deriving from a professional association’s ethical code that, through the publication of a public document, incorporates the general public and other interested parties in the “policing” of the purchase of illicit antiquities. It serves both a preventative/control function (identifying works that have been stolen and therefore should not be purchased) and a restorative function (the return of the stolen goods to the source country). In our field work over the years, we have found a number examples of how this process works to identify looted material, and to result in the restoration of that material to its country of origin (although it must be noted that often the museums involved are less than forthcoming about their role in the process). For our purposes, however, its critical function is to provide a clear set of understandings that underscore the principle that unprovenanced material will not be acquired by museums, either through purchase or donation.

Since historically museums have been one of the major purchasers of important archaeological artifacts, the publication itself, and the successful return of stolen objects, could have considerable effects on the antiquities trade more generally (e.g. dealers and individual buyers) in terms of expectations regarding the provision of full provenance. Further the importance of the development of such lists is indicated by the production of an Emergency Red List of looted objects from Iraq (June, 2003) as one of the first responses to the recent events which have resulted from that war (for a discussion of looting in Iraq, see Polk and Schuster, 2005; and for a documentation of the effects seen in the war in Afghanistan, see van Krieken-Pieters, 2006).

While these ideas might have appeal to many concerned today with the problem of controlling this illicit traffic, there are other proposals which are more contentious. One example of a negotiated/collaborative control process in a source country that we have identified in our field work is the excavation and documentation of the Hoi An shipwreck in Vietnam, and the subsequent archiving of some items and sale of others, involved a collaborative agreement between the Vietnamese Government, marine archaeologists, salvage operators, and, ultimately, antiquities dealers. It is an example of a control strategy of negotiation and collaboration between interested parties with competing and diverse interests, but one which involves direct involvement of a source nation in defining the mechanisms by which ultimately the material reaches a legal market (for a brief

description of this example, see Krowitz, 2003, 28). A somewhat similar case is found in the arrangement between the British Government and salvage operators in the exploration of the *Sussex* wreck in Mediterranean waters. In both of these cases, the source nation retains its control over the material, its extraction, and its distribution, and the objects are not thereby subject to looting by criminal networks. Further, and important for present interests, if and when material comes onto the market (as it did in the Hoi An example) it brings with it explicit reference to the provenience of the material.

Immediately it needs to be acknowledged that there would be strong objections to the Hoi An experience as a model. For one, the placing of the material onto the market would be in violation of the Underwater Cultural Heritage Convention which explicitly prohibits economic exploitation of underwater cultural material. Archaeologists would argue that a major goal in addressing such sites is the preservation of the material as much as possible in situ, thereby assuring the context for future research. Finally, most source nations today have a complete ban on any material leaving the country, especially if it is destined for the commercial antiquities market.

One of the main reasons we present the Hoi An program is that, for all of its faults, it demonstrates that it is possible for source nations and the market to negotiate issues relating to the study of cultural heritage sites, and access to material that is produced. Because of the collaboration, it was possible to investigate a site where otherwise the source nation likely would not have the economic resources to carry out the work. There may be ways other than sale to move the material onto a wider cultural stage, these might procedures whereby the ownership remains vested in the source nation, including loans of material, leasing arrangements, or perhaps joint ownership.

The position of many in the cultural heritage community is that commercial exploitation of cultural heritage should not be permitted. In one form (as presented above by Kersel and Luke, 2003), archaeologists argue that cultural heritage sites should be preserved for study by specialists who have an understanding and appreciation of the critical importance of context.

That is a view that merits public attention and debate. While we are willing to defer on many of these issues to the expertise of our archaeological and cultural heritage colleagues, we would point out two major problems in this argument. One, it is impossible to eliminate the market for antiquities. Given that the market exists, present understandings within that market (and continuing demand) assure that unprovenanced

cultural heritage material leaks into that market. Ways need to be found, we would argue, to increase the willingness of those inside that market to avoid dealing in, or purchasing, unprovenanced material. Two, reliance totally on prohibition, when moral support for demand remains strong, has a number of potentially disastrous effects. Not only will the market continue to flourish (and the destruction of archaeological sites continue), but such attempts generate a high level of contempt for the rule of law. When demand remains high, and the economic rewards are considerable, that contempt fosters the wider problem of organized crime. In the case of antiquities, the disastrous effects of whatever organized crime will result not only in the continued destruction of heritage sites, but forms of organized crime that are at considerable distance from the niceties of the economic, social and political life found in demand environments.

It also needs to be said that we have only begun a discussion on the forms of persuasion that might be tried. While we have pointed out the dismal record of prohibition and deterrence as major or sole planks of public policy, there are examples where mixes of persuasion and punishment appear to have enduring effects. Over many years in countries such as the United States and Australia, there has been a concerned attempt by Anti-Smoking campaigns to alter attitudes and behavior toward smoking. Most of this effort has been through public health and educational initiatives, with some support in terms of laws banning smoking in various public places, and the mix seems to have met with success. A similar campaign has been launched regarding the use of seat-belts, although in that case there is probably a heavier role played by the punishments provided in the criminal laws. Both suggest the possibility that mixes of persuasion and punishment can serve as a guide for public policy.

More work can be done where there are indications of potentially helpful initiatives. The heavy-handed retentionist policies of many source nations might receive greater support in the market environments if there were more positive efforts to share material through such mechanisms as joint ownership (as for example in art material between France and England), leasing arrangements, or long-term loans (especially to specific and dedicated museum collections that can serve as centers for learning as well as exhibition). There is scope for much wider use of the sale of replicas (developed in collaboration with source nations), especially through the museum shops that have become such an important marketing device for funding of the larger museums. Efforts might be undertaken to broaden and deepen initiatives such as can be seen in the group Save Antiquities for Everyone (SAFE). In a discussion of SAFE, Lazrus (2008, 272) comments that an important question that needs to be addressed is:

“Why should and how can people ensure the safety of works they will never see?”

There is a flaw in our proposals that requires mention. The approach suggested here calls for major effort in the demand environments, focusing on dealers and potential customers in such venues as New York, London, Paris, Amsterdam, Brussels and similar locations. Such efforts by definition will have no purchase on the large domestic markets in Asia, especially in China. There is no question that for hundreds of years a primary source of market pressure producing the plunder in Asia has come from demand exerted by these domestic markets. Parallel thought, and work, will have to be undertaken in these if there is to be any significant reduction in the size of the illicit antiquities problem, especially in Asia.

Conclusion

Currently there is a peculiar kind of standoff that is found concerning the traffic in illicit antiquities. On one side are the cultural heritage supporters and archaeologists who base their strategy for the control of illicit traffic in antiquities on prohibition at source. On the other side is the market which because of demand, and because sale at destination is legal, continues to flourish (which is possible in part because due diligence regarding provenance is, by mutual consent, ignored). The consequence of the standoff between these positions is that cultural heritage sites around the globe continue to be turned into moonscapes. However necessary and important prohibition regulations may be, these are not by themselves protecting cultural heritage. There is no surprise in this for the criminologist, since this form of illicit traffic can be added to a long list of problems which are not solved simply by prohibition. We would urge that the debate be widened, and that the question of “who owns the past” (Gibbon, 2005; Cuno, 2008) be taken as an issue for negotiation, and as that problem is considered, steps are taken to reduce demand in the market nations.

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THE EFFORTS OF GREEK STATE TO COMBAT THE ILLICIT TRAFFIC OF ITS CULTURAL HERITAGE²¹

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The Greek state has always had as its main priority the protection of its cultural heritage. Following the Independence from the Ottoman rule in 19th century and soon after his arrival in Greece the first Governor Ioannis Kapodistrias in 1828²² *prohibits the export of antiquities*. From the very early stage of its establishment in 1830, the Greek State having to face the flight of antiquities from its territory due to the collecting tendencies of eminent travellers in the previous centuries as well as in the 19th century, took measures by enacting national laws for their protection. Thus in 1833 a Royal Decree²³ establishes the authority which is responsible among others "... *for the discovery of the lost masterpieces of art, for the care*

²¹I would like to thank my colleagues archaeologists working in the same department Mr Vassilis Sakelliadis, Dr Marlen Mouliou, Ms Natasa Balaska, Ms Myrsini Koumnioti, Ms Stavroula Kalliodi and Ms Maria Terzoudi for the collecting of data from the archives of the department and digitisation of images (for the power point presentation) and particularly Dr Mouliou for the statistical analysis.

²²Diatagma ar. 2400 tis 12 Maiou 1828 (Decree No 2400 of 12 May 1828) *pros tous kata to Aigaion Pelagos Ektaktous Epitropous*, Petrakos V., *Dokimio gia tin Archaeologiki Nomothesia*, T.A.P. Demosievmata tou Archaeologikou Deltiou, ar. 29, Athena 1982, 18, (*Addressed to the Temporary Commissioners of the Aegean*, Petrakos V., *Essay for the Archaeological Legislation*, *Archaeological Receipts Fund*, Publication *Archaeologikon Deltion*, no. 29, Athens, 1982), (in Greek).

²³ Vassiliko Diatagma 3/15 Apriliou 1833 *peri tou schematismou kai tis armodiotitos tis epi ton Ekklesiastikon kai tis Demosias Ekpedefseos Grammatias tis Epikratias*, art. 2, (F.E.K 14/1833), (Royal Decree 3/15 April 1833 *on the creation and the competence of the Ecclesiastical and Public Education State Secretariat*, article 2, Official Gazette 14/1833), (in Greek).

and preservation of those that still exist and for ensuring that the remaining ones will not be exported from the Dominion”.

The first archaeological law, in 1834, proclaims all antiquities within the Greek territory “*National property belonging to all Greeks*”²⁴. A stricter legislation in 1899²⁵ provides that the Greek State has the exclusive authority over the antiquities, while in 1914 another law²⁶ regulates issues concerning possession and prohibition, without a license, of export, trade and movement, for the “Byzantine, Medieval and of historical value works of art dated before 1830”.

²⁴ Nomos 10/22 Maiou 1834 tis Antivassilias *peri ton epistimonikon kai technologikon syllogon, peri anakalypseos kai diatiriseos ton archaeotiton kai tis chriseos afton* (FEK 22, 16 Iouniou 1834), (Law 10/22 May 1834 of Regency on the scientific and technological collections, on the discovery and preservation of antiquities and of their use, Official Gazette 22, 16 June 1834). This law, a work of Mauer, consists the official starting point of the Archaeological Service. It was a law modern for its time. Chapter A of Part C, that deals “about the rights of ownership on antiquities” defines the ownership of the State and of private entities. The full text is as follows:

Article 61. “All antiquities within Greece, being works of the ancestors of the Greek peoples, are considered national property belonging to all Greeks”.

Article 62. “All ruins or other antiquities, of whatever name, found on national land or under it, on the sea bed, in rivers, public streams, lakes or marshes, are the property of the State”. Petrakos, V. op. cit. 1982, .20 (in Greek).

²⁵ N. BXMS/1899 tis 24 Iouliou 1899) *peri archaeotiton* (FEK 158/A, 27 Iouliou 1899), (Law 2646 of 24th July 1899 on antiquities, Official Gazette 158/A of 27th July 1899).

Article 1 defines that: “all antiquities within Greece, movable and immovable, dated from the very ancient times onwards, are the property of the State”. In order, however, to avoid conflict between the State and the citizens for depriving them from the ownership of antiquities that are found in private land, the new law provided the right for their compensation, (in Greek).

The law was soon followed by a circular decision of the Minister of Education (no 11538 of 30th August 1899) entitled “*Odigies peri efarmogis tou peri archaeotiton BXMS nomou* (Guidelines concerning the implementation of the law 2646 on antiquities) which expresses disgust for the illicit traffickers: “They [the traffickers], by truth, should not at all be called Greeks; for by damaging and destroying the antiquities, by trading and exporting them abroad illicitly, they prove nothing else, but that they are descendants of those barbarians who destroyed and stole so many ancient monuments of art here in Greece”. Petrakos V., op.cit. 1982, 22 (in Greek).

²⁶Nomos 401/1914 *peri idriseos Byzantinou kai Christianikou Mouseiou* (FEK 347/A, 25-11-1914), (Law 401/1914 on the foundation of Byzantine and Christian Museum Official Gazette 347/A, 25-11-1914), which was modified and

In 1932 with the Codified Act “*On Antiquities*”²⁷ the possession and ownership of all antiquities, whether movable or immovable, from ancient or subsequent times found in Greece and any national possessions, belong exclusively and in perpetuity to the Greek State, while a complementary Act in 1950²⁸ provides protection of specific works of art subsequent to 1830 after being classified.

The aforementioned laws were valid until the year 2002, when the new antiquities and cultural heritage law²⁹ came into force. The State is responsible for taking measures for the protection of the cultural heritage, which dates from the very ancient times until today³⁰.

To make the protection more effective the law is focusing on measures providing control and supervision of excavations, research and use of metal detectors and like instruments, of public and private works near archaeological sites, of uncontrolled finds, of possession, transfer of ownership, trade and antiquities dealers, of import and export of movable cultural property, of acquisition by museums and collections to mention only some of them³¹. Besides, all movable and immovable antiquities are documented and recorded in the National Archives of Monuments of the

completed by Law 2674 of 10 August 1921, Official Gazette 146/A, 18 August 1921), (in Greek).

²⁷ Codified Act 5351/ 1932 of 9 August 1932 *on antiquities* (Official Gazette 275/A, of 24th August 1932), becomes the basic text of the Greek archaeological legislation. This Act codified the laws and all relevant applicable provisions up to 1932. Cf Unesco’s publication *The Protection of Movable Cultural Property* in the series *Collection of legislative text (GREECE)*, Unesco 1987.

²⁸ Act 1469/1950 of 2 August 1950 *Concerning Protection of a Special Category of Edifices and Works of Art Subsequent to 1830*. Unesco, op.cit..

²⁹ Law 3028/2002 of 28 June 2002, *On the Protection of Antiquities and Cultural Heritage in general*, (Official Gazette 153/A/28-6-2002). Portal of the Hellenic Ministry of Culture <http://www.culture.gr/YPPO>

³⁰ Ibid., article 1 *Objectives* provides that 1) “The protection ... covers the cultural heritage of the country from the very ancient times until today..... 2) The cultural heritage of the country consists of cultural objects found within the limits of Greek territory, including territorial waters and other maritime areas over which Greece exercises relevant jurisdiction in accordance with international law. The term cultural heritage also includes intangible cultural heritage”.

³¹ Ibid., articles: 36 Systematic excavations, 37 Rescue excavations, 38 Other archaeological research, 23 Possession of movable monuments, 28 Transfer of possession or ownership of movable monuments, 31 Collectors of monuments, 32 Antique dealers and merchants of modern monuments, 33 Import of cultural goods, 34 Export of cultural goods, 45 Museums, 46 Access to and use of monuments and sites.

Ministry of Culture³² while the stolen, confiscated and repatriated antiquities and their photographic material have been digitized and a data base has been created. At the same time a new advanced data base has been designed in order to achieve a more complete and efficient implementation of the protective measures of movable cultural property, but also to achieve the documentation, correlation, search and claim of stolen, illegally excavated and illegally exported antiquities.

The protection is also promoted through incentives to the citizen. A legal or physical entity is thus entitled to a reward if it declares to the Archaeological Service chance finds, or indicates an unknown archaeological site. It can also receive compensation or benefit from tax reductions if antiquities in its legal possession are given to state museums, or to museums recognized by the state³³. On the other hand, the penal code provides for sanctions for the illegal acts. Theft, embezzlement and illegal export of cultural property, the receiving and disposing of products of crime and illegal excavation are punished by prison terms of up to ten years³⁴.

The protection of cultural heritage is enforced by the Greek Constitution³⁵ which defines that “The protection of the natural and cultural environment is an obligation for the State and a right for every citizen. For its preservation the State is obliged to take specially preventive or repressive measures within the framework of the principle of sustainability”.

Therefore, the taking of preventive measures to combat the illicit traffic of antiquities and cultural property in general, consists the primary care of the Hellenic Ministry of Culture and one of the basic policies for the protection of our cultural heritage³⁶. To make this combat more effective a

³²Ibid., article 4 National Inventory of Monuments.

³³Ibid., articles: 8 Declaration, indication of immovable antiquities and reward, 24 Declaration, indication of movable monuments and reward, 47 Tax incentives.

³⁴Ibid., Criminal Law Provisions, articles: 53 up to 69. Article 69 provides that “Forfeiture of cultural goods which have been illegally exported or attempted to be illegally exported as well as the means of commission of this act, illegal excavation or other research for the purpose of finding or revealing antiquities is mandatory, if owned by the offender or a participant.

³⁵Constitution of Greece of 1975 revised in 2001, article 24.

³⁶According to Law 3028/2002 (article 3, paragr. *b* and *c*) “The protection of the cultural heritage of the country consists primarily [among others] in: *b*) its preservation and prevention of destruction, disfigurement or in general any kind of damage, direct or indirect, to it *c*) prevention of illegal excavation, theft and illegal

new law³⁷ was enacted in 2008 establishing a new central authority, at the level of Directorate, at the Ministry of Culture which will deal exclusively with matters of illicit traffic of cultural property. The law provides that an investigation officer will be appointed³⁸ in this new Directorate, while a Public Prosecutor and his deputy³⁹ will be appointed specially for the protection of cultural property, provisions that aim to improve co-ordinated action. Furthermore, the law provides for the international jurisdiction of the Greek courts for matters concerning rights of ownership and possession of movable monuments, as provided by the antiquities and cultural heritage law of 2002, as well as sanctions for the forgeries⁴⁰.

For the illicit traffic we are called to fight is multi folded: it includes clandestine excavation, theft, confiscation of movable cultural property, vandalism and destruction of immovable and movable cultural property, illicit import, export, transfer of ownership and trade, forgeries, illegal removal of artifacts from monuments or from ruins or shipwrecks in sea, rivers or lakes and even the accusation for an attempt of these illegal acts.

This policy is also extended to cultural property of other countries that has been illegally imported into Greek territory and has either been traced by Greek authorities, or the country of origin has informed the competent Greek authority of its loss. As the Greek State participates in the initiatives taken by the international community for the protection of cultural heritage, this policy is further ruled not only by the European Community legislation, but also by the European and international

export.....”.

³⁷Nomos 3658/2008 *Metra gia tin Prostasia ton Politistikon Agathon kai alles diataxis*, (FEK 70/A/22-4-2008), (Law 3658/2008 “*Measures for the Protection of Cultural Property and Other Provisions*, Official Gazette 70/A/22-4-2008), (in Greek).

³⁸Ibid., article 5 Disposition of Personnel of the Hellenic Police: provides that an officer is appointed by the Commander General of the Hellenic Police, in order to act as a liaison between the new directorate and the police, for the better cooperation in combating the illicit traffic, (in Greek).

³⁹Ibid., article 6 Prosecutor for the Protection of Cultural Property: the Public Prosecutor’s Office appoints a Public Prosecutor especially for the protection of cultural property, who supervises the whole investigation process, starts proceedings for the offences, which are provided by the legislation on the protection of cultural property (Law 3028/2002) and sees to the enforcement of the main and attendant punishment that is imposed, (in Greek).

⁴⁰Ibid., articles: 10 Forgeries of Monuments, 13 International Jurisdiction of Greek Courts-Enforced Law, (in Greek).

conventions which Greece has ratified by law, as well as by bilateral agreements which the Greek State has signed with other countries.⁴¹

The illicit traffic of cultural property is a complex problem with international parameters and characterised by an upward trend. To confront this problem the cooperation and the joint efforts of many different authorities are absolutely necessary. Namely the competent authorities of the Ministry of Culture, the specialized police authorities, the law enforcement authorities, the customs offices, the Embassies and

⁴¹Greece has transposed the European Union Directive 93/7/EEC of the Council of 19th March 1993, as it was amended, *for the return of cultural property that has illegally been removed from the territory of a member state* (Presidential Decree No 133/1998, Official Gazette 106/A/19-5-1998, amended by Presidential Decree No 67/2003, Official Gazette 71/A/21-3-2003). It has also ratified the following International Conventions concerning movable cultural property:

- *Convention on the Protection of Cultural Property on the Event of Armed Conflict*, Hague 1954 and *the First Protocol to it* (Law 1114/1981, Official Gazette 6/A/8-1-1981).

- *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* (Law 3317/2005, Official Gazette 45/A/23-2-2005).

- UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Paris 1970 (Law 1103/1980, Official Gazette 297/A/29-12-1980).

- *European Convention on the Protection of Archaeological Heritage*, London 1969 (Law 1127/1981, Official Gazette 32/A/10-2-1981).

- *European Convention on the Protection of Archaeological Heritage (Revised)*, Valetta 1992 (Law 3378/2005, Official Gazette 203/A/19-8-2005).

- UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*, Rome 1995 (Law 3348/2005, Official Gazette 144/A/23-6-2005).

- Greece participates in the Intergovernmental Committee of UNESCO *For Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation* and is a member of ICOM, ICCROM and ICOMOS.

It has also signed the following bilateral agreements:

- *Ratification of Agreement between the Hellenic Republic and the United States of America, for the mutual administrative cooperation between the Customs Authorities* (Law 2066/1992, Official Gazette 117/A/7-7-1992). The agreement concerns breaches and provides, among other things, collaboration for the fight against the illicit traffic of antiquities and works of art.

- *Memorandum of Understanding between the Ministry of Culture of the Hellenic Republic and the State Administration of the People's Republic of China On Cooperation Concerning the Prevention of Theft and of Illegal Excavation*,

Consulates⁴², international organizations (like UNESCO, INTERPOL, ICOM), as well as the central authorities of the other 26 member states of the European Union competent for the implementation of the Directive 93/7/EEC *for the return of cultural property that has been illegally removed from the territory of a member state*⁴³.

Yet, despite the measures on a legislative and administrative level, Greece as a source country is always a target for organized looters, both local and international. Of course the majority of illegally exported antiquities, which are channeled to international markets, are products of clandestine excavation, particularly in remote areas. The “unprovenanced antiquity” is worst than the “stolen” one exactly because the excavation has not been documented. To quote Professor Lord Renfrew “Dealers are middlemen. They would not exist if there were not both a demand (the museums and private collectors) and a supply (the flow of unprovenanced antiquities from looted archaeological sites)”⁴⁴. As a Greek Public Prosecutor pointed out “the crimes concerning antiquities and the recidivism are a usual phenomenon and perhaps it is not an exaggeration to speak of a kind of addiction or passion”⁴⁵.

Import and Export of Cultural Property, signed on 26th February 2008, (not yet in force).

⁴²As the Greek State “Within the context of international law, ... shall care for the protection of cultural goods originating from Greek territory whenever had they been removed from it” (*Law 3028/02* article 1 par. 3), the combating of illicit traffic includes the claim and restitution of cultural property, that is located in another country, in cooperation with the Greek and foreign police authorities, the Embassies and Consulates of Greece abroad, by appointing, through the State Legal Council, a lawyer, who is representing the Greek state in the country, where the object has been traced and by requesting in some cases court proceedings.

⁴³The policy which the competent central authority of the Hellenic Ministry of Culture follows is to inform the designated central authorities of the other 26 member states of EU and the international organisations as soon as a theft has occurred, sending a detailed description and photographic material for identification and for publication in the INTERPOL CD-ROM and the ICOM magazine.

⁴⁴Lord Renfrew C., 2000, *Loot, Legitimacy and Ownership. The Ethical Crisis in Archaeology*, London, G. Duckworth, 35.

⁴⁵Diotis, I., (forthcoming), *I piniki dioxi tis archaeokapilias kai i symvoli tis sti diekdikisi kai anaktisi archaeotiton*, Praktika Synedriou I Prostatia ton Politistikon Agathon apo tin Paranomi Diakinisi kai i Diekdikisi tous, Neo Mouseio Akropoleos, Athena 2008 (*The prosecution of illicit traffic and its contribution to the claim and restitution of antiquities* in: Hellenic Ministry of Culture Proceedings of Conference (forthcoming - in Greek).

Looking at the clandestine excavations all over Greece registered by the Archaeological Services from the 1930's until today, we are led to the conclusion that there was an abrupt increase in incidents in the 1980's and 1990's with a slight reduction in the present decade. These are, as it seems, the decades with the greater supply of antiquities as a consequence, most probably, of an increasing demand. Geographically the clandestine excavations mostly occur in the Peloponnese in South Western Greece, where there are a lot of prehistoric sites of Mycenaean civilization; in the island of Crete with sites of the Minoan civilization; Central Greece follows with a lot of neolithic sites and finally Northern Greece, particularly in central Macedonia with the rich royal tombs.

As, however, a lot of clandestine excavations that occur are unknown to the Archaeological Service, the extent of the phenomenon is explicitly shown by the great number of confiscations, by the police forces, of antiquities and protected cultural goods. During the last eight years (2000-2008) 475 confiscations have taken place, the majority of which involved a great number of objects destined for the illegal trade. The total number of antiquities involved in those cases amount to 15.475 with a peak in cases and number of antiquities in the year 2001 (**Figure 1**).

Confiscations are taking place also for objects that have been smuggled into the country. Within this framework, in 2003 and 2007 marble statues belonging to the Butrint Museum in the Albanian Republic were returned by the Greek State to their museum of origin⁴⁶ (**Figure 2**).

A number of the products of clandestine excavation, when they are smuggled out of the country, are often exhibited in museums abroad, obtaining in this way a kind of respectability. It is what Lord Renfrew describes as "antiquity laundering"⁴⁷. As a well-known dealer has said, dealers often send a letter to a reputable museum offering an unprovenanced object to be exhibited in that museum. The museum in turn replies that it regrets it can not accept the offer at that time. In this way the dealer has in his possession a letter from a reputable museum which he uses as a kind of pedigree⁴⁸.

⁴⁶They were three marble heads and two marble statues stolen from Butrint Museum and archaeological site during the upheavals in 1991. They were located by investigation officers in Ioannina, North West Greece and in Athens respectively, were confiscated and court proceedings followed.

⁴⁷Lord Renfrew C., 2000, op. cit., 31.

⁴⁸Said by the dealer Michel Van Rijn when interviewed by Dick Ellis in London in: DVD "*Illegal Trade*" presented in Conference *Fighting illicit traffic in cultural goods within the European Union*, organised within the framework of Holland's presidency of the EU, Rotterdam 2004.

We are all aware, nowadays, of the international dimension of the illegal trade of such objects. It has been revealed by the Schultz case in the past in the USA, the Getty case both for Italy and Greece, the Hect and Medici case and the famous Symes-Michailidis case with thousands of unprovenanced objects in their storerooms, while the Greek police authorities have found and confiscated a great number of antiquities, in a villa on an uninhabited island, together with invaluable for the enforcement authorities photographic material.

On the other hand, the theft of antiquities does not present the same frequency as clandestine excavations do, since the antiquities are inventoried and their sale through auctions is not easy. This explains why in many cases the stolen antiquities end up directly in private collections abroad. One very important case is the theft of 285 antiquities from the Archaeological Museum in Ancient Corinth, in Peloponnese, in 1990, (**Figure 3**) by four looters after badly injuring the night guard.

The antiquities were inventoried, photographed and published, so they could only end up in a private collection. Despite the immediate actions of all the authorities involved within Greece and abroad, the antiquities were smuggled out and 274 of them were located nine years later in Maiami, USA, in a private house of a woman friend of one of the looters.

It seems, however, that some auction houses and well-known dealers are willing to take the risk with stolen objects. We are having the opposite experience from what a Dutch analysis on art and antiques trade points out, that “those wishing to sell stolen ...objects prefer to offer them to smaller dealers or regional auction houses....”⁴⁹. It was in 2004 when a known auction house in Munich was promoting for sale a big relief decorated part of a colossal marble statue of Augustus, that was stolen in 1991 from the Archaeological Museum of Amphiareion, in Attica (**Figure 4**).

The antiquity was in the Interpol data base and was published in its DVD with stolen objects. The immediate reaction of the Consul General of Greece in Munich and our Department led to the recovery of the object within a month. Moreover, in 2007, at the Maastricht antique fair, a well known dealer active in Switzerland, was exhibiting for sale a marble statue

⁴⁹ Bielemen, Stoep and Naayer point out that “the reputations of the top dealers prevent them from been offered forged or stolen objects since there is a very good chance of detection”, Bielemen B., R. van der Stoep and H. Naayer, 2007, *Pure Art- Preventive Criminal Analysis of the Dutch Art and Antiques Trade*, Groningen-Rotterdam, 50

of Appollo Lyceus that had been stolen in 1991 from the Archaeological Collection of Gortyna, on the island of Crete. The statue, that was also published by Interpol, was then taken to Switzerland by the dealer from where we managed to recover it. We are indebted to the Italian investigation authorities for providing the Greek investigation authorities with the relevant information for locating the statue.

The registered thefts all over Greece, from the 1930's until today, indicate a peak in cases in the 1960's and 1980's and again in the 2000 decade. As in the case of clandestine excavations, the majority of thefts have taken place mainly in the Peloponnese (South Western Greece), then in Thessaly (Central Greece) and thirdly in Macedonia (Northern Greece). The type of objects the looters prefer are firstly coins, followed by pottery and clay objects, metal objects, jewelry and statues. The bigger the size and weight of an object, the more perilous its theft and smuggling. On the contrary the smaller and lighter the objects, like coins, the more vulnerable they are to theft and smuggling⁵⁰.

In the last eight years, however, we have been faced with a "plague" of increasing vandalism and thefts occurring in churches and monasteries particularly in remote areas. Sixty nine (69) thefts have been reported involving 446 objects out of which 138 were stolen in 2008⁵¹. Icons, crosses, liturgical objects, frescoes and even big parts of wooden iconostasis are the products of looting. Some of them are documented and photographed by the Archaeological Service, but others are not due to the refusal of the local church authorities or the monks to cooperate; hence, it is difficult to proceed with an international search. The increase of occurrences has a geographical distribution with the greater problem observed in the areas of Epirus in North Western Greece and Thessaly in

⁵⁰ *ibid.*, Bieleman, Stoep and Naayer mention that "the consequence of the unique nature of the objects being traded is that they can not immediately be converted into liquid assets....The liquidity of an object also depends on how easy it is to transport", 46.

⁵¹ Sakelliadis, V., (forthcoming), *Klopes antikeimenon latreias kai allon ergon technis apo I. Naous kai I. Mones. Hartografisi enos provlimatos kai protasis therapias tou*, Praktika Synedriou, *I Prostasia ton Politistikon Agathon apo tin Paranomi Diakinisi kai i Diekdikisi tous*, Athena 2008, (*Thefts of liturgical objects and of other works of art from churches and monasteries. Mapping a problem and proposals for its therapy* in: Hellenic Ministry of Culture Proceedings of Conference, (forthcoming -in Greek).

Central Greece⁵². We presume that well organized gangs are active in those areas.

The competent authorities of the Ministry of Culture have long ago realized that the problem can be faced only if there is a joint effort of both the local Archaeological Services and the Church authorities, so that all movable and immovable monuments are documented and photographed and if it is possible to jointly draw up a strategy for their safekeeping. To achieve this, last September, the Directorate General of Antiquities and Cultural Heritage invited the Archbishop to participate in a round table discussion at a Conference organized by the Ministry “*On the Protection of Cultural Property from Illicit Traffic and its Claim*”. The Archbishop, who had studied and worked as an archaeologist in his youth, pointed out the need for cooperation between the authorities of both sides, so as to improve communication and to avoid misunderstandings. To this effect he proposed the organization of seminars with the participation of archaeologists and representatives of the Church and monasteries, aiming at comprehending the impact of the problem and the need to find ways of inventorying and photographing the immovable and movable religious monuments⁵³. The Ministry is looking forward to this cooperation so as to effectively put a stop to this pillage and sacrilege.

Our efforts are focused primarily on preventive measures and on combating the illicit traffic of our cultural heritage, but at the same time they are also turned to locating and repatriating stolen or illicitly excavated antiquities. The coordinated efforts of the Archaeological Service with other authorities within and outside Greece led to the successful recovery of many antiquities. The majority of them were products of clandestine excavations, which demand a more thorough scientific and legal documentation. In some of the claims we have pleaded European Directive

⁵²ibid., Sakelliadis points out that the looters choose to strike during autumn and winter periods.

⁵³Archbishop of Athens and entire Greece Mr Ieronymos, (forthcoming), Untitled, in: Proceedings of Conference *The Protection of Cultural Property from its Illicit Traffic and its Claim*, Athens 2008, (in Greek).

93/7/EEC of 1993 of the Council⁵⁴ and in others the 1970 Unesco Convention.

An immediate and effective way of recovery, particularly of unprovenanced antiquities, is the confiscation we referred to above, within and outside the Greek boundaries, with judicial proceedings. The second way is through negotiations, with legal assistance⁵⁵, the third is through purchase and the fourth through voluntary return.

Italy has many successes on matters of claiming unprovenanced objects particularly from American museums. These repatriated Italian antiquities, which are real masterpieces, are proof that times and attitudes are changing.

We have registered 80 cases of repatriation of Greek antiquities since 1945. Sixteen (16) of them were recovered through court proceedings, (**Figure 5**) thirty seven (37) through negotiations with legal assistance, six (6) cases through purchase and twenty two (22) cases by voluntary return, particularly by foreign citizens to our Embassies abroad. These involved a total of 1940 antiquities out of which the majority (1201) was recovered with court proceedings⁵⁶.

⁵⁴Unfortunately, so far Directive 93/7/EEC has not been effective for Greece, as the time limit of one year, from the moment a member state locates an object in the territory of another member state, is too short for all the required, time-consuming, procedures for a claim. For this reason the Hellenic Ministry of Culture has since 2005 proposed to the Advisory Committee for Cultural Goods of the European Commission the modification of the Directive in order to extend the time limit to three years. Italy followed this year with the same proposal. The Commission informed the Advisory Committee for Cultural Goods that 15 member states have agreed to the modification; however, the proposals of the new member states are still expected.

⁵⁵Diotis I., op.cit., 2008. He points out that strong evidence for recovery is *a*) the photographs the looters usually take as soon as they find the antiquities, which they use in order to negotiate their sale and *b*) the scientific documentation prepared by archaeologists, which contributes to defining the provenance and origin of the object. He also points out that starting prosecution proceedings contributes to the positive results of negotiations with known collectors and distinguished members of museums' boards, who wish to avoid any involvement with prosecution, as this type of case attracts great publicity.

⁵⁶ Boutopoulou, Sm., (forthcoming), *Desmi metron kai energeion tis Diefthinsis Mouseion, Ektheseon kai Ekpedeftikon Programmaton gia tin prostasia ton politistikon agathon apo tin paranomi diakinisi: Diapistosis-episimansis*, Praktika Synedriou, *I Prostasia ton Politistikon Agathon apo tin Paranomi Diakinisi kai i Diekdikisi tous*, Athena 2008, (*An array of measures and activities of the Directorate of Museums, Exhibitions and Educational Programmes for the*

Our first registered restitution took place in 1945. It concerned a marble statue of a woman, which was removed from the Archaeological Collection in Thessaloniki, in Northern Greece, in 1944 by German soldiers, allegedly for safe-keeping in an air raid shelter; instead the statue was transported to Vienna. It was located in Saltzbourg from where it was recovered. Since then a number of works that had been removed by the occupation forces have also been recovered.

Apart from the stolen objects that have been located abroad and we have succeeded bring home, we consider, as already mentioned, that the most difficult claims are those regarding unprovenanced antiquities. The successful results of their claim are due mainly to the thorough scientific documentation of them provided by our authorities, on which the negotiations of the lawyers are often based. One such case is the Aidonia Treasure (including 78 works) from a clandestine excavation in a Mycenaean cemetery in the Peloponnese, (**Figure 6**) on sale in a gallery in the USA. The documentation provided by expert archaeologists and with the help of a lawyer, led the owner of the gallery to return the treasure to its country of origin. After being exhibited at the Capitol, the treasure returned to Greece in 1996.

On the other hand, the enforcement authorities of other countries by confiscating Greek illegally excavated antiquities have in all cases contributed to their recovery. A characteristic example are the 187 antiquities from Brindisi, Italy in 1997 (**Figure 7**); the Italian authorities have lately informed us of another confiscation.

I will, however, focus on those cases that show a change in attitude in the last few years in countries like Germany, the USA and the UK. A great number of Greek antiquities have been located in Germany⁵⁷. In the last few years we have observed an activity of the Public Prosecutors in Germany concerning the cultural property belonging to other countries. Within this framework, to mention one such case, the police forces in Saabrucken in collaboration with the Greek police forces confiscated 438 Greek antiquities including a bronze statue, which the Public Prosecutor in 2001 rendered to the Greek State. The antiquities were repatriated in 2002.

As regards the USA, after the case of the Aidonia Treasure in the year 1996, in the years 2007 and 2008 we repatriated four important

protection of cultural property from illicit trafficking: Observations and conclusions, in: Hellenic Ministry of Culture Proceedings of Conference, (forthcoming-in Greek).

⁵⁷ Germany is first with 871 antiquities, USA comes second with 686 antiquities and then follow the UK with 212 antiquities and Switzerland with 55 antiquities.

antiquities from the Getty Museum (**Figure 8**) and two others from the Shellby White and Leon Levy Collection from which one marble relief was exactly fitted to its other half in the Brauron Museum near Athens. Museum boards and collectors are more compromising. Museum professionals sign declarations within the spirit of an ethical code, while the official authorities do look at the problem of illicit traffic of antiquities. We underline the fact that the USA the last few years is actively participating in the meetings of the member states to the 1970 UNESCO Convention and in the Intergovernmental Committee of UNESCO *For Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation*.

And to come to the UK, it was in 1990 when Sotheby's in London announced the auction of the Cycladic collection of Helen Mayer from Switzerland, known as the Keros Hoard. Keros is an uninhabited island in Greece. The Ministry of Culture, in collaboration with our Embassy in London, moved quickly to halt the auction. Professor Lord Renfrew was a witness in favour of the Greek side. Yet the English judge decided in favour of the auction and addressing the representatives of the Greek State added that, if the Hellenic Ministry of Culture considers the collection of Helen Mayer of great importance for its cultural heritage then the Greek State should buy it at the auction. Seven years later, in 1997, the position of the UK is shown by the reply of the relevant minister, when Lord Renfrew asked in the House of Lords a question concerning unprovenanced antiquities. The minister said that "it is not an offence to import into this country [UK] antiquities which have been illegally excavated in and exported from their countries of origin"⁵⁸.

In 2005 this attitude had changed. An airport customs officer contacted our Embassy in London stating that two Greek citizens were arrested with 18.000 Euros, money they got after having sold a coin to a well-known dealer in London. The smugglers were suspected as they travelled in and out of UK on the same day. The customs officer asked from the competent court the permission to confiscate the money and to halt the sale of the coin. The Ministry appointed a lawyer and prepared a thorough scientific documentation proving that it is a rare silver dinar of Brutus, of the period of roman civil wars (43/2 BC), that was minted in Greece, when Brutus camped near Fillippi in north Greece carrying the mint with him. The dealer finally realized he was losing the case and handed the coin over to the Ministry's lawyer. The coin was located thanks to the conscientious work and cooperation of the English customs officer.

⁵⁸ Lord Renfrew C., 2000, op.cit., 66.

Coming to 2008, I refer to the case of a 14th century icon that was stolen in 1978 from the Monastery of St. John Prodromos in Serres, in Northern Greece (**Figure 9**). The icon was big in size and two sided with the representation of Christ's Descent from the Cross on one side. It was cut horizontally into two in order to be easily smuggled out of the country and was painted over after the theft, so that it would not be recognized and to raise its value. The icon was located in London in 2003 without the Hellenic Ministry of Culture knowing the possessor. The Ministry appointed a lawyer in the UK, sent all the documentation to the Metropolitan Police, through our Embassy in London and claimed the icon. The possessor was disclosed only in 2007 and as his lawyer was playing games during the negotiations, the Ministry asked for a court proceeding. During the court hearing, the English judge had a completely different attitude from that of the judge on the Keros case in 1990. He rendered the icon to the Greek State, he even decided, which is a rare case, that the accused had to pay 75% of the court expenses of the Ministry; when the accused protested that the Hellenic Ministry has chosen an expensive legal office, the judge replied that the Greek State rightly chose that office, as it respects and protects its cultural heritage. He added that the smugglers could have respected the icon and have at least chosen a bigger suitcase to pack it in and not cut it into two. This is indeed a change in attitude.

What we also experience and it is touching, is the voluntary return by citizens from different countries of even small marble pieces which, they mention, once their father or brother or friend had taken away from Greece. It is also touching that like Odysseus reaching Ithaca, the marble relief fragment with the representation of Nereus and Herakles from Munich has found its body, the colossal statue of Augustus in Amphiareion Museum in Attica. The leg from Salinas Museum in Palermo has traveled to find its goddess Artemis in the east frieze of Parthenon. The upper part of the marble relief stele from the Shelby White Collection joined its other half in the Vravra Museum in Attica (**Photo 10**).

As Ricardo Elia points out “the main value of repatriation is the role it may play in repressing the market and discouraging future looting”⁵⁹.

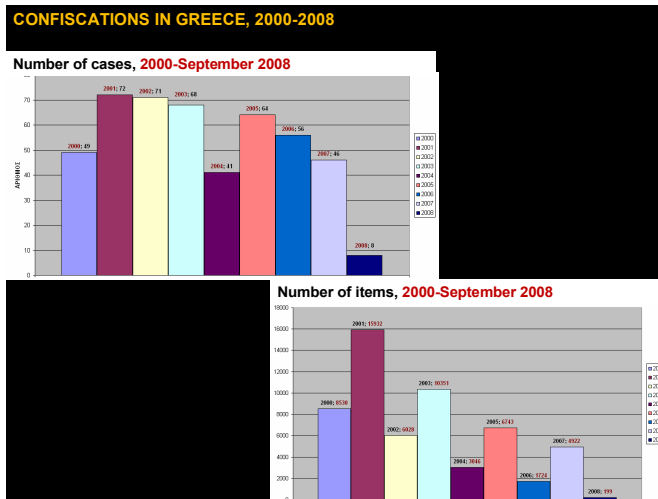
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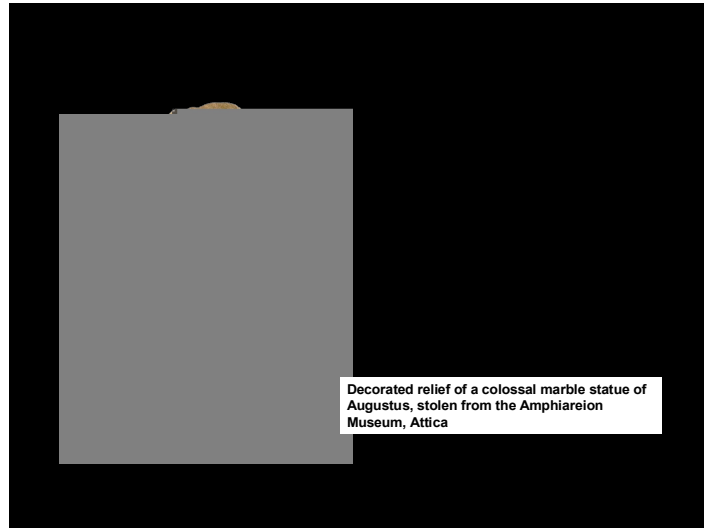
*Statistics of confiscations of antiquities in Greece from 2000-2008
[Source: Archives, Hellenic Ministry of Culture]*



Repatriated antiquities to Butrint Museum, Republic of Albania [© Hellenic Ministry of Culture]



Two of the 285 antiquities stolen from the Archaeological Museum of Corinth, Peloponnese [© Hellenic Ministry of Culture]



Decorated relief of a colossal marble statue of Augustus, stolen from the Amphiareion Museum, Attica [© Hellenic Ministry of Culture]



Recovered antiquities [© Hellenic Ministry of Culture]



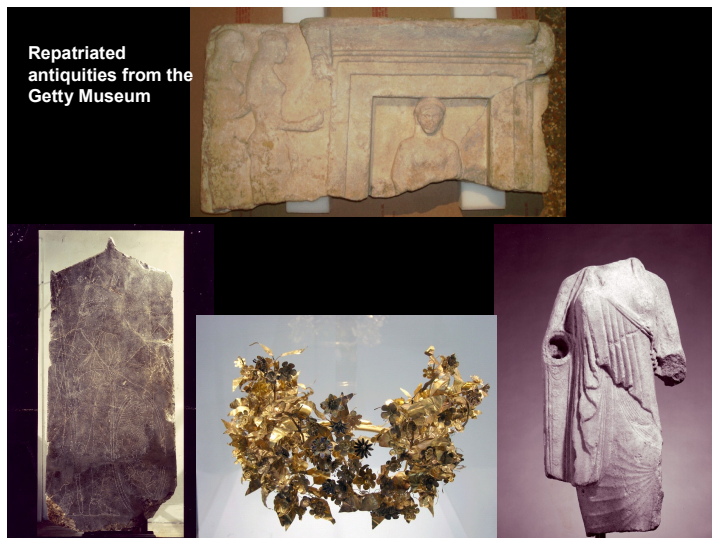
The Aidonia Treasure (78 antiquities). Repatriated in 1996 [© Hellenic Ministry of Culture]

Confiscation of 187 antiquities
Brindisi, Italy (1997)



Confiscation of 187 antiquities Brindisi, Italy (1997) [Source: Directorate of Public Security, 2nd of Department against Illicit Traffic]

Repatriated
antiquities from the
Getty Museum



Repatriated antiquities from the Getty Museum [© Hellenic Ministry of Culture]



Christ Descent from the Cross, Monastery St John Prodromos (repatriated in 2008). Photos before theft and after theft [© Hellenic Ministry of Culture]



The upper part of a funerary relief stele found its lower part in the Vraurona Archaeological Museum after its repatriation in 2008 [© Hellenic Ministry of Culture]

THE PROVENANCE PROBLEM AND THE WEARY HERAKLES: A TURKISH POINT OF VIEW

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Anatolia, which is now Turkey, has sheltered various civilizations since early ages. One of the most important civilizations for Anatolia was definitely the Hittite Civilization. Anatolia witnessed the smuggling of cultural property even in this ancient civilization.

In an inscription on behalf of Anittas, son of the Kussara King Pithanas, dated to two thousand B.C. it says “*some time ago Uhnas the King of Zalpa removed our God Sius (the statue) from the city of Nesa to Zalpuwa. However, I the Great King Anittas brought our God Sius back from Zalpuwa to Nesa. And I brought Huzziya the King of Zalpuwa to Nesa alive*”⁶⁰. This text is probably the proof of the oldest cultural property smuggling of the world.

As is known, the statues, ceramics and grave gifts were either looted or pillaged during both Classical Greece and Roman Ages.

Anatolia continued to be one of the locations that attracted European and American travellers and collectors during the 19th century. Although this interest ensured scientific excavations, the technological basis of the date could not prevent the looting of archaeological and artistic areas. One of the most significant of these illegal excavations was the one in Kültepe Kaniş in 1880s. Achaion tablets which are the advanced and simplified examples of Sumerian alphabet and dated to four thousand B.C. entered the antiquities market and at first were named by the antique dealers as samples of the Cappadocia region. However; after Czech scientist Hrozny, who started an excavation in 1925, found out that the origin of these tablets were Kültepe, this theft of history ended⁶¹.

There were no legal regulations concerning the cultural property in the Ottoman Empire until 1869. The empire issued excavation licences to encourage legal excavations and allowed the acquisition of the property by the excavators on condition that half of the artefacts found should be given

⁶⁰ Neu 1974, Larache 1971.

⁶¹ Dinçol 1982, p.20.

to the Ottoman Empire. With the regulation in 1872, the law on antiquities became effective in Ottoman administration. In 1884, the amendment to this law by Osman Hamdi Bey prevented the removal of antiquities on the lands of the Ottoman Empire outside the country. The law on antiquities issued in 1906 also did not allow taking cultural property abroad. After the foundation of the Turkish Republic, the law on antiquities was preserved and the removal of antiquities outside the Republic of Turkey was prohibited. The extended version of this law which was effective until 1983 is still in use.

I will try to explain below, how the events which are thought and said to have taken place before 1970, a date accepted as a milestone in this context, were grievous for the Republic of Turkey and other origin countries.

From this point of view, the trade in cultural property has been forbidden especially in Anatolia since 19th century. Nevertheless; when we examine both European and American collections and contemporary auctions we see that objects with no origin information or explained with expressions like “said to be” or “probably” are still in the market.

In year 2000, David Gill and Christopher Chippindale introduced some statistical results on famous private collections and certain auction catalogues on the American continent in their study published in the *American Journal of Archaeology*⁶². Examining the study, one can see that most of the artefacts in the collections surveyed were acquired after the milestone date of 1970 or their origin information was explained with vague expressions like “said to be” or “probably”. Similar expressions are also used for the objects valued at hundred thousands of dollars in auction firms that are active world-wide.

The objects sold at an auction that took place in New York in 2007 can be taken as a comprehensive example of what is mentioned above⁶³.

The first example is a Roman marble bust, with lot number 77, which does not leave any questions on its provenance history. The record of the object goes back to the 18th century and it also includes the ownership history (without mentioning the jobs of the owners) through two centuries. There were also other objects having that fully documented provenance at the same auction.

The mosaic for sale with the number 84 in the auction catalogue has a note stating that the artefact “might belong to” Zeugma and should be one of the pieces that were spread around the world from Zeugma at the

⁶² Chippindale-Gill 2000.

⁶³ Cat. Sotheby's, Auction No: 8373, 05.12.2007, Newyork.

end of 19th century. The earliest provenance information of the artefact known, at least the earliest known to us, is an auction in 1972 and as can be seen this date is later than the milestone of 1970.



PICTURE 1

Provenance: Christie's, London, July 12th, 1972, no. 371, illus.

The ancient city of Zeugma mentioned in the catalogue is located in Gaziantep city in the southeast of Turkey and the smuggling in the region still continues although the whole world is alert to this situation. The looting cannot be completely prevented in Zeugma in spite of the efforts of our Ministry, the security forces and the excavation team from Ankara University.

In this context it would be helpful to mention Zeugma mosaics which have been reunited with broken pieces in Turkey. As a result of a study in the museum of Gaziantep in 1994⁶⁴, the Republic of Turkey detected a scene, the main figures of which are lost, in a collection in the U.S.A. and started the necessary process for its return.

⁶⁴ Yitik Miras'ın Dönüş Öyküsü, p. 144



PICTURE 2
Metiokhos Parthenope (Photo: Yitik Miras'ın Dönüş Öyküsü)

After the examination, with Rice University in Houston having the mentioned pieces (Menil Collection), it was concluded that the objects in the United States had definitely been smuggled from Zeugma and thus they were returned to the Museum of Gaziantep. Unfortunately, the present condition of the artefact has to be considered again and again by the people who think that buying a mosaic in the market means preserving it (Pic. 2). In the picture, all one can see is how demand from the wealthy in the American continent may cause damage in Anatolia, through the hands of a villager who wants to supply goods.

I also want to examine the provenance note of another small object that was for sale at the same auction in New York. Two bronze animal figurines (Lot Number 133) of archaic era belong to a private collection in Texas and the declared owner is Gilbert E. Bursley who lived between 1913 and 1998. There was an interesting detail in the catalogue note about both the Republic of Turkey and Greece. While a military attaché in Turkey between 1947 and 1952, Gilbert Bursley served in Greece between 1950 and 1952.

This statement in the catalogue note is a significant detail and the reason of this statement to be in the catalogue is open to interpretation from different viewpoints. While pointing that the artefact might be taken from Turkey or Greece between 1947 and 1952, this statement might also aim at using the owner's role as a military diplomat as a guarantee of the authenticity of the object on sale.

The common argument of both international museums and auction houses concerning artefacts with no provenance information is that returning the objects is out of question if there is no record on their theft. There is also another defence for the artefacts with no provenance information, i.e. that they might have been discovered in the 17th or 18th centuries and hidden somehow for hundreds of years. This kind of approaches has lost their validity as some accidentally or systematically solved phenomena made the figures and organizations visible in the market.

Weary mother collection

Another subject of this study is the issue of the statue of Weary Herakles which has become a cult issue for the Republic of Turkey and the Turkish people.

The ancient city of Perge is located in the Pamphylia region in South Anatolia which is now the city of Antalya. During the seasons of 1980 and 1981 when Prof. Dr. Jale Inan, who had been working in Perge since 1940s, was the head of the excavation, some looting incidents came up.

In the excavations performed in that region, a group of magnificent statues were discovered in the area called the Gymnasium Hall L⁶⁵. One of these objects, which were the Roman copies of legendary works of famous Greek sculptures, is a leg part of a copy of the Weary Herakles, the original of which is attributed to Greek sculpture Lysippos. With the discovery of this artefact during the excavation season of 1980, a series of mysterious events occurred.

In 1992, a famous American collector couple, Leon Levy and Shelby White, wished to exhibit the artefacts they have to the community of art and antiques in an exhibition called “Glories of the Past” in the Metropolitan Museum of Arts⁶⁶. The exhibition attracted attention and many people from all over the world came to visit it. One of these visitors was Turkish journalist Özgen Acar who is known for his interest in antiques. Özgen Acar associated the missing part of the Weary Herakles in the exhibition “Glories of the Past” with an artefact he was already familiar with. Acar also insisted that the weary legs of the Herakles in Antalya and

⁶⁵ İnan 1981, İnan 1992.

⁶⁶ Bothmer 1990.

the weary Herakles body in U.S.A. constitute a whole⁶⁷. Of course the Ministry of Culture of the Republic of Turkey got involved in the incident. Jale İnan, the head of the excavation in Antalya, was assigned to take a copy of the piece in Antalya to the United States in order to prove that they were a whole. The testing was performed under the supervision of the authorities of the Metropolitan Museum and it was demonstrated that the two pieces were undoubtedly the two halves of a whole.



PICTURE 3
Photo: Ministry of Culture and Tourism Archive

It was stated in the catalogue of the exhibition that the artefact was excavated from a public building and probably from a gymnasium⁶⁸. It is exactly the area where the legs of Herakles were discovered. In this context the statements in the inventory record of the museum of fine arts in Boston are significant. The inventory record which is open to public reads as follows:

“Provenance/Ownership History: By 1981: with Mohammad Yeganeh, Bundenweg 7, 6000 Frankfurt/Main (said to be from his mother’s collection and before that from a dealer in Germany about 1950)”.

In 1992, the Republic of Turkey started the required process for the return of the upper part of the statue and the negotiations continued until 1996. Levy and White, who after the tests agreed that the torso in the United States. belonged to the leg pieces in Antalya, stated that they can

⁶⁷ Acar 1990.

⁶⁸ Bothmer 1990, p. 238.

return the artefact on condition that the Republic of Turkey guarantees not to start any processes concerning the other artefacts they have. The negotiations continued until 1999 but did not come up with any positive results and after that date they were suspended.

In this direction, I will try to approach the Weary Herakles issue mentioning two other operations in Perge to which I would like to draw your attention.

In 1974, during an operation in Istanbul, some pieces belonging to a Herakles sarcophagus were taken with the intent of smuggling them out of Perge. Some other pieces of the sarcophagus were found in the necropolis of Perge and the artefact was placed in the Antalya museum. In her study for the Getty Museum in Los Angeles, Prof. Dr. Jale İnan discovered that the piece of a sarcophagus there belonged to the sarcophagus in Antalya. As a result of the negotiations the piece was returned to the Antalya museum from the Getty Museum. In 1994 another piece of the same artefact was identified in the private collection of an important firm in Germany and this piece was also returned⁶⁹. The Herakles sarcophagus of Perge is still being exhibited in the Antalya museum with its still missing parts.

In another operation in 1981 near Perge, a headless Weary Herakles torso was found in the house of a villager. After due examination, it was concluded that the torso matches the leg pieces excavated in Perge excavations in 1980 (Pic. 4).

Found in a Smugglers garden

⁶⁹ Yitik Miras'ın Dönüş Öyküsü, p.144

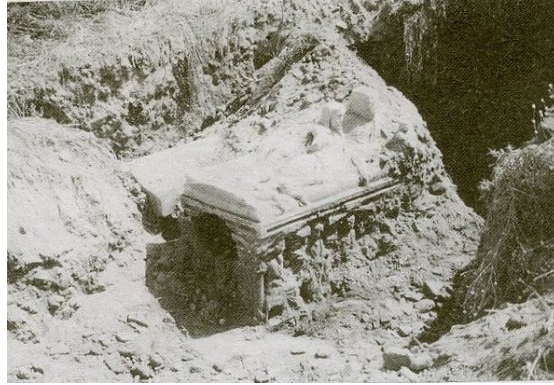


Found in Perge Excavations



PICTURE 4

Photo: Antalya Museum Archive



PICTURE 5. Perge 1997

Photo: Antalya Museum Archive

The smugglers in both cases were the same people. They were punished but subsequently benefited from amnesty. There is some information that these people are still active (Pic. 5)⁷⁰ around Perge like the other known smugglers in every other country.

If we turn to separated Herakles, in 2004 the ownership of the Weary Herakles passed on to the Boston Museum of Fine Arts. Although the attempts of the Republic of Turkey started again in 2006, there has not been any development since that time. I believe that the time has come for Herakles to have his rest by the Mediterranean Sea in Antalya Museum.

Smuggling and illicit activities in national and transnational areas go on systematically and have become a circular system, operating all over

⁷⁰ Demirer 1998, Prof. Dr. H. Abbasoğlu, Perge Excavations Director, In his presentation of 2008 excavation.

the world, that starts from a local area and includes international museums, states, dealers, culture, art, science, law and international relations.

As long as there is a strong, rich and effective demand, there will always be a supply to meet this demand. This supply-demand circle will not only violate laws but also destroy the common heritage of the whole world.

In the issue of transnational organized crime all parties should be more transparent, more positive, more sharing and more sensitive to the prevention of the illegal trade of cultural property. International communication would be a much better way of transferring and repatriating cultural property than the Conventions. But it is also certain that there has to be a forcing power. We can call it UNESCO; we can call it UNIDROIT or whatever you like. But it has to be practical, it has to be applicable and it has to be result-oriented.

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Part III

**INTERNATIONAL CRIMINAL
POLICY RESPONSES**

UNITED NATIONS INSTRUMENTS IN FIGHTING ORGANIZED CRIME AND PROTECTION OF ART AND ANTIQUITIES

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1. Introduction

I have been asked to speak on “*International instruments in fighting organized crime and protection of art and antiquities*”.

First, I will look at the scope of application of the United Nations Convention against Transnational Organized Crime, of 15 November 2000 and how illicit traffic in art and antiquities as a form of transnational organized crime under can be brought within the scope of application of this Convention.

I will then look at the Convention against Transnational Organized Crime as a tool for international cooperation in criminal matters, which can be used to complement existing international instruments concerning the protection of cultural heritage, by facilitating police and judicial cooperation in fighting organized crime in art and antiquities.

In conclusion, I will briefly discuss the tools prepared by UNODC to facilitate international cooperation in criminal matters.

2. Scope of application of the Convention

During the negotiations of the Convention against Transnational Organized Crime, various approaches to defining the scope of the Convention were discussed. Several delegations favoured a list approach and the lists discussed by the negotiating Conference included, among others, serious transnational crime, as well as the illicit traffic in and theft of cultural objects as defined in relevant conventions.

In the end, the scope of application of the Convention (article 3) was made to apply to the *prevention, investigation and prosecution* of (a)

participation in an organized criminal group, (b) corruption, (c) money laundering, (d) obstruction of justice; and (e) to serious crime which is transnational in nature and which involves an organized criminal group.

Under the Convention (art 2 (a)), an “organized criminal group” is defined to “mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain directly or indirectly, a financial or other material benefit”.

The above offences facilitate or underlie most forms of transnational organized crime, including illicit traffic in arts and antiquities. However, for the States Parties to benefit from the scope of application of the Convention, *they are required to adopt legislative and other measures, as may be necessary, to establish the activities referred to above as criminal offences, when committed intentionally.*

Adopting legislation and other measures to criminalize and punish illicit traffic in arts and antiquities *without an effective strategy to deal with different and complex facets of this transnational organized crime, including the link between the licit and illicit market, falls short of the noble statement of purpose of the Convention, which is “to promote cooperation to prevent and combat transnational organized crime more effectively”.*

Definition of transnational offence under art.3

The broad definition of a transnational offence under the Convention facilitates its application to illicit traffic in arts and antiquities. Under the Convention (art 3 (2)), an offence is transnational in nature, if it fulfils one of the following four criteria:

- a. if it is committed in more than one State; or
- b. if it is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State; or
- c. if it is committed in one State, but it involves an organized criminal group, which engages in criminal activities in more than one State; or
- d. if it is committed in one State, but it has substantial effects in another State.

Coverage of serious crime under the Convention

The Convention (art.2) defines a serious crime as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.

In order for illicit traffic in arts and antiquities to be brought within the broad definition of serious crime (art.2), it is essential that it is established as a criminal offence under national law with the minimum penalty envisaged by art. 2.

3. The Convention against Transnational Organized Crime as a tool for international cooperation in criminal matters

Under the Convention (art 18), *the Parties are required to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by the Convention.* Mutual legal assistance may be requested for, *inter alia*, any of the following purposes: (a) Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information, evidentiary items and expert evaluations; (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; and (g) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

Benefits of using the Convention

At present, 147 Parties to the Convention can cooperate with each other in relation to a wide range of transnational crime on the basis of the Convention when no other treaty basis exists (no applicable multilateral or bilateral treaty).

The Convention can also be used, if an existing bilateral treaty does not include the specific offence in relation to which cooperation is sought.

In a recent report containing analysis of responses of States Parties to the Convention against Transnational Organized Crime, several States have reported using the Convention as a basis for law enforcement cooperation, in the absence of a bilateral or multilateral treaty (see note by the Secretariat (CTOC/COP/2008/CRP.10) <http://www.unodc.org/unodc/en/treaties/CTOC/CTOC-COP-session4.html>

4. UNODC tools to facilitate international cooperation

In order to facilitate communication between central authorities designated by the Parties under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1988, and the Convention against Transnational Organized Crime, UNODC has established an on-line Directory of Competent National Authorities containing contact details of authorities dealing with *extradition, mutual legal assistance, interdiction of illicit traffic by sea and smuggling of migrants*. <http://www.unodc.org/compauth/en/index.html>

At present, access to the on-line Directory is restricted to States and Governmental organizations, upon request, on a password protected basis. Hard copies of the Directory are submitted to States on a quarterly basis.

UNODC has also prepared a Mutual Legal Assistance Request Writer Software, with templates on preparing effective mutual legal assistance requests. <http://www.unodc.org/unodc/en/legal-tools/index.html>. Access to the Request Writer Tool is also restricted to States and relevant Governmental organizations, upon request, on a password protected basis.

Other tools such as the Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters are available to the general public on the UNODC website.

In addition to the preparation and dissemination of tools, UNODC provides technical assistance to Governments, upon request, through training seminars, workshops, expert working group meetings, legislative drafting, etc.

Before I conclude, I would like to refer to the Economic and Social Council resolutions 2008/23, of 24 July 2008, and 2004/34, of 21 July 2004, both entitled: “*Protection against trafficking in cultural property*”. I would like to especially refer to the open-ended intergovernmental expert group meeting, which the Council has requested UNODC to convene, in close cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), *to formulate recommendations to the Commission on Crime Prevention and Criminal Justice on protection against trafficking in cultural property, including ways of making more effective the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property*.

In the first part of my presentation, I stated that Adopting legislation and other measures to criminalize and punish illicit traffic in arts and antiquities *without an effective strategy to deal with different and complex facets of this transnational organized crime*, including the link between the licit and illicit market, *falls short of the noble statement of*

purpose of the Convention, which is “to promote cooperation to prevent and combat transnational organized crime more effectively”.

I that regard, and in conclusion, I will respectfully exhort the Conference to formulate recommendations, which will serve as a good basis for the formulation of an effective global strategy on protection against trafficking in cultural property.

LE RETOUR DES BIENS CULTURELS SPOLIÉS:
L'ACTION DE L'UNESCO CONTRE LE TRAFIC ILLICITE DES
BIENS CULTURELS

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Monsieur le Président, Autorités, Mesdames, Messieurs, Chers collègues,

Le vol, le pillage de biens culturels et les fouilles clandestines constituent les principales causes de la destruction du patrimoine culturel de nombreux pays dans le monde. Aujourd'hui, le trafic illicite de biens culturels prend des dimensions affolantes, menant à la disparition des trésors culturels de la planète. Plus encore, le trafic illicite de biens culturels serait devenu la deuxième source de trafic lucrative après le trafic de drogues.

Au lendemain de la tenue à Séoul du 30^{ème} Anniversaire du Comité intergouvernemental pour la promotion du retour des biens culturels à leur pays d'origine ou de leur restitution en cas d'appropriation illégale, cette conférence s'inscrit dans l'actualité d'une prise de conscience encore accrue de la nécessité de protéger les Etats membres contre le trafic illicite des biens culturels tant il est vrai que ce trafic contribue à la dégradation de l'identité culturelle des Etats victimes

Au nom du Directeur général de l'UNESCO, M. Koïchiro Matsuura, et de Madame Françoise Rivière, Sous – Directrice générale pour la Culture, je tiens à vous féliciter pour l'initiative prise aujourd'hui par vos organisations à travers la convocation de cette réunion sur la restitution des biens culturels

Le trafic illicite des biens culturels est devenu un phénomène quotidien. Cependant, des faits sans précédent encore récents dans nos mémoires ont contribué à mobiliser l'opinion publique sur les dimensions importantes que peuvent atteindre les actes de destruction ou de trafic du patrimoine culturel. On ne peut oublier la destruction, en Afghanistan, d'œuvres d'art qui remontent à l'ère préislamique, notamment des gigantesques statues bouddhiques de Bamyian, ou encore le pillage en Irak

qui a déclenché des protestations générales de la communauté internationale. De telles actualités soulignent la nécessité impérieuse de la coopération internationale pour protéger le patrimoine culturel des Etats et de l'humanité.

A ce sujet, je voudrais rappeler les déclarations d'alors mais encore très actuelles de Monsieur Koichiro Matsuura, Directeur général de l'UNESCO:

«Parmi les défis inédits de notre Organisation, il y a eu bien sûr la folie iconoclaste qui s'est abattue sur le patrimoine culturel de l'Afghanistan. Chacun d'entre vous aura pu suivre l'action menée par l'UNESCO, et que les médias ont largement relayée, dans l'espoir de prévenir l'irréparable.....

Hélas, rien n'a pu arrêter ce crime contre la culture. Une fois passée l'onde de choc provoquée par la destruction des bouddhas géants de Bamyan, j'ai poursuivi mes efforts pour préserver ce qui peut l'être encore du patrimoine afghan, tout en initiant les actions nécessaires pour que ce genre de crime ne se reproduise plus.

J'ai renforcé par ailleurs les contacts noués depuis plusieurs années déjà avec un certain nombre d'organisations non gouvernementales pour lutter contre le trafic illicite d'objets appartenant au patrimoine afghan qui connaît aujourd'hui une grave recrudescence. Je suis en train de mettre en place un mécanisme pour aider ces ONG reconnues, en liaison avec des pays comme la Suisse, le Japon, la France, et d'autres, à récupérer ce qui a été volé, le mettre à l'abri, et garantir sa restitution à l'Afghanistan lorsque les conditions permettront d'assurer sa sauvegarde. Je saisis cette occasion pour inviter les États membres qui n'y seraient pas encore parties à rejoindre les pays ayant ratifié la Convention de 1970 sur le transfert de propriété illicite de biens culturels et la Convention UNIDROIT de 1995. Le poids de ces instruments s'en trouverait renforcé d'autant.

Enfin, il est clair qu'on ne peut rester insensible à l'appel, venu de tous les pays, de toutes les communautés et de toutes les sensibilités du monde, pour que soit mis en place un système de droit international proscrivant de tels actes insensés contre le patrimoine. Je crois qu'il faut engager la réflexion sur le type de sanctions qui pourraient être envisagées contre les auteurs de crimes volontaires contre les biens culturels.

L'objectif des sanctions, en droit international, est certainement moins de punir que de prévenir. Et la prévention, c'est bien ce qui fait l'objectif ultime de l'UNESCO, dont l'Acte constitutif décèle, dans «l'ignorance et le préjugé», la source réelle des principaux maux qui affectent l'humanité. Car je suis profondément persuadé que l'usage de la force, ou de la

contrainte, ne peut fournir de solution viable sur le long terme. Seul le dialogue, patient et inlassable, même sans complaisance, seule l'éducation, peuvent changer en profondeur les attitudes".

Au regard du mandat confié à l'UNESCO par son Acte constitutif de 1945, notre Organisation a développé une stratégie pour sauvegarder et contribuer à la reconstitution de l'identité culturelle de ses Etats membres; cette stratégie a été mise en œuvre notamment par l'élaboration de Conventions et en particulier les Conventions de 1970 et celle dite Convention UNIDROIT de 1995 dont il conviendra de s'arrêter sur les modalités; enfin, le programme d'activités important consacré au trafic illicite des biens culturels depuis des dizaines d'années se poursuit et les perspectives d'avenir de l'action de l'UNESCO dans ce domaine ne manqueront pas de reprendre les recommandations que le Comité intergouvernemental pour la promotion du retour des biens culturels à leur pays d'origine ou de leur restitution en cas d'appropriation illégale a adoptées à Séoul le 28 novembre dernier.

L'UNESCO est la première organisation internationale à entreprendre positivement la lutte contre le trafic illicite des biens culturels au niveau mondial. Aux termes de la résolution de la 18^{ème} session générale de l'UNESCO qui s'est tenue à Paris du 17 octobre au 23 octobre 1974, et qui en réponse à la préoccupation exprimée concernait notamment les «transferts massifs d'objets d'un pays à un autre, consécutifs à l'occupation coloniale ou étrangère», et «invitait les Etats membres à ratifier la *Convention concernant les mesures à prendre pour interdire et empêcher l'exportation et le transfert illicites des biens culturels, adoptée le 14 novembre 1970* par la Conférence générale de l'UNESCO et qui enfin invitait le Directeur général de l'UNESCO à contribuer à cette action de restitution».

Nous avons célébré en novembre 2000 le 30^{ème} anniversaire de cette Convention grâce à laquelle un mécanisme a pu être créé pour faciliter le retour des biens culturels volés ou illégalement exportés. Cent seize Etats sont actuellement «parties» de cette Convention, aussi bien des Etats «victimes» et qualifiés d'«exportateurs» que des états qui ont un important marché en objets d'art et que l'on qualifie abusivement d'«importateurs». Je reviendrai ultérieurement un peu plus longuement sur la protection apportée par la Convention de 1970, aux Etats parties.

En 1978, la Conférence générale de l'UNESCO, soucieuse de répondre aux préoccupations des Etats membres pour la protection des cas de trafic illicite antérieurs à la ratification de la Convention de 1970, a créé le *Comité intergouvernemental de l'UNESCO pour la promotion du retour des biens culturels à leur pays d'origine ou de leur restitution en cas d'approbation illégale*.

Outre la Convention de 1970 et le Comité, l'UNESCO a élaboré et adopté deux autres Conventions afin d'aider ses Etats membres à protéger leur patrimoine culturel, à savoir:

1. *la Convention pour la protection des biens culturels en cas de conflit armé* – dite aussi Convention de La Haye de 1954 et ses deux protocoles;
2. *la Convention de 1972 concernant la protection du patrimoine mondial culturel et naturel* – connue sous le nom de la Convention du Patrimoine mondial.

Concernant le sujet qui nous préoccupe, en vertu de la Convention de la Haye et de son protocole, l'exportation de biens culturels d'un territoire occupé est interdite. Au cas où les biens auraient été exportés illégalement, ils doivent être restitués au territoire dont ils proviennent. Le Protocole interdit aussi expressément l'appropriation de biens culturels au titre de dommages de guerre.

En complément de cet arsenal juridique, en 1982 il était recommandé à l'UNESCO d'entreprendre de concert avec un organisme une étude pour renforcer les mesures législatives et réglementaires nationales visant à lutter contre le trafic illicite des biens culturels. Il s'agissait notamment d'examiner le principe de la protection de l'acquéreur de bonne foi qui selon les experts, favorisait l'introduction dans le commerce licite de biens culturels ayant fait l'objet d'échanges illicites. Ce processus a abouti le 24 juin 1995 à Rome par l'adoption de la *Convention UNIDROIT sur les biens culturellement volés ou illicitement exportés*.

Tels sont les outils que l'UNESCO a mis en œuvre pour renforcer la protection du patrimoine culturel tangible; je tiens à vous informer qu'en complément de cette batterie de normes, trois autres textes internationaux ont été adoptés par l'UNESCO à savoir la *Convention internationale pour la protection du patrimoine subaquatique en 2001*, la *Convention pour la sauvegarde du patrimoine culturel immatériel en 2003*, enfin, la *Convention sur la protection et la promotion de la diversité des expressions culturelles en 2005*.

A l'issue de cette introduction, l'UNESCO une fois encore voudrait inviter tous les participants à cette réunion à appeler les gouvernements à ratifier plus massivement les conventions notamment celles de 1970 et de 1995, si l'on veut que l'action lancée par l'UNESCO puisse vraiment se développer de façon efficace dans un contexte normatif coordonné au niveau mondial.

Le souci qui anime les protagonistes de la réunion d'aujourd'hui est une approche plus pénaliste contre le crime organisé dans le domaine de l'art et des antiquités. L'UNESCO se penche sur cette thématique en termes de récupération des biens culturels et je souhaite à cet effet vous donner plus de précisions quant aux mécanismes prévus par les instruments promus par l'UNESCO à cet effet.

En premier lieu, je voudrais vous donner une présentation plus précise des moyens que la *Convention de l'UNESCO de 1970* met à la disposition des Etats qui l'ont ratifiée à cet effet.

La Convention de 1970 oblige les Etats parties à collaborer pour faciliter la restitution des biens culturels aux Etats parties auxquels ils ont été volés ou dont ils ont été exportés illégalement. Pour faciliter ce processus de restitution, encore faut-il prendre des mesures en amont pour protéger le patrimoine culturel. La plupart des pays du monde ont adopté des mesures pour limiter, voire interdire, l'exportation des biens culturels. Ceci est pourtant le processus préliminaire pour pouvoir accéder à un mécanisme de restitution des biens. Dans bien des cas, cette législation n'est pas suffisamment élaborée.

En devenant parties à la Convention s'obligent:

- A introduire un mécanisme de certificats d'exportation pour chaque objet exporté (article 6);
- A protéger les musées et institutions similaires contre l'acquisition d'un bien d'un Etat partie où l'objet a été illégalement exporté après l'entrée en vigueur de la Convention dans les 2 états (article 7 (a));
- A interdire l'importation de biens volés en provenance de musées, monuments vers un autre Etat partie, encourageant ces musées, institutions à établir des inventaires (article 7 (b));
- A prendre les mesures, à la demande de l'Etat d'origine, de l'objet pour restituer tout objet importé illégalement après l'entrée en vigueur de la Convention (article 7 (b) (ii));

- A imposer des pénalités ou des sanctions administratives à toute personne qui a exporté un bien culturel sans un certificat d'exportation approprié, ou qui a importé des biens volés ou illégalement exportés (article 8).

Ainsi, la Convention de 1970 quand elle est mise en œuvre par deux Etats parties peut-elle aider de façon fondamentale à la prévention du trafic illicite de biens culturels.

Toutefois, il est à noter *qu'aucune de ces dispositions n'est rétroactive*. Aussi à titre d'exemple, si un objet culturel a été exporté d'un état avant que cet Etat ne soit devenu partie à la Convention de 1970, la Convention n'est pas applicable.

Je voudrais souligner in fine les dispositions de l'article 9 selon lesquelles tout Etat partie à la Convention dont la patrimoine est mis en danger par des pillages peut faire appel aux autres Etats parties pour participer à une action internationale concertée visant à contrôler le commerce international sur les objets d'art en provenance de cet Etat.

La Convention a eu un impact considérable bien qu'à ce jour, elle ne soit encore ratifiée que par 116 Etats dans le monde. A titre d'exemple, la Convention a influencé des codes d'éthique dans les réseaux des musées: le Conseil international des Musées, l'ICOM, a adopté en 1986 un code de déontologie professionnelle, énonçant des règles éthiques concernant l'acquisition et le transfert de collections. A la suite de l'adoption de ce Code, beaucoup de Musées notamment dans les Etats "importateurs" tels que l'Australie, le Canada, la Nouvelle Zélande, l'Afrique du Sud, le Royaume Uni ou les USA ont adopté des politiques pour l'acquisition de leurs collections, conformes à ces principes de l'ICOM.

Ce développement a contribué à la restriction du marché d'objets d'art illicitement exportés en particuliers pour les objets d'art trouvés dans des fouilles clandestines. Ces Fouilles clandestines posent un problème particulier non seulement en terme légal mais aussi en termes de destruction des sites archéologiques enfin dans une disparition des connaissances qui auraient pu être développées sur ces sites.

La 30^{ème} session de la Conférence générale de l'UNESCO (qui s'est tenue en octobre – novembre 1999 à Paris) a approuvé *un Code international de déontologie pour les négociants en biens culturels reprenant les principes de la Convention de 1970*.

Ainsi en réponse à vos préoccupations quant à la restitution des objets illicitement exportés, se trouve une première réponse qui tient aux mesures que vous devriez prendre dans chacun de vos pays par des

législations nationales pour éviter ce trafic illicite. La mise en œuvre de la Convention de 1970 dans chaque pays est la première ligne de défense et de protection contre le trafic illicite.

Les limites de la Convention de 1970: recherche de la protection du trafic illicite dans le cas d'un acquéreur de bonne foi? La Convention UNIDROIT de 1995

Un des principaux problèmes non résolus par la Convention de 1970 était le traitement qui devait être accordé à l'acquéreur de bonne foi.

Par définition, l'acquéreur de bonne foi est une personne qui a acquis un objet de bonne foi, sans savoir que l'objet a été volé ou illicitement exporté: la bonne foi est en principe présumée jusqu'à ce que la preuve du contraire soit rapportée, ce qui est généralement difficile à démontrer.

En général, selon le système légal communément appliqué, le propriétaire original d'un bien volé a le droit de le revendiquer, ce qui revient à dire que le détenteur du bien de bonne foi n'a pas le droit de retenir ce bien. Toutefois, dans certains systèmes de droit civil, le détenteur de bonne foi a le droit de retenir le bien acquis au détriment du vrai propriétaire.

Cette différence dans les régimes de droit privé a encouragé l'exportation de biens illicitement exportés ou volés, avec l'objectif de vendre ces biens dans un pays où les marchands d'art peuvent pratiquement acquérir des biens en toute loyauté.

Aussi en 1984, l'UNESCO a-t-elle demandé à UNIDROIT, l'Institut International pour l'Unification au Droit privé, d'élaborer des règles applicables aux acquéreurs de biens culturels illicites en complément de la Convention de 1970. En 1995, le texte de la Convention UNIDROIT a été adoptée par la Conférence diplomatique à Rome.

Alors que la Convention de 1970 s'applique au niveau intergouvernemental, la Convention UNIDROIT, développe un cadre international pour permettre aux individus de saisir les juridictions nationales pour revendiquer les objets illicitement exportés ou volés.

La Convention établit que le possesseur d'un objet culturel volé doit restituer celui-ci, qu'il en ait ou non eu connaissance. La Convention ne prévoit de dédommagement en cas de restitution d'objets culturels qu'à condition que «le possesseur n'ait pas su ou dû raisonnablement savoir que le bien était volé».

Aucun texte international antérieur ne va aussi loin pour persuader les acheteurs potentiels d'œuvres d'art à chercher à savoir par quelles mains sont passés les objets qui les intéressent. En fait, cette disposition devrait convaincre les négociants en œuvres d'art et les salles de ventes d'établir une documentation précise pour chacun des objets qu'ils se proposent de revendre.

La Convention UNIDROIT n'a été ratifiée à ce jour que par 29 Etats membres. Permettez moi de souligner que les efforts de la Communauté internationale ne sauraient progresser tant que ce processus de ratification restera faible de la part des Etats membres.

Le Comité intergouvernemental pour la promotion du retour de biens culturels à leur pays d'origine ou de leur restitution en cas d'appropriation illégale

Conscients du délai pour faire progresser le processus de ratification de la Convention de 1970, la Conférence générale a créé ce Comité aux fins de faciliter le retour et la restitution des biens culturels.

Ce comité se compose de 22 Etats membres élus pour un mandat de 4 ans et qui se réunissent une fois tous les 2 ans. Le Comité intergouvernemental favorise la coopération et le dialogue dans le domaine du retour des biens culturels. Il propose ses bons offices dans les situations où le recours aux négociations bilatérales n'a pas abouti à des résultats satisfaisants pour les parties concernées, en vue de la résolution de différends survenus au sujet de biens culturels. Le Comité n'intervient que lorsqu'il y a eu des négociations bilatérales entre les pays concernés et que celles-ci ont échoué, et encore le Comité ne le fait qu'en qualité d'observateur ou de conseiller.

Il est à noter qu'à sa 2^{ème} session en 1981, le Comité a élaboré un formulaire type pour les demandes de retour ou de restitution, étant précisé que ce formulaire type doit être rempli par les deux parties concernées.

Le comité constitue aussi un forum de consultations pour l'UNESCO dans les actions qu'elle entreprend contre le trafic illicite de biens culturels. Il formule des projets et des activités qu'il recommande à l'UNESCO de mettre en œuvre. Parmi les recommandations, je tiens à vous informer de la recommandation n° 5 prenant en considération la demande du Pakistan et demandant aux Etats membres de l'UNESCO d'interdire les expositions et ventes d'objets d'art illégalement acquis d'autres Etats.

A ce jour, le Comité a aidé au retour d'un certain nombre d'objets dans les pays d'origine.

Evoquant les travaux du Comité, je voudrais vous transmettre les résultats des recommandations de la session extraordinaire qui vient de se clôturer à Séoul le 28 novembre dernier et qui sont principalement les suivants: (les participants pourront prendre connaissance de ces recommandations dans un document qui sera mis à leur disposition ultérieurement).

- Proposition d'une loi modèle sur la propriété de l'Etat afin que les Etats revendiquant aient les armes juridiques pour faire valoir leurs droits devant les tribunaux étrangers.
- Encouragement à l'assistance légale mutuelle: l'UNESCO, avec ses partenaires UNIDROIT, INTERPOL, ICOM etc. encourage déjà cela via le Comité Retour/restitution (dont la prochaine session ordinaire aura lieu du 11 au 13 mai 2009 au Siège). Des sessions d'information et des ateliers de formation en ce sens sont régulièrement organisés par l'UNESCO. (Derniers en date pour les pays andins en septembre 2008 à Quito, pour les juristes irakiens à Beyrouth du 2 au 7 novembre 2008, prochain atelier prévu en coopération avec les Carabinieri pour les pays africains en mai-juin 2009, ainsi qu'un autre en juillet 2009 pour les Etats d'Amérique centrale...).
- Encouragement à renforcer la sensibilisation de l'opinion publique mondiale: sur ce thème conformément à sa lettre circulaire 3854 du 20 mai 2008, le Directeur général de l'UNESCO a rappelé aux Etats, observateurs, acteurs du marché de l'art à leur devoir en matière de protection du patrimoine culturel en général et iraquien en particulier et a rappelé aussi les termes de la Résolution du Conseil de Sécurité des Nations Unies 1483 de mai 2003 qui impose un « import ban » et une interdiction de commerce ou de transfert des Biens Culturels illicitement trafiqués depuis l'Iraq.
- Enfin, le Comité travaille aussi sur le développement de modes alternatifs de résolutions des conflits en matière de retour de Biens Culturels: médiation, conciliation, prêts à long terme, échanges.

Résumé du rôle de l'UNESCO dans la prévention et la restitution des biens culturels: promotion et assistance

Ainsi, par les mécanismes juridiques établis par la Convention de 1970 complétée par la Convention de 1995, ainsi que par le Comité intergouvernemental de l'UNESCO pour la promotion du retour des biens culturels à leur pays d'origine ou de leur restitution en cas d'approbation illégale, l'UNESCO a développé des moyens aux services des Etats pour les aider à protéger leurs biens culturels contre le trafic illicite ainsi que pour les aider à récupérer leurs biens illicitement exportés ou volés. A l'occasion du 30^{ème} anniversaire, un code international de déontologie pour les négociants en biens culturels a été lancé. Enfin l'UNESCO a établi une fiche visant à aider les Etats membres à dresser un inventaire des biens culturels au sens de la Convention de 1970.

L'UNESCO prête aussi son assistance aux Etats membres pour protéger leur patrimoine culturel et les aide lors d'activités de conservation spécifiques, en menant une action normative. On estime en effet que 5 à 10% des œuvres pillées, seraient retrouvées ainsi, aussi l'assistance aux Etats membres est-elle une action essentielle. L'UNESCO invite à l'établissement de réseaux entre policiers, douaniers et conservateurs de musées. L'UNESCO met par ailleurs à la disposition de ces Etats, des consultants pour améliorer les législations nationales ainsi que pour aider à la constitution d'inventaires.

Les autres organisations intervenant dans la restitution des biens

Je ne saurais dresser une vision globale des moyens mis en œuvre au niveau international pour lutter contre le trafic illicite des biens culturels et à leur retour dans les pays d'origine, sans citer les autres organisations avec lesquelles l'UNESCO coopère. Dans son souci d'aider à la protection du patrimoine, l'UNESCO a développé une coopération avec *INTERPOL*, organisation intergouvernementale dont le but principal est de faciliter la coopération entre les forces de police de par le monde. A cette fin, chacun de ces 178 pays a établi un bureau d'*INTERPOL*.

INTERPOL a développé un programme spécifique sur le trafic illicite des biens culturels. Quand un vol est constaté, le bureau national adresse au siège d'*INTERPOL* les renseignements rassemblés dans un formulaire type dit «CRIGEN/ALT» conçu par *INTERPOL* qui l'introduit dans une base de données. Ces informations sont rediffusées dans les Etats membres pour être distribuées auprès des salles de ventes, de musées,

marchands d'art. C'est dans ce contexte qu'INTERPOL s'associe aux efforts de coopération internationale développés par l'UNESCO avec des ONG telles que l'ICOM.

Je suis confiante que le représentant d'INTERPOL organisation avec laquelle l'UNESCO a une coopération très étroite et très positive, ne manquera pas de mentionner le Groupe International d'Experts d'INTERPOL sur le Trafic illicite de Biens Culturels dont l'UNESCO fait partie.

En dernier lieu et en référence aux déclarations faites par les représentants de l'UNODC relatives à la Résolution adoptée en juillet 2008 par le Conseil Economique et Social des Nations Unies (ECOSOC), l'UNESCO se félicite que l'UNODC conformément à cette Résolution, se joindra aux travaux de l'UNESCO pour apporter sa coopération.

Le moment est venu de rendre justice aux pays ayant subi des pertes importantes de leur patrimoine culturel, unique et irremplaçable. Au sein de la communauté internationale, on se rend de plus en plus compte que les objets d'art qui représentent au mieux la culture de leur pays d'origine devraient, en cas de vol, de fouilles clandestines ou d'acquisition illicite, être restituées aux pays où ils ont été créés. Il est temps que l'on se rende compte que le manque de connaissance, l'ignorance est bien souvent à l'origine de ce trafic qui cause un préjudice à la sauvegarde de la culture des peuples. Tout en réfléchissant aujourd'hui avec les représentants de la Justice, des institutions de police, à l'enrayement d'un tel trafic, essayons ensemble de penser à une éducation et à une responsabilisation des auteurs de troubles afin de développer une réelle politique de prévention du trafic et ainsi de développer une réelle sauvegarde de l'identité culturelle et de la diversité des cultures des nations.

RECOMMENDATION OF THE INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE
RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN
CASE OF ILLICIT APPROPRIATION (ICPRCP)
Seoul, 26- 28 November 2008

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP), hereinafter mentioned as “the Committee”.

- *Expressing* its appreciation to the Korean authorities for organizing this Extraordinary Session of the Committee commemorating its 30th anniversary;
- *Welcoming* a recent increase in the number of returns of cultural property to its countries of origin, and *acknowledging* a rise in awareness of the general public, researchers and institutions, in the return of cultural property to its countries of origin or its restitution in case of illicit appropriation as well as the fight against illicit traffic;
- *Recognizing* that in its 30 years of existence, the Committee has made substantial achievements in the raising of awareness concerning the return of cultural property to its countries of origin or its restitution in case of illicit appropriation and concerning the fight against illicit traffic;
- *Mindful* of the need to further strengthen the role of the Committee as a facilitator for the return of cultural property to its countries of origin or its restitution in case of illicit appropriation, including through bilateral negotiations;
- *Taking note* of the discussions and the Conclusions of the Athens International Conference on the Return of Cultural Objects to their Countries of Origin (March 2008) and of the meeting of the non-governmental experts held in Seoul in November 2008 (reservations by Japan);
- *Reaffirms* that certain categories of cultural property fully reveal their authenticity and unique value only in the cultural context in which they were created,
- *Encourages* the States concerned to continue and intensify their efforts with a view to resolving disputes on the return of cultural property or restitution in case of illicit appropriation, by amicable means through bilateral negotiations complemented by other means,

such as mediation and conciliation, bearing in mind that in many cases this may involve non–state actors;

- *Encourages* international cooperation with a view to assisting developing countries in building their capacity to facilitate restitution of their cultural property;
- *Encourages* States through international cooperation to develop inventories of their cultural property wherever located and to make better use of existing databases of stolen works of art;
- *Suggests* collecting information on successful restitutions and setting up a database thereon;
- *Invites* States to consider becoming [become] parties to the international instruments relating to the return of cultural property to its countries of origin or return in case of illicit appropriation and the fight against illicit traffic;
- *Invites* States to consider a more active use of the Committee;
- *Considers* that adoption of rules of procedure on mediation and conciliation will be a significant step to strengthen the role of the Committee;
- *Urges* the development of innovative ways to raise awareness for the return of cultural property to its countries of origin or restitution in case of illicit appropriation, and the fight against illicit trafficking;
- *Suggests* that the International Code of Ethics for Dealers in Cultural Property be amended and *considers* that further efforts should be made to encourage the art market to respect it;
- *Encourages* contributions to the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation;
- *Invites* the Director-General to include an item in the agenda of the Committee’s 15th Ordinary Session concerning a strategy for the future work of the Committee, within the framework of its mandate, and to prepare a document to that end.

Extraits de la Résolution de l’ECOSOC (Juillet 2008)

1. *Emphasizing* the importance for States of protecting and preserving their cultural heritage in accordance with relevant international instruments such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the United Nations Educational,

Scientific and Cultural Organization on 14 November 1970, the Convention on Stolen or Illegally Exported Cultural Objects, adopted at Rome on 24 June 1995 by the International Institute for the Unification of Private Law, and the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954, and the two Protocols thereto of 14 May 1954 and 26 March 1999;

2. *Welcomes* national, regional and international initiatives for the protection of cultural property, in particular the work of the United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation;
3. *Reiterates its request* that the United Nations Office on Drugs and Crime, in close cooperation with the United Nations Educational, Scientific and Cultural Organization, convene an open ended intergovernmental expert group meeting, with interpretation in all the official languages of the United Nations, to submit to the Commission on Crime Prevention and Criminal Justice at its eighteenth session relevant recommendations on protection against trafficking in cultural property, including ways of making more effective the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, 1 and invites Member States and other donors to provide extrabudgetary contributions for those purposes in accordance with the rules and procedures of the United Nations;
4. *Encourages* Member States asserting State ownership of cultural property to consider means of issuing statements of such ownership with a view to facilitating the enforcement of property claims in other States;
5. *Urges* Member States and relevant institutions, as appropriate, to strengthen and fully implement mechanisms to strengthen international cooperation, including mutual legal assistance, in order to combat trafficking in cultural property, including trafficking committed through the use of the Internet, and to facilitate the recovery, return or restitution of cultural property;
6. *Urges* Member States to protect cultural property and prevent trafficking in such property by introducing appropriate legislation, including, in particular, procedures for the seizure, return or restitution of cultural property, promoting education, launching

awareness-raising campaigns, mapping and carrying out inventories of cultural property, providing adequate security measures, developing the capacities and human resources of monitoring institutions such as the police, customs services and the tourism sector, involving the media and disseminating information on the theft and pillaging of cultural property;

7. *Also urges* Member States to take effective measures to prevent the transfer of illicitly acquired or illegally obtained cultural property, especially through auctions, including through the Internet, and to effect its return or restitution to its rightful owners;
8. *Further urges* Member States to continue to strengthen international cooperation and mutual assistance for the prevention and prosecution of crime against cultural property that forms part of the cultural heritage of peoples, and to ratify and implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 2 and other relevant international instruments;
9. *Requests* the United Nations Office on Drugs and Crime to develop its relations with the cooperative network established among the United Nations Educational, Scientific and Cultural Organization, the International Council of Museums, the International Criminal Police Organization (INTERPOL), the International Institute for the Unification of Private Law and the World Customs Organization in the areas of trafficking in cultural property and its return or restitution.

THE ROLE OF INTERPOL IN THE FIGHT AGAINST THE ILLICIT TRAFFICKING IN CULTURAL PROPERTY

KARL-HEINZ KIND
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First of all, I would like to introduce myself. My name is Karl-Heinz Kind. I am a German police officer working at the Interpol General Secretariat where I am coordinating Interpol's activities related to cultural property crime.

On Interpol's behalf, I would like to thank the ISPAC (International Scientific and Professional Advisory Council of the United Nations) for inviting me to attend this international workshop.

To give you a better idea of what our Organisation is and does, in a few words I will present the structure of our Organisation and I will develop the role of the Interpol General Secretariat in the fight against the illicit traffic in Cultural Property.

Interpol is an intergovernmental organisation with 187 member countries. It is the second largest organisation after the U.N. in terms of membership.

The governing bodies of Interpol are the General Assembly and the Executive Committee. These are deliberative organs, with decision making and supervisory powers.

Approximately 150 police officers from about 75 countries representing all the regions of the world are working at the Interpol General Secretariat, which is located in Lyons, France.

The composition of the staff ensures a sound knowledge and wide experience of both regional situations and the problems of international crime.

The purpose of our Organisation is:

- To ensure and promote the widest possible mutual assistance between all criminal police authorities, within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights.

- To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.
- It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.

Contrary to common belief, Interpol is not made up of international brigades of investigators. Interpol Police Officers cannot carry out investigations in the member countries. Instead, international investigations are conducted by the countries' national police forces.

The General Secretariat has no power to force a country to take action, or not to take action, in a specific police investigation.

In each Interpol member country, the task of co-operation is assigned to the National Central Bureau, usually located in the country's capital city.

Since 1947, Interpol has invested a lot of efforts in the fight against the criminality related to Cultural Property.

Which tools are at our disposal to efficiently fight against the illicit traffic in cultural property?

A wide and fast circulation of information among Interpol's member countries

Telecommunications network

Our worldwide telecommunication network enables to circulate information among all the member countries within a few minutes. The ever-increasing number of messages, in particular of those containing images (photographs, fingerprints) presented a new challenge to Interpol. Interpol's response is a new telecommunications system based on the Internet technology, and which presents advantages in terms of speed and costs while maintaining the required high security standards. The system is called I-24/7 and meanwhile all member countries are connected.

To give you an idea, approximately 11 million messages transited the system in 2007, i. e. nearly 30, 000 messages on a daily basis. That is three times of the amount we had in 2003. I-24/7 does not only enable a quick exchange of information among the NCBs and the General

Secretariat, it also enables to connect more national law enforcement officers from other agencies and even to connect not only single users, but entire local or national networks. It also gives access to a number of central databases including the works of art database.

Poster of the most wanted Works of Art

Every six months we publish a poster showing the six most wanted works of art. It is the only paper publication remaining for the stolen works of art. On average, 2 out of six objects represented are recovered.

As an exception, the poster issued in June 2003 has been entirely dedicated to objects stolen in Iraq. Copies of the most recent poster published in June 2008, are available for you.

The “ASF – works of art” computerised database

In 1995, the General Secretariat developed a computerised database for stolen works of art, including descriptions and photographs.

This database has been made for Police Officers and is based on a visual description of works of art which is very easy to carry out.

End of October 2008, the database contained 32 573 individual items.

The majority of items have been reported by European countries (24, 350 or 74.7 %), followed by America (4, 222 or 12.9%) Middle East & North Africa (2, 585 or 7.9 %) Asia & South Pacific (1.254 or 3.9 %), and Africa (162 or 0.5 %).

Contrary to common belief, we do not keep information on all offences committed anywhere in the world. We only record the crimes considered to have *international* ramifications and we only open files for *international* criminals.

Direct access to the database

Since January 1999, this database is available to all member countries by means of a specific computer program.

In an effort to increase both the speed and the user friendliness of our tools, in November 2005, we launched the access to Interpol's stolen art database through the new telecommunications system, and in September 2006, we added the French and Spanish versions.

Since, the number of remote queries has tremendously increased reaching approximately 7, 000 queries this year.

The CD-Rom/DVD "Interpol - Stolen Works of Art"

With a view to enable the private sector to have access to information on stolen art, in co-operation with a private French company, the General Secretariat started in 1999 to produce and distribute a CD-ROM on stolen works of art.

On this CD-ROM you had the possibility to select your working language: English, French or Spanish. It contained not only information on stolen art, or art items found in suspicious circumstances, but also:

- the text of international Conventions of the UNESCO in 1970 and UNIDROIT in 1995,
- the list of the member countries and their telephone numbers,
- the OBJECT-ID developed by the Getty Information Institute (minimum description standard of a work of art) which was recognised by both UNESCO and ICOM,
- a list of objects at risk (red list of ICOM).

This CD-ROM was one of the registers mentioned in the UNIDROIT Convention of 1995 in its article 4 § 4.

In August 2006, we switched from the CD-ROM to the DVD technology for an increased storage capacity and, as a result, a higher quality of the photographs.

All the NCBs continue to receive one DVD free of charge whereas it is sold to other public and private institutions by annual subscription including updates every two months (with a special price for law enforcement).

We are currently examining the possibility of granting access to the works of art database through INTERPOL's secure web site.

Internet

In July 2000, the General Secretariat opened an INTERNET site for the works of art.

This site, publicly accessible, contains information on:

- Interpol meetings and conferences, recommendations adopted
- Specific alerts in the event of important thefts (e. g. Munch's "The Scream" from museum in Oslo, August 2004, and its recovery in 2006, the "Saliera" from Museum in Vienna, May 2003 and its recovery 3 years later)
- The most recent thefts of works of art. To ensure the continuity of information stolen works of art reported to the General Secretariat between two updates of the DVD will be published in this web site section.
- Items found by Police Officers who are trying to trace the owners,
- The DVD (technical details and conditions of subscription),
- Frequently asked questions

In 2003, we created a specific web site section for the cultural property stolen in Iraq holding all the information recorded in the General Secretariat's database (currently 2, 283 items).

In 2004, we added a specific web site section for cultural property stolen in the Kabul Museum, Afghanistan (including c. 670 items) where the entire information had been provided by the UNESCO. Later, data entry was amended with information from a publication, again provided by the UNESCO.

Success Stories

Various examples demonstrate the successful use of database information. They also illustrate the necessity to keep the information as long as possible, as well as the advantages of timely notification.

We have experience of cases where the stolen items were proposed for sale short time after the theft occurred. In other cases, it took decades before the objects were detected, and the database was the only remaining

means allowing to identify the stolen property and to enable its restitution and the arrest of the offenders.

Organisation of international conferences

Every 3 years, the General Secretariat organizes an international symposium on the illicit traffic and theft of works of art, antiques and cultural objects. This conference is held in Lyons. The last one took place in June 2008.

Since 1995, the General Secretariat has organized conferences in regions that are particularly affected by this type of criminality, in particular Europe and South America. In September 2007, in co-operation with the host country, we organized an international conference on cultural property stolen in Central and Eastern Europe in a former salt mine in Wielicka, Poland, a UNESCO cultural heritage site.

Since a couple of years, we are regularly organizing training courses in Latin America. Currently, such a training course is under preparation for Peruvian police, customs and museums officials scheduled to take place in the first half of 2009.

Co-operation problems

The key issue for Interpol has ever been and will remain the international police co-operation. My previous statements demonstrate, however, that the tools already available to ensure this co-operation are greatly under utilized.

This seems not only to be the result of a lack of willingness or of practical means to co-operate, but also a deficit in an inter-agency co-operation on a national level. That's why it is of utmost importance to establish regular working relationships between police, customs and the cultural authorities and to inform each other on important events.

Co-operation with other international organisations

INTERPOL signed Memoranda of Understanding with the WCO (World Customs Organization) in 1998, with the UNESCO in 1999 and with ICOM in April 2000.

Since a couple of years, the General Secretariat has actively participated in regional workshops organised by UNESCO and ICOM (International Council of Museums), where Police Officers, customs and museum curators have been invited.

We are glad to count on the strong support by the UNESCO and ICOM, which regularly send representatives to join Interpol's Experts Group on Cultural Property created in 2003. And we acknowledge the products put at the disposal of the international law enforcement community by the UNESCO, such as

- the cultural heritage laws database,
- the list of experts for Iraqi cultural heritage, and as a last result,
- the common letter with basic recommendations concerning the sales over the Internet, which was distributed to their respective membership by each of the Organizations (UNESCO, ICOM, INTERPOL).

Recently, the list of experts for Iraqi cultural heritage proved its usefulness. In the beginning of this year, the Peruvian National Institute for Culture informed us that a post mail parcel had been stopped at their borders. It contained ancient coins and 3 cuneiform tablets. Upon their request, we recommended a Spanish expert from the UNESCO list who stated that they were authentic and of Iraqi origin. The tablets were seized awaiting their restitution to Iraq.

Conclusion

In conclusion, I would like to reassert the intention of our Organisation to co-operate closely in the fight against the illicit trafficking in stolen cultural property.

In order to make this fight effective, it is necessary to:

- adopt appropriate laws for the protection of the cultural heritage;
- be party to the international conventions;
- establish and update the inventories of the collections;
- transmit any information concerning stolen works of art as rapidly as possible to the competent Police Services. A rapid and wide distribution of this information is an effective tool in the fight against this form of criminality;

- ensure the museum personnel participate in the police and customs training sessions;
- establish a good co-operation between the concerned ministries;
- adopt a specialized cultural property database.

ILLCIT TRAFFIC AND LOOTING OF CULTURAL PROPERTY DURING ARMED CONFLICT

CORI WEGENER
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When considering the looting and subsequent illicit trafficking of cultural property in the wake of an armed conflict there are few better case studies than the looting of the Iraq National Museum during the 2003 U.S. invasion of Iraq. From 10-12 April 2003 looters took more than 15,000 objects from the museum's storage and galleries and damaged hundreds of others. This paper will describe how looting and illicit traffic of cultural property can occur during an armed conflict using the example of the Iraq Museum and illustrate how this tragedy has resulted in renewed efforts by the international cultural heritage to support of the principles of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

The Looting of the Iraq National Museum

In the months leading up to the U.S. invasion of Iraq a number of U.S. scholars and organizations warned government officials of the risks of an armed conflict in the culturally rich nation of Iraq. The best known example is when Dr. McGuire Gibson, a leading authority on Mesopotamian archaeology, met with Department of Defense staffer Joseph Collins from the Pentagon's Office of Stability Operations in January 2003. Gibson warned of potential damage to important archaeological and cultural sites during bombing as well as the probability that the local population would loot Iraqi museums during any resulting instability. He provided a list of important cultural sites and their locations, including the Iraq National Museum. While Gibson and others thought their information had been sufficiently acknowledged by officials, warnings about potential looting were not communicated to U.S. forces⁷¹.

⁷¹ For a detailed account of the events leading up to the U.S. invasion see Lawrence Rothfield, "Preserving Iraq's Heritage from Looting: What Went Wrong (within

During this same period in early 2003, the staff of the Iraq National Museum paid close attention to the political situation and became certain of the need to prepare their collections against looting and war damage that might take place during the now almost certain U.S. invasion. A small handful of staff prepared for the possibility of aerial bombing by securing foam padding around sculptures and cases and sandbagging the floor in the Assyrian Gallery, which contained large scale friezes from the Palace at Nimrud. They also sealed multiples doors and windows using concrete blocks and removed most of the collections in the galleries to a secret storage location. This was a precaution not only against potential looting by U.S. forces, but also a response to lessons learned in 1991, when nine of Iraq's regional museums were looted of about 5,000 objects by the local populace⁷². Another, more unfortunate result of this lesson was that many regional museums transferred their portable objects to Baghdad in early 2003, where they became additional targets for looting and damage.

While the precautions taken by the staff no doubt saved the vast majority of the museum's collection, the looters were nonetheless able to carry off many objects that remained in the galleries because they were judged by the staff to be too heavy or fragile to move or were permanently installed. The looters also found and broke into some of the storage magazines, where they gained access to thousands of objects, many of which were as yet uncatalogued. As a result we may never know the exact number of objects taken by the looters; however, best estimates of the staff are that approximately 15,000 objects were taken.

While there were not enough U.S. military resources available to confront the looting problem in a timely manner, once the seriousness of the looting of the museum became apparent U.S. Central Command assigned the Joint Interagency Coordination Group (JIACG). The group was comprised of a combination of military and civilian law enforcement professionals and led by Marine Reserve Colonel Matthew Bogdanos, to the museum to execute an investigation. JIACG determined that at least some of the looters had inside knowledge of the facility layout, collections, and security precautions.⁷³ Most of the looters, however, were opportunists

the United States)" in *Antiquities Under Siege: Cultural Heritage Protection after the Iraq War*, ed. Lawrence Rothfield (New York: Alta Mira Press, 2008), pp. 5-25.

⁷² Martin Gottlieb with Barry Meier, "Aftereffects: The Plunder; of 2,000 Treasures Stolen in Gulf War of 1991, Only 12 Have Been Recovered", *New York Times*, May 1, 2003.

⁷³ For a detailed account of the looting investigation and its findings, see Matthew Bogdanos with William Patrick, *Thieves of Baghdad*, (New York: Bloomsbury,

who availed themselves of a chance at what many considered Saddam's personal property rather than their shared cultural heritage.

With the cooperation of museum officials the JIACG team established a "no questions asked" policy in the days after the looting, encouraging the return of collections objects in exchange for immunity. This approach was successful in recovering several important objects in the coming months, among them the famous Warka Vase, c. 3100 BC. One of the earliest known votive vessels, the vase was recovered in June 2003 after careful negotiations between the looters and members of the JIACG team. Good police work led to the recovery of several other major objects, including the Head of Warka, c. 3100 BC in September, a copper sculpture from Bassetki, c. 2250 and a bronze brazier from Nimrud, c. 820 BC, both recovered in November of 2003. These recoveries were the result of a cooperative law enforcement partnership between the U.S. Army Reserve's 812th Military Police Company, led by Captain Vance Kuhner, and local Iraqi Police, where Iraqis posed as potential buyers in daring sting operations.

To date, approximately half of the estimated 15,000 looted objects have recovered through the efforts of law enforcement and customs officials worldwide. A number of objects have been seized during customs and border inspections and a few during specialized law enforcement operations, such as the recovery of the 4,400 year old Sumerian sculpture of King Entemena of Lagash, which was smuggled through Syria and recovered in New York in July of 2006⁷⁴.

In addition to the looting from the Iraq National Museum, the U.S. invasion opened the door to increased looting from more than 10,000 archaeological sites throughout Iraq. While looting of archaeological sites is a continuing problem worldwide, Saddam had kept it in check in Iraq with the threat of the death penalty. In 2003, the Iraqi State Board of Antiquities and Heritage had fewer than 2,000 site guards in its employ and they were ill equipped and trained. The Italian Carabinieri provided a model site protection system in the area of Nasiriya in southern Iraq; however, it proved to too difficult to reproduce this system in other areas of Iraq.

2005).

⁷⁴ Barry Meier and James Glanz, "U.S. Helps Recover Statue and Gives It Back to Iraqis", *New York Times*, July 26, 2006.

Dealing with the Aftermath

The Coalition Provisional Authority brought together a number of experts to assist the Iraqi government. Unfortunately most of the cultural heritage experts were sent only after the looting of the Iraq National Museum. The British Ministry of Culture, Media and Sport sent curatorial personnel from the British Museum. Italy provided a series of advisors to the Iraqi Ministry of Culture, starting with senior advisors Ambassador Pietro Cordone and his successor, Ambassador Mario Bondioli-Ossio. Members of the Italian Carabinieri for the Protection of Cultural Heritage assisted the museum in digitizing photos of their lost collections and posting them to the INTERPOL website. The U.S. sent Dr. John Russell, an archaeologist from the Massachusetts College of Art and an expert in Assyrian culture. While all of these professionals were eventually instrumental in returning the museum to working order and the recovery of important objects in the long term, the fact remains that the museum and its staff waited months for assistance. There should have been an immediate offer of emergency assistance from the international cultural heritage professional community, which simply did not occur.

The International Response

While a number of humanitarian non-governmental organizations (NGOs) were deployed in Iraq by May 2003, NGOs dealing with damage to cultural property were surprisingly absent. After many difficulties in coordinating the trip, UNESCO finally managed to send an assessment team in May 2003, more than a month after the looting. They only were allowed to stay a few days and did not leave behind any professionals to provide further assistance. A number of cultural heritage professionals volunteered to come to Iraq to assist, but they were not permitted to enter the country as individuals by the Coalition Provisional Authority or by their own governments. One needs to be part of an established NGO capable of operating independently in a combat zone. Unfortunately, in the wake of one of the greatest cultural property disasters in recent memory an NGO capable of deploying to protect cultural property during armed conflict simply did not exist, in spite of the best efforts of those who remembered the damage during World War II.

The 1954 Hague Convention

The looting of the Iraq Museum highlighted dangers to cultural property during armed conflict, a problem that nations had sought to rectify nearly fifty years earlier with the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Drafted in the wake of World War II, the 1954 Hague Convention is the first and only international treaty focused solely on the protection of cultural property during armed conflict⁷⁵. The Convention requires States Parties to avoid damage to cultural property during an armed conflict unless faced with a military necessity. It requires nations to plan for the protection of their domestic cultural heritage during peacetime, to include considering marking cultural property with the distinctive symbol of the blue shield. It also requires nations to provide trained personnel to secure respect for cultural property within the military and to co-operate with civilian authorities responsible for safeguarding cultural property.

The First Protocol to the 1954 Hague Convention, drafted at the same time as the main Convention, requires States Parties to prevent the export of cultural objects from occupied territory. They must also take into custody objects imported from an occupied territory, return objects illegally removed from an occupied territory at end of war, and return property removed for safekeeping at end of war. The Second Protocol, which came into force only in 2004, narrows the situations in which a States Party can claim an exclusion because of the doctrine of military necessity and outlines the granting of enhanced protection for certain important cultural sites. The Second Protocol also forbids archaeological excavations in occupied territory and requires States Parties to establish domestic criminal offenses for violations to the 1954 Hague Convention.

In 2003, the 1954 Hague Convention included more than 100 States Parties, including Iraq. Although it was the stated policy of the U.S. Department of Defense to follow those provisions of the 1954 Hague Convention that were considered customary international law, the United States was not a States Party. Other than planning to avoid damage to cultural property by U.S. forces during aerial bombing, there was little consideration for the protection of cultural property. Finally, when damage did occur, the U.S. military and its Coalition partners had few cultural heritage professionals within their ranks to assist, and there were no NGOs

⁷⁵ For the text of the 1954 Hague Convention and its Protocols see: http://portal.unesco.org/culture/en/ev.php-URL_ID=35261&URL_DO=DO_TOPIC&URL_SECTION=201.html

in the theater of operations to fill this role. The international response for cultural heritage at risk from armed conflict was bleak indeed.

It became obvious to those in the international cultural heritage community that there would need to be decisive action for the 1954 Hague Convention to be taken seriously in future conflicts. This would include persuading the United States and the United Kingdom, two of the most militarily power nations, to ratify the 1954 Hague Convention. In addition, the cultural heritage community would need to take a more proactive role to increase awareness about the risks to cultural property during armed conflict. Based on the experience of Iraq, the best way to gain visibility and credibility with the military was through an NGO such as the Blue Shield.

The Blue Shield

The International Committee of the Blue Shield (ICBS) was established in 1996 and named for the Blue Shield symbol used to mark protected cultural property as mentioned in the 1954 Hague Convention. The ICBS board consists of the executive directors of five international cultural heritage organizations: the International Council of Museums, the International Council on Archives, the International Federation of Libraries and Archives, the International Council on Monuments and Sites, and the Coordinating Council on Audiovisual Archives Associations. Their stated mission is to work for the protection of the world's cultural heritage by coordinating preparations to meet and respond to emergency situations⁷⁶. The Second Protocol to the 1954 Hague Convention mentions the ICBS as an advisor to UNESCO and the International Criminal Court. In addition, a number of nations have established Blue Shield national committees to promote the 1954 Hague Convention, coordinate with government and military, and raise domestic awareness about cultural property.

Unfortunately, neither the International Committee of the Blue Shield nor the national committees were financially or logistically capable of providing an emergency response to their colleagues in Iraq in 2003. After all, the network of national committees was relatively new and did not include a U.S. Blue Shield committee, which might have been better able to coordinate with U.S. forces in Iraq. Many in the Blue Shield community resolved to do better in the future and held meetings to discuss possible solutions. The first international Blue Shield meeting was held in Torino, Italy in 2004, and in addition to the member bodies of the ICBS,

⁷⁶ See <http://www.ifla.org/VI/4/admin/protect.htm>

included the Blue Shield national committees of Belgium, Czech Republic, France, Italy, the former Yugoslav Republic of Macedonia, Madagascar, Norway, Poland, United Kingdom and Ireland, and Venezuela. The 2004 Torino Declaration resolved to encourage nations to ratify the 1954 Hague Convention and its Protocols and to act in accordance with them. It also encouraged the establishment of additional Blue Shield national committees in accordance with the requirements of the Strasbourg Charter of 14 April 2000.

Meanwhile, the events in Iraq had shocked the U.S. cultural heritage professional community into action, and in 2006 they united to establish the U.S. Committee of the Blue Shield (USCBS) as a non-profit organization. Founding members included the American Institute for Conservation, the American Library Association, the Archaeological Institute of America, the Association of Moving Image Archivists, the Society of American Archivists, the U.S. National Committee of the International Council on Monuments and Sites, and the U.S. National Committee of the International Council of Museums. The International Committee of the Blue Shield officially recognized USCBS on 4 October 2007⁷⁷. The Blue Shield and its partner organizations immediately began a concerted effort to raise awareness of the importance of ratifying the 1954 Hague Convention. On 25 September 2008, the U.S. Senate voted to ratify the 1954 Hague Convention. USCBS and its partners also provide cultural property protection training for U.S. military units deploying overseas, and work to raise awareness about the 1954 Hague Convention and its symbol, the blue shield, here in the U.S.

Other Blue Shield national committees are working toward the same goals. Much like the U.S. Committee of the Blue Shield, the UK/Ireland Blue Shield has been working toward the UK's ratification of the 1954 Hague Convention and both Protocols, which has been in process since 2004. The United Kingdom has also encouraged greater attention to cultural property issues within their military and has supported a number of cultural heritage rehabilitation projects in their area of operations in southern Iraq. Several other Blue Shield national committees have recently been recognized by ICBS, including Australia and Austria.

The next international meeting of the Blue Shield community occurred in The Hague in 2006. The result of that meeting, which again included the ICBS and its constituent organizations, representatives from the Blue Shield national committees, and a number of other cultural heritage organizations, resulted in the 2006 Hague Blue Shield Accord.

⁷⁷ For information about the U.S. Committee of the Blue Shield see www.uscbs.org

The Accord recognized that Blue Shield national committees must set their own national priorities within the Blue Shield mission. As national committees, they are also the organizations most capable of networking with their own governments and other national committees to provide an emergency response for cultural property at risk during armed conflict. In order to coordinate these efforts, the national committees and the ICBS agreed to establish the Association of National Committees of the Blue Shield, to work side by side with the ICBS⁷⁸.

After two years of planning and coordination, the Association of National Committees of the Blue Shield was officially founded on 7 December 2008 during the third international meeting of the Blue Shield in The Hague. The founding session was concluded by a vote of eligible national committees from eleven countries, including Australia, Austria, Belgium, Chile, Czech Republic, France, Macedonia, Netherlands, Norway, Poland and the United States. The group elected an international board, including Karl von Habsburg, Blue Shield Austria as Chair; Marjan Otter, Blue Shield Netherlands as Secretary; Axel Mykleby, Blue Shield Norway as Treasurer; and board members Marie-Thérèse Varlamoff, Blue Shield France and Corine Wegener, Blue Shield United States. Deputies include Sue Cole, Blue Shield UK/Ireland; Hans Mulder, Blue Shield Netherlands; Krste Bogoeski, Blue Shield Macedonia; Christophe Jacobs, Blue Shield France; and Lidia Klupsz, Blue Shield Poland.

In honor of its role as the “city of international peace and justice” and as the location for the historic signing of the 1954 Hague Convention, the City of The Hague will be the headquarters location for the new ANCBS organization. The Hague is generously supporting the new organization through its initial phase with office space and an annual contribution.

The new ANCBS board identified the following priorities: coordinating and strengthening international efforts to protect cultural property at risk, providing and promoting cultural heritage protection training programs and awareness raising with international and governmental decision makers on the importance of the 1954 Hague Convention and its Protocols and the international symbol of the Blue Shield. During the conference they discussed their plans and activities to strengthen the network between Blue Shield and other cultural emergency assistance organizations, institutions and authorities responsible for cultural heritage.

⁷⁸ For the 2006 Hague Blue Shield Accord see: <http://www.ifla.org/VI/4/admin/icbs-accord28-09-2006.htm>

Conclusion

The looting of the Iraq National Museum during the U.S. invasion of 2003 illustrates how fragile and susceptible cultural property is to looting and damage during an armed conflict. The tragedy was an international wakeup call to cultural heritage professionals worldwide. They came to realize that in order to have their voices heard during the pandemonium of armed conflict, they must band together under the banner of their respective Blue Shield national committees to remind governments of their responsibility to our shared cultural heritage. In turn, governments like the United Kingdom and the United States realized they could no longer ignore the 1954 Hague Convention and have taken steps to ratify the treaty and comply with its requirements, including training of military personnel. The ICBS and ANCBS plan to work together to ensure that the next time cultural property is placed at risk by armed conflict, the parties involved will understand that there are international actors who will observe and report violations of the 1954 Hague Convention. Finally, our colleagues in countries threatened by war will have hope that if all else fails and their collections are looted and/or damaged, international help will arrive in a timely manner.

INTERNATIONAL OBLIGATIONS AND DOMESTIC CRIMINAL LAW IN PROTECTING ART AND ANTIQUITIES

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1. International obligation for restitution of cultural, historical objects to original countries by destination countries

Although credible international documents such as UNESCO conventions of 1954 and 1972 have defined cultural heritage of countries as part of common human heritage which belong to all humanity and this international principle has been upheld by all member states of UNESCO, unfortunately, domestic laws of certain member states easily ignore that principle.

According to some of those laws, seizing cultural heritage of other original countries which exist within the territory of destination countries has been allowed. At present, more than 30,000 pieces of clay tablets related to the Achaemenid civilization which belong to the Iranian nation and have been loaned to the Oriental Institute of the University of Chicago, have been seized in favor of a number of American citizens and Iran has had to file a lawsuit with the American courts in order to defend its rights.

Another group of laws ignore cultural status of antiques by comparing them to other kinds of property and maintain that keeping them in the country of destination for a certain period of time will be enough to legalize their ownership even though they have been acquired through illegal means and smuggling. In February 2007, a London court relied on one of those laws and ruled in favor of the possessor of a bas-relief which had been stolen from Persepolis in Iran many years ago, sold through sales at an international auction institute and then kept by the buyer in France for a matter of 30 years. Persepolis has been registered by UNESCO and is among common human heritage.

Governments should attune their domestic laws to their international obligations.

2. Ban on selling antiques and works of art from countries of origin in destination countries

While some member states of the 1970 and 1995 conventions are expected to return objects of historical and cultural value to their countries of origin, they allow sales institutes to sell cultural and historical objects that have been stolen and smuggled from other countries through public sales. Member states should heed their international obligations and put a strict ban on sales of cultural and historical objects stolen from other countries by sales institutes on their soil. They should also pass laws to punish the violators.

3. Facilitating prosecution of smugglers of cultural heritage belonging to countries of origin in destination countries

Conditions should be provided to facilitate judicial prosecution of smugglers of cultural and historical property from countries of origin in destination countries and the way should be paved for extradition of offenders to countries of origin. Also, countries which host main sales markets for other countries' property should establish special courts in order to look into cases involving restitution of cultural heritage.

4. Cultural and historical objects should not fall victim to cultural greed of other people

Although the most important reason for the boost in antiques markets is demand from wealthy people interested in cultural and historical objects of other civilized nations, cultural heritage belongs to humanity and should be put on display and introduced at the original location where they have been found. In other words, cultural property should not fall victim to cultural greed of those people who fuel the antiques markets by increasing the demand for such goods and who then keep them stored away in their countries' galleries. They don't even put them on public display, nor do they indicate their true origins.

5. Culture building and global awareness

Cultural awakening needs national and international determination. In order to eliminate the social grounds for smuggling cultural and historical objects, governments should raise public awareness using such effective tools as the mass media as well as official and unofficial education. Potential criminals should be made aware of the importance and status of such objects and smuggling them should be publicly denounced and rejected by all people.

6. Eliminating discrimination against introduction of historical objects

In most countries, state-run and private cultural institutes, museums, and galleries have adopted a discriminatory approach to the introduction of cultural and historical objects coming from other countries and only use “an oriental civilization” or other general phrases. This is not only disregard for the rights of visitors to get all the required information on a historical or cultural object, but is in violation of property rights of all nations whose ancestors have created those objects many centuries or thousands of years ago and are, in fact, the true owners of those objects.

These governments should make it obligatory for the said institutes to introduce such historical and cultural objects in full detail.

7. To fight forging and smuggling forged cultural and historical objects

Forging and selling forged cultural and historical objects will before anything else undermine cultural values in countries from which such objects originate. Governments should wage an all-out war against this ominous phenomenon.

Part IV

**THE INVOLVEMENT OF THE
PRIVATE SECTOR**

THEFT AND SPLENDOUR: STEALING HERITAGE AND THE RESPONSE FROM HERITAGE ORGANISATIONS

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Human creations, such as art, craft and antiquities (materials developed in the past), have attracted curiosity and attention, culminating in a great demand over the years which in turn created a complex market system with high price tags. The notions of 'priceless', 'rare' and 'un-renewable' heritage have created competitive demand for acquisition at any cost.

Today, the world suffers from an acute demand for acquisition of rare and unique heritage; this has ensured that great works of art and antiquities in various galleries and museum collections around the world are targets for unscrupulous traffickers. Despite the numerous conventions so far passed, mostly by international bodies such as UNESCO, and the various rules and regulations put in place such as the International Council of Museums (ICOM)'s *Code of Ethics*, the theft and illegal trade in humanity's material culture continues.

Curiosity for ancient and exotic objects, leading to treasure hunting and even plundering of archaeological sites, is a common (but not normal) human activity that goes back centuries, if not millennia. The value placed on old and rare material culture is a phenomenon that transcends nearly all societies and periods of time: the pyramids of Egypt, the tombs of Aksum and many sites in the Americas and Asia show scars of robbery, some not long after the placement of the goods. Today, the illegal digging of archaeological sites continues unabated in Africa, from Somalia to Nigeria to Mali. The terracotta, especially Nok, sculptures of West Africa have been the greatest victims.

From Cambodia in the East, Greece in northern Europe, Peru and Bolivia in South America, to Morocco and Nigeria in Africa, there are cries of help as cultural heritage faces an onslaught from looters. Every year, hundreds of sites are ravaged by looting, most often in areas of poverty or conflict. It was recently reported that the archaeological site of Nok in Nigeria has been reduced to a shadow of its past, as looters have invaded the fields, tearing through the trenches with artefacts and causing extensive damage. It was further reported that even some of the custodians of the site

admitted taking part in the looting, in order to feed their families (*AFRICOM News*, issue no. 6, 2007).

In the same issue of *AFRICOM News*, the Director General of the National Commission for Museums and Monuments of Nigeria, Dr. Joseph Eboime, was quoted to have said that "...the government had adopted a community based approach to preserve artefacts through a bottom-up approach that involves working hand in hand with communities on how to preserve their values and the importance of keeping their historical identities". This is said to be a three-pronged approach that would include promoting the customary laws of the people, and ensuring administrative contacts.

It is clear that the solution to curb such thefts cannot be through punishment alone, but must involve the local communities in the management of the sites; in addition, these heritage sites must become engines of economic development in the areas in which they are found. Failing this, and as long as there is poverty and hunger within the surrounding communities, the vice of looting will continue. The developed world has however not been spared, as more sophisticated art robbers continue to target museums, monasteries and galleries.

The resultant tragedy, particularly with the destruction of archaeological sites through looting, is what Collin Renfrew refers to as the "irrevocable loss of context of the artefacts removed". This in turn leads to the loss of information and any opportunity to learn something about our (human) past, a point clearly stated in the *ICOM Code of Ethics*.

Various international bodies have made this problem a public issue, thus moving the arguments into a wider domain and, in the process, creating awareness on the magnitude of the problem; this approach has at times resulted in positive developments. These bodies include ICOM (International Council of Museums), whose approach has been through the publication of stolen items in its Red List and shaming those in possession of the items and restricting their sale; AFRICOM (International Council of African Museums); ISCOTIA (International Standing Conference on the Traffic in Illicit Antiquities); and SAFE (Saving Antiquities for Everyone), among others.

The work of Interpol in this area should not be underestimated. Through their international networks, they have succeeded in alerting the heritage community to cases of theft and have at times succeeded in tracing lost objects and prosecuting the perpetrators. Nonetheless, the destruction continues unabated; movies such as *Indiana Jones*, combined with poverty in the developing world, the lack of understanding of the importance of the heritage, government inaction in the affected countries, constant conflicts,

lack of legal framework for the protection of the heritage, the lack of support from the receiving countries, as well as the collusion between dealers and their agents, do not help the situation.

Today the destruction of archaeological sites, the acquisition and sale of looted material culture, thefts in museums and sites, and at monuments such as churches and monasteries, are not only in the increase, but mind-boggling in the way they are executed. The illegal trafficking in artefacts and antiquities is said to be third only to drugs and weapons, with a turnover of over 4.5 billion US dollars a year, and run by sophisticated global networks.

It can be said that collecting is human nature and that, intrinsically it is not bad, as it goes beyond fulfilling human curiosity and can even contribute to research when done responsibly. Great museums and galleries all over the world are at times made of illegally acquired collections from various parts of the world. The greed for quick money, the need to mystify collections, and the competitive nature of humans has exposed the very creations of humanity to abuse through theft.

Museum Code of Ethics

ICOM, the umbrella body for museums worldwide, developed an 'Ethics of Acquisition' code as early as 1970. A full code of 'Professional Ethics' was developed in 1986, reviewed in 2001 and subsequent years, with the last review having been in 2006. These were developed in the realisation that museums, as public institutions in the service of society, needed to be responsive to the expectations of peoples from all walks of life. The ethos of these documents was and still is defined by a museums' character as being in the 'service to community, the community, the public and its various constituencies and the professionalism of museum practitioners'.

The complete *Code of Ethics* provides a means of professional self-regulation and sets a minimum standard of conduct and performance for museum professionals; it further provides a statement of reasonable public expectation from museum professionals. The *Code of Ethics* provides 'a global minimum standard on which national and specialist groups can build to meet their particular requirements' (Geoffrey Lewis 2004). It indeed reflects principles that are generally accepted by the international museum community (ibid).

The issue of illicit traffic of materials, whether cultural or natural, especially museum specimens, is comprehensively dealt with in ICOM's *Code of Ethics*. It deals with all areas of museum practice, reiterating the fact that 'museums maintain collections and hold them in trust for the benefit of society and its development'.

Regarding the security of collections, the *Code of Ethics* calls upon governing bodies to ensure appropriate security to protect collections against theft or damage in display, exhibitions, working or storage areas and while in transit. Thus theft is recognised as a major threat. Further, the *Code* calls for collection policies that address acquisition, care and use of collections. This has however not stopped those individuals bent on heritage theft, and in Africa – where inadequate heritage legislation and lack of implementation where it does exist – the continent continues to fall victim, with some bizarre cases in the recent past; a few examples suffice.

In June 2007, a person described as "a white man with a bag" went to the National Gallery of Zimbabwe and insisted to enter with his bag, which is against the rules. He was allowed in, unaccompanied, and he proceeded to the gallery. Just afterwards, a staff member decided to go and check, but by then the white man was on his way out of the room.

The staff member found a number of items missing from the case in the room where the white man was and alerted the gallery security guard, who started chasing the culprit. The security guard, who did not even have a uniform to differentiate him from the general public, was then mistaken by the general public as a thief who wanted to rob the white man, and was descended upon and beaten by the public. In the confusion, the thief escaped with the looted items, which were later traced in Europe and still await their return.

Another example lies in the Sahara, with its striking sand dunes, rock outcrops and rock shelters, making it an extremely rich cultural landscape. It has within it some of the greatest rock art in the world. The 'Fighting Cats' in the Libyan desert and the Dabous giraffe rock engravings in Niger – whose images have graced *Time Magazine*, and which made the World Monument Fund's World Monument Watch List of 100 most threatened sites – are but a few of the many outstanding examples of rock art in the Sahara.

There are thousands of rock art sites in the Sahara, dating to thousands of years ago, in Chad, Niger, Algeria, Libya, Egypt, Morocco and Mauritania. Rock art is indeed common in the whole of Africa, with Southern Africa and the Sahara probably having the largest concentration. Today rock art, especially in the Sahara, is not exempt from destruction and looting.

The Sahara – with its natural beauty, its mystique, and its rippling and seemingly endless sands – has always attracted adventurers. It is now attracting the rich and adventurous individuals, and some of these new “tourists” have introduced a culture of destruction and looting. Rock art is chipped, broken and taken away as souvenirs.

Dealers and collectors of antiquities have also discovered the Sahara, and there are people who now visit with the sole intention to loot. The nature of the vast Sahara desert does not allow easy policing of the heritage, but if no immediate action is taken, this humanity’s heritage will go the same way that much African heritage has: through the path of destruction and loss. A few concerned bodies, such as TARA (Trust for Rock Art in Africa) have championed the Sahara case, and in some instances managed to even raise financial resources towards the protection of a few rock art sites. There is need to address this problem urgently, by more technical and financial partners, as well as governments.

On the question of validity, the Code is clear: “...no object or specimen should be acquired by purchase, gift, loan, bequest, or exchange unless the acquiring museum is satisfied that a valid title is held. Evidence of lawful ownership in a country is not necessarily valid title”. The rider at the end however recognises that there are people who claim ownership and may show “valid documents” supportive of this within the national boundaries, and yet the original acquisition may be suspect.

To avoid falling victim to stolen heritage, ICOM’s *Code of Ethics* stresses on the need for museums to demonstrate provenance and due diligence. Thus before any acquisition can be made, it has to be demonstrated that objects have not been illegally obtained or exported from the country of origin or any intermediary country. To prevent illicit traffic and exchange of such materials, a full history of the item from discovery or production must be established. This is unfortunately not always the case, as even some established and respected museums have been known to possess collections without provenance. A number of museum officials have found themselves in the dock, accused of knowingly purchasing stolen antiquities.

The Code further addresses the issue of objects and specimens from unauthorised or unscientific fieldwork, by stating that “... museums should not acquire objects where there is reasonable cause to believe their recovery involved the unauthorised, unscientific, or intentional destruction or damage of monuments, archaeological or geological sites or species and natural habitats.” Similarly, the Code states that “... acquisition should not occur if there has been a failure to disclose the finds to the owner or occupier of the land or to the proper legal or government authorities”.

Africa, Asia and South America have particularly suffered a lot from loss of collections emanating from unauthorised and or unscientific fieldwork and looting of their sites and monuments. In Africa, apart from the colonial plundering, the continent has continued to attract illicit traffickers who take advantage of poverty in the local communities and the lack of adequate legal frameworks, to set up illegal digging and buying of archaeological, geological as well as other important cultural materials.

No better example illustrates this than the ruthless exploitation of the Malian terracotta and the Nigerian Nok material, the plunder of the Democratic Republic of Congo's museum collections after the fall of Mobutu Sese Seko, the looted holy manuscripts and crosses from Ethiopian churches, and the thousands of objects, artefacts and artworks that have disappeared from South African museums and galleries in the last four years, as recently reported in that country's Parliament (*AFRICOM News*, Issue No. 6, 2007:14).

Unethical fieldwork goes against ICOM's *Code of Ethics*, which states that "...fieldwork should only be undertaken with respect and consideration for the views of local communities, their environmental resources and cultural practices as well as efforts to enhance the cultural and natural heritage". The above, cited cases aside, there are numerous other cases where looters have plundered from sacred spaces, including graveyards; the *Vigango* (burial posts) from *Kaya* (sacred Mijikenda forested settlements) along the Kenyan coast are a sad example of this.

The *Vigango* are grave posts, carved of hard wood and at times very elaborate in their carving, depending on the importance of the departed within the society. These grave posts became extremely popular with collectors from the West, notably in the USA and Germany in the 1970s and early 1980s. Hundreds if not thousands of *Vigango* found their way to the West: some were fake, manufactured for the new market and then buried under anthills to mimic ageing. Today some museums in the West, including prestigious university museums, hold collections of these Mijikenda ancestral representations, some even still on display – irrespective of the fact that most of these items were stolen and have no provenance.

According to the *Code of Ethics*, "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". It is clearly very specific in all these potentially 'grey' areas, but some museums have continued to close their eyes and, as a result, assist in abetting the theft of cultural material.

The *Code of Ethics* is very clear that members of the museum fraternity should not in any way – directly or indirectly – support the illicit traffic or market in natural or cultural property. Apart from the fact that the *Code of Ethics* embodies all the relevant UNESCO conventions, the exception to the obligation of confidentiality only applies to serious cases such as theft of heritage: “Confidentiality is subject to a legal obligation to assist the police or other proper authorities in investigating possible stolen, illicitly acquired or illegally transferred property”.

Theft of artwork and other heritage of humanity is real and it is as much with us today as it was in the days of the earliest Egyptian tomb raiders. Tackling this vice requires the effort of many, as these are common legacies that require a shared responsibility. Cooperation among concerned parties, awareness among the youth, communities, politicians – and even dealers – is the key to tackle the problem of illicit traffic. This is of course in addition to punitive measures that must, without doubt, be taken against anyone engaging in this reprehensible trade.

AUCTION HOUSES AND MEANS OF PREVENTING AND MONITORING CRIMINAL ACTIVITIES

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I. The National Auction House Association and Rules of Conduct

The need to unite auction houses together under the aegis of an association that would represent them and at the same time play a supervisory role on the work of the individual associations has emerged in Italy only fairly recently. Indeed, the National Auction House Association (A.N.C.A) was established in 1995.

The reason for the long delay in achieving this project goes hand in hand with the previously low interest in and understanding of auction sales in Italy as a common tool for the buying and selling of art objects. It was only as recently as the late 1950s that auction sales in Italy, adopting the model of the international markets, have risen to prominence, with the resulting and progressive growth in the number of auction houses operating in the territory.

The reason why this was true in one of the countries that holds the greatest number of works of art and which has seen the birth and spread of such professions as antiques traders and experts is an issue that we will leave to the sociologists and market economics to grapple with.

As there are relatively few auction houses operating in Italy (to date there are approximately thirty, 17 of which are associated with A.N.C.A.) – despite the fact that, paradoxically, the volume of sales they deal with is comparable to the leading European nations – there is little if any legislation regulating the segment.

Unlike countries such as France, where auctions are strictly regulated and supervised by federal organizations, in Italy, auctions must only apply the generic provisions of the Italian Civil Code and Penal Code and local public safety ordinances.

The *commissaire priseur*, a public official who was responsible for calling all public auctions in France, was responsible for running auction sales and gave auctions an institutional charge. While it is true that this person played a somewhat obstructive role to the free entry of foreign businesses into the country, thus creating a highly controlled market, at the same time, this exclusivity has made auction sales the quintessential sales form and auction houses became the only points of reference on the art market.

Going back to Italy, this lack of attention to specific legislation has given auction houses the burden of self-regulation and has used certifications of integrity and transparency to ensure the fairness and legality of their actions.

Our Association has expressed the desire for self-regulation by drawing up a Regulation (that is attached to this report) which includes rules of conduct that individual members must follow in their relationships with each other and with clients, principals and institutions.

While the rules set down might seem generic and perhaps more reminiscent of simple declarations of intent than actual rules of conduct, in actual fact, the contents are not only well identified (professionals working in the art market will realize this) but the rules imply a binding commitment to those who have shared and subscribed to its contents.

For example, Article 6 of the A.N.C.A. regulation cites “Members undertake to cooperate with public institutions in order to preserve the Italian cultural heritage and to protect it from theft and counterfeiting.”

The responsibility undertaken with this commitment involves all the most relevant aspects of the work done by the auction house and should not be confused with a generic and good faith desire to cooperate.

There are few ethical and professional codes of conduct that set forth stricter rules of conduct than the contents of this article of the A.N.C.A. regulation.

If you look at the regulations of other such important and prestigious international and Italian associations as CINOA (*Confédération Internationale des Négociants en Oeuvres d’Art*) or even UNESCO’s *Code International de déontologie pour les négociants en biens culturels*, the bases of these regulations are the same and can be encapsulated in undertaking certain rules of conduct. In the case of CINOA and UNESCO, attention is turned chiefly to international trade, whereas the focus for our Association is chiefly on the domestic market.

The general wording of Article 6 of the A.N.C.A. regulation was specifically intended to assign more responsibility to members than they

would otherwise have with a regulation that more strictly defines the area of commitment, and therefore to all intents and purposes limits it.

But the auction house does not only undertake a commitment with public institutions, it is also with vendors and buyers.

Art. 1. “Members undertake to guarantee the integrity, professionalism and transparency to owners who entrust the house with their works of art and to interested buyers who purchase them”.

Auction houses generally act in their own name on behalf of others (vendors).

The names of the purchaser and vendor are not disclosed to each other. The auction house always remains the reference contact for both parties. This places on the auction house a dual responsibility – first, to ensure the authenticity and legitimate provenance of the work of art to the buyer, and to protect the vendor by striving to achieve the best sale.

We will see later how auction houses protect buyers and themselves from black market activities and how they cooperate in preventing crimes while buying and selling works of art.

As such, we believe that though it may seem simple and will certainly be subject to improvements in the future, the Regulation could well be considered a benchmark for those who deal with member auction houses, whether these are buyers, vendors or public institutions, and the acceptance of and compliance with its contents should be viewed positively as a further guarantee of the professionalism of the auction house. Furthermore, it should be mentioned that Italy also has a Civil Code that sets out contractual or non-contractual responsibilities, and a Penal Code for dealing with every form of illegal conduct. As cited in Article 27 of our Constitution, “criminal responsibility is personal”.

II. The role of auction houses in preventing crime in the art trade

The contents of Article 6 of the Regulation set forth that cooperation between the auction houses and public institutions take place chiefly on three fronts:

- preservation of the Italian cultural heritage;
- protection from works of black market provenance;
- protection from counterfeit works.

Preservation of the Italian cultural heritage

The law on protection of the artistic heritage in our legal system dates back to 1939.

Despite the many amendments to it and despite the establishment of the Code of Cultural Heritage, in essence, the regulatory system has undergone few if any substantial changes.

As we well know, Italy is the source of some of the most important works of art in the world and as such, has been plagued by “commercial incursions”. The real risk of a continuous drain of works of art out of our country has given rise to an extremely strict law protecting the artistic heritage, emanated on the eve of World War II.

Still today, as in 1939, the criteria of free access to export is based on chronological factors. Any works of art that are 50 years old or older must have an express declaration of exportability (today, this is called a certificate of free circulation) issued by the Supervisory Office.

It is easy to see the difficulty that the heritage protection authorities face in controlling clandestine export of works of art (remembering that buying and selling can take place between private parties) in a contemporary European Union without borders.

The inflexibility of the law is not enough to prevent this from happening. It is a little like installing a steel-reinforced front door while leaving the French windows to the garden wide open.

This is why auction houses play an essential role in preventing black market exports.

Every auction house publishes on average a dozen catalogues a year, in which each work of art is photographed and described in detail. Every catalogue is submitted to the local Supervisory office and the Central Offices for Heritage Protection.

All the works of art published are automatically recorded as present on the national territory. What better deterrent to black market exports? It is obvious that anybody who buys a work of art that has been published in the auction catalogue cannot elude the export offices.

Without the work of the auction houses, a large number of works of art that would be coveted on international markets might not be recorded and the prevention work of the authorities responsible for protection would be that much more difficult.

The authorities responsible are not always aware that auction houses play a very important role in prevention by publishing their catalogues, casting light on valuable objects that might otherwise remain on the black market.

It is important to remember that the very strict regulations on protection of artistic heritage and export of works of art, especially the

notification obligation that is often exercised in an overly repressive way, and the anachronistic limit of fifty years to free export, can hinder an effective preventative action to actual protection and safeguarding of our heritage and, likewise, can have the opposite effect of encouraging black market export.

It might be useful to open up a discussion about the existing legislative system. This discussion must also consider that the historic, artistic and commercial circumstances in place at the time the law was conceived were very different from today's world. With that in mind, a body of laws centred on the comprehensive protection of works of art and not on their actual enjoyment might have been justified. In a global economy, an effective protective action must take into account that the art market is also progressively subject to the rules that this economy imposes.

Protection from works of illegal provenance

Auction houses play a very important role in preventing the continuation of counterfeiting, fraud and the black market trade of art and artifacts.

Cooperation with the Department for Heritage Protection of Italian Carabinieri is not necessary only *after* a work of art is discovered to have originated from a black market source, is suspended from sale and held in the custody of the police, but more importantly, *before* this happens.

All the authorizations to sell a given work, including the name of the seller who has contacted the auction house and the description of the piece along with its base price, are submitted before every sale to the Police. As soon as the catalogue is published, it is submitted to the Department for Heritage Protection. This constant exchange of information, data and images represents an enormous aid to the people who would otherwise have to independently track down stolen works or works traded on the black market. The Department for Heritage Protection stores information dating back to 1969 and has powerful information equipment with terminals connected across the nation as well as with its foreign counterparts.

Thus, recognition of the works published by the auction houses takes place in real time.

No private database and no form of supplementary cooperation can ever provide auction houses with a better guarantee of the legality of the works of art they put up for sale than their close cooperation with the Carabinieri's Department for Heritage Protection.

Protection from counterfeit works

In addition to the above-mentioned cooperation with the Department for Heritage Protection, auction houses have the obligation to certify and take all necessary measures to prevent unauthentic works of art from being sold at auction.

The problem is very widespread and the instruments available can hide some real dangers.

While in every other profession, the main rule is generally to trust in someone with experience and competence, this is not always enough in the field of art. Auction houses usually assign experts in the sector who give their opinion of the authenticity of the work proposed. But the opinion provided by the auction house, based on the opinions of its experts, whether positive or negative, can never have the same value as a declaration of authenticity, but can only express the opinion of the auction house. This is why instruments are used that give more force and efficacy to the declaration of authenticity, or its negation, and this aims to give a stronger guarantee to the purchaser and also to protect the auction houses from subsequent claims.

It is also important to distinguish between the certification of modern and ancient works of art.

For the former, the auction houses, as the market has come to expect, work with Foundations, archives or experts who are recognized as authorities on a certain artist by the “scientific community”. These individuals issue a certificate of authenticity that becomes as important as the work that it certifies.

However, for a work of art to be considered authentic, it is not always enough for the piece to be accompanied by the certificate; the job of the auction house is also to check the veracity of the certificate.

On the other hand, for ancient works of art, there was no art market based on modern criteria at the time of their execution so the issue of certification never arose. There were workshops where art students worked side by side with the master. Works were almost never signed by their authors. Clearly, there was no system of classification of works of art or photographic archives by the artists and therefore, for ancient work of art, it is even more important to obtain the opinion of experts to whom the scientific community affords, in that given historic period, the utmost competence for that given artist or that given school.

As this is an extremely delicate issue and of great importance, I hereby include excerpts from an article I wrote for the “Gazzetta delle Aste”, published by the National Association of Auction Houses in October 2006, which delved into the issue of certification of works of art and their validity over time.

Certification of works of art. An open question

Contemporary art archives. What legislation and what future?

This is the title and theme of an important convention held in Rome on 24 May 2004 at the Accademia Nazionale di San Luca where illustrious law makers (Fabrizio Lemme, Maria Beatrice Mirri, Pierluigi Cipolla, Alessandro Riscossa), representatives of institutions (Rossella Bennati, Mario Serio, Anna Mattiolo, Ferdinando Musella), and respected authorities in the art market (Claudia Gianferrari, Duccio Pallesi) came together to discuss the issue of certifying the authenticity of works of art, each one contributing his or her opinion, identifying critical points and discussing possible solutions. (The transcripts of the convention are published in *Gazzetta ambiente*, pages 135-155, year 2004, no. 5, Editore Colombo, Rome).

From the perspective of the professionals on the market and in particular, the auction houses, the primary interest is to include in sale catalogues only works of art whose authenticity is certain. The individual who purchases a work legitimately wants to know if the piece comes with a certificate of authenticity, issued by either a certain Foundation, a certain archive, a certain art critic, the artist himself or his heir, as the case may be. Save for when authentication is issued by the artist himself, the problem arises when the contact reference changes after a certain amount of time. It might also happen (and it already has) that the opinion of an art critic recognized as an unrivaled authority on a certain artist is disputed or challenged by a new expert soon after the well-regarded authority has died. The job of the auction house is to proceed with sales that can offer legal guarantees on the certificates of authenticity and take every measure to protect their clients from the whims and moods of experts, heirs of artists who come and go, archives and Foundations that can frequently change the members of their scientific community.

Long after the final gavel has sounded on a sale, auction houses may be called to intervene, sometimes even by subsequent purchasers, if the authenticity of a work certified by “A” is disputed by “B”, a new expert for that particular artist. Except for art brokers with an international reputation who have a less personal relationship with their customers,

dealers are usually affected by these claims and must become involved in exhausting debates with new experts who, at times, take hostile stances as if the very idea that a broker had in the past given scientific credence to other people were some sort of serious offence.

How can we protect ourselves and protect the purchase made by our clients from this constant back and forth of opinions about the sources of certification of works of art?

Although it would be a step in the right direction, any legislation that aims to dictate rules on this issue would be nearly impossible to enforce. While it might be possible to identify systems and procedures of formal standardization of certification, regulating the work of Foundations and archives, it would be impossible to implement the substantial element, because this is only a mere expression of an idea, whose freedom is already protected by Article 21 of the Constitution.

Anybody and everybody is free to express his personal opinion about any work of art. But when does this opinion become relevant and considered the only legitimate one? The answer lies in the adjective “accredited”: it is the credibility that the scientific community and industry professionals recognize to that specific authority which legitimates the influence and weight of its opinions.

It is therefore difficult to hold a person accountable for voicing, at our request, an opinion which we ourselves have decided to consider credible.

The inability to turn to the legal system does not prevent us from appealing to the sense of responsibility of those who know well that issuing an opinion can strongly influence the wealth of others (consider the economic detriment to someone who has acquired a work of art, for example, a Giorgio de Chirico, believing it to be authentic and certified in the past by accredited experts, and who now finds its origin disputed or its attribution to the master denied by other experts who are equally accredited today). Disowning the serious work of predecessors does not necessarily guarantee more intellectual prestige, especially when it is no longer possible for both sides to engage in scientific debate.

It can hardly be ignored that the legitimate and total freedom to express one’s opinion is part of a commercial and economic dynamic in the art world – demonstration of this is the fact that compensation is generally given for opinions expressed – whose equilibrium is determined by all the players involved who required to act with utmost responsibility and intellectual integrity.

It is the intention of the National Association of Auction Houses to respect the work done in the past by art experts, critics, and archives

accredited as authorities at the time when they performed their tasks, believing it to be contrary to the transparency and integrity of the market to capriciously second guess or erase the information and expertise acquired.

A.N.C.A. National Auction House Association Regulations

Article 1

Members undertake to guarantee the integrity, professionalism and transparency to owners who entrust the House with their works of art and to interested buyers who purchase them.

Article 2

When accepting a work of art to include in the auction, members undertake to carry out all the necessary research and studies, in order to correctly understand and evaluate these works.

Article 3

Members undertake to communicate to principles with the utmost clarity the conditions of sale, especially the total amount of the commissions and all the expenses that they might incur.

Article 4

Members undertake to design the sales catalogues with utmost precision, furnishing the articles proposed with comprehensive information sheets and for more valuable articles, with faithful reproductions.

Members undertake to publish their terms and conditions of sale in all catalogues.

Article 5

Members undertake to notify all potential buyers of all the information necessary to best judge and assess their purchases and undertake to provide buyers with all the necessary assistance after the purchase.

By request of the purchaser, members issue a photographed certificate of the articles acquired.

Members undertake to ensure that the data contained in the invoice corresponds exactly to the information in the sales catalogue and correct any mistakes or errors in the catalogue. Members undertake to publish the final prices of the winning bidders.

Article 6

Members undertake to cooperate with public institutions in order to preserve the Italian cultural heritage and to protect it from theft and counterfeiting.

Article 7

Members undertake to compete fairly, in full compliance with the laws and professional ethics. Members undertake to safeguard the general interests of the category and defend its honour and respectability.

Article 8

Sanctions under Article 20 of the A.N.C.A. Regulations will be applied against members for violations of the provisions set forth by these regulations.

CONCLUSIONS AND RECOMMENDATIONS

The Conference on *Organized Crime in Art and Antiquities* (see attached programme – Annex I), sponsored by ISPAC, the Courmayeur Foundation and UNODC, took place in Courmayeur Mont Blanc, Italy, on 12 – 14 December 2008. The Conference was attended by 145 experts from 27 different countries including, among others, representatives of national governments and international organizations, NGOs, academia and the private sector. The text below was presented and approved at the closing session of the Conference, on Sunday 14 December 2008.

Taking into account the recent ECOSOC Resolution on *Protection against trafficking in cultural property*, as recommended by the Commission on Crime Prevention and Criminal Justice at its Seventeenth Session (Vienna, 14-18 April 2008) and recalling the 1992 Charter of Courmayeur (see Annex II), the Conference unanimously approved the following conclusions and recommendations:

1. The Conference recognized that illicit activities exist in the global trade of art and antiquities, including the trafficking in which organized criminal groups with transnational reach are involved, and that these criminal dynamics are a significant cause for international concern. It is underlined that these complex phenomena feature significant and specific characters that deserve targeted attention. The prevention and control of these phenomena require a modern, tightly tailored, consistent and multidisciplinary approach on the part of both the international community and national authorities.
2. There is insufficient knowledge and awareness, at the national and international levels, of the extent and seriousness of these phenomena, of the role played by organized criminal groups, and of the dangers related to the use of new technologies. It is therefore crucial to foster high quality criminological research, economic studies devoted to the interfaces between licit and illicit markets, as well as coordination and sharing of national experiences and operational information.
3. The Conference also noted that a number of international legal instruments exist in the field of illicit activities in art and antiquities, referring either to armed conflict or to the restitutions of illegally exported goods, including the Hague Convention of 1954 and its protocols; the UNESCO Convention of 1970 and the UNIDROIT Convention of 1995, in addition to the UN Model Treaty. A comprehensive and consistent legislative approach, well focused on

these specific criminal phenomena, is thus required, including but not limited to the effective prevention and control of transnational trafficking in art and antiquities.

4. The fundamental Palermo Convention of 2000 should also apply to transnational trafficking in art and antiquities and, with the view of further enhancing international cooperation in the prevention of these criminal activities, targeted attention should be devoted to judicial cooperation, money laundering and the liability of legal entities, as well as confiscation and harmonization of criminal offenses in this specific area.
5. The role of the private sector is critical in the prevention and control of these criminal phenomena and existing codes of ethics should be improved and effectively implemented.
6. An international monitoring mechanism should be established in order to ensure the implementation of more effective appropriate preventive and protective measures.
7. Countries plagued by war, conflict, political failure, and socioeconomic underdevelopment have often been especially affected by looting and destruction of their cultural, artistic, historical, and archaeological heritage. The Conference highlighted the cases of Cambodia, Iraq and Afghanistan, but it also noted with concern that similar occurrences took place in several other countries, from where many precious artistic and archaeological goods have been trafficked through various means to Western and wealthy countries. The international community should feel a moral obligation to support victims of this type of trafficking in the detection of illicitly exported cultural goods as well as in their recovery, by means of bilateral and multilateral agreements and appropriate legal actions where necessary.
8. In conclusion, the international community should undertake large-scale initiatives, not only in more effectively preventing crimes involving art and antiquities, but also in promoting the sensitivity of their people in respecting anywhere in the world the local artistic and archaeological heritage in which the culture of peoples and nations find their most significant expression.

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