

F. Desmarais (Ed.)

Countering Illicit Traffic in Cultural Goods

The Global Challenge of Protecting the World's Heritage

Cultural objects disappear every day, whether stolen from a museum or removed from an archaeological site, to embark on the well-beaten track of illicit antiquities. A track we have yet to map clearly.

The need to understand that journey, to establish the routes, to identify the culprits, and to ultimately locate these sought-after objects, gave rise to the launch of the first International Observatory on Illicit Traffic in Cultural Goods by the International Council of Museums (ICOM).

This transdisciplinary publication concludes the initial phase of the Observatory project, by providing articles signed by researchers and academics, museum and heritage professionals, archaeologists, legal advisors, curators, and journalists. It includes case studies on looting in specific countries, with the primary aim of eliciting the nature of the antiquities trade, the sources of the traffic, and solutions at hand.

Countering Illicit Traffic in Cultural Goods





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The Global Challenge of Protecting the World's Heritage

Edited by France Desmarais



This project has been funded with support from the European Commission. This publication reflects the views of the authors, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

*Countering Illicit Traffic in Cultural Goods:
The Global Challenge of Protecting the World's Heritage*
Edited by France Desmarais

ICOM International Observatory on Illicit Traffic in Cultural Goods

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ISBN: 978-92-9012-415-3

Cover photo: 'Fire Buddha' ©National Museum
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Foreword

The International Council of Museums (ICOM) and its 35,000 members from the international professional museum network shoulder those who defend museums and heritage, culture and peace.

As such, at the 38th session of the UNESCO General Conference, which took place in November 2015 in Paris, a new Recommendation on the Protection and the Promotion of Museums and Collections, their Diversity and their Role in Society, was unanimously adopted by the member States, highlighting the essential work undertaken by ICOM.

The ICOM International Observatory on Illicit Traffic in Cultural Goods is a powerful tool in the fight against this illegal trade, and this publication illustrates ICOM's full commitment, as a museum network, to safeguarding the world's heritage.

We would like to thank warmly all those involved in this project, including the European Commission, expert ICOM members, law enforcement agencies, State administrations, intergovernmental organizations and research institutions, whose cooperation has been vital in bringing this publication to fruition.

We also commend the collaborative effort within the ICOM Secretariat. The project was spearheaded by France Desmarais, with the assistance of Raphaël Roig and Susanne Poverlein in the Programmes Department, and the support of Aedín Mac Devitt and Melanie Foehn in the Publications Department.

Doubtless, these insightful articles will shed light upon a global problem that can only be resolved through strong international involvement and cooperation.

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France Desmarais is the International Council of Museums' (ICOM) Director of Programmes and Development since 2010. As such, she develops the institution's partnerships and leads the organization's Programmes department in all museum and heritage related issues, specifically in the field of emergency preparedness and response and ICOM's international fight against illicit traffic in cultural goods, which includes the Red Lists of Cultural Objects at Risk. She works closely with national governments and international organizations to develop and enhance ICOM's work in the protection of cultural property around the world. In 2012, she created the only International Observatory on Illicit Traffic in Cultural Goods, thanks to the financial support of the European Commission. She is Permanent Secretary of ICOM's Disaster Relief Task Force for Museums (DRTF) and an active member of the International Committee of the Blue Shield (ICBS). Prior to joining ICOM, France Desmarais has lived in the Middle East, teaching at Lebanese University, in Central Africa as well as in Canada where she was head of strategic development at the McCord Museum.

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St John Simpson is the senior curator responsible for the pre-Islamic collections from Iran and Arabia in the British Museum. Star items in these collections include the Oxus Treasure, the Cyrus cylinder, Sasanian silver dishes, and antiquities from ancient South Arabia. He has a D. Phil. on the archaeology of the Sasanian period in Mesopotamia, and his main research field is Sasanian material culture. He has excavated extensively in the Middle East and Central Asia, including sites of all periods from prehistoric to recent times.

Guy Tubiana is a reserve police force commander and serves as a museum security expert for the French Ministry of Culture. He takes part in counseling museum professionals on security issues and implementing security measures in French museums, supervises museum security high-profile exhibitions of French collections abroad. He also trains security professionals and works as a consultant and international expert in the Art field during periods of military reserve.

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Günther Wessel is a German freelance journalist who lives in Berlin. He studied literature, philosophy and art history. He lived a couple of years in Washington D.C and Brussels, worked in many different countries, especially in North and South America. He writes for newspapers, magazines, and the German public radio and is the author of numerous books (travel-guides, biographies, non-fiction for children). Most recently, in August 2015, his book *Das schmutzige Geschäft mit der Antike. Der globale Handel mit illegalen Kulturgütern* (The Dirty Antiquities Business: On the Global Trade in Illicit Cultural Goods) was published in Berlin (Christoph-Links-Verlag).

An International Observatory on Illicit Traffic in Cultural Goods

France Desmarais

Every day, cultural objects disappear. Stolen from their place of conservation – whether pilfered from a museum or, as is most often the case, ripped out of an archeological site – they embark on the road often travelled by illicit antiquities. A road we are still trying to map with more precision.

The desire to better understand that journey, to figure out what the routes are, to know who the culprits could be, and of course to discover where these coveted objects end up, spurred the creation of the first – and only – International Observatory on Illicit Traffic in Cultural Goods by the International Council of Museums (ICOM) in December 2012, thanks to a grant from the European Commission.

ICOM has, for long, been at the forefront of the fight against illegal trade. The protection of the world's cultural heritage has featured in the organization's mission statement since 1947, a year into its creation 70 years ago. Ever since, as the voice of the world museum community, ICOM has played a foremost part in advocating advancement in the protection of cultural heritage practice in general, and in countering illegal trade in particular (UNESCO 1972). From the *Code of Ethics for Museums*, now referred to as the international deontological standard for museum professionals, to the well-known Red Lists of Cultural Objects at Risk, directly associated with helping law enforcement recognize and seize important quantities of antiquities, the aim has always been to develop innovative practical tools designed to help protect cultural property.

In need of figures

In 2011, the idea of creating an observatory stemmed from the dire need to obtain more information on the whereabouts of stolen objects and more reliable facts and figures on illicit traffic in art and heritage. It is surprising, to say the least, that illicit traffic in cultural objects should have been officially recognized for decades – if not a century – but that no organization gathered official global statistics to illustrate the extent of the problem. Many numbers are brought forward by different expert organizations to quantify the trade, in mass or in financial value. Some of those numbers are astronomical. Yet, none can be confirmed by official empirical data. While the INTERPOL Expert Group on Stolen Cultural Property concluded, in June 2015, that data gathering and systematic research are of high relevance for combatting the illicit traffic in cultural items, it remains impossible, to this day, to precisely rank illicit traffic in cultural objects so as to measure it to other types of transnational crimes.

Although some improvement has been observed in the collection and analysis of the numbers related to theft and seizures, it is unfortunately still impossible to answer questions regarding the number of objects that disappear or are sold illegally each year. In the big data era, and in a moment in time when massive looting has spread to large parts of the world, even as political leaders and the general public seem more than ever concerned about the fate of cultural heritage in danger, this impossibility to quantify seems paradoxical. The reality is that, despite the palpable increase in global awareness concerning the importance of protecting cultural objects, the actual means to support their protection are somewhat lagging behind. If, as a long-standing actor in

the global fight against illicit traffic, ICOM wants to keep developing useful tools and proposing appropriate response mechanisms to effectively counter the illegal trade, it needs to know and understand the phenomenon as yet. Identifying the trade routes, the agents involved and the types of objects targeted is the only way to comprehend the significance of the illegal art and antiquities market. This can only be tackled through transdisciplinary research initiatives, such as that initiated with the Observatory project, as relevant organizations are encouraged to do under the 1970 UNESCO Convention. Indeed, Article 17 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property mentions the possibility for relevant organizations to conduct studies on matters related to the illicit movement of cultural property. Looting and illicit traffic represent one of the global challenges yet to be faced, for which a research and data gathering body such as the International Observatory in Illicit Traffic in Cultural Goods is needed.

What we *do* know for a fact is that museums are particularly concerned by theft in art and heritage, as primary places of conservation from which objects can be stolen, but also as collecting institutions that could, unwillingly, end up buying looted cultural property. Indeed, objects are not only stolen from museums, but they can also land, with the help of sometimes ill-informed accomplices, in the hands of private collectors. Later, through a donation for example, they might find themselves in museums. It is specifically because stolen art and antiquities risk falling into museum collections that it is the duty of the world museum community to come together and counter illicit traffic in art and heritage. The inaugural gesture is to apply strict ethical practice concerning provenance of acquisitions. But it does not suffice. It must be supported by strong national programmes.

Duty to protect objects from the market

One of the other objectives of the Observatory was to gather information on measures which the concerned countries have implemented to fight illicit traffic in cultural goods. What, indeed, are States Parties to international conventions doing to implement effectively the provisions of those laws and treaties? What mechanisms have been developed to monitor theft and to ensure seizures? How could we help them increase transnational cooperation to improve import and export controls? Those are all questions we have been able to directly address in over 10 missions carried out for the Observatory.

What we have discovered by interviewing national authorities is what we initially suspected: political will is essentially lacking. With real political will to protect movable heritage would come adequate legislative tools and effective administrative capacities. Countries need stronger national legislation to strengthen the implementation of the international legal tools they have ratified. That is, if they are signatory to the relevant instruments, insofar as the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is still very unevenly implemented and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is insufficiently ratified. To put it plainly: why have none of the traditional 'destination countries' for cultural objects ratified UNIDROIT? What prevents governments from ratifying and passing law to further protect cultural heritage of the world?

The example of Germany may explain the reticence of certain governments. While, in 2015, Germany courageously brought forward updated draft legislation to prevent

illegal import and export of cultural objects as well as provisions for due diligence, many voices in the country rose to oppose. It appears as if only one group, whose lobby is strong, objects to the proposed text. It is the art market. A similar phenomenon can be observed in most if not in all the countries with a strong art and antiquities market. A market that is still largely unregulated (Adam 2015).

Towards more effective transdisciplinary cooperation

As a transdisciplinary cooperative professional platform, the Observatory project has generated knowledge and federated expertise and resources. It was important that a publication be added to the other outcomes of the Observatory in order to take stock of where things stand, in 2015, in all matters concerning the protection of the world's heritage.

The first chapter of this publication introduces articles that describe practices of the antiquities market, thus illustrating some of the threats the trade represents for historical objects, including Internet sales and fake provenance. Indeed, since cultural objects have become cultural goods (CECOJI-CNRS 2011: 40), since financial value has been added to their historical, cultural and scientific aura, creating unlimited monetary value for limited resources such as artefacts, the illicit trade has become their major threat (Desmarais and Haldimann 2014: 16-17). As long as there will be a demand for those objects, there will be people looting them. In this case, the seemingly simplistic equation 'no buyer, no looter' is very close to the truth. A historical overview of conflict antiquities also confirms that illegal digging and selling is far from being a recent crime that the Islamic State (or DAESH) would have 'invented', contrary to what headlines imply, somewhat overwhelmingly.

The second chapter presents the problem of international networks and routes, with cases of countries where looting has occurred, whether historically or in recent times. From the Middle East to Latin America, no part of the world has been spared by this pandemic problem emptying the sites of entire regions. In addition, one contribution informs us on how this also applies to underwater cultural heritage.

In the final chapter, authors explore the different mechanisms, tools and solutions available in fighting illicit traffic in cultural goods. It ends on a positive note, which sheds light upon how effective cooperation between institutions concerned, i.e. law enforcement agencies and museums, has allowed for many Afghan objects to be intercepted, seized and returned home. This is a perfect illustration of how transdisciplinary collaboration can lead to success stories and actual results in countering illicit traffic in cultural goods. It is our adamant hope that when buying, collectors will, in the near future, be more demanding in terms of object provenance.

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Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage concludes the initial phase of the International Observatory project. Among the other tangible results of the Observatory is a dedicated website that includes a searchable databank of over 6,000 diverse resources on the subject (including legislation, guidelines, articles, videos, etc.), an official glossary of relevant terms, good practices relating to cultural property protection, and specific pages for each country, detailing national initiatives in fighting illicit traffic in cultural goods. URL: < www.obs-traffic.museum >.

Acknowledgements

We thank the European Commission for financial support from the Prevention and Fight against Crime Programme-European Commission Directorate-General Home Affairs in this endeavour to better understand illicit traffic and increase cooperation between the actors involved, as well as compile and federate existing resources on the subject. After being actively involved in the fight against illicit traffic in cultural goods for decades, this financial support enabled ICOM to create an effective body that could complete its existing practical tools, such as the Red Lists, and further contribute to raising awareness and bringing forward solutions in favour of the protection of the world's heritage.

A special thanks to Neil Brodie for his availability and generosity in sharing his extensive knowledge on the subject. His insight has been precious in preparing this publication.

Finally, we warmly thank all the participants in the project's expert meetings for their constant support of the idea of the Observatory and for their strong involvement in its work.

Françoise Bortolotti; Christophe Bourdès; Zeynep Boz; Neil Brodie; Citlalin Castaneda de la Mora; Claire Chastanier; Celso Eduardo F. Coracini; Brian I. Daniels; Sophie Delepierre; Jessica Dietzler; Marco Eichenberger; Mauricio Escanero; Gianluca Ferrari; Stéphane Gauffeny; Jean-Robert Gisler; Marc-André Haldimann; Markus Hilgert; Hrvoje Korzinek; Pınar Kusseven; Theodore Leggett; Michel L'Hour; Simon Mackenzie; Bonnie Magness-Gardiner; Carmelo Manola; Vincent Négri; Fabrizio Panone; Vimal Pazhekadavil; Robert Peters; Laurent Pinot; Edouard Planche; Fabrizio Rossi; Marina Schneider; Assaad Seif; Samuel Sidibé; Carine Simoes; Yusuf Abdallah Usman; Veronic Wright; Donna Yates; Candemir Zoroğlu.

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Dealers and Collectors, Provenances and Rights: Searching for Traces

Günther Wessel

In the summer of 2014, I wrote to several antiquities dealers in Germany to discuss the trade in archaeological finds, both legal and illegal. In my letter, I observed that ‘serious accusations – especially by archaeologists – are relentlessly levelled against the trade in antiquities and the dealers: a large proportion of the business is thought to be based on the sale of illicit objects from excavations. There is talk of handling stolen objects that have been looted, of indirect incitement to looting, obscured provenances, smuggling and exploitation of legal grey areas.’ Few were those who responded: just as most of the dealers ignored my enquiry – in one instance the answer came through his lawyer – so too did the auction houses remain utterly silent. The only person willing to talk to me was Ursula Kampmann.

Ursula Kampmann is the spokesperson of the International Association of Dealers in Ancient Art (IADAA), an association of antiquities dealers from Europe and the U.S.A and, at the same time, a lobby organization founded in 1993. Quoted below is the opening sentence of the IADAA ‘statement’, which can be found online:

IADAA stands firstly for the right of the trade, collectors and museums to legally acquire, own, sell and donate antiquities from the ancient world encompassed by the Mediterranean, Europe and the Near East.

Ursula Kampmann’s enthusiasm for collecting is manifest as she evokes the fascination collectors nurture for history. ‘No journey back into the past could ever be so direct and concrete an experience as that of collecting,’ she says. But what is the provenance of the antiquities for sale in auction catalogues and proposed by art dealers? ‘Well,’ she explains, ‘History makes clear that collecting is an old activity, for people have been collecting since the Middle Ages, but it was during the Renaissance that the occupation flourished.’ She evokes the cultural exchanges between the Humanists, their unwavering curiosity for the past – a time when the first major collections of ancient art came into being. ‘The life of goldsmith and sculptor Benvenuto Cellini illustrates this passion well. He used to stand on the edge of Rome’s city walls, and intercept farmers who came in from their fields and would buy the objects they had found plowing. The greatest collectors had tens of thousands of objects in their collections.’ Is that where the antiquities come from?

Michael Müller-Karpe, an archaeologist working at the Römisch-Germanisches Zentralmuseum in Mainz, shakes his head before such a discourse. ‘That is a some worn-out fairytale,’ he says, admitting that old collections have indeed existed – “curiosities” seamlessly collected by aristocrats for hundreds of years. Müller-Karpe remarks, however, that the number of objects from such collections is negligible compared with what the market offers. Furthermore, he continues, insofar as these old pieces had been part of these collections for centuries, they had most likely been documented previously, and in many places: diaries, copper engravings for the earliest sources, newspaper articles or other types of publication in more recent times. ‘Unrecorded objects were deemed so worthless that heirs discarded them systematically,’ he explains.

Glasgow archaeologist and crime researcher Neil Brodie observes that ‘only very,

very few objects genuinely come from the 18th or 17th centuries. And if one does, you get a lot of information telling you that. You get a list of provenance, detailing who owned the object, who described and analyzed it, and where. The idea that there could still be unknown collections from the 18th century, which then suddenly come onto the market, is a myth.'

Ursula Kampmann disagrees, arguing that documenting objects did not become a requirement until the 1980s. 'Many States had no interest in keeping their cultural property within the country, quite the contrary. What's more, approval for or documentation on exportation was not required either,' she says. Until 1983, dealers in Egypt could sell antiquities with permission from the government, Kampmann explains. She shows me an invoice from a government-licensed Cairo dealer, Kamel Abdallah Hammouda, who can easily be traced on the Internet as the source and provenance of numerous Egyptian antiquities, and also lists, to date, what he has sold to the Ancient Art gallery in Amsterdam.

The invoice is in English and undated. Other slips of paper have been stuck onto it and copied along with the invoice itself – one of them is in Arabic and laden with stamps; a handwritten piece mentions a sandstone relief 67 cm in size, which seems to have been supplied directly to another gallery in South West Germany. The invoice lacks any type of detail whatsoever, as it only mentions six crates that contain objects – stone reliefs and statuettes, terracotta items and alabaster vases, and a headless granite statue. In Ursula Kampmann's words, 'there is nothing but a piece of unillustrated paper which only specifies which objects were exported and the number of crates; there are no individual entries, no lists, yet all objects were taken out of the country legally, although you cannot identify a single object using this list.' From the dealers' point of view there is no need to obtain approval for the exportation nor to provide documentation for these objects. 'I remember that a coin dealer I knew back in the 1970s travelled regularly to Syria and Lebanon, where he bought from goldsmiths coins that were destined to be melted down.' Today, she explains, people see administration, laws and documentation differently. Mentalities have changed utterly in 30 years' time.

Ursula Kampmann is amiable and resolute, but after a certain point the conversation leads to nowhere. My feeling is that she has answered all these questions many times before. She skilfully defends her position: collectors are all different – some of them also collect documentation while others do not, although they all know that it is always easier to sell items with an unequivocal and documented provenance. In the case of antiquities, precisely, provenance determines price: the older and better the provenance of an artifact, the higher the price.

And what about all the examples I mentioned? — Exceptions, all! What about the Nebra Sky Disc, which is now on the UNESCO Memory of the World Register and was unearthed by looters in July 1999? 'That is a thorny case,' she replies, 'but to be honest, the object's an absolute exception.' And what about the Gold Hat in the Bronze Age collection of the Neues Museum in Berlin? Yet another exception.

Here is another example worth considering. In 2014, three objects discovered in the Egyptian department of the Budapest Museum of Fine Arts had supposedly already been in the possession of an art dealer in 1974; they were purchased by the museum three blocks from the entry to a tomb in Saqqara. It turned out that the tomb (built for a priest in the 6th Dynasty) had not been discovered until 2001, during excavations by *the Institut français d'archéologie orientale* (French Institute for Oriental Archaeology,

IFAO). Shortly afterwards, the blocks were removed illegally. Kampmann was content to say that, 'Honestly, there will always be black sheep, and some questions should have been asked.'

Black sheep in infinite numbers, although no IADAA dealers were involved in the cases mentioned above. This begs the question whether the association enquires probingly about provenance. 'At the IADAA we have very, very strict provisions for how to deal with someone who brings us an item. It *is* a problem if they lie to us, but who are we to question the honesty in the people who come to us?' She concludes that the antiquities trade is not to blame. People look for a scapegoat in order to divert attention from the real problems. Countries are completely irresponsible in matters regarding their archeological heritage. 'And now,' she adds, 'they are attempting to take the easiest path. Not by protecting the excavations locally, but by trying to get other States to stop a centuries-old trade.' Like many archaeologists, Michael Müller-Karpe considers it impossible ask countries of origin to protect their heritage. 'That is wishful thinking. Most of these countries are experiencing of political chaos – an instability likely to spawn every kind of crime, including illicit excavations and dealing in stolen antiquities.' And he reminds me that 'it is well known that in a market economy, demand determines supply. We therefore have to tackle the problem where such objects are in demand, here in the West.'

Considering the supply, the demand appears to be high. In addition to IADAA-affiliated dealers (five in Germany), numerous small and large dealers exist, not to mention auction houses, many of which sell antiquities from time to time. Then there are also Internet auctions, with antiquities appearing continuously on eBay. For example, in April 2015, a New York dealer with a highly dubious reputation. In 2012, he admitted he had smuggled Egyptian antiquities into the U.S.A via Dubai and offered a 34 by 45.7 centimetre limestone relief depicting the ram-headed god Khnum. It is said that the piece, which supposedly came from a collection in Brussels and was acquired before 1970, was sold for \$13,515.

Auctioneers are obliged to check the provenance of the objects brought to them, and do so against databases such as the Art Loss Register and the Red Lists of the International Council of Museums (ICOM), which catalogues endangered cultural items by category. While large auction houses in particular should take this very seriously, according to Neil Brodie, these establishments, whose dealings are not always quite legal. 'Nearly every year the major auction houses, Sotheby's, Christie's and Bonhams, are caught selling stolen objects. And "caught" means that a photograph of the object exists, either in an archive or in police files, so that evidence it has been stolen can be provided.'

Let us turn once more to Ursula Kampmann, in Lörrach. She leafs through the catalogue of an auction house specializing in antiquities. Here and there she points to an object and then admits that 'There are dozens of these, dozens. There are tens of thousands of objects just like these without any academic value.' Many of these artefacts, she admits, have indeed been sold and auctioned, but were never documented because deemed too worthless. Why is the origin of the items so important? Put briefly, let us say that, in the antiquities trade, this is what decides whether an artwork can be sold legally in a country.

In November 1970, UNESCO adopted a Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The intention was to make it more difficult to export and sell cultural objects.

The Convention – which entered into force on April 1972 when three States had ratified it – formulated basic principles for the international protection of cultural property, including regulations for measures to combat illegal trafficking, protect a country's own cultural property and unlawfully imported cultural property of other signatory States, prevent their illegal export, ensure that such property be returned upon request from the country of origin. However, the UNESCO Convention only concerns interstate dealings. For some dealers, the above-mentioned UNESCO Convention means that 'Items or objects or collections that were acquired before 1970 can be sold legally', as former art dealer Christoph Leon from Basel put it. Yet, many connoisseurs of the field would not agree, because the way the UNESCO Convention is implemented varies from one State to another.

The examination of auction catalogues provides an impression of the customary, often imprecise descriptions of provenance: it is rare to find anything more than platitudes. The entries are vaguely formulated, e.g. *Former private European collection from the 1950s to 1960s* or simply *Acquired before 1970*. These formulations do not constitute grounds for doubt about the legality of the items on offer. Ursula Kampmann does not flinch when I mention the murky practice of provenance forgery again. She immediately attempts to explain this. 'Collectors are vulnerable. That is to say, they are the preferred victims of attacks and thefts, and the only way they can really protect themselves is by holding back to a certain extent.' A surprisingly large number of art collectors allow themselves, however, to be profiled in trade magazines, open up their collections to the public, present themselves on Internet pages, have catalogues printed that display their objects, and also loan works to museums (including a label stating the fact), because that increases the market value of their treasures.

The second argument Ursula Kampmann proposes is more convincing: 'Many collectors want to keep quiet the fact that they are selling something. The art market is extremely small, and that means that the major collectors know one another, so no one wants the others to know which item from the collection they are selling, or why.' Apparently, to ruin a good reputation is easy, and someone might think that the object is being sold because its owner is short of money. According to Ursula Kampmann, it would actually be unreasonable to expect the collector to state publicly that he was the seller. She admits that the auction house does know, but it is bound to maintain discretion and confidentiality.

There is another market alongside the art trade and auctions. The small ads columns of larger newspapers covering more than one region, frequently carry adverts in their section on the art market as illustrated here by an example taken from the *Frankfurter Allgemeine Zeitung* on 7 March, 2015: 'I am selling an extensive old collection from a private bequest. It comprises approx. 200 valuable objects collected from the areas of Egypt, Asia, South America, Africa and Islamic art. The collection was created in the 1950s and 1960s. Viewing by appointment.' This is followed by a box number.

At the end of March 2015, I wrote to the box number, introducing myself as an interested layman with a special fondness for Egyptian and pre-Columbian South American art, and asked for individual photos and more detailed information about individual pieces to be sent to me by email. I received a reply a few days later explaining that there were several serious inquiries from people who made offers for the entire collection, but nothing has yet been sold. It would be preferable to sell everything together. Attached came a selection of photos. Overall, there are 35 pictures showing

antiquities from all over the world. I enquired about the precise origin of the collection, and whether documentation exists, including any that would indicate the history of the collection.

I receive an instant reply. There are no purchase documents for the individual objects; concerning the collection itself, there are letters and pictures, and only a few from the year 1982. This means that all statutory limitation periods have expired. It was put together in the 1950s and 1960s, and the origin of the collection could be proven but tracing each object turned out impossible. Additional photos of record cards – a catalogue of the collection – are then sent to me. The front of each card shows an object photographed in black and white, and the back bears a short handwritten description of the piece – something of a jump back in time, to the 1950s and 1960s. Yet there is no direct documentation. It's a typical case. You can choose whether to believe it or not. What would Ursula Kampmann and the IADAA dealers do in such a case?

In Hürth, near Cologne, one of the big sharks in the television business lives in an old mansion and gardens. Helmut Thoma made the RTL a success in Germany. As I enter his house, I have no doubt he is a collector – although not a systematic one – since he only buys objects that appeal to him and have a historical aura. 'I have always sought the company of witnesses to the past.'

In the parlour, Buddhas sit alongside 18th century French furniture, and the glass coffee table top rests on the wooden capital of a column from South East Asia. A Plexiglas column bears a stone bas-relief from Syria. The artefact, made of yellowish light-grey sandstone, is roughly 50 cm in height and probably dates from the 2nd or 3rd centuries. It depicts a young man with short, rather smooth hair, clothed in a short-sleeved robe. His face is flat with a broad nose and pronounced lips drawn into a slight smile. His right arm hangs down loosely, and with his left hand he is gathering his robe in front of him. The fragment only goes down to the thighs: that is how it was knocked off the wall. The sandstone slab was probably originally used to seal a grave. The relief was also noticed by a journalist from the German newspaper *Welt am Sonntag*, who recorded a home portrait cum interview with Thoma in November 2011. Here is an excerpt:

THOMA: Thirty years ago a grave robber and I got this grave slab here out of Syria.

WELT AM SONNTAG: Sorry, you did what?

THOMA: Well, I know a dealer in Damascus... He took me to a burial cave in the ancient desert city of Palmyra and said, 'Now we're going to crawl in there.' And I was a bit apprehensive. It was night time, and there were snakes...

WELT AM SONNTAG: But your inner Indiana Jones was stronger?

THOMA: Yes. After the narrow opening, the tunnel got wider, and there were several graves, beautifully decorated with frescoes. I chose the one here in my living room.

WELT AM SONNTAG: And then you hacked it off with a hammer?

THOMA: No, the dealer did, and he also delivered the object to me afterwards in Germany [laughs].

Things were different back then. At the customs in Frankfurt he was asked what he was transporting. He said, 'Stone,' and was allowed to cross the border.

Helmut Thoma does not deny what he said in the interview. 'The story is basically true,' he says – but for a few insignificant details. In Palmyra, he really did crawl in an undefiled grave, led by his Syrian acquaintance, a dealer who had big business dealings with Switzerland and was also closely associated with the National Museum in

Damascus, and there the dealer had asked him whether he wanted a grave slab like that. 'I answered, yes, if you can get that sort of thing, and if it can be exported.' About a year later, the dealer came to Germany and had a bas-relief with him, shrouded in packing paper. Thoma then had an expert check its authenticity and bought it from the dealer.

In passing, Thoma provides more details about the business practices of this Syrian antiquities dealer. He explains that he took many antiquities out of Syria via neighbouring Lebanon, for the borders were open, and Syrian troops were stationed there. The dealer had also offered him a complete grave with Greek frescoes for \$1,000,000. 'Quite apart from the fact that I couldn't afford it, I asked him how he would get it out of the country as surely such things were protected?' 'Yes,' he replied, 'But it doesn't matter. I sell the stuff in Switzerland where there is a recognized dealer who then certifies that he had it in his possession before the 1970 UNESCO Convention came into force. And then... then I sell it in America.' It's *that* simple.

Naturally, a sale is much easier if a suitable legend exists to go with the claim that the item was in the dealer's possession long before – a believable story that can be recounted; witnesses liable to confirm, and possibly even stories in papers. According to the German newspaper *Süddeutsche Zeitung* on 23 April 2014, quoting IADAA spokesperson Ursula Kampmann, 'a good provenance also massively increases the value.' How does one acquire this sort of provenance for antiquities? Helmut Thoma's account of the arrangements made by the Syrian dealer provides clues. 'There are various options,' says a man who knows exactly what he is talking about. Michel von Rijn earned his living by smuggling works of art for many years, and he knows most of the tricks of the trade.

There are, roughly, three methods, which can also be intertwined to obtain a good provenance for antiquities.

Method one: 'Certification' by old aristocrats or colonial officials 'from the good old days'

According to archaeologist Salima Ikram, whom I spoke to in Cairo, 'it was easy to find an impoverished nobleman in Europe who would publicly confirm possession of said object: "Oh, yes, that was in the collection of my great-great-grandfather, it left its country of origin in 1817. Of course it belonged to us, in fact we have all the old family photos from back then"'. It is impossible to prove that kind of statement or to expose it as a lie. Many aristocratic families would do the same, she adds, sometimes because they were paid to do so, sometimes because they wanted to help out. 'You give someone 5,000 euros to say, "I inherited it from my father"', former art dealer Christoph Leon explains. In some cases this kind of origin was invented when the last heir in a noble family had died. 'It then becomes easy to declare that said object belongs to the collection of so-and-so, purchased by so-and-so, and originally from x.' Or, as Salima Ikram puts it: 'You take the item and go elsewhere, saying that it was found in a deceased aunt's attic and you wonder whether it is worth anything.'

Thanks to eBay and the numerous presumed finds in cellars and lofts, the 'attic tactic' has now somewhat fallen out of favour, says Neil Brodie, the Glasgow-based archaeologist and crime researcher. However, England is still a dream location for well constructed provenances. That is due most of all, he explains, to the country's colonial past. 'Because of the British Empire, such indications of origin are very popular: *Acquired by the father of the owner while on military service in Egypt*, or *Acquired by the father of the owner while working in Yemen as an engineer*, or *Acquired by the father of the owner while working on construction of a railway in Iraq*. And all of that is credible because there were Britons everywhere in positions. Of course it is all made up, but it is credible.'

In the spring of 2015, I came upon precisely such a fabricated origin a small auction house in Berlin offered – among the hundreds of items in its catalogue – seven finds from excavations in North Africa and the Middle East. Five items originally came from Egypt (all of them, according to the information, were roughly 3,000 years old), one from Afghanistan, and one from Iran (both roughly 2,000 years old). All the objects, according to the catalogue, ‘were the *property of an English colonial officer*. When I made enquiries at the auction house, I was assured that the objects have long been in the family’s possession. They have been brought in by an Englishman whose grandfather had travelled the world and returned with things from where he had been. Unfortunately, no paperwork existed. Some of the pieces (two objects remain unsold) attain astonishingly high prices above their estimated value, and the new owner is satisfied with their fine provenance: *private English collection prior to 1970, acquired (in good faith) at auction in 2015*.

Let us take another example. In the summer of 2014, the Egyptologist Johannes Auenmüller was preparing an exhibition at the Egyptian Museum of the University of Bonn entitled *From Antiquity to Modern Times: Animal Representations from Four millennia in the Preuss Collection*. The exhibition is filled with numerous, mostly ancient Egyptian objects. Auenmüller studies these works of art, including the fragment of a mural that depicts two men bringing gifts for a celebration for the dead (approx. 40 by 30 cm). What an amazing discovery he would make comparing the artefacts with illustrations in old catalogues! One ancient photograph of excavations in Thebes (Luxor) shows a wall from which the mural fragment seems to originate. More careful comparisons confirm the suspicion: the 3,500-year-old mural *does* come from the grave of Sobekhotep the Treasurer and was removed from the wall around 1980 for loot.

The following press release by the University of Bonn states that ‘[t]he piece with the false provenance *old English ownership* inexplicably found its way onto the German antiquities market and at the end of 1986 it was acquired in good faith by Mr. and Mrs Preuss in a renowned Cologne art gallery.’ The renowned art gallery belonged to the art dealer Alois Faust, Karl-Heinz Preuss specified as I enquired. The art dealership no longer exists today. He is certain that Faust did not knowingly provide a false provenance.

Method two: Circular sale

‘A little patience is needed,’ says former art dealer Christoph Leon as he explains how a rather clear and somewhat verifiable provenance can be obtained. ‘You keep the newly acquired item for a certain period and then put it on sale on the market with a provenance stating *Private collection ca. 1970*, – which cannot be verified by auctionneers and therefore remains unchecked. Then you buy it at auction yourself, either anonymously or through “front men”, and you have an antiquity with an unequivocal invoice: acquired in the auction house at such-and-such auction. In addition, you acquire authentication since many auction houses guarantee the authenticity of the items they sell. After that, you bring the antiquity with this apparently legal background to one of the larger auctions either in this country or elsewhere. The costs of this kind of procedure are relatively modest. *De facto* you only pay the auctioneers’ commission – as seller and as buyer. And one reason why it works so well is because auction houses always keep the identities of both the sellers and the buyers confidential. Of course, you can also engage in multiple circular sales and use “front men”.

Moreover, an (overall) fine system such as the Art Loss Register (ALR) can be used to back up a false provenance. The ALR lists around 300,000 missing works of art and

claims to be the world's largest private database of lost and stolen art and antiques. It can be used by collectors, the art trade and law enforcement agencies to research items. If an art dealer sends an inquiry to the ALR, they must contact the police if the artwork was reported stolen. If verification shows that the piece is not listed in the ALR database as stolen, the dealer receives a certificate – an initial document that will suggest a sound source for an antiquity object excavated illegally, and registered in no database. 'This way, a dealer can show without risk that they have exercised due diligence,' says Michel van Rijn, 'and they obtain a nice document.'

Silvelie Karfeld, who works on illegal antiquities at the German Federal Criminal Police Office, has another tip: 'One can also offer such an item to a museum with only a low level of risk, so that it is temporarily included in an exhibition as a loaned object. Then it is published in the exhibition catalogue and thus obtains an apparently legal background.'

Method three: Forging the paperwork

'I have come by forged papers, especially in the Middle East,' says Michel van Rijn. 'Fanciful provenances are invented. You can always find a notary there to confirm them.' Helmut Thoma agrees. His Syrian dealer told him that he would bring the large grave to Switzerland, and there it would also acquire its papers, 'because the only buyers who really spent a lot of money on these items were American museums,' he says, 'and they wanted to see information about the origin, and so they were provided one: so-and-so bought the piece 40, 50 or 70 years ago, and has had it in their possession ever since, and now he's selling it.' The Americans were entirely satisfied with that. Christoph Leon knows how to forge provenances: 'It's quite simple: you use old typewriters and paper to try and write some sort of letter which somehow indicates the origin.' This said, 'you must be careful,' former curator of the Metropolitan Museum of Art, Oscar White Muscarella forewarns, 'really careful,' he insists, and recounts the story of the so-called Getty *kouros*.

The Getty *kouros* is a larger-than-life marble statue that in 1985 was acquired for 9 million dollars by the J. Paul Getty Museum in Malibu, California. It is not known whether it is authentic or a fake, and the museum acknowledges this. For several years the label next to the statue was: *Greek, about 530 BC, or modern forgery*. What matters most is the provenance of the statue. It first appeared on the art market in 1983, offered by the Basel art dealer Gianfranco Becchina, and supposedly came from the collection of a Genevan doctor named Jean Lauffenberger, as Jiri Frel, curator of antiquities at the Getty Museum, reported to the Board of Trustees. The doctor was said to have acquired the piece in Greece *circa* 1930.

However, there was no record of the provenance and date of discovery of the *kouros*, which eventually brought a little suspicion; all the more so when it became known that no friends of Lauffenberger's or his two ex-wives, had ever seen the statue over the half decade or so it presumably was in his possession,' Oscar White Muscarella recalls. 'Just as suspicion was waning among archaeologists, a couple of letters appeared as if from nowhere, confirming the Lauffenberger provenance – luckily enough for Frel.' One of them was dated 15 March 1952 and sent from Ernst Langlotz, a German archaeologist wherein Langlotz evoked the style of the *kouros*. Another letter from 1955, written by A. E. Bigenwald, a Basel craftsman whom Lauffenberger had contacted, repairs to the *kouros*. 'This seemed to prove its origin,' says Oscar White Muscarella, grinning in anticipation of the twist he is about to tell, 'but the forgers had been careless because

Langlotz's 1952 letter bore no postcode – in fact, the latter was introduced 20 years later, and the bank account indicated by Bigenwald did not exist in 1955. In fact, it was only opened in 1963.'

There are all types of combinations for the different methods – if there is enough criminal drive, there are enough options to provide false provenances. The entire system only works when seller and buyer play their parts, and when the buyer refrains from asking too many questions. 'I don't see why I should feel guilty,' Helmut Thoma, the former manager of RTL, observes. 'Everything was done legally.' Yes, it was legal, but somehow one can sense that Thoma seems to feel he is skating on moral thin ice with this assessment. He resumes, 'what am I supposed to do when I buy something from a dealer? In doubtful cases I don't know either whether he's selling stolen objects or whatever. And I can't verify that.'

Thoma is actually right. It is up to the collector or the buyer to decide whether he believes the dealer or not. But greed on the part of dealers and collectors alike can be an unholy combination. Neil Brodie knows the principle well: 'If you go to a dealer and say you would like to have a provenance for the object that you want to buy, then you'll get one. You receive a piece of paper bearing the names of one or two previous owners, and perhaps a signature as well. You can accept it or not, as you wish. You have to decide for yourself.' Helmut Thoma chose to believe his dealer. The holder of a Ph.D. in Law, he mentions a crucial term: *acquisition in good faith*.

In Germany, 'acquisition in good faith' is lawfully defined in Section 932 of the German Civil Code. One does not have to quote many complicated legal texts. Robert Kugler from Berlin, an attorney who specializes in representing Latin American States with recovery and restitution of cultural property claims, explains the concept thus 'The section was created to simplify legal transactions by saying there are certain things that one can assume as a buyer. Namely, that as a rule the person who is in possession of an object is also its owner. But this also means that as the buyer, one is possibly allowed to keep stolen objects, or illegally exported antiquities, if the acquisition was made in good faith. Good faith requires that one take into account indications of illegality with gross negligence; but there is no general obligation to undertake any research.'

While buyers may trust provenances, acquisition in good faith is always a delicate balancing act. If you buy a mobile phone from a stranger in a pub, you're going to have a hard time later on claiming that you thought it was a *bona fide* offer, but it wouldn't be so hard if you had bought an item in a second-hand shop. Kugler says, 'Buyers must not act as if they were totally clueless. If you are buying a secondhand bicycle at Berlin's Mauerpark flea market, you should ask a few probing questions, because it is common knowledge that stolen bikes are bought and sold there now and again.' The situation would be different, however, if you go to a bicycle dealer, even for a used bike.

Now, if a collector acquires a *shabti* from an antiquities dealer, he has acquired it in good faith, just like he would buy a ring from a jeweler, or an item at an antiques' fair. And if it turns out that the provenance of the piece later is not quite in order – for example, it came from an illicit excavation insofar as the Egyptian State can indeed request its return, but has virtually no chance of winning in a German court. The new title to the property has more weight because the buyer, and perhaps the dealer, too, can claim that they acquired the piece in good faith. Helmut Thoma can thus continue to display his grave slab with impunity. Nobody can bring a legal case against him. This said, today any legal misconduct on his part would fall under the statute of limitations.

In Germany, the principle of good faith applies by law when it comes to auctions

with publicly appointed and sworn auctioneers. Anyone who acquires an object at a public auction automatically does so in good faith and is then the lawful owner of the item – no matter where it came from. Acquisition in good faith is recognized in almost all countries, but it does not protect the new owner everywhere. To put it simply, in the Anglo-Saxon legal systems (England, the U.S.A, Canada, Australia and New Zealand) even acquisition in good faith does not provide grounds for a new title to the property in the case of stolen objects. However, the situation is different on the European continent (and in countries with similar legal systems). This said, as was mentioned earlier, the buyer is expected to exercise a certain amount of care and precaution.

I tell lawyer Robert Kugler of the case of the Egyptian mural from the exhibition in Bonn, and its *bona fide* acquisition – probably by the dealer, and later on by Mr and Mrs Preuss. He is dismissive: the object may well have originated from a documented excavation site known for years – and not only in the academic world but also among the general public. Still ‘the new title to the property is valid.’

Admittedly, archaeologists like Michael Müller-Karpe are right (somewhat) when they say that archaeological finds are subject, as a rule, to restrictions on acquiring ownership and exporting the items. Many countries of origin have had such rules since the 19th century. For Müller-Karpe and many peers of his, therefore, the decisive factor is whether an object left its country of origin either *with* an export permit (i.e. with verifiable paperwork) or *before* the country of origin introduced a general ban on exports.

Yet there is a yawning gap between this view and the law. In short, the problem is that in Germany, German law applies. The Regional Court of Frankfurt am Main ruled to this effect on 18 August 2011 (recorded on 19 November 2011, Case no. 2-13 O 212/10), stating that:

lex rei sitae [applies]. Accordingly, decisions on the acquisition, content and loss of the property are determined by the legal system of the state in which the item is located. This also applies to cultural objects.

Put simply, the right to ownership of antiquities is decided by the laws that apply in the country in which the object is at the time of the legal proceeding. If it is in Germany, the issue is decided by German law, in Italy by Italian law and in England by English law. The same ruling also determined that even a possible infringement of export bans imposed by the object’s country of origin does not prevent acquisition of ownership in Germany. The ruling was confirmed by the Higher Regional Court of Frankfurt on 4 February 2013 and can therefore be used as a precedent in other rulings (Case no. 16 U 161/11 2-13 O 212/10).

To Karl-Heinz Preuss, the provenance of ‘his’ mural from Thebes came as a shock, and he knows that in buying it, he became responsible not only for this specific act of destruction, but others as well given that the process paid off for the looters. For Preuss and his wife the mural had to be returned to Egypt. Legally, they could have kept it for it was acquired in good faith. ‘I know that, of course. But for us it’s not a legal question, it’s a moral one,’ Preuss explains. ‘We have also seen pictures of the wall after its destruction. And that is such an appalling crime that, to us, there could be no alternative: it had to be returned to Egypt.’ Without a moment’s hesitation, they decided to return the art piece to Egypt, even though it was difficult to part with it. But, Preuss says, ‘We’ve always felt that with art collecting comes responsibility. Ancient art belongs to the cultural heritage of humanity, so one has to handle it in an especially responsible manner.’

The Internet Market in Antiquities

Neil Brodie

Since the launch of eBay in 1995, the Internet market in antiquities has grown into a sophisticated and diversified commercial operation (Barker 2000; Bruhns 2000; Chippindale and Gill 2001; Lidington 2002; Fay 2011). By 2014, antiquities from most countries in the world could be bought online in many other countries of the world. Alongside the continuing existence of eBay, which offers a platform enabling private transactions through auction, more traditional businesses have established themselves, including companies selling directly to the public from virtual ‘galleries’ (termed here ‘Internet dealers’), and companies offering material for online auction (termed ‘Internet auctions’). Just as notable was the appearance of Internet malls or marketplaces. These Internet malls gather together on one website links to a range of merchants or ‘members’, all offering related types of material. The Trocadero marketplace, for example, links to the inventories of dealers in art and antiques, including antiquities. Potential customers visiting the Trocadero website can search or browse according to material or vendor. VCoins, as its name suggests, is a venue for the purchase and sale of coins, including ancient coins. In February 2015, it listed 137 ancient coin dealers offering between them 91,764 items with a total asking price of \$22,897,792. Many of the listed dealers also sold antiquities.

The Internet market allows the participation of antiquities collectors from a much broader range of socioeconomic backgrounds than was previously the case. It works against traditional merchants who maintain physical galleries in expensive locations such as New York or London and favors a new business model whereby large inventories can be stored in low-cost locations, thus making it financially viable to trade in low-value and potentially high-volume material. It also brings geographically distant buyers and sellers together in electronic space. Individuals in Malaysia, for example, can sell directly to customers in the U.S.A by offering material on eBay U.S.A. Most antiquities are sold on the Internet without any secure documentation of provenance (ownership history) or find spot. Unprovenanced antiquities of this sort are known often to have been excavated and traded in contravention of national or international laws – they have been stolen and smuggled. The fact that antiquities sold on the Internet are of poorer quality than those that have been traditionally traded indicates that archaeological sites or cultural institutions that previously would not have been worth looting and thus left intact are now viewed in a more lucrative light and targeted accordingly.

Archaeologists, merchants and customers alike also believe the Internet market to be riddled with fakes. It was reported that, in 2009, 11 out of 99 antiquities’ vendors were suspended by eBay for selling fakes (Fay 2011: 459). Yet, as an alternative to eBay merchants unsurprisingly recommended firstly, to purchase from established auction houses or dealers, particularly from those who are members of professional associations, and, secondly, to buy from dealers offering an unconditional guarantee of authenticity for sold objects. Trocadero and VCoins also look to have been exercised about the debilitating effect of fakes on market confidence. Both strongly proscribed misrepresentation of objects offered for sale and reserved the right to discontinue members who failed to comply with their rules on the issue. Kelker and Bruhns believe that only the more blatant fakes end up being sold on eBay, and give examples of more

convincing forgeries and pastiches being sold by other merchants and bought by wealthy collectors and museums (Kelker and Bruhns 2010: 45-58). Thus the expanding Internet market has had a destructive effect on the world's archaeological and cultural heritage and a detrimental effect on historical scholarship.

In response to growing concerns about the Internet market, UNESCO, INTERPOL and ICOM issued a joint statement in 2006. The statement recommended several actions that might obstruct the sale of illicitly-traded antiquities – in particular, that the following disclaimer be posted on any website offering antiquities for sale:

With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM (UNESCO 2006).

This paper looks more closely at the Internet market in antiquities. First, it presents some findings of original research by the author (Brodie 2014), describing the scale, structure and operation of the Internet market. It follows with a series of five short case studies and a concluding discussion.

The Internet Market in pre-Columbian antiquities

The structure of the Internet market in pre-Columbian antiquities

There are no reliable statistics describing the material volume or monetary value of the Internet market in its entirety. Using a sampling methodology, a study of the Internet market in pre-Columbian antiquities conducted over a three-year period (2011-2013) established some baseline estimates.

On average, over the period in question, a minimum of 6,285 lots of pre-Columbian antiquities were sold online each year. With the mean number of objects per lot varying between 1-1.7, the minimum number of antiquities sold annually would have been something in the region of 8,170. The annual aggregate value of this material is estimated to be \$3,605,385. These figures are likely to be underestimates because of uncertainties surrounding the methodology. The actual numbers are likely to be higher though less than double those estimated – between 8,000 and 16,000 objects sold annually with a total value of between \$3,600,000 and \$7,200,000. To put these figures into some perspective, the physical auction house Sotheby's in New York sells on average 35 lots per year, for a total value of \$1,644,032 and a mean price of \$46,972. Thus the Internet market comprises the low and middle sections of the antiquities market as a whole.

Figures 1-3 show a breakdown of the total figures according to Internet dealers, Internet auctions and eBay. eBay is the major market outlet in terms of material volume. It offers and sells large quantities of generally small, low-priced objects, though financially it accounts for less business than the Internet dealers and auctions.

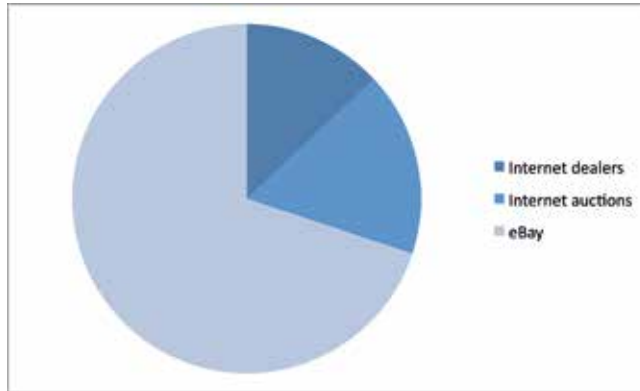


Fig. 1. Market shares according to material volume. Data from Brodie (2014: 255-56, tables 13.2 and 13.3).

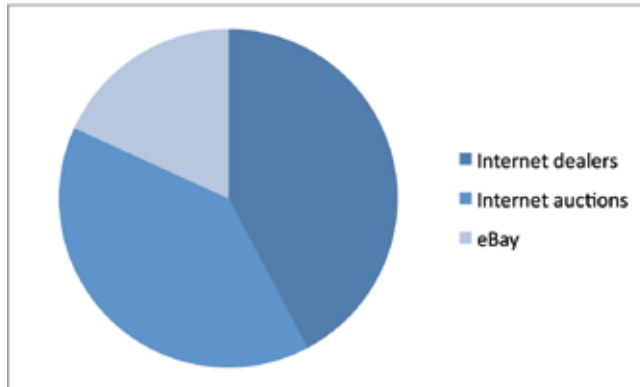


Fig. 2. Market shares according to monetary value. Data from Brodie (2014: 255-56, tables 13.2 and 13.3).



Fig. 3. Mean price (\$) per lot sold. Data from Brodie (2014: 255-56, tables 13.2 and 13.3).

The key indicator for assessing archaeological damage is material volume – the number of looted antiquities in circulation. The high number of objects being traded shows how damaging the Internet market has been when compared to the smaller, more traditional, physical market.

The provision of provenance for Internet sales of pre-Columbian antiquities

Figures 4 and 5 show provenance statistics for pre-Columbian material sold on the Internet between 2011 and 2013. Most lots are offered and sold with no verifiable provenance, or with a provenance that fails to date back to before 1970. Thus customers are not preferentially targeting provenanced antiquities, nor are they being frightened off by the absence of provenance, which indicates either ignorance or insensitivity on their part towards the provenance-related issues of illicit trade and authenticity.

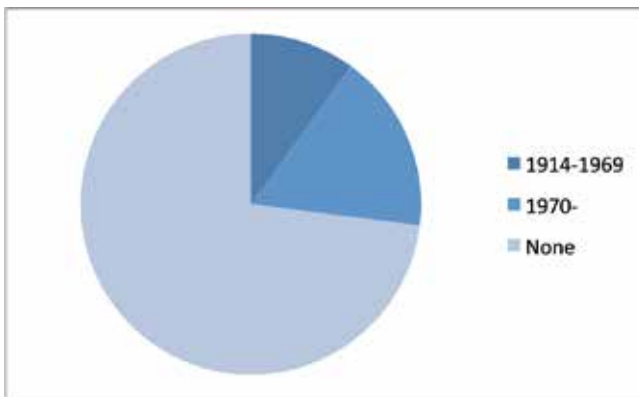


Fig.4. Internet dealers and auctions. Earliest verifiable provenance of lots sold. Data from Brodie (2014: 257, table 13.4).

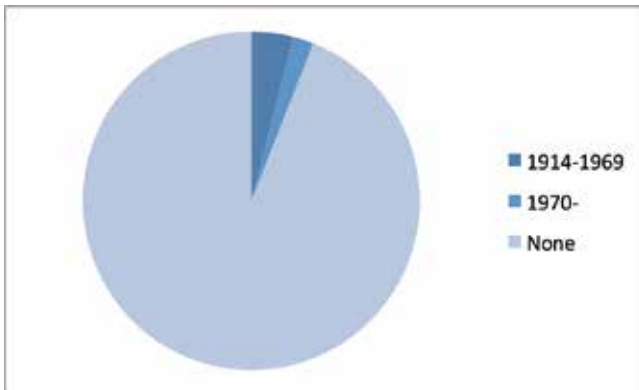


Fig. 5. eBay: earliest verifiable provenance of lots sold. Data from Brodie (2014: 257, table 13.4).

In 2013, the ICOM/INTERPOL/UNESCO disclaimer was not observed on any trade website inspected (except eBay, as will be explained below). More generally, advice on provenance or national and international laws is generally hard to find and usually inaccurate. Only a few websites offered any information about statutory regulation or

the importance of establishing a documented provenance. When advice was offered it was most commonly to assert the importance of the 1970 date of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property as a 'bright line', suggesting that material out of its country of origin before 1970 is legally on the market. This statement is incorrect. The legality or otherwise of export is determined by national legislation, not the 1970 UNESCO Convention. Where websites did provide information about appropriate laws and regulations it looked to be for cosmetic purposes only. On websites stating the importance of 1970 as a threshold date, for example, the majority of lots offered and sold had no dated provenance and thus nothing to guide a customer in search of pre-1970 material.

Most websites did offer 'certificates of authenticity', seemingly guaranteeing the authenticity of objects sold and offering the customer some protection against fraud. In reality, these certificates are badly misleading. They offer a money refund if a purchased antiquity is shown to be fake. As this would entail the customer paying for expert opinion or scientific analysis, a simple refund of purchase price would still leave the customer out of pocket. There is no incentive for a customer to pay for the necessary examination, and therefore little legal or financial risk to a merchant knowingly or unknowingly selling fakes.

The CCPIA and the Internet market in pre-Columbian antiquities

In 1983, the U.S.A enacted the Convention on Cultural Property Implementation Act (CCPIA) in implementation of the 1970 UNESCO Convention. Under the CCPIA, States whose cultural heritage is in imminent danger of looting and illicit trade can ask for a bilateral agreement obliging the U.S.A to place import controls on designated categories of cultural material from the country concerned. The agreements are formalized by means of a Memorandum of Understanding (MOU) and run for five years. They are open to renewal.

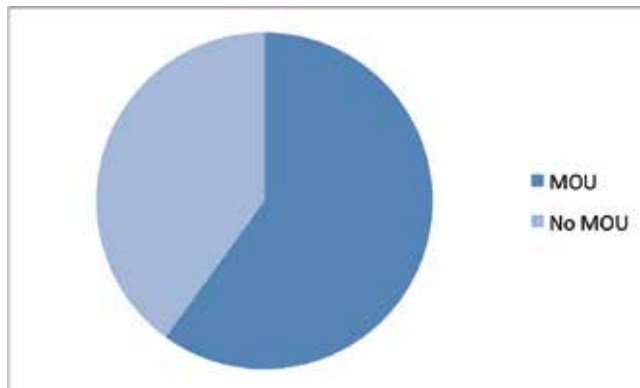


Fig. 6. Proportions of total lots sold from countries without and with MOUs reached under the 1983 CCPIA. Data from Brodie (2014: 259, table 13.8).

Many of the Latin American countries that are the source of pre-Columbian antiquities have agreed MOUs with the U.S.A. Thus the import of pre-Columbian antiquities from any country with an MOU would be in violation of US law. There is no real evidence,

however, that concerns about illicit import are causing the suppression of information about the origins of unprovenanced antiquities offered for sale on US-based websites. Country names are frequently provided, and even when they are not, cultural terms offered in object descriptions are often specific to a single country – the Chavín culture, for example, which is restricted in its distribution to Peru. Peru agreed an MOU in 1997. Figure 6 (above) shows that merchants are not shy about selling objects from countries with MOUs and that customers are happy to buy them. No websites have been observed describing the regulatory substance of bilateral agreements enacted under the CCPIA, or providing details of specific agreements. There is no real evidence of customer caution or restraint when faced by unprovenanced material from countries with MOUs. Again, as in the case of provenance, customers seem either unaware of or unconcerned about the possible illicit origins of their purchases.

Some case studies

Stolen Coptic manuscripts from Egypt

Starting in February 2003, the St. Shenouda the Archimandrite Coptic Society, based in California, U.S.A., purchased 189 items on eBay, comprising parts of 22 different Coptic manuscripts, from 12 different sellers (Takla 2014). Many of the manuscripts had most likely been smuggled out of Egypt whole, and were sold whole on eBay or else dismembered and sold as lots of one or more pages. Perhaps 12 of the manuscripts had passed through the hands of one seller, resident in Turkey, who had been auctioning whole manuscripts and individual pages. Some of the material he had handled was later resold by three other people acting independently of one another. He also sold some intact manuscripts to a US-based husband and wife team, who in turn dismembered them before selling individual pages on eBay. It was established from following the sales history of one single manuscript that individual pages had been sold in at least 338 transactions to 70 buyers in 10 countries. The total price for all identified pieces was \$11,558, with the lowest price being \$601.89 and the highest \$1,660.50. The purchase of what might be stolen Coptic manuscripts of Egyptian origin by the US-based Coptic Society might be morally justifiable but is legally questionable.

Stolen antiquities from the Egyptian archaeological site of Ma'adi

In 2004, various objects from the Egyptian Predynastic site of Ma'adi began appearing on Internet dealer sites and for physical auction. They had been stolen from a storage facility at Cairo University in 2002 and offered for sale with a false provenance. US Immigration and Customs Enforcement (ICE) established that the material had been smuggled out of Egypt by a US Army helicopter pilot and sold to a US-based antiquities dealer who also sold online. She then sold the more valuable stone bowls through physical auctions in London and New York and the less valuable pottery by private sale to other Internet dealers who in turn resold the material online. In 2008 the helicopter pilot pled guilty to a charge of possession and sale of stolen antiquities and 79 objects were returned to Egypt (ICE 2008a, 2008b).

Illegally excavated coins from Bulgaria

Since the 1990s, large quantities of coins said to be from Bulgaria have been offered for sale on the Internet. Before 2007, when Bulgaria joined the European Union, it seems

likely that the country was sometimes being used as a fictional findspot for coins actually found in the EU. It is also believed that many of the coins are fake. Nevertheless, even leaving aside material from outside Bulgaria and fakes, there has been a very large and damaging trade in genuine coins from Bulgaria. In June 2011, for example, Canada returned 21,000 coins and pieces of jewellery that had been smuggled into Canada from Bulgaria in 2008 and seized by police (Canadian Heritage 2011). In May 2013 ICE returned from the U.S.A 546 coins that had been arrived in Newark by mail from Bulgaria in 2011 (ICE 2013).

More is known about the activities of one Bulgarian dealer based in the U.S.A. He moved to the U.S.A in 1999 after facing charges in Bulgaria related to antiquities smuggling. In March 1999, two parcels addressed to the dealer weighing between them 60 kg and containing between them 19,860 coins were seized at Frankfurt Airport (Dietrich 2002). Customs documentation stated that the coins had been bought a trade fair in Munich. Further investigations by German customs established that the same dealer had transited several previous shipments through Frankfurt, weighing in total close to one metric ton. This would be about 350,000 coins in total (Elkin 2009: 484). In December 2000, because of procedural difficulties, German customs released the material back to the owner, for shipment onwards to the U.S.A. Until June 2007, the dealer was selling coins on eBay. It is estimated from eBay records that between 2000 and 2007 he would have made \$1,251,994 from coin sales (Campbell 2013: 131).

The Nebuchadnezzar Larsa bricks from Iraq

Since 2005, it has been possible to find examples of objects looted from Iraq and Syria for sale on the Internet. One glaring example is that of the Nebuchadnezzar Larsa bricks (Brodie 2011: 125-126). Each of these clay bricks carries an identical Neo-Babylonian inscription celebrating King Nebuchadnezzar II's restoration of the temple of Shamash in Larsa. Images of bricks show that they have been sawn down in size to facilitate illegal transport from Iraq. The faces of whole bricks measure something like 34 x 33 cm, while those of pieces offered for sale are in the region of 19 x 11 cm. The bricks are thought to have been taken from the site of Larsa when it was badly looted in 2003. They started appearing for sale on eBay and other Internet sites in about 2005. To date, more than ten different ones have been identified. On 12 February 2015, one US-based seller was offering a brick for \$1900. He claimed to have bought five in 2005. A UK-based dealer was offering a similar brick for \$2289.

A comparison of eBay regulations in Germany and the U.S.A

eBay regulations as regards the sale of non-domestic antiquities vary according to country, both in terms of requirements and enforcement. In Germany, a clear definition of an antiquity is provided on the eBay site, where it is stated that an antiquity can only be offered for sale if accompanied by valid documentation of legal export from its country of origin. It is prohibited to sell any object listed on an ICOM Red List. In the U.S.A, antiquities are defined as 'items of cultural significance [...] from anywhere in the world' and, like Germany, the eBay site states that an antiquity can only be offered for sale if accompanied by an image of valid documentation of legal export from its country of origin. The German and US rules are broadly in line with the 2006 ICOM/INTERPOL/UNESCO recommendations.

A quick inspection of eBay Germany on 12 February 2015 found only a handful of

antiquities offered for sale, all accompanied by an image of relevant documentation. On the same day, however, on eBay U.S.A, despite a similar rule to the German one, there were thousands of objects for sale without any kind of documentation, many offered by non-US-based sellers. The startlingly different sales numbers on the US and German eBay sites despite similar rules about the provision of provenance indicate different standards of self-regulatory compliance that are probably due to the presence or absence of external oversight. In Germany, inspection and oversight is provided by state representatives of the *Landesdenkmalpflege* (Monument Protection Authority). In the U.S.A, there does not appear to be an appointed responsible monitor of that sort. There was not a disproportionate number of German sellers on either the UK or US eBay sites, suggesting that the strong German regime has not simply displaced activity to other countries where eBay has a less stringent regime. More systematic research would be needed to confirm that fact.

Discussion

Some antiquities offered sale without provenance on the Internet, such as the Coptic manuscript pages and the Ma'adi antiquities are the product of theft and recent illicit trade. Many other unprovenanced antiquities have been out of their countries of origin for 10, 20 or more years and an unknown proportion are probably fake. Thus the size of the market is an indication of the failure of public policy to achieve any kind of decisive response to the Internet market since its inception in the late 1990s. Buoyant sales figures show that the general absence of provenance (with its implication of illicit trade) and the likely presence of fakes are not deterring customers, who are either unaware of the possible illicit or fraudulent sources of material up for sale, or do not care. Thus the Internet market is flourishing in part because of widespread ignorance or indifference on the part of customers to the issues involved.

Merchants do nothing to help. Several websites provide lengthy advice about avoiding fakes on the market while proffering questionable 'guarantees of authenticity', but have less to say about illicit trade. The reason presumably is to protect business by reassuring customers about the authenticity of material up for sale while at the same time not frightening them off with talk of laws and law-breaking. The recommended ICOM/INTERPOL/UNESCO statement is nowhere to be seen. Self-regulation appears to be largely non-existent. Even on eBay U.S.A, its own rule requiring sellers to include an image of an official document confirming legal export is completely ignored.

The experience of eBay U.S.A shows that in the absence of effective oversight self-regulation is likely to fail, and concerned public or professional bodies need to step forward and respond to the challenge. Bland (2009: 90-91) reports the heavy time burden of monitoring eBay UK, but perhaps that is because of the complexity of UK national legislation as reflected on the eBay UK policy page. The German experience seems more positive. The simple rule for non-domestic antiquities that an offered object has to be accompanied by an image of valid export documentation should reduce to a minimum the time burden of monitoring. Clearly, documents can be forged, but at increased risk to the merchant. Professional bodies or other independent organizations with the necessary expertise should be prepared to monitor eBay regularly to ensure self-regulatory compliance.

The emphasis of law enforcement should be on convicting criminals and removing them from the market. The seizure of material in itself does not exert a deterrent effect. It

simply imposes another cost of doing business. No Internet dealers caught selling stolen material from Ma'adi were indicted; presumably they were left free to go about their trade. There have been convictions of people offering stolen antiquities on eBay, but they are the small fish of the antiquities market pond and their convictions have had have no discernible material or deterrent effect.

The one dependable constant of the Internet market is that it is continually creating or adapting to new commercial opportunities. In March 2015, Sotheby's and eBay announced jointly that Sotheby's would commence live streaming auctions on eBay (Grimes 2015). In Syria, militia members have been reported selling antiquities over WhatsApp and using Skype to arrange deals (Hardy 2015). In June 2015, several Facebook pages were identified offering for sale antiquities thought to have come from Syria or Iraq. When alerted, Facebook acted expeditiously to close the pages down (Daftari 2015).

Acknowledgements

The writing of an earlier version of this paper was supported by the Antiquities Coalition. It was further supported by the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013)/European Research Council Grant agreement no. 283873 GTICO.

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The Conflict Antiquities Trade: A Historical Overview

Samuel Andrew Hardy

The public and professionals alike have been sensitized to the problem of conflict antiquities through the Syrian civil war. The history of the trade is sometimes traced as far back as Iraq, Afghanistan or Cambodia. Yet, such plunder forms a piece with far older programmes of State expropriation. Complex structures for antiquities trafficking by armed groups and repressive regimes, and sophisticated markets that consume violently extracted cultural assets, have existed for more than a century.

Category error

The standard definition, established under the United Nations (UN), is that ‘blood diamonds’ or ‘conflict diamonds’ are ‘diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments’ (UN 2000). However, that is inadequate even for natural resources. As Global Witness (2012: 20) have pointed out it essentially excludes the illicit trade’s role in financing the activities of other human rights abusers, e.g. it excludes forces and factions aligned with governments and governments themselves.

For example, the Kimberley Process Certification Scheme for conflict-free States and enterprises recognize that, as well as Angola, the DRC and Sierra Leone, the conflict diamond trade has also afflicted Côte d’Ivoire and Liberia (Kimberley Process 2013). Yet it does not recognise the handling of diamonds that finance Robert Mugabe’s regime in Zimbabwe as trading in conflict diamonds, despite the fact that it is a source of off-budget financing for Zimbabwe’s Central Intelligence Organization (CIO), Ministry of Defence (MOD) and State-owned and internationally sanctioned Zimbabwe Defence Industries (ZDI), which ‘subverts civilian and democratic control’ of law enforcement, facilitates undemocratic management of political life and finances human rights abuses by that government or its shadow, ‘parallel government’ (Global Witness 2012: 3; 4).

Furthermore, there are problems specific to the illicit trade in cultural goods as ‘cultural’ instead of ‘natural’ resources. The destruction and deprivation inherent to the looting and trafficking of cultural property mean that human rights violations are inherent to the illicit trade. And cultural assets may be extracted through State or non-State violence as ‘cultural’ instead of ‘economic’ capital. Hence, it may be helpful to use ‘blood antiquities’ and ‘conflict simultaneously but distinctly, wherein ‘blood antiquities’ are pieces of cultural property that are extracted through violence by politically motivated armed groups, and ‘conflict antiquities’ are pieces of cultural property that are handled to finance politically motivated human rights abusers.

Material assets and cultural assets

Consideration of the distinct treatment of plundered cultural property has persisted for practically as long as cultural property has been plundered. While the Neo-Babylonian Empire plundered Jerusalem in 597 BC, and the Achaemenid Empire incentivized its

forces with the spoils of war and plundered the Neo-Babylonian Empire in 539 BC, the Achaemenid Empire returned the plundered religious artefacts in Babylon to Jerusalem (Miles 2011: 29). The Roman Empire generally refrained from expropriating religious artefacts. It also venerated those religious artefacts that it did expropriate, and partially financed itself through the sale of other cultural property to private buyers (Miles 2011: 30).

Likewise, in the medieval period, Hindu conquerors preserved plundered icons for veneration instead of sharing, selling, or recycling them (Davis 1997: 62-66). Muslim conquerors preserved significant icons for desecration (Davis 1997: 104-108). However, ownership was still believed to be transferred by acquisition through State action. Preservation and destruction were matters of religious duty (or its absence) and economic benefit, rather than matters of historical understanding and cultural respect. Restitution was still ultimately performed as an act of *realpolitik* and strategy, rather than a recognition of property rights or cultural belonging.

Long after the moral and political debates over the acquisition and repatriation of cultural property in the defeated Napoleonic Empire, and not long before the international prohibition of pillage and plunder through the Conventions of the first and second Hague Peace Conferences (HPC 1899; 1907), 'punitive expeditions' to vulnerable States by powerful States persisted as standard practices. By then, though, cultural assets were expropriated *as* cultural assets, which thereby had exceptional value. Since then, the cultural property market's exploitation of such criminal opportunities, and supplier criminals' exploitation of such market opportunities have continued to grow.

When the Second French Empire sacked Korea in 1866, when the British Empire sacked Ethiopia in 1868, Ashanti in 1874 and Benin in 1897, for example, those States extracted blood antiquities – assets that were donated to their own cultural heritage institutions (Forrest 2010: 162). Certainly, when the British Empire sacked Ethiopia, Ashanti and Benin, it also extracted conflict antiquities – assets that were auctioned and sold to cultural property collectors to cover the costs of its invasions (AFROMET 2000; Lindsay 2014: 218; Opoku 2011 and 2012). Indeed, British Museum manuscript assistant Richard Holmes was an appointed member of the punitive expedition to Ethiopia and bought objects from soldiers during the plunder of Maqadala (AFROMET, 2000).

In 1903-1904, the Sikkim-Tibet Field Force Expedition conducted an operation that combined a diplomatic mission and a punitive expedition (Hopkirk 1983: 162-164). The British Empire's expedition provoked confrontations that legitimized massacre and plunder. Spurred on by news from home that antiquities from Tibet were achieving 'high prices in the auction houses of London' (Myatt 2011: 135), the Expedition extracted blood and conflict antiquities ('legitimate loot') from monasteries in Gyantse and Tsechen (Myatt 2011: 135; see also 137) – thus abandoning a long-standing principle of not plundering religious property (Davis 1997: 154), and explicitly rejecting the strictures of the Second Hague Convention of 1899.

The colonial Government of India had appointed Tibetologist Lieutenant-Colonel Austine Waddell to the expedition to purchase cultural property for institutions across the British Empire. Yet, during the massacre of Chumik Shenko, Waddell stole antiquities from the Tibetan force's dead leader's home; and 'the man who collects for the British Museum' was also given antiquities from the monastery of Pelkor Chöde, which soldiers had extracted while torturing a Lama for other commodities (Myatt 2011: 131 and 134). Much more was plundered besides that, which was split between cultural heritage institutions such as the (colonial) India Museum and the British Museum, military

leaders and military officers. Some of it was then sold through Christie's.

Expropriation

So, within conflict antiquities trading, there are intertwined strands of cultural property crime, including might-makes-right plunder, which has persisted in the sack of vulnerable States by powerful States. Legalized internal theft can be traced back to acts such as England's confiscation of Christian monasteries' property in 1536-1541, and China's confiscation of Buddhist monasteries' property in 845. This, too, has persisted in the State crimes of the Ottoman Empire, Bolshevik Russia and the Soviet Union, Nazi Germany, the People's Republic of China and Khmer Rouge Cambodia, for which the expropriation of vulnerable communities' cultural property was also a constituent element of persecution. And, increasingly, there is outright illicit appropriation of cultural property by State and non-State forces, which may be indiscriminate but which may feed on and feed into persecution.

The Ottoman Empire

The *coupist* Committee of Union and Progress (*İttihat ve Terakki Cemiyeti*) seized control of the Ottoman Empire in 1913 and entered the First World War in 1914. Building on the foundations of an existing policy of Ottomanization, it initiated a programme of 'nationalization' (or, 'Turkification') which went beyond State expropriation of private assets to further the war effort. It comprised the dispossession of non-Turkish, non-Muslim communities' assets by Turkish Muslim structures, so as to further the homogenization of society.

State expropriation of the cultural property of minority communities was a constituent element of the Armenian Genocide (Akçam and Kurt 2015; Üngör and Polatel 2011). Other Eastern Christians suffered the same fate, i.e. Greek, Assyrian (or Nestorian Orthodox), Chaldean (or Nestorian Catholic), Syriac Orthodox (or Jacobite) and Syriac Catholic communities (Bjørnlund 2009; de Courtois 2004; Gaunt 2006). Occasionally, historic and religious artefacts would be smashed rather than sold (Gaunt 2006: 144). More often, homes, villages, churches, convents, monasteries and missions were looted or plundered and auctioned.

Even before the First World War, a paramilitary Special Organization (*Teşkilat-ı Mahsusa*) had begun to kill and displace Christian communities. The theft of the dispossessed property was legalized through the Abandoned Properties Laws (*Emval-i Metruke Kanunları*) of 1915-1930. Amongst other institutions, during the First World War, the CUP regime established Abandoned Properties Commissions ('*Emval-i Metruke Komisyonları*') to realize dispossession behind a legal fiction of abandonment and compensation. And it established Liquidation Commissions (*Tasfiye Komisyonları*) to prepare documentation for court-ordered confiscation, redistribution and sale via public auction. The liquidated wealth was both redistributed to local and refugee Turkish Muslim communities, which incentivized their participation in the genocide, and sold to private buyers, which financed the genocide. Much portable property, including portable cultural property, was then resold in local bazaars, from where they flowed onto national and international markets through bazaars in Constantinople (Gingeras 2009: 53; Üngör and Polatel 2011: 88).

However, one documented and corroborated case reveals that the entire process of

trafficking antiquities could be distinctly organized. Abdul Kadir Pasha Gueuze, Khudr Chelebi Komerli, Abdur Rahman Kavas and Razzuk Chelebi organized a 'Moslem Committee' to conduct massacres in Diyarbakir and Mardin, then extracted millions of dollars' worth of 'jewelry, carpets and antiquities... as well as gold' from those territories alone (British Captain Evan MacRury, 12 December 1918, cited in Dadrian 1996: 78).

Diyarbakir Governor Mehmet Reshid, who offered some jewelry and furniture to more senior regime figures, transported '48 boxes of jewelry and two cases full of precious stones' in one go (British General Staff Intelligence Egyptian Expeditionary Force, 12 February 1919, cited in Dadrian, 1996: 78). Much of Abdul Kadir Pasha's gang's plunder was sold to Diyarbakir Deputy Aziz Feyzi or Aleppo-based German entrepreneur Martha Koch, thence to genocide-facilitating foreign officials such as the German Minister Resident for the Orient, Baron Max von Oppenheim, who fed disinformation to his own authorities.

After the First World War, when the Constantinople Government fell under the occupation of Western powers, the Turkish National Movement and its parallel Ankara Government imposed National Tax Obligations (*Tekâlif-i Milliye*) to fund the 1919-1922 War of Independence, which encompassed further efforts at genocide that persisted until 1923. Significant sources of funding for those obligations were the expropriated assets of exiled and exterminated minority communities, which were legally ring-fenced for military expenditure (Akçam and Kurt 2015).

Bolshevik Russia and the Soviet Union

Following the seizure of power by the Bolsheviks through the Russian Revolution in 1917, the communist regime began 'looting the looters' as it expropriated the assets of its internal political targets. In 1918-1919, parallel with the civil war, Soviet Russia established the Commission for the Storage and Registration of Artistic and Historic Monuments to facilitate the confiscation of individuals' and institutions' cultural property. It seized more than a billion dollars' worth of exactly catalogued assets from one city in one year alone, which included icons, 'silver and bronze artifacts [and] "archaeological curiosities"' (McMeekin 2009: 60).

With the lifting of the international blockade in 1920, that Commission became a State Treasury for the Storage of Valuables (*Gosudarstvennoe khranilishche tsennostei, or Gokhran*) in order to register, expropriate, evaluate and export cultural property from its territory. And with the end of the civil war and the famine-induced collapse of worker and peasant uprisings in 1922, the regime withdrew its strategic exemption of religious property and plundered the Russian Orthodox Church, the Armenian Orthodox Church, the Greek Orthodox Church, the Anglican Church of Moscow and the Jewish community's synagogues.

That year, thousands of icons looted were sold on the local market to foreign collectors. At least 277 were bought by banker Olof Aschberg in 1923-1924 and around 250 of those 277 were then donated to the National Museum of Sweden in 1933 (McMeekin 2009: 88-89). Much of the total value consisted of precious metals, precious stones and pearls. Many of those raw materials had been extracted from recycled cultural artefacts. Still, just in the 1920s, the Bolshevik administration sold billions of dollars' worth of assets direct to buyers in Russia. It sold tens of billions of dollars' worth of looted art and antiquities from Russia into the international market.

It sold through Rudolf Lepke's high-end, 'museum-quality' Berlin Kunst-Auction-

Haus; Stepan Mikhailovich Mussuri's low-end dealership in 'antiquities religious artifacts, artifacts made of bronze, manuscripts and other cultural goods (McMeekin 2009: 217); and Aschberg's international enterprises. It also sold through Christie's and Sotheby's auction houses and other brokers in Austria, Germany, Sweden, the UK and the US. In 1931, the British State bought an ancient Bible and gave it to the British Museum (McMeekin 2009: 219). The collateral and income were primarily used to raise funds for tens of billions of dollars' worth of arms purchases from Germany. And such practices persisted. Between 1979 and 1989, occupying Soviet forces plundered the cultural assets of Afghanistan (Richardson 2012).

The Nazi Empire

Having long persecuted its Jewish subjects, in 1938, Nazi Germany issued an Order for the Disclosure of Jewish Assets and then a Decree on the Confiscation of Jewish Property, which established a system for registering and expropriating assets. From 1939, the Nazi Empire began expropriating the cultural assets of occupied States and vulnerable communities and divided them amongst public administrations, cultural heritage institutions, civilian victims of Allied bombing, the Nazi Welfare Organization (*Nationalsozialistische Volkswohlfahrt* or NSV) and local buyers (Dean 2010: 187 and 224). The expropriation of the cultural property of vulnerable communities – such as Jews, Roma and Sinti, sexual minorities and people with disabilities – has not been consistently documented. However, it has been documented that, for example, Roma property was systematically expropriated (Freund 2013: 60 and 66; Holler 2013: 167; Korb 2013: 85 and 86). There was a wrangle within the Nazi State over the fate of cultural property. Various, 'arson squads' (*Brenn-Kommandos*) burned ideologically unacceptable material; race-focused institutions saved it for study; empire-focused institutions preserved ideologically acceptable material for the glory of the Reich; and finance-focused institutions cashed in its cultural capital for economic capital.

When cultural property was deemed suitable for acquisition, it entered the personal collections of regime figures, the public collections of museums and galleries or the antiquities market. Even there, there was a wrangle between different arms of acquisition, such as between the Wehrmacht-backed Reichsleiter Rosenberg Taskforce (*Einsatzstab Reichsleiter Rosenberg* or ERR) and the Central Security Department of the Reich (*Reichssicherheitshauptamt* or RSHA) in France and between the ERR, the Administration of Enemy Property (*Feindvermögensverwaltung*) and the Gestapo-backed Mühlmann Section (*Dienststelle Mühlmann* or DM) in the Netherlands (Aalders 2004: 52-58).

Each structure was an internally complex operation. The DM ran separate bank accounts for separate financial flows – one that disbursed public money for regime collectors, one that accrued public money from regime sale and one that transferred private money for private collectors. The ERR oversaw parallel teams of experts who specialized in particular classes of assets, such as those from churches (Aalders 2004: 48). Perceived 'degenerate' art was sold as well as destroyed, which demonstrates the flexibility of other self-proclaimed iconoclasts (Nicholas 1995: 10). The politically-disbarred former museum director and art association director Hildebrand Gurlitt, gallery-owning art dealer Karl Buchholz, art broker Ferdinand Möller and art broker Bernhard Böhmer were appointed the trade representatives of the Commission for the Exploitation of Confiscated Works of Degenerate Art (*Kommission zur Verwertung der*

Beschlagnahmten Werke Entarteter Kunst).

When Gurlitt, Buchholz, Möller and Böhmer failed to sell nearly 16,000 pieces of cultural property through the Haus der Kunst, they publicly burned 4,829 of them in one day (on 20 March 1939), whereupon Kunstmuseum Basel and private buyers flocked to ‘rescue’ the remaining pieces (Barker 2013; Chech 2014: 203-14). Buyers were from as far away as the United States (cf. Hucal 2015). This also demonstrates the financial value of asset destruction. Saleable expropriated cultural assets were handled by occupied financial institutions such as Nederland and front companies such as Lippmann, Rosenthal and Co. (Aalders 2004: 36 and 127). They were valued by antiquities brokers and sold to dealers such as Gurlitt (Chechi 2014: 200), or through auction houses such as Kunsthaus Mathias Lempertz (Dean 2010: 374). They were also bought by public museums and private collectors. The State’s price caps limited its own profiteering from confiscation, but maximized the benefits for those private profiteers who bought the stolen goods. Nonetheless, a significant amount directly funded the programme of extermination.

Communist East Germany

Documentation from the West Berlin Office for the Protection of the Constitution has revealed that, between 1961 and 1966, the Federal Republic of Germany maintained a hidden fund of tens of millions of dollars ‘to secretly buy cultural assets from East German museums via middlemen in Denmark, Holland and Belgium’ (Detlev Gudat, cited in Ericas, Kuhrt and Wensierski 2014). When that flow of funds was cut off, Stasi Commander Erich Mielke authorized Alexander Schalck-Golodkowski to plunder private collections under the guise of ‘Commercial Coordination’ (*Kommerzielle Koordinierung* or KoKo). This was operated more and more intensively through the 1970s and 1980s. As it implemented Communist East Germany’s Fortune Law, KoKo evaluated – and massively inflated – subjects’ assets who were then imposed duly inflated taxes. When subjects could not pay, the Stasi detained them and KoKo confiscated their assets.

KoKo ‘completely emptied’ some properties, and sometimes gained thousands of antiquities from individual collectors such as Helmuth Meissner and Werner Schwarz (Ericas, Kuhrt and Wensierski 2014). It plundered at least 220,000 objects between 1973 and 1989 (Mashberg 2015). Occasionally, the Stasi pressed those ‘guilty’ of ‘tax evasion’ into donating antiquities to Berlin State Museums (Sandler 2008). Eventually, the secret police’s ‘art squads’ were reduced to pillaging portable antiquities and ancient architecture from churches, libraries and public infrastructure (Mashberg 2015).

KoKo chauffeured bus loads of buyers – primarily from the Federal Republic of Germany, but from Japan as well – to shop amongst daily truckloads of art and antiquities at the warehouse of its primary front company, Kunst und Antiquitäten GmbH, where they could purchase stock ‘by the container’ according to lawyer Nicolai Kemle, the Chairman of the Institut für Kunst und Recht (cited in Sherwin 2014). It arranged personalized, nationwide shopping sprees for its most valued customers (Ericas, Kuhrt and Wensierski 2014). Some of the plunder was sold through Christie’s (Mashberg 2015). By the sale of this ‘robbed gold’ (*Raubgold*), KoKo extracted tens of millions of dollars a year (Yackley 2000).

China

In 1949, when the Communist Party had effectively defeated the Nationalist Party in the Chinese Civil War, it converted the Republic of China into the People's Republic of China under a supposed dictatorship of the proletariat. Then, it tried to foster popular class war. In 1950, it annexed Tibet. When the Communist Party tried to industrialize China through the Great Leap Forward (1958-1961), its industrialization and 'civilization' of Tibet provoked exceptional resistance, against which China launched a campaign of 'anti-feudalism'. The regime established the Cultural Articles Preservation Commission, which had the same function in Tibet as its euphemistically named predecessors elsewhere – to destroy cultural life and political resistance and to generate a revenue stream to finance that persecution and other repression. Thousands of monasteries were dissolved. China trafficked so much cultural property from Tibet that it 'flooded' the antiquities markets of Hong Kong and Tokyo (Knuth 2003: 213). If cultural goods were not valuable enough to be looted, they were destroyed.

Due to the induction of a famine through the Great Leap Forward, and the persistence of internal party struggle, there was another civil war, in the form of the Great Proletarian Cultural Revolution (1966-1976). The destruction of the Four Old Things – old ideology, old culture, old habits and old customs – involved another campaign of ethnocide in Tibet, which was led by thousands of radical student Red Guards. The loss to Tibetan society was incalculable both in terms of culture and in terms of sheer quantity. During a post-revolutionary period of doctrinal relaxation and reconstruction, one mission to Beijing found 13,000 statues and statuettes (Knuth 2003: 218).

There has not been another such systematic programme of ethnocide since. However, in reaction to an uprising in 2008, in which Tibetan autonomists looted and destroyed Chinese settlers' private assets, Chinese police punitively plundered Tibetan communities' cultural assets (Smith, 2010: 18; 20; 57). It was evidenced by a 'marked flow' of cultural material 'onto the [antiquities] market' (Alder, Chappell and Polk 2009: 127).

Cambodia

Cambodia embodies the historical shift from State plunder to non-State looting. It encompasses violent organizations that acted outside the State to advance political interests and violent organizations that perverted State institutions to advance financial interests. As soon as conflict erupted in 1970, industrial looting was instituted by the Vietnam People's Army (an ally of the communist Khmer Rouge) as well as the young Khmer Republic (Davis and Mackenzie 2014: 297-298).

Collectors have excused the purchase of antiquities during the civil war in Cambodia as rescue from the threat of destruction by the Khmer Rouge (Mashberg and Blumenthal 2013: 41). Yet the Khmer Rouge launched a programme of destruction, within a broader politicide campaign against religious people or 'intellectuals' who were presumed to be counter-revolutionary, when it established nationwide control in 1975 (Thomas 2006). It only launched a programme of looting after it had lost nationwide control in 1979 (Davis and Mackenzie 2014: 298-299).

The various armed forces compelled civilians to loot sites, and used industrial machines to extract entire features from buildings, then smuggled the antiquities to dealers in Thailand or buyers at the market end (Mackenzie and Davis 2014: 729-731). Not only did they cooperate with armed forces or corrupt elements within armed forces

outside Cambodia in order to smuggle their loot, but sometimes they also cooperated with each other in Cambodia across lines of conflict (Davis and Mackenzie 2014: 299). While it may now technically be a matter of State corruption instead of State conduct, since the end of the conflict, trafficking has remained 'concentrated in the hands of the military' and its shadow State (Lafont 2004: 39; 54-56).

Conclusion

A victim of Communist East Germany's expropriation, collector Friedhelm Beuker observed that conflict antiquities remained 'smeared with blood, everyone knows that, including the dealers here in the West' (Erices, Kuhrt and Wensierski 2014). Such bloodstained assets have been, and continue to be, consumed by markets around the world. This century-long history demonstrates that situation-to-situation regulation does not work and that the market will not regulate itself. It needs to be strictly regulated to reduce the flow of finances to human rights abusers.

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Illicit Cultural Property from Latin America: Looting, Trafficking, and Sale

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This chapter will provide a broad overview of the theft, smuggling, and illegal sale of cultural objects from Latin America. First, I will describe the two categories of Latin American cultural property covered by this chapter (pre-Conquest artefacts, colonial sacred art), and then consider the form and functioning of the illicit trade in Latin American antiquities. I will discuss the on-the-ground devastation of the historic trade in looted Latin American objects and present a model of a historic antiquities trafficking network. This will be illustrated by two case studies: the theft and trafficking of a large Maya sculpture from the site of Machaquilá, Guatemala, and of the Church of Challapampa, Peru. The paper will close with a brief recommendation and an outline of the various outside forces that appear to play a significant role in the continued looting and trafficking of Latin American cultural objects. Among these important forces to consider are deforestation, human migration, the narcotics trade, local and regional instability, community insecurity, poverty, globalization, and developmental disparities. If reducing the illicit trade in Latin American cultural property is our goal, then all current and future policy must address these issues.

Latin American cultural property

Ancient items from North and South America

Before the Spanish Conquest, every modern Latin American State (in this discussion, including Brazil and Belize) housed complex cultures which produced cultural property that has since been looted, trafficked, and sold on the international market. However, the primary focus of the illicit trade in Latin American archaeological objects has historically been the formidable civilizations of the central and northern Andes, Mesoamerica, and the ‘connecting’ cultures of Costa Rica and Panama. The achievements of these cultures translate into beautiful cultural objects which have become desirable on the antiquities market, especially in the last 60 years. The rise in popularity of these items is tied to a growing Western collecting interest in so-called ‘primitive’ and ‘tribal’ art – racist art market terms that are artificially applied to non-Western and non-Eastern cultural objects. This obsession with the ‘primitive’ started in the 1950s, became popular in the 1960s, and was firmly established in the international art market in the 1970s. By the 1980s most major (and many minor) auction houses offered ‘tribal’ art sales and several offered sales of specifically ‘precolumbian’ art (Gilgan 2001; Yates 2006). The term ‘precolumbian’ is not without its own serious issues, but will be regretfully used here as it is used by the art market. Based on market analysis, certain classes of Latin American artefacts have historically been in demand on the market and likely still are. This is a very rough characterization of a complex market and further details can be found in a number of studies (e.g. Alva 2001; Coe 1993; Coggins 1969, 1976; Gilgan 2001; Gutchen 1983; Hernández Sánchez 2008; Levine and Luna 2013; Luke and Henderson 2006; Parades Maury 1996; Pendergast 1991; Pendergast and Graham 1981; Robertson 1972; Sheets 1973; Yates 2006, 2011, 2014a, 2014b). Thus, the market in Latin American antiquities mostly consists of the following:

- *Ceramics.* Ceramics from throughout Latin America appear for sale on the international market. Of particular focus, and thus at particular cost, are the beautiful Maya polychrome vessel of the Meosamerican lowlands, especially vessels with figural scenes and/or Maya writing, and Moche moulded spouted vessels from Peru made in the form of three dimensional animals, objects, and human portraits.
- *Metalwork.* The cultures that inhabited the area from Peru through Panama were masterful metalworkers who produced cultural objects made of gold, silver, and copper. The majority of these metal objects were used for ceremonial adornment both in life and in death. They are rarely seen as true armour or weaponry, as the material is too soft to be effective. The spectacular funerary masks of the Moche and Chimú of Peru, the jewellery of Ecuador and Colombia, and the mythical animals and other composite beasts of the Darien of Panama, all wrought in gold, are among the most sought-after pieces on the market. Gold, most certainly, is the market's focus, although silver is also of interest, e.g. Inka silver drinking vessels and llama statuettes. Copper artefacts are rarer on the international market as survive poorly.
- *Textile.* Because of the arid conditions of the coastal areas of Peru and northern Chile and because a number of ancient cultures of the region specifically deposited their dead in locations that favoured natural mummification, many examples of ancient textile craft survive from that area. The Paracas, Nasca, and Wari cultures, among others, wrapped their important dead in up to 100 pieces of textile before placing them in desert burials. These textiles are some of the most intricate and advanced seen in the ancient world, displaying mythological scenes in bright colours using embroidery, tapestry weaving, and printing. Featherwork also survives. These pieces, although fragile, have been extremely popular on the market as they are considered to be the finest in the world.
- *Stonework.* Latin American stone sculpture is both rare on the market and highly sought. Historically the most prized and most looted type of stone sculpture from the region have been the stelae, altars, and other architectural pieces produced by the Maya. Many of these sculptures are massive. Smaller pieces, such as zoomorphic grinding stones from Costa Rica, are also seen, as are various kinds of statuary from Central Mexico. There is a particular price premium on Aztec, Toltec, sculptures (among others) that depict such things as skulls and sacrifice.
- *Figurines.* Both ceramic and stone figurines are commonly seen on the market. A particularly popular category of these in the past have been the various styles of human and animal figurines from western Mexican shaft tombs, particularly those that depict dogs. Olmec figurines of any type are prized, perhaps because of the popular mystique associated with that culture. Maya figurines thought to be from the island of Jaina are sought for their intricate, lifelike scenes. In Ecuador, the schematic figurines of the Valdivia culture have been a particular focus of collecting. Figurines are some of the most common but most varied Latin American object type on the market.

It should be noted that since the very earliest days of the Latin American antiquities market massive numbers of fakes have polluted the corpus. While there are a number of techniques that can be used to determine if an object is fake, none are fool-proof and examples exist of fakers fooling every technique and every expert. Even those items that are difficult to fake can be used to produce fakes, e.g. portions of ancient textiles have been refashioned in to marketable 'ancient' dolls. Estimates of how many and speculations about which objects are fake fill the literature and some experts have gone as far as to declare that most Latin American antiquities on the market in a number of the previously mentioned categories are fake (e.g. Bruhns and Kelker).

Colonial and republican sacred art from Churches

Although little discussed in the academic literature and rarely a focus of international discussion, there exists a strong demand for colonial and republican period art, primarily from Latin American churches. In some locations, the incidents of cultural property theft from churches have far exceeded incidents of theft from archaeological contexts. Evangelisation was a core concern of the Spanish Conquest and it was a conquering technique: pre-Conquest temples were razed and churches were built in their stead often out of the same stone, to harness the power of the already holy place. As indigenous populations were reduced into villages, each village was given a church. Over the years, these churches would filled with both local and international religious art, often in a unique local style. There has been a market demand for these objects for decades, however early work on this subject indicates that there was an uptick in demand starting in the 1990s and continuing into the 2000s, which perhaps coincides with popular interior decorating trends that favour many of these objects. There are a number of terms that are used to describe these pieces and, for the sake of clarity, I will use the term 'sacred art'. The following categories of object have historically been on demand in the market and likely still are:

- *Silverwork.* For much of the Colonial period, Latin America produced the majority of the world's silver, both from Central Mexico and, more significantly, from the silver mountain of Potosí, Bolivia. The result is that a significant number of Indigenous craftspeople had experience with the metal and the metal was locally available. Thus in the Andes, and to a lesser extent the rest of Latin America, even the smallest churches in the poorest communities contain sacred silver items. In demand on the market are silver monstrances, candle sticks, altar pieces (even very large ones), and other ritual items from all colonial periods. Also of market interests are the jewellery, crowns, resplendors, spurs, and other adornments of figures of the holy family and saints. If it is colonial and silver, there will be a market for it.
- *Icons/Figures/Sculptures.* These pieces are sold under a number of names, but they are sculptures of the Virgin, of Christ, and of the Saints, wrought in a number of different materials with a core of polychromed wood, which would be the object of directed worship within a church. Particularly fine, and thus particularly desirable figures have inlaid eyes, elaborate dress, or previously mentioned silver or gold accessories.

- *Paintings.* Both European and indigenous paintings adorn the churches of Latin America, with many of the indigenous ones displaying techniques assigned to various local 'schools'. It is this sense of the foreign and the parochial, the idea of arts at the periphery of the European model, that drive the demand for colonial paintings in general and colonial church paintings specifically. Some of the most sought are those that represent indigenous themes within Christian contexts, e.g. dark Virgins as mountains, angels with large guns, etc. The historic frames that contain these paintings are also sought on the market.
- *Bells.* Church bell theft is a major issue in Latin America but, as it stands, there is no evidence that these bells are sold intact on the international market. Although there is some market for historic church bells, it is thought these are likely melted down and sold as scrap.
- *Furniture.* Perhaps the most difficult type of sacred art to track because of misunderstandings as to whether furniture should be documented as heritage (by the law of most Latin American countries, it should), very old furniture which can often be found in churches is sought on what is usually considered to be the antiques market. A number of recorded church thefts include the theft of historic furniture. The sources of these antiques are rarely questioned on the market and this could be a much bigger issue than we know.

Unlike archaeological pieces, which can only come from archaeological sites, sacred art is not only found in churches. Because of the continued importance of Catholicism to Latin American culture and identity, many (but not all) of the categories of objects listed above could be found in a private residence and thus be passed down through families. This, perhaps, allows a buyer to imagine that the items they purchase are legitimate, even if they are not. That said, in most Latin American jurisdictions, items of a certain age, even if they are privately held must be registered with the government and cannot be exported from the country without a permit that is unlikely to be granted. For this reason, all Latin American sacred art on the international market should be treated as suspect until it is proven otherwise.

The Latin American antiquities trade pre-1970

It is difficult to put an exact date on the start of looting in Latin America and various activities of the late 1800s could be considered looting. However, after the early 1900s, true scientific archaeology was conducted in Central and South America by both foreign and local scholars and after about 1925, particularly in Peru, scholars reporting that sites were being looted and objects were coming up for sale on the market in their country of origin (Tello 1959). Some of this early looting was devastating, for example the looting of the Paracas Necropolis for textiles from 1931 to 1933, but truly endemic looting came later. At this time the market for these objects was local or international in a local way: the objects were purchased in-country by foreign diplomats and business people. The issues were serious enough to incite a number of countries in the region to pass very early laws claiming ownership of all archaeological objects and prohibiting all digging and exporting of artefacts without a government permit, e.g. El Salvador in 1903

(Decree no. 4347), Bolivia in 1906 (Law of 3 October 1906), Peru in 1929 (Law no. 6634), Guatemala in 1947 (Decree no. 425 of 1947).

The scale of artefact looting and trafficking greatly increased when the market for Latin American antiquities became truly international. As points of sale to collectors shifted from the streets of Lima or Mexico City to New York, Paris, or Hollywood, and as demand increased, trafficking networks (both simple and complex) grew to fill the important middle transit stage of the antiquities smuggling chain and the pillage of archaeological sites rose sharply. Because most Latin American countries outlawed the export of antiquities before an international market grew for them, all the Latin American antiquities on the market were tainted by crime and were illegal in some jurisdictions. This is still the case.

That said, there was no desire on the part of dealers and buyers (including major museums) to respect the law of the countries of origin at that time. It is often said that Latin American source countries have been treated with disrespect and indignity by the international antiquities trade. At this time pre-Conquest objects were the primary focus of looting and trafficking. Churches were robbed and early collections of colonial sacred art began to grow but the scale was not at the level seen today. Furthermore, many of the countries in question had not fully clarified their ownership of, and export bans on, sacred art at this time. Of course, sacred art that was outright stolen from a church was still stolen property, but at least from recorded sources, sacred art trafficking would largely come later.

Although there are a number of ways Latin American antiquities left their country of origin at this time, a simplified model might include the following elements: a notable site would be located by locals, either people living in a nearby village or those who move through the jungle or desert as part of their subsistence activities. Because they know that there is a market for ancient items, locals would either sell this information to a local looting group or notify an intermediary who would finance illicit digging. Locals with previous experience might loot the site themselves. The items would quickly pass out of the hands of the locals and into those of an in-country intermediary, often but not always an expatriate, who worked with a particular out-of-country intermediary to smuggle the antiquities. The in-country intermediary would arrange the transit stage of the antiquities, perhaps with the help of local corruption, perhaps because of their own access to shipping methods. These intermediaries would either be paid upfront or given a cut of the future sale. The out-of-country intermediary would then receive the antiquities in the country of sale and 'clean' them both figuratively and literally for sale on the 'legitimate market', serving as a Janus figure connecting the criminal underworld and the respectable market (Mackenzie and Davis 2014).

These intermediaries might be dealers themselves who would then sell the object on to a museum or collector, particularly a collector that they had a working relationship sourcing particular objects for. They also might be dealers to dealers, supplying objects to the established store-front and catalogue style dealerships. Oftentimes, it was these out-of-country intermediaries would supply a plausible back story and false paperwork to legitimize the smuggled objects. Finally, the object would be sold to a 'legitimate' collector or museum who was fully aware of the illicit nature of the market they engaged in but would specifically choose to neither ask too many questions nor notify the authorities of suspect behaviour. There was almost no risk of punishment for any individual beyond the stage of in-country intermediary.

The following case study illustrates an extreme version of this model which, due to its relatively late date, was fully exposed. This represents a rare example of traffickers being caught and brought to justice and there is every reason to think that previous networked trafficking incidents from Latin America were much like this one, only with a lot less hesitation on the part of buyers.

Network case study: Machaquilá Stela 2 (Guatemala)

Machaquilá is a Maya site located in an isolated part of Guatemala's Petén department (La Porte *et al.* 2009). It is a difficult site to access due to rough terrain and a lack of natural resources (Just 2007: 3). Its remote location appears to have buffered it from the fallout of the endemic conflict of the Classic period, and it experienced a brief florescence during the 9th century AD in the wake of the Tikal-Calakmul War (Just 2007: 3). Afterwards it fell into decline along with the rest of the Petén, although the people of Machaquilá produced stela for nearly 40 years after other sites were abandoned (Just 2007: 3).

Numerous sculpted stones were found by archaeologists at Machaquilá, e.g. Ian Graham found 17 *stelae* and six altars in the 1960s, but as of the time of writing there are no carved monuments at the site (La Porte *et al.* 2009). Many were looted during the endemic pillage of the Petén in the 1960s and 1970s and the rest were removed for their own protection by the Guatemalan government.

Two Costa Rican brothers working for the Union Oil Company discovered Machaquilá some time before 1961. Archaeologist Ian Graham contacted the men and they confirmed their discovery by showing him a carved stone they had brought from the site that was being using as a doorstop (Graham 2010: 250). In May 1961, Graham visited Machaquilá, which he named after the local river, and recorded the presence of *stelae*. In 1962, he spent considerably more time at the site specifically to record the various carved *stelae* via photographs, drawings, and latex moulds (Graham 2010: 254). Thus, Machaquilá Stela 2 was discovered by Graham, who drew and photographed the sculpture *in situ*, establishing that it was, indeed, in Guatemala after Guatemala had declared ownership of all archaeological objects within its territory. Unless otherwise stated, the following account of the trafficking of Machaquilá Stela 2 is derived from the memoirs of Ian Graham (2010: 436-438).

In 1971, Dr William Bullard of the University of Florida contacted Ian Graham to inform him that Machaquilá Stela 2 had been looted, trafficked, and exhibited for sale in Florida. The stela had been bought from looters (who cut it to pieces) by Jorge Alamilla, a Belizean who was known to be involved in the antiquities trade for around \$3,000. It was passed on to three men: Ed Dwyer, according to Graham, the brother-in-law of the owner of a lumber company that operated in the Petén; Johnnie Brown Fell; and his cousin Harry Brown, who were both in the shrimp-exporting business. The stela was stored in Fell's fish-packing plant in Belize City for a period of time (Hughes 1977: 149). The men moved the stela, which was in fragments, to Miami, Florida in a boat concealed by a shipment of shrimp. The fragments of the stela had been packed into boxes labeled 'personal effects' and marked with the address of restorer Clive Hollinshead in Santa Fe Springs, California (Hughes 1977: 149). Once in Florida, Hollinshead was brought in to restore the piece.

After the restoration, Fell and Dwyer bought a station wagon (Graham recounts that it was Fell and Alamilla, but the court record reports it was Dwyer), put the stela in it, and drove to New York City. They offered the stela to the Brooklyn Museum, to dealer André Emmerich, and then to dealer Leonardo Patterson. All three declined to buy it, but

Patterson suggested they offer the sculpture to Marjorie Neikrug who owned a gallery in the city. While Fell and Dwyer were discussing the piece with her, the car containing the stela was towed away for illegal parking but they managed to retrieve it. When Neikrug turned down the stela, the two men drove to Milwaukee, Wisconsin, where they offered it to Glenn Rittenour, a Methodist minister who later testified against them at trial. He, too, turned the stela down. Federal records indicate the men also stopped in Decatur, Georgia, and in North Carolina in attempts to sell the piece. Fell and Dwyer continued their drive, eventually bringing the stela to Los Angeles where they sold it to the restorer Clive Hollinshead. The asking price for the stela during this journey is said to have been \$300,000 (Meyer 1973: 33).

After uncovering this story via a series of well-placed telephone calls, Graham contacted the FBI who informed him that the stela could be recovered via the National Stolen Property Act's ban on the interstate transportation of stolen objects (18 U.S.C. 2314). He was told that at trial, it must be shown that the men in possession of the stela knew it was stolen and had transported the object from one State to another with full knowledge of that status. To secure this information, Graham asked a friend of his to pose as a potential buyer interested in Maya *stelae*. Hollinshead showed her Machaquilá Stela 2, which was in his garage at the time, proving that it had been transported, which provided enough evidence for the FBI to intervene.

On 28 August 1972, a federal Grand Jury indicted Clive Hollinshead, Jorge Alamilla, and Johnnie Fell on charges of conspiracy to transport stolen goods in interstate and foreign commerce and causing the transportation of stolen property in interstate commerce (Hughes 1977: 149). According to the indictment, Hollinshead had a prior arrangement with Alamilla for the procurement of looted and smuggled Maya objects. The indictment stated that Hollinshead was on-hand in Belize during the smuggling process, as were unnamed Guatemalan officials who were bribed (Hughes 1977: 149). In February 1973, Hollinshead *et al.* was tried in a Los Angeles Federal District Court. Graham, who was serving as a witness, was unable to watch the most of the trial. However, he recounts that Ed Dwyer, who was one of the original purchasers of the stela while it was still in Central America, turned State's evidence and was spared any legal repercussions. Jorge Alamilla, who was not a US citizen, did not appear, presumably fleeing to his native Belize.

The Court found that Ted Wiener, a man based in Dallas and involved in the oil business, had financed Hollinshead's purchase of the stela in return for a cut of any profit from resale. Hollinshead's seized records showed that another stela from Machaquilá was, at that time, in the possession of Harry Brown in Helena, Arkansas, but that stela had been mostly destroyed in the looting process having been broken into 25 pieces. It was impounded by the FBI in January of 1972 and was later identified as Machaquilá Stela 5 (Meyer 1973: 33). Allegedly, this piece had been offered to the Denver Art Museum (*ibid*). On 14 March 1973, Hollinshead and Fell were found guilty of both counts and in 1974 the district court opinion was affirmed by the United States Court of Appeal for the 9th Circuit (United States vs. Hollinshead, 495 F.2d 1154, 9th Cir, 1974; Hughes 1977: 149). Hollinshead was fined \$5,000, given a suspended sentence, and put on 5 years probation (Meyer 1973: 33). Fell also received a suspended sentence and 3 years, probation. Both Machaquilá were returned to Guatemala.

The Latin American antiquities trade post-1970

There is little evidence that the 1970 UNESCO Convention had much of an impact on the illicit trade in Latin American cultural property. The Convention's focus on development of international partnerships for the return of a few very high profile antiquities does not seem to have addressed the on-the-ground needs of the region. Indeed a number of sources indicate that, in parts of Latin America, looting actually intensified after the 1970 Convention, particularly in the war-torn Petén region of Guatemala where rampant looting for Maya polychromes and other portable antiquities which the 1970s and 1980s left devastating scars on nearly every Maya site. Some of the highest profile looted antiquities from Latin America left post-1970 and many of them have not been recovered. The late 1980s and the early 1990s saw the looting of spectacular Moche tombs at Sipán, La Mina and other locations along Peru's North coast and only limited success with regard to the return of objects from those contexts. As previously stated, theft of colonial and republican sacred art increased greatly in the 1990s and 2000s and may not yet have hit its peak. What seems to be a reduction in looting incidents in traditional Latin American looting locations, e.g. Peru's North and South coasts and the Petén, likely had nothing to do with the UNESCO Convention, and more to do with some increased local police awareness and the fact that many, perhaps most archaeological sites in these areas have been exhausted. There is not much left to loot.

Thus in the 1970s and throughout the 1990s, it is likely that Latin American antiquities trafficking looked very similar to the trafficking networks seen in earlier periods. That said, we have very little evidence about the construction of these networks due to the systematic lack of convictions for antiquities trafficking at the 'demand' or 'market' end of the smuggling chain. An exception is the smuggling of some of the artefacts looted from Sipán. In one route, the objects were sent from Lima to London (via official corruption), repackaged and assigned a plausible false provenance, and were then sent to California where they were driven from the airport to the home of a potential buyer (Atwood 2004; Kirkpatrick 1992). In another, a large Sipán piece was taken from Peru to Panama where it was transferred to the diplomatic pouch of Francisco Humberto Iglesias, then the Panamanian Consul General to the United States. Iglesias knowingly smuggled the item into the United States where it was seized in an undercover FBI operation (FBI 1997; Wittman 2010).

At this stage, it is fair to characterize the current trade in illicit Latin American cultural property as largely opaque. It is no longer clear who is selling these items and no longer clear who is buying them. This is especially the case for sacred art and no case has yet publicly revealed the middle transit stages of the criminal networks that operate in this area now.

The case below is characteristic of the sort of major international Latin American cultural property smuggling cases that we see today. It features a particular factor that was, of course, not an issue before the late 1990s: the Internet as a collector/dealer tool for sharing new purchases and for detection of looted objects.

Network case study: Challapampa altarpiece (Peru)

Challapampa is a small indigenous village located in the district of Juli, in the Puno region of Peru. The village is home to the Capilla de San Pedro de Challapampa, a 16th century Spanish colonial church. The church, which was declared to be National Cultural

Patrimony in 1972, contained a 16th century mannerist-style altarpiece carved by Pedro de Vargas and painted by the acclaimed artist and Jesuit priest Alonso Bernardo Joan Democrito Bitti. It was constructed some time between 1575 and 1591 out of gilt cedar and maguay wood and decorated with polychrome paint. The altarpiece was originally created for the Picchu hacienda in Cuzco but was transferred to Challapampa in 1700. It is approximately 4 metres long, 3 metres high and weighs 450 kilograms (UNESCO 2006).

In January 2002, the altarpiece was disassembled and stored in a medical post near the church as part of a restoration project. It was stolen from this facility and the theft was immediately detected and reported. Initial speculation was that the thieves moved the piece across the border into Bolivia. In previous years, the church at Challapampa had been robbed of 14 paintings of archangels which some sources allege are now in Brazil (Frasier 2006).

In April 2003, the Embassy of Peru in the United States was notified via an anonymous phone call that the altarpiece had been trafficked to the United States and was being offered for sale on the Internet (Bush 2005). Peru reported this to the Department of Cultural Heritage of the US State Department and in May 2003, United States Immigration and Customs Enforcement (ICE) traced the piece to Ron Messick Fine Arts and Antiquities, a dealership operating out of Santa Fe, New Mexico (UNESCO 2006). On 6 May 2003, ICE took possession of the altarpiece under suspicion that its import violated the 1997 Memorandum of Understanding between the United States and Peru concerning the import of certain classes of cultural property (Arnold 2004; UNESCO 2006). When the piece was seized, the statue of the Virgin, which once stood in the central niche of the altarpiece was found to be missing. It has not been recovered.

It is unclear exactly how the object was moved from Peru to Santa Fe. A report prepared for Messick by Colorado-based appraiser Carol O'Brien English, appears to create a false ownership history for the altarpiece. It allegedly states that the piece entered the USA in 1961 as part of a collection from Spain and was sold to Messick by Arizona-based art dealer Paul S. Shephard in 2002 (Coleman 2005). Shephard denies this claim and English has stated that the story in her report was provided to her by Messick (Coleman 2005). Self-confessed former antiquities trafficker Michel van Rijn claimed that Messick displayed the altarpiece in his home before it was seized (Coleman 2005). At one point van Rijn offered to pay for the repatriation of the piece himself (Arnold 2004). Messick, via his lawyer Mark Donatelli, claimed that various stolen art registries were checked before the piece was acquired (Coleman 2005).

The ICE, Interpol, and the Attorney's Office in New York sought a criminal complaint against Ron Messick for his alleged hand in the trafficking and attempted illegal sale of the stolen altarpiece. A Federal Grand Jury was convened and the criminal prosecution of Messick was initiated by the US Attorney's Office in New York, however the prosecution was abated due to Messick's failing health (Coleman 2005). After it was seized in 2003, the altarpiece was moved to El Paso, Texas where it was positively identified by Rolando Paredes, Director of the National Institute of Culture in Puno, as being from Challapampa (Arnold 2004; Bush 2005). It was held in there storage until 2005 when it went on temporary display in Houston (Coleman 2005). On 20 January 2006 it was returned to Peru, and on 27 June 2006, it was restored to the Capilla de San Pedro de Challapampa.

The role of other regional forces and policy recommendation

The looting and trafficking of Latin American cultural property cannot be viewed in isolation. It is only a very small component of some of the biggest issues that the region faces. It is not a separate problem and should not be treated as such. Regional instability from the narcotics and people trafficking, government failure and corruption, globalization and neoliberalism, developmental inequality and deforestation are what perpetuate on-the-ground threats to Latin American cultural property. To put it simply, if the goal is to protect Latin American cultural property on the ground, we must make people less poor, make people less insecure, and make Latin American governments less corrupt and more capable. In other words, broad international measures that are meant to focus on the source-end of the illicit antiquities market are likely to do very little as the underlying problems that cause cultural property threats will remain. Small-scale targeted capacity building may help in limited contexts (e.g. funding and training to secure a specific church), but not the greater issues.

Thus, policy focus must be at the market end of the trafficking chain. Demand causes supply and a reduction in demand for Latin American cultural property will result in a reduction of cultural property theft. Our focus should be discouraging criminality and punishing criminals rather than simple artefact recovery at all costs. Those caught engaging with the illegal antiquities market and those committing criminal acts should face the punitive damages for trafficking and receiving stolen goods afforded by local law and should not be allowed to simply surrender stolen artefacts to escape any charges. Furthermore, we should invest more time in developing better soft control techniques to discourage the market beyond ineffectual and obtuse codes of ethics by:

- introducing doubt into the market, e.g. by giving source country experts a platform on which to challenge the authenticity or legality of cultural property for sale,
- introducing more oversight into museum donation tax incentives,
- publicly lauding collectors and museums that do the right thing and publicly shaming those who do the wrong thing.

Some of these non-punitive market reduction measures have the added benefit of being inexpensive, important for developing countries. Many of them could effectively be deployed online. Some could be organized by the countries of origin and, in a sense, this could be a focus for funding ear-market for on-the-ground cultural property protection. There are many possibilities but few are being effectively utilized.

When it comes to the development of future policy, I urge a departure from the 1970 UNESCO model that focuses on country-to-country bilateral agreements. Country-specific legislation, such as the UNESCO-based bilateral agreements between the governments of some Latin American countries and the United States (still the primary market for Latin American antiquities), is ineffectual. It is nearly impossible to absolutely prove that a particular artifact came from the ground of a particular country and did so after the bilateral agreement was signed. I argue that 'object-specific' legislation, which introduces import bans into market countries for whole classes of ancient object no matter their country of origin, such as the 1972 US law that prevents the import of all Central American sculptures, murals, and architectural elements (Public Law No. 92-587, 19 U.S.C. § 2091), is much more effective at reducing the illicit trade in cultural

property and is cheaper to enforce as specific country of origin need not be specifically determined in each case. As we see, the UN is moving to impose more country-specific bans on the movement of antiquities, I fear that we will not move away from the country-specific model and that our international policy efforts will continue to have little effect.

Finally, more empirical academic research must be conducted on many of the unanswered questions involved in the theft, trafficking, and market for Latin American material. For example, there has been almost no research into sacred art theft and trafficking in any discipline: it is happening but we do not know how or why. Non-academic reports may tie theft and destruction of many types of Latin American antiquities to encroachment and land clearings in protected areas, which itself is tied to complicated issues related to poverty, post-conflict, and other criminal trafficking activities. No academic work has focused on this. This is quite clearly due to a lack of sustained funding for this sort of research, both in Latin America and abroad. This lack of investment in primary research into the topic will likely ensure that most efforts to control cultural property trafficking are both ill-advised and ill-suited for the realities of the situations in which they will be applied.

Acknowledgements

The author has received funding for this research from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007–2013)/erc Grant agreement no. 283873 GTICO, the Leverhulme Trust, and the Fulbright Program.

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Documenting Looting Activities in Post-2011 Egypt

Monica Hanna

Since the 2011 uprising, looting has been pandemic in Egypt. It has affected Ancient Egyptian, Coptic, Islamic and contemporary sites altogether. This ongoing desecration of Egyptian heritage for the past four years is now reaching the antiquities market which, as a consequence, is in constant expansion. New markets in the Gulf Region, Far East and Eastern Europe now add to the continuous demand in North America and Western Europe on Egyptian artefacts. The Gulf Region has turned into a huge market place for Islamic objects, while North America and Europe are the biggest markets for Ancient Egyptian artefacts. The profits made out of the illegal trade in cultural and ethnographic Egyptian objects go into the money laundering channels and sometimes are used to fund extremism. This paper will document known events and dynamics of looting, areas of illegal digging and whenever possible the ways which these objects leave the country.

In July 2015, the rate of loss of Egyptian cultural heritage was at its peak and, since the January 2011 events, the rate of illegal excavations in Egypt has been on the rise. Under the Mubarak regime, looting and theft were also carried out, but at a much slower rate. The withdrawal of the police force on 28 January, 2011 has encouraged people to illegally re-appropriate the heritage they felt deprived of, as indeed, the Mubarak regime kept the Egyptian people away from it. The Giza Plateau was closed on Sham el-Nessim festivities to Egyptians while only foreign tourists were allowed (Sanad 2009). Large walls were constructed around the archaeological sites to stop encroachment, but it brutally interrupted the communities' interaction with the sites. Foreign archaeological missions have mostly been published in European languages, leaving non-academic Egyptians without an updated understanding of their own cultural heritage.

Not only were modern Egyptians denied the enjoyment of their own cultural heritage, but they also were rarely allowed to build up proper economic relations with the archaeological sites. Tourism money usually went to major companies, leaving local communities out of the touristic map. Furthermore, the Egyptian educational *curriculum* does not allow Egyptian students to truly engage with their own heritage. It is presented as fragmented scenes of different histories written by incompetent employees on the subject matter. These different factors had strong repercussions on the lack of proper engagement with the heritage affectively, intellectually and economically. To make matters worse, fanaticism grounded in eastern Salafi influence persuaded these marginalized communities that this heritage belongs to a 'rotten' culture (Sabri 2015; *Russia Today* 2012) and that it contradicts the proper teaching of Islam. Similarly, conservative Christian priests advocated that the Ancient Egyptian culture belongs to the evil Pharaoh who persecuted Moses. All this has created multiple identities within the Egyptian community, who is unable to form appropriate identification with the Egyptian heritage.

Rumour goes, amidst villages, that the previous regime used to deal in antiquities. Whether this was true or not, particular officials have never been convicted in proper legal cases. The only famous case was that of al-Sahe'r family whose eldest brother was the Cairo Chief of police (Gamal el-Din 2015). With the fall of these figures and the rumours spreading, along with the radical influences, many people did not regard illicit digging for antiquities on archaeological sites as a criminal activity. The different communities neighbouring archaeological sites went out to dig illegally with their children and wives.

Indeed, children have been used primarily to reach small burial shafts and tunnels. Unfortunately, many children have lost their lives in the process (*Custodian* 2015). People have become obsessed with finding a treasure that would make them rich quickly. Many people, particularly in Middle Egypt and the oases, started defrauding schemes as fake artefacts were buried for rich buyers to come and find – many of whom (from Egypt and abroad) were victims of these frauds.

Another type of criminal looting activity has emerged. With the chaotic situation in Libya and the infiltration of state-of-the-art weapons through the western border of Egypt, many organized looting gangs were able to buy weapons at cheap prices. They immediately formed systematic groups to raid archaeological sites with four wheel cars and geo-sonars. Helpless site guards stood with their empty .9 mm pistols, watching gangs fight and kill each other over a discovered tomb. These gangs have archaeological knowledge, and many foreign experts were rumoured to have helped them with maps or with expertise. They also are thought to have worked for particular dealers or collectors who went in search of specific artefacts (Abdelzaher in Hanna 2004).

With the Arab Spring and subsequent unrest in the Middle East, the trade in illicit antiquities has escalated. International crime organizations managed to smuggle antiquities along with arms and drugs in the region. Countries such as Israel, where the antiquities trade is legal, have served as a collection point for many objects in the region before travelling to Europe or the United States. Antiquities, from Ancient, Coptic, Islamic and Modern Egypt, started appearing on the antiquities market. In fact, the market suddenly flourished with thousands of objects coming in from illicit digging. The online market prospered in particular, as online websites have been used to sell Egyptian objects. In addition, a growing interest for collecting in the Gulf countries has emerged. The illegal markets in Abu Dhabi, Doha and Kuwait City had antiquities shops which collected objects that originated from the entire region. The famous Barakat Gallery has been selling illegally acquired objects in Abu Dhabi despite efforts by the Egyptian government to halt them.

Illicit digging has destroyed most of the Egyptian heritage, as looters used bulldozers to tear off remains in their search for objects to be sold easily. Many of the sites have lost their historic value, insofar as the looters and local communities alike knew many of the spots where no excavations had taken place before and targeted them immediately. Illicit digging strips the object from any related contextual knowledge and as such, it becomes an artefact instead of a historical piece (Brodie 2006; Kanawati, El-Raziq and McFarlane 1998). The looters not only sell de-contextualized objects, but also destroy the context of the site in the process. In most looted sites, many of the standing structures have been destroyed, such as at Antinoupolis (Shaykh Ibada) in Mallawi, Minya in Middle Egypt (Fig. 1).

The looting, thefts, vandalism and land-grabbing map

It is important to bear in mind the clear difference between looting and thefts. Looting targets unspoiled sites to extract objects and selling them. are usually armed and target magazines, storehouses and museums. Vandalism is usually carried out either to wipe out the aura of a site as 'heritage' by setting it on fire, destroying inscriptions, or turning the site into farmland, fish farms or a solid waste dump. This step usually is taken to change the 'identity' of the site in communal memory, so that its initial nature as an archaeological site is forgotten and its overtaking easier. Land-grabbing is usually the

final stage. After looting and vandalism, the land is taken to be built over and the site is lost forever. Looters sometimes collaborate with land-grabbers, where they would dig a site which, once finished, would be given to a local contractor, so much so that it is no longer to be found when the government surveys the looted site. Usually, this is carried out very quickly – little attention is dedicated to peripheral sites or amidst densely populated slum areas.

Many more sites other than those listed hereafter were subjected to both looting and land-grabbing activities. Members of the Egypt's Heritage Taskforce had keenly documented on a volunteer basis the looting using the news reported and the site inspectors who got in touch as primary sources. They also used satellite images from Google Archive to verify the looting and the land-grabbing (Contreras and Brodie 2010: 30-33).

Alexandria and the North Coast. In Alexandria, ongoing looting is taking place in recently demolished old buildings. Most of the seized antiquities come from illegal digging that happens in the old quarter of the Eastern Port (El-Khodary 2015; Fakhri 2015; Renfrew 2000). In addition, underwater illicit excavation occurred near the Port of Abu Qir. The storehouse of Mustafa Kamel was robbed in April 2015 and the antiquities police found some of the objects. Heavily armed looters also attacked the site of Tell Mariya in the western North Coast with bulldozers in the early months of 2014. They destroyed a large part of the Roman bath and have tried to land-grab several parts of the site. Another site has also been land-grabbed is Tell el-Sanaqra, which has never been fully studied or surveyed.

Beheira. The Kom al-Ahmar, Kom al-Faraj, Kom al-Nakhla, Kom Aziza, Tell al-Barnugy and Tell al-Kanayes sites may be lost to the local contractors, in addition to being subjected to sporadic looting. Many have not been fully excavated or studied and risk total loss as the objects and their context might be lost utterly.

Kafr al-Shaykh. Some looting has been reported in the Tell el-Khanaziri, Tell el-Khawaled, Tell el-Khebiz, Tell el-Hamamou, Tell el-Shagara, Tell Nagla, Tell el-Tabani, Tell el-Toukhi, Tell el-Fara'na, Tell el-Galagel, Tell Singar, Tell Mastoura, and Kom el-Akhdar sites. As for Beheira, these sites are at risk of being sold to local contractors. As a consequence their archaeological content would be lost.

Munufiya. Some looting has taken place in the archaeological cemetery of Qesna, and Tell Kufur al-Raml. In addition, excavations have been reported in many of the houses surrounding those sites. Tell Mustai and Tell Sirsina also reported looting.

Gharbiya. Several looting activities took place in the Coptic cemeteries of Nitria and Kelia. Wadi al-Natrun has suffered plenty of illegal excavations and land-grabbing around the monastic areas. This has resulted in bitter clashes between monks and offenders. Many of the archaeological sites lie beyond the ownership of the Coptic monasteries or the Ministry of Antiquities. Several of these sites have not been fully surveyed or thoroughly excavated.

Daqahliya. Tell al-Muqdam has suffered looting on many occasions; people from the neighbouring village were arrested (al-Anany 2014). This site was the privileged target of armed gangs and many times, the local site guards have exchanged fire with the offenders (al-Kenany 2015). Another heavily targeted site is Timai al-Amdid. Many looters were

caught performing illegal on-site excavations. Heavily armed gangs have also targeted Tell al-Rub', and 20 looters were arrested (al-Anany 2014; al-Kenany 2015). Furthermore, Tell Awlad Isma'il and Tell Ligan, situated at the heart of Manzallah Lake have been completely overtaken by criminal activities insofar as in addition to constant looting, its geographic advantage has been exploited and turned into dens of criminal activities by looters. It is inaccessible for site inspectors or police forces (Abdelmoaty and Gohar 2015).

Damietta. Two sites have been targeted, i.e. Tell al-Dahab and Tell al-Khassin.

Port Sa'id. Two sites have been attacked, i.e. Tell Thinis, which is only accessible by boat, and Tell Mu'abid (Abdelmoaty and Gohar 2015). The storehouse of al-Qantara East that housed objects from Eastern Delta and the Sinai was completely stolen in 2011.

Sharqiya. Several sites have reported looting such as Tell al-Fara'in, Tell al-Daba'a, San al-Hagar (Fig. 2), Tell al-Yahudiya, Kafr al-Qot, Qaramus and Tell al-Ghita. The latter was attacked with bulldozers, and many of its archaeological features were destroyed (Shehata 2013). In addition, the archaeological storehouse of Tell al-Dab'a near Faqus was completely robbed. Tell al-Ruhban in the North East of Sharqiya was entirely land-grabbed and turned into a fish farm.

Cairo. The Egyptian Museum of Cairo was attacked on January 28, 2011, in the middle of the protests. It was an inside job, and some of the internal security members were arrested (Abdelzaher 2010). Around 56 objects were repatriated, but the original number of stolen objects is not clear, as there is no complete inventory of the museum.

- *North Cairo: Al-Matariya and 'Ain Shams (Ancient Heliopolis).* Ancient Heliopolis lies in the midst of a very densely populated quarter of North Cairo. The site was a major cult centre for the sun god Re, and extends currently under the modern constructions. Most of the site has been built upon before 2011, but there is a serious threat to the remaining parts which could be totally lost. Illegal excavation has been taking place everywhere, particularly under private houses. The Ramesside Sun Temples in 'Ard el-'Arab has been purposefully vandalized by the local 'land mafia', who wants to wipe out any evidence that the site had any archeological value (Taher 2015). The site has been turned into a solid waste dump. Criminals and outlaws have also occupied the Ramesside Sun Temples and the area is inaccessible to inspectors and the police at night. The temples were burnt down several times and inscriptions were purposefully hacked out (Figs. 3-6). The 26th Dynasty cemetery was covered by a modern cemetery built illegally, and the western gate of the Temple of Atum was completely built upon. The rest of The Temple of Atum was covered with solid waste and metres of construction rubble. Its southern part has been turned into a parking lot and funfair for the local children. A few years from now, the identity of this area as an archaeological site will be forgotten and soon buildings will be constructed upon it.
- *Historic Cairo.* The Sultan Hassan *minbar* ('pulpit') was stolen along with the Kursi al-Musshaf from his mosque and funerary complex. The *minbar* and doorknob of al-Shaykh Barquq have also been stolen in al-Mu'iz street twice

in 2012 and 2013. The inlaid artwork of the door of the mosque of al-Mu'ayad Shaykh was stolen in 2012. Similarly, the Sultan Qaytbay al-Rammah *minbar* and door inlaid artwork were stolen in 2013. Qajmass al-Isshaqi *minbar* and knocking handle were stolen and a lantern from al-Rifa'i mosque disappeared in 2014. The mosque of Taghri Bardi had its wooden decorated doors vandalised and stolen, and al-Sultan al-Ghuri upper door panels were removed. Many other monuments have suffered partial demolition and destruction.

- *Southern Cairo.* The pre-dynastic archaeological site of al-Ma'adi has been turned into a car park. Some of its parts were taken and apartment buildings constructed over it. The site is shrinking without any proper documentation. The sites of Helwan such as Turah have been subjected to systematic looting by the armed gangs. The area where the looting has been taking place has been inaccessible to inspectors and the police.

Giza. Most of the archaeological sites in Giza are part of the Memphite Necropolis, which is registered on the UNESCO World Heritage list. The site of Abu Rawash has been systematically looted by both nearby village dwellers and organized armed gangs. Some parts of the site near the valley have also been land-grabbed (al-Tahtawy 2012) subsequent to thorough looting in the area upon which archaeologists have speculated could house the valley temple of the Pyramid of Djedefre of the Old Kingdom (2686-2181 BC). The Giza Plateau has also suffered looting, where a entire tomb in the southern cemetery was stolen in 2014. Beyond the wall, several digging pits were found, although probably no objects would have been found except close to the small lake – Birket Nazlet al-Batran near the valley, where several small objects were reported to have been found.

In Abusir, looting was particularly intense in 2011, as nearby villages immediately dug within the archaeological area. North of Abu Sir, in Hud al-Zuhur, an illegal landfill for solid waste and sand quarries were re-opened. South of the 5th Dynasty pyramids in Abu Sir, looting took place and many pits have been observed. In this area, several burial pits were opened and many looting holes can be seen until a little north of the Step Pyramid of Djoser. South of Saqqara, looting has also been noted, especially near the area of the Pyramid of Djedkare Isesi, known locally as al-Haram al-Shawaf. South of this pyramid, the locals also overtook a large area of land illegally and built a modern cemetery in 2012. The storeroom of Saqqara has not been attacked, but an alabaster oil palette, which was excavated by Nagib Kanawati (Ikram and Hanna 2013) from the tomb of Inumin appeared in a London auction, while a replica was put in its place. The case is still under investigation.

The most intense looting occurred in Dahshur. The local villagers of Manshiyet Dahshur along with armed gangs overtook the area of the Black Pyramid of Amenemhat III (1860-1814 BC), which have not been thoroughly excavated previously. All the cemetery right below the Pyramid's foot was looted. Dahshur became famous for looting, to the point that armed gangs used to fight each other over the loot, until the military forces intervened in May 2013. Bulldozers, as well as many children from the village, were used to undertake excavations the southern pyramid of King Snefru, also known as the Bent Pyramid, modern cemetery was built on its grounds. The area overtaken was the remainder of the causeway of the South Pyramid and was not previously excavated. Because the area received ample attention, the construction of the cemetery was halted before any burials took place.

The sites of Mazghouna and Lisht near the southern area of the Memphite Necropolis have also been heavily looted (Hanna 2013). In addition, some parts of the archaeological areas were also land-grabbed and re-used for agriculture. Memphis (Mit Rahina) itself was subjected to systematic looting and land-grabbing. Several of the sites such as Tell al-'Aziziya, and the Ptah Temple had several looting pits. Many of the lands that were grabbed by locals were used just as a cover for illegal digging beneath them. In addition, several magazines in the area were attacked, but not successfully stolen such as storeroom no. 36, and that of the American archaeological mission. There was also an attempt to burn the Temple of Hathor.

In 2013, a double limestone statue depicting two priests was stolen – an inside job from one of the storerooms – and smuggled through a Belgian diplomatic briefcase. In the storeroom, a replica was put in its stead. The theft turned out to be an inside job from one of the storerooms. The statue was put in an auction fair in Belgium, but was not listed in the official catalogue (Billen 2014). It was immediately noticed, for it had been discovered by the American archaeological mission working in the area two months before. After news of the theft came out, the statue 'miraculously' re-appeared in Memphis (Fathy 2015). One of the inspectors was caught, as well as the storeroom guard. Atfih or Aphroditopolis has also been subjected to looting and land-grabbing. Mostly the local villagers attacked the site with Apis bull burials. Most of its southern area towards the storeroom was land-grabbed and has recently been given back to the Ministry of Antiquities.

Beni Suef. Organized gang looting has hit several Beni Suef sites. Sites such as Abu Sir al-Malaq, Ihnassiya al-Medina and al-Hiba have been heavily looted. Abusir al-Malek has a cemetery that was only sporadically surveyed or excavated (Hammad 2015) and has been heavily looted. The site consists of around 500 acres of land that has been completely dug up. Many 'coloured sarcophagi' were reported found by the police. The site is also famous for fraud operations (Gouda 2010), as several people were arrested for such activities in May 2015. The site of al-Hiba was being systematically excavated by Professor Carol Redmount, from the University of California-Berkeley, but suffered excessive looting and the excavation mission was no longer granted security clearance to continue working.

Fayyum. Sites such as Girza, Madinet, Madi, Kom Aushim, Tell Gu'ran and Dayr al-Banat reported looting. Girza was most affected, and many of the pre-Dynastic remains were destroyed in the search for objects to sell.

Minya. Although the major news of al-Minya concerned the the Mallawi Museum break-in on 14 August 2013, and the loss of around 1,000 objects, many of the sites in Minya have been undergoing continuous looting since 2011. Parallel to the museum robbery, many of the old churches that were burnt in Minya and particularly in Delga were illegally looted, as many of these churches were built on older ruins (Shehata 2013). Sites like Tell Sharuna, and Tuna al-Jabal are looted by the local villagers, and serious looting is undertaken by nearby villagers in the al-Zawyet al-Amwat, Istabl 'Antar, al-Ashmunain, Antinoupolis (Shaykh Ibada), and Ansina in Mallawi East sites.

The village of Shaykh Ibada is densely populated and live on a small agricultural area. Thus, local youth took up work in the illegal excavation of objects. The site spans around 1000 acres and supplies the antiquities market with manuscripts, coins and many smaller objects. Unfortunately, it is destroyed at a slow rate, as many of the structures cleared by

the Italian-American archaeological mission were damaged. The Coptic site of Ansinā has also been heavily looted, particularly the rock-cut structures behind Dayr al-Batul. The looters use dynamite bought from nearby quarries, thinking hidden treasures lie behind the rock-cut monks' cells, keep and church. Amarna has also been targeted and several parts of the ancient city have been land-grabbed. The remains of Amarna are now disappearing, in fact, underneath the neighbouring villages.

Assiut. Dayr al-Bersha has witnessed several looting attacks on the rock-cut tombs. The most recent case was on the tomb of Djehutyhotep II, where the looters hacked out a small slab of approximately 30 cm in length and 24 cm in width. Several tombs of the First Intermediate Period (2181-2055 BC) in the area have been looted and many of their inscriptions were hacked out for sale. Several people were arrested in the village of Abu Tij. In Assiut, antiquities, drugs and arms are smuggled for mutual exchange, especially in the area of Dayrut and Bayadiya.

Sohaj. Sohaj's main illicit area is concentrated in Akhmim. Temple remains were recently discovered under a house right next to the archaeological site. Modern graves have also been built upon the archaeological site, despite the efforts of the local unit that provided another cemetery. Abydos has also suffered sporadic looting attempts, particularly in the aftermath of the 2011 uprising. Umm al-Ga'ab has been subjected to several attacks as well.

Luxor. Illicit digging in Luxor has been minimal compared to other areas in Egypt. Looting activities were noted in Nag' al-Sawalem and Dab'iya, but on a very small scale. Towards the south of Luxor, the area of Gebelein has been badly looted and built upon. The unique First Intermediate Period tombs that were excavated by Schiaparelli were heavily destroyed.

Aswan. Aswan has witnessed sporadic looting in various villages, but the most notable were the Middle and New Kingdom tombs found by the locals near the tombs of the nobles on the West Bank (al-Meniawy 2013). These tombs were discovered by the villagers who occupied them for more than a year. They did not allow local authorities to inspect them. After they emptied the tombs from their objects, they brought tourists to see the tombs and took 'ticket' prices from them.

Western Desert. The Western Desert has witnessed systematic illegal digging sometimes from the villagers and most often by the organized gangs. Many of the sites in Bahariya, Kharga and Dakhla were raided and some of the sites discovered by the looters were not even known by the local authorities. In Kharga Oasis, sites near the village of Tunis that are not registered were looted as well as many of the registered sites. In Bahariya Oasis, the remains in Jabal Mandisha were dug illicitly. In Dakhla Oasis, the sites of Shaykh Wali and Masara were also heavily looted.

Eastern Desert. Several of the sites in the Eastern Desert were targeted, but the most famous looting accident was when a car of looters went in search of a 'temple' between Qena and al-Quseir and six members were lost and died on the way, while one was rescued.

Smuggling routes

The smuggling of antiquities, which results from illicit digging, has many routes. Unfortunately, diplomatic briefcases have been used many times for antiquities trafficking. This was the case of the already-mentioned theft of the double limestone statue from Mit Rahina, which was smuggled through the Belgian briefcase as per the police investigations on the case. Many of the other small objects travel out of Egypt as souvenirs through air travel, particularly the organic material such as Coptic textiles or parchment, because the scanners cannot detect them as easy as the stone or metal statues. Coins, as well as small jewellery, have been seized multiple times in airports. Bigger wooden material such as sarcophagi, Islamic or Coptic wooden panels or boxes usually travelled with bigger containers carrying modern woodwork from the ports of Damietta or West Port Sa'id. (Abdelaziz 2014 ; al-Tahrir 2015; Gamal el-Din 2015). Although skilled antiquities inspectors work in these ports, they are only allowed to check 6% of the exported containers. Inspectors also do not have proper modern scanners that can detect antiquities within the same material. 'Ain Sokhna marine port and Sohaj airport did not have antiquities checkpoints until 2014. Many of the objects that were looted in 2011 were smuggled using the tunnels between Egypt and Gaza. These ended in Tell Aviv antiquities stores, or travelled legally to anywhere else. Many of the objects leave first to Turkey and then enter the European Union (Abdelzaher 2014).

Politics, economics, and subsistence looting

Political regimes prior and subsequent to 2011 have seen communities living nearby archeological sites as a threat. As a result, these communities do not realize their cultural rights in accessing the space and the knowledge of the heritage their houses flank. They are never involved in the decision-making on the protection or development of the site. Unsurprisingly, locals are hardly attached to antiquities and resort to looting for mere economic gain. Heritage is still viewed as State property, rather than a cultural right. Despite the inauguration of Article 50 of the Egyptian Constitution stating that people have rights to their heritage and its protection, tangible efforts are yet to be made. State development views archaeological sites as troublesome with little potential due to repercussions of the political situation on tourism. Political will to tackle issues of heritage protection is still weak. Unfortunately, many of the sites lost in the Delta and Cairo go to governmental un-planned urban development.

With the events of January 2011 and the political unrest and insecurity, the economic situation of Egypt has worsened. Tourism has stopped, many foreign investors channelled projects out of Egypt. Many have thus lost their jobs, particularly those who subsided on daily wages from tourism and construction. The organized looting gangs used to employ these workmen to dig illicitly and were paid their average daily wage. They exploited the people's precarious situation, who found themselves unemployed with families to provide for as they are, and gave them these work opportunities. The organized gangs usually have their own smuggling networks if they do not work directly for special antiquities dealers or collectors. The local villagers, who illegally excavate sites near their houses, usually send children and teens to 'provide for their schooling' – an expression used by most villagers who are involved in illicit digging. These villagers usually sell their loot to a local antiquities trader, for the smallest amount imaginable. This intermediary usually sells the objects to the bigger antiquities dealer in Cairo with enough networks

to smuggle the object outside of the country. Many of the people involved in looting are not doing it to provide food for the table or to continue schooling: unfortunately, the larger percentage keeps digging out of greed. There is a strong market for these objects, and wealth is easily acquired.

Religion and superstition

Religion plays an important role in Egyptian society. Most belonging to both the Muslim majority and the Christian minority are deeply religious. Unfortunately, with the Wahhabi influence on Egyptian Islam, many *fatwas* were issued against Ancient Egypt, and stated that trade in antiquities is not a religious fault as long as you do not sell statues insofar as they are probable idols. A famous cleric, Shaykh Muhammad Hassan has issued the *fatwa* in 2010 and many have taken it seriously. Due to media pressure, Hassan has withdrawn his *fatwa* (Abdelsalam 2010). In 2011, another Shaykh called Muhammad Shahhat of the Salafi Da'wa in Alexandria declared that the Ancient Egyptian culture is rotten and statues should be covered in wax (Sabri 2015).

Although the Coptic minority usually takes pride in its heritage and intimate bond with Ancient Egypt, many of conservative priests affirm that the Ancient Egyptian civilization was evil – the persecutors of Moses. This creates aversion and distrust in this heritage. As a consequence, many in the Coptic community are also involved in dealing in Coptic antiquities.

Most looters bring shaykhs famed for their magical powers to tell them where to dig for antiquities. Regular villagers who cannot afford a geo-sonar will beseech a shaykh to use his powers to locate the 'treasure'. In Dayr Abu Hennes, Mallawi in Minya, near the rock-cut Coptic remains of Ansina, Coptic looters asked a Muslim shaykh from the nearby village to guide them in their excavations. (al-Bagoushi 2013).

Antiquities, market and laundering

The market in Egyptian antiquities has flourished since 2011. Many Ancient Egyptian objects reached auctions and collectors in Europe and the United States, while many of the Islamic ones went to the Gulf Area³. Several Biblical scholarly institutions, particularly in the United States, have bought Coptic manuscripts and objects of a lower value have been sold on e-commerce website ebay as well as other websites in plentiful quantities (Fig. 7). This has given antiquities traders a huge advantage, inasmuch as the tracking of their channels has become very difficult.

In addition, numerous auctions selling antiquities have laundered their certificates of origin. The best example is the double limestone statue sold in Belgium. This statue was illegally sold along with another serpentine statue: the sale took place in an auction with papers that attested it came from another old collection (Abdelzaher 2014; Billen 2014: 20-21). Most Egyptian objects on the antiquities market and sold as 'old collections' come from illicit excavations with false documents.

Restitution and repatriation

Hundreds of objects seized by customs or from public auctions have been repatriated from the United States, France, Switzerland and Germany to Egypt (al-Bagoushi 2013). However, many more have been sold. These objects have lost their historical value and will return to Egypt stripped of any meaningful interpretation that can be inferred about them. The Chief of Police Antiquities, Brigadier Ahmad 'Abdel Zaher has estimated that the number of repatriated objects in the past four years represent only 6% of the number of objects that have been looted (Abdelzaher 2015).

Advocacy and public engagement

With the political changes that occurred in 2011, many civil society members deem that the government pays insufficient attention to heritage, and numerous groups have been formed, as a result, in the endeavour to advocate cultural rights and salvage of heritage. The efforts of these groups were diverse. 'Egypt's Heritage Task Force', targeted Ancient Egyptian heritage. Others, such as #Save_Cairo advocated the preservation of historic Cairo. Another group focused on the modern architecture of Alexandria, e.g. #Save_Alex.

Smaller groups formed in Port Sa'id, Mansura, and Minya. These groups have fostered a strong public opinion towards heritage protection, and they were even invited to contribute to the writing of Article 50 of the Constitution. They are constantly involved in setting red flags against looting, land-grabbing, demolition of monuments, thefts, and unplanned governmental development. Were it not for such civic movements, many sites would have been lost, like al-Fustat, the oldest Islamic capital of Cairo, which the government wanted to turn into a public garden. Other sites were saved because of brave volunteer groups, who gathered in front of the archaeological area of Dahshur as the local community protests to protect the site from armed gangs. After the protest, military forces were sent to protect the archaeological area. In Egypt, the public is now aware of the heritage crisis, and many are starting to join these civil society movements to help salvage Egyptian heritage.

The rate of looting and desecration of Egyptian heritage is increasing. More national efforts from the governmental sphere and civil society movements are needed to provide creative tangible solutions to stop the heritage drain. Many of the archaeological sites that are visible today will be replaced by constructions in the next 10 years. Many more will lose their objects and their architectural structures; the stratigraphy will be lost forever. The market continues to create a demand that is making the best use of the economic crisis and the security lax situation in Egypt. International support is needed to restrain the antiquities market and invest in cultural heritage development projects in Egypt that would tie the local communities to their heritage economically. Archaeologists should involve the communities in the protection and salvage of their heritage. This should not be the sole role of the government, but the responsibility of the Egyptian society as a whole. The war on cultural heritage has produced devastating results on national, regional and international levels. History is important for the new formation of identities in the Middle East, and only its protection and safeguarding provide the different communities means for development.

Note

Most sources cited are originally written in Arabic, and without any official translation.

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Fig.1 a. The Antinopolis (al-Sheil Ibada) archaeological site during the excavation season of 2010.



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Fig.1 b. The Antinopolis (al-Sheil Ibada) archaeological site after looting.



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Fig. 2. Souq el-Khamis, a government construction built upon Ramses II temple ruins.



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Fig. 3. Illegal housing construction takes place on ancient archeological sites.



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Fig. 4 Looters' pit north of the Step Pyramid of Djoser.



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Fig. 5. The illegal construction of the cemetery on the causeway of the Southern Pyramid of King Snefru in Dashur.



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Fig. 6. Human remains disturbed by looters in Mandisha, oasis of Bahariya.

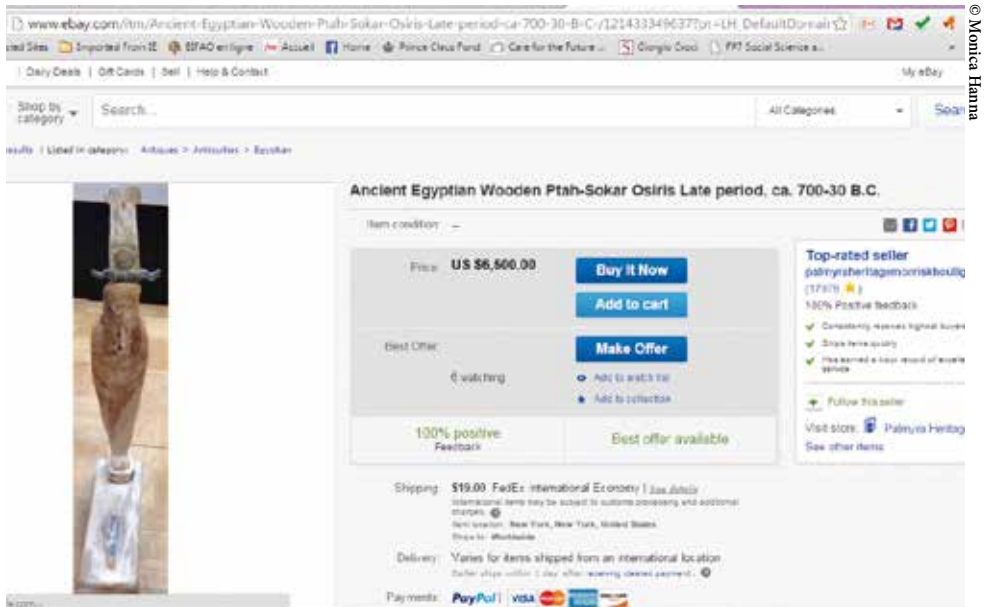


Fig. 7. Illegally excavated antiquities sold on eBay: statue of Pthah-Sokar-Osiris from the late Period.



Fig. 8. The Dashur protest by heritage activists and locals.

Illicit Traffick in Cultural Property in Lebanon: A Diachronic Study

Assad Seif

Antiquities, particularly ancient works of art, belong to the country in which they were produced in the past. They form an integral part of the past of the inhabitants of that country, and hence are in reality communal property forming cultural roots for the present day inhabitants. Like natural resources, cultural heritage forms a non-renewable resource base, every bit that is lost, broken or sold is a fragment of past identity removed and hence an impoverishment of today's identity. If the loss is due to ignorance, it will be paid for by future generations whose cultural memory will have been wiped out (Seeden 1992a: 110).

The trafficking of cultural property is rooted in a psycho-sociological movement, enhanced by an addictive behaviour in the collector (Belk 1994: 317-326). It is intimately related to the social status of the different players in the operational mechanism at work (*chaîne opératoire*) that ranges from extraction to exhibition and involves three types of players. It is nurtured, in the lower social strata, by the need for money, enhanced by the popular myth revolving around treasure-hunting and ensuing opulence, while privileged classes seeking to enlarge their collections of antiquities are essentially driven by addiction (Subkowski 2006: 383-401). Middle-men or dealers are the second type of players. They profit from the above-mentioned dynamics and their 'hostages' in order to amass more money. They continuously incite the excavators who come from a modest background to hunt for more 'treasures', and then display their goods for the collectors's benefit – something of a Pavlovian lure. Then come the smugglers, who are usually related to diggers, and their job is to transport the excavated objects through the borders and get them to the local dealers.

Lebanon is laden with unspoilt archeological sites – a playground, in many ways, for looters and collectors, who depend on the middle men.

Historical, legal and administrative framework (Ottoman period-1990)

Lebanon, like the Ancient Near East, was subjected to the trafficking of cultural objects as early as the Ottoman period. Encouraged as they were by the yearning of Western museums to enlarge their collections at the time, some people began to dig and exhume ancient artifacts in order to sell them to these museums. The examples of the Durighello family in Sidon and the Farah family in Tyre (both residing in South Lebanon) illustrate this best. A family of French diplomats, the Durighellos, used their position to dig and sell antiquities mainly to the Louvre museum from 1882 to 1906 (Fontan, E. 2004a: 192-201). The most important discovery made by the Durighello family in Saida was the *Mithraeum*, where many marble statues were excavated and sold to the Louvre. Since then, these statues occupy a prominent location in the galleries of the Louvre (Klat 2004: 180-187).

(Fig. 1)

The Farahs were Lebanese and resided in Tyre. They took to trafficking antiquities for the Louvre as their main professional activity. After the first explorations of the site of Umm el Amed by Ernest Renan during his mission to Phoenicia¹, France had to forsake its archeological missions. Clermont-Ganneau, a renowned archeologist at the time, relates that he had agreed with the Farah Family to continue onsite excavations and send him what they could find (Fontan 2004b: 51). They worked in secrecy, smuggling their finds at night in order to shipload them to Paris. In the records of the Louvre, the names of the different members of the Farah family, as antiquities sellers, were registered between 1890 and 1911. The family did not sell objects to the Oriental Antiquities Department only, but to the Greek and Roman antiquities departments as well (Fontan 2004b: 51).

The Ottoman Sultan Abdul-Aziz laid the foundations for the Istanbul Museum to be constructed in the Topkapi Palace exterior gardens in a mimetic gesture of the main empires of the West. His successor, Sultan Abdul Hamid II, continually sought antiques and ancient relics from all over the Ottoman empire in order to augment the collections of his imperial museum. It is in this context that Osman Hamdi Bey, the first curator of the Istanbul Museum, was sent to excavate the newly discovered tomb in Sidon in the spring of 1887 and retrieve the findings which included the famous Alexander sarcophagus – the jewel of the Istanbul museum today (Hamdi Bey and Reinach 1892).

(Fig. 2)

During the early French Mandate period, archaeological sites and discoveries were run by the army until 1920 with the establishment of the *Service des Antiquités*. The investigations were spearheaded by two main institutions, the Louvre and the *Académie Française des Inscriptions et des Belles Lettres*. These institutions worked through the army regiments present in the Levant at the beginning. Afterwards, the activities were entirely run by archaeologists (Gelin 2002: 33-37).

As early as 1926, in an attempt to control the circulation of antiquities, the French mandate authorities in accordance with the Great Lebanon government issued Law no. 651 prohibiting the import of archaeological artifacts from Iraq and Palestine unless they have the proper certifications from the States of origin². This law was issued in a bilateral agreement between France and Great Britain in order to organize their respective territories and archaeological investigations in the region. Syria was not included at that time, because Lebanon and Syria had one custom entity as they were both under the French mandate authority. Since 1926, Lebanon applies Law no. 651, which is first law to regulate the traffic of antiquities in the region.

The Law on Antiquities R.L/166 issued in 1933 under the French mandate organized the commerce of antiquities and gave the antiquarians the right to sell and buy antiquities according to strict regulations³. As for Law no. 651, it was still applied in adjunction with the new issued law, which stipulates that all people intending to deal in the commerce of antiquities, have to get a permit from the Directorate General of Antiquities (DGA). These permits must be renewed yearly. The issuing of permits for the antiquities market traders by the authorities of the DGA continued without interruption during the Lebanese war until the early 1980s. As for the transfer of property of cultural objects, mainly inventoried and classified antiquities belonging to the private collectors,

Law R.L. no. 166 envisage this possibility in Article no. 44. Nevertheless, the DGA has a pre-emptive right over these antiquities.

In 1988, after 13 years of civil war, and due to the lack of control over the Lebanese antiquity market, the Minister of Tourism issued Ministerial Decision no. 8 banning all kind of export of antiquities from the Lebanese territory⁴. The Preamble of the Decree makes clear that the decision was taken in response to the different security issues the country was facing at the time, i.e. illicit export, looting recorded during the civil war and the need to protect the national cultural heritage. This decision was followed the same year by another Ministerial Decision no. 14 aiming at the organization of the antiquity market inside Lebanon.

In the early aftermath of the civil war, the Minister of Tourism issued a new Ministerial Decision no. 8 of 27 February 1990, which combined the previous two decisions. The new decision not only prohibited all kind of export of archaeological objects from Lebanon but also banned the commerce of antiquities inside the country. This was done by discontinuing the release of antiquities trade permits by the DGA. However, freezing the antiquities trade led also to a collateral damage which is the loss of control by the authorities on the market itself. As a result, the illicit trade of national cultural objects altogether with trans-border illicit traffic have increased.

A few months later, Lebanon ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property by Law no. 21 voted at the Parliament on 30 October 1990. Since then, Lebanon is applying not only the previous Laws and decisions regarding the trade in antiquities, but also the 1970 UNESCO Convention, which was integrated into the National Laws on Cultural Properties⁵. Furthermore, the ratification of the Convention has enabled Lebanon to expand the span of protected types of material cultural objects which comprise archaeological objects, i.e. objects prior to 1700 AD as stipulated by Law R.L. no. 166, as well as all types of cultural properties dating from later periods.

The most recent law on cultural property (Law no. 37) was issued in 2008. However, this law does not include a section on antiquities trade *per say* since the articles of the 1933 Law R.L./166 are always applied. Nevertheless, it includes regulatory measures regarding the transfer of cultural properties and their import as a direct application of the 1970 UNESCO Convention⁶.

Importing cultural properties into Lebanon

Even if trading in and exporting of antiquities and cultural goods were banned since the late 1980s, importing these objects and goods through proper channels and procedures was never subject to any legal restriction. The law is very clear on this matter: any antiquities which are to be imported to Lebanon require legal export papers from the country of origin. The procedure is quite simple: the DGA inspects the objects to be imported at customs and delivers an official document allowing import, if conditions conform to those stipulated in Article no. 44 of Law R.L./166 in the case of ownership change. Nevertheless, according to Ministerial Decision no. 8, 27 February 1990, re-exporting the same goods will not be possible. Also, Law no. 37 of 2008 on cultural properties, Articles 17 and 18, prohibits import of classified cultural properties from a State with which Lebanon maintain diplomatic relations, without the consent of that State. If there is no consent (official documents), such properties are seized and returned to their original owner, provided that the requesting State:

- pay just compensation to an innocent purchaser or to the lawful owner,
- provide, at its expense, evidence and relevant documents supporting its request for recovery and return,
- bear all costs related to the return of cultural goods (freight, insurance and delivery).

Clandestine excavations and illicit traffick during the Lebanese civil war 1975 - 1990

During the Lebanese civil war, clandestine excavations and illicit traffick in archaeological objects spread due to the absence of general government control. This situation reached dramatic proportions in second half of the 1980s (Hakimian 1989). During this decade, clandestine digging spread to the most remote areas of the country (Seeden 1990: 142). The areas that underwent most of the clandestine activities during the civil war were The Beqaa, namely Baalbek and western Beqaa, and the South (Fadlallah 1992: 75).

People in the villages, especially those located nearby ongoing excavations, took advantage of the lack of government control and began illicit excavations on archeological site premises. Little by little, the excavations invaded the archaeological sites, which were pilfered using heavy machinery, *inter alia* excavators and bulldozers. This was the case of Kamid el Loz (ancient Kumidi) in western Beqaa, where archaeological excavations stopped prematurely in 1981 (Seeden 1991: 3-4).

Uncontrolled and unorganized constructions during the war also lead to archaeological discoveries that attracted clandestine excavators. Wherever a new construction site was initiated, especially in areas known to have potential archeological value, clandestine diggers would inspect the excavation for any potential hole in the ground that could lead to a tomb, or any structure that could reveal the presence of artifacts, especially mosaic floors, very prized by the collectors (Fadlallah 1992: 76). Once someone finds a tomb in a new area, frantic looters would sense its presence kilometers away. The next day, the entire area would be pitted and cratered by looters searching for other tombs and new material to be sold to the dealers.

The major sites affected by looting are burial sites from the Phoenician and classical periods. These tombs much prized for their valuable artefacts, which were often well preserved. This means good prices upon sale. Also, early Christian and Byzantine churches and basilicas were tracked for their important and valuable mosaic floors. Clandestine excavations were not limited to the land, many were done underwater nearby historic cities known to have been major harbour cities during the Antiquity. The most looted maritime area is situated in front of Tyre's shore in southern Lebanon, where thousands of statues and *amphorae* were dug out from shipwrecks lying beneath the sea waters. Statues illegally extracted from the waters of Tyre are still on sale in fancy antiquarian boutiques in the UAE today.

Once extracted from clandestine excavations, looted artefacts would be collected by smugglers and dealers who pass them through borders in order to reach international markets, where they sell for tenfold the price allotted to diggers. The dealers have strong local and international connections, which eases their work and ensures the quick liquidation of their goods. Some of the dealers even opened their own antiquarian boutiques in many western countries, namely Geneva and New York. In this context, many cultural objects were destroyed due to improper methods used in clandestine digging. The remaining objects were exported out of the country. And along with it

comes the irrevocable loss of Lebanese heritage.

Administrative awareness actions in post-war period

In order to face the degrading situation and the loss of the national cultural heritage due to theft and illegal trade, many workshops and awareness campaigns have been conducted since the ratification of the UNESCO 1970 Convention in 1990. Awareness campaigns and workshops brought locals and governmental agencies together, while others aimed to reach out to neighbouring Arab countries, also signatories of the Convention. Two regional workshops focused on the review of measures against the illicit trafficking of cultural property were held in Lebanon with the collaboration of the UNESCO regional office. The first was held in 2002, the second in 2009.

Following the first workshop, held in February 2002 in Beirut and gathering UNESCO-affiliated Arab States, a recommendation by the Lebanese State Party representatives was issued to set up a national committee to fight against illicit trading of cultural objects. This Committee was to be composed of representatives of the Lebanese Ministry of Culture, including the Director General of Antiquities and the Director General of Culture, in addition to representatives from the Ministries of Justice, the Interior and Municipalities, of Foreign Affairs and of Finance. It aimed to monitor the matters related to the fight against illicit trafficking of cultural goods at a national and international level and to make administrative and legislative proposals to the competent authorities. Unfortunately, this decision was not implemented and the Committee was never formed.

Law application procedures and the 1970 UNESCO Convention

Today, the Ministry of Culture and the National Security Agencies (Police forces, General Security forces, customs, etc.) share the procedures for the application of the 1970 UNESCO Convention as well as the above mentioned laws. Subsequent to the seizure of illicitly trafficked cultural properties by the security agencies, the objects were transferred to the Directorate General of Antiquities by direct order from the Attorney General or the General Prosecutor. Once the cultural properties are handed over by the security forces, the DGA follows the subsequent procedures:

1. Objects are inspected and their provenance is certified by both DGA and Police.
2. In case the objects are from Lebanon, the judge opens an inquiry and police investigations are carried out in order to locate the place from which the objects are illegally extracted in addition to an inquiry about the network of people involved in the illicit act.
3. In case the objects are foreign, the Directorate General of Antiquities transmits the list of the objects with explanatory documents and photographs to the competent authorities of the countries concerned through diplomatic channels.
4. A bilateral technical committee is formed between Lebanon and the provenance countries to finalize the certification of origin and to draw up the final list of objects to be repatriated.
5. Once all documents are completed, the repatriation is done according to diplomatic procedures between the two countries.

In applying these procedures, the Lebanese government seized and returned many stolen antiquities and illicit cultural objects sent through Lebanese territory to Syria and Iraq.

Sanctions and regulatory measures

According to 1933 Law R.L./166, illicit trafficking in antiquities or cultural properties is considered as a minor crime or a misdemeanor, but not a felony or a major crime. This consideration did not change with the newly established Law no. 37, issued in 2008. Both laws impose sanctions that range from one month to three years of imprisonment, in addition to a financial penalty. Antiquities are seized and donated to the National Museum as stipulated in Article 107 of the Law on Antiquities R.L./166 and Article 20 of Law no. 37 on Cultural Property.

Solutions found for private collections of cultural properties

Despite the decisions made as regards the ban on the trade in antiquities issued in 1990, many antiquities dealers continued their activity. Furthermore, the unrest and insecurity caused by the war prevented any inspections to put a stop to their activity, leading to government incapacity to control the illegal market trade. Consequently, neither legal actions nor any sanction have been taken against these dealers, resulting in an increase of the illicit trade of national cultural objects as well as trans-border illicit traffic.

In 1999, a huge campaign was raised by the General Prosecutor against these traders and some of their shops were closed by court decisions. This was only temporary as there were flaws in the procedures, i.e. the conditions for proper legal confiscation were not met during seizures. Consequently, the General Prosecutor withdrew his decision and no sanctions were taken against the traders. Yet, since that incident many shops were closed and the traders froze their collections that were inventoried by the DGA during the campaign.

During the campaign, many private owners of antiquities were called by the judge, and most of their publicly exhibited collections were seized but returned because of the same above-mentioned flaws. In addition, the court ruled the restitution of their 'properties' in accordance with Article no. 306 of the Civil Prosecutions Code, which states that: 'According to the general legal adjudication, the acquisition of a movable cultural object in good faith, and in an open transparent way, constitute a conclusive argument of ownership that cannot be refuted under any other evidence.'

In this regard, let us bear in mind that in 1995 the DGA sent a formal consultation request to the Legal Consultation Board at the Ministry of Justice, to enquire whether the acquisition of antiquities could be considered legal before the issuing date of the 1990 Ministerial Decision. The Board's answer was, likewise, based on Article no. 306 of the Civil Prosecutions Code. Furthermore, Article no. 306 was considered to be applicable for objects found in any private collection today. Notwithstanding, private owners of cultural objects were made to worry about official decision undermining their ownership after the General Prosecutor took that decision in 1999. Accordingly, many requests to the consecutive Ministers of Culture were raised in order to find adequate solutions for private collections.

Hence, in order to implement the 1970 UNESCO Convention as well as Law no. 37 on cultural objects issued in 2008, the Ministry of Culture was required to draw an inventory of all cultural objects present on the Lebanese territory. The Minister of Culture formed a consultation committee in 2014 to prepare a draft decree regarding this inventory. After having obtained formal approval from the Council of State, the decree presented to the Council of Ministers in 2015 was based on Article no. 306 of the Civil Prosecutions Code, and is conditioned by Article 7 Paragraph b(1) of the UNESCO 1970 Convention:

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

In order to apply this decree, the administration gives all private owners an 18-month period to provide a complete list of the cultural objects they hold, so that DGA experts may carry out an inspection and that these properties be included in national inventory of cultural properties stipulated in the 2008 Law no. 37. Thus, the Ministry of Culture has a consistent inventory of the movable cultural objects on Lebanese territory, and is able to better control the illicit market of cultural properties in the near future.

Syria and Iraq

Syria and Iraq are facing a situation similar to Lebanon during the civil war, if only at an inconceivable rate. Extremists know the value of cultural objects to both the people and the international community. They undertake their work of destruction to wipe out the memory of the many communities that still connect with this ancient past. The intention is to make the fundamental principles of the Western world fall apart, and weaken any society whose values rest upon the past and heritage.

The destruction is coupled with large-scale organized looting overseen by extremist Jihadist groups. Clandestine excavations and illicit traffic have now grown to uncontrollable dimensions during war time. The objects seized that are coming through Lebanese borders increased as the war escalated. According to the administrative files held by the DGA since 2012, there are more than 70 seizures done by the security forces for objects from both Syria and Iraq.

In order to put some figures and numbers to these findings and observations, let us consider the following data: in 2012, the DGA had three seizures from Iraq and 13 cases of seizures from Syria compared to less than 10 cases for both countries before the war. In 2013 the DGA had 13 seizures from Syria. In 2014 the DGA had one case of object seizure from Iraq and 20 seizures from Syria. Since January 2015 The DGA had 12 seizures from Syria.

Yemen

Since the war has begun in Yemen, the Lebanese customs have seized one shipment leaving Lebanon through Beirut National Airport. The shipment consisted of two Yemenite stone objects. The first one is a sculpted stylized head (60cm x 26cm) and the second one is a square stone depicting a carved stylized face (31cm x 31cm). The two objects are still at the DGA premises waiting to go through official return and restitution procedures.

Hereafter, a summary of an interesting case from the Lebanese civil war, related to illicit traffic and unconventional solutions. Then, some recent cases will be drawn where seizures were made by either police forces, the customs or the general security authorities and transferred to the DGA.

The Phoenician cemetery in Tyre (The Tophet)

In 1990, as the Lebanese civil war came to a close, clandestine excavations performed at the Palestinian refugees' camp of Al Bass in Tyre uncovered a Phoenician cemetery with cinerary urns and other pottery artifacts, in addition to funerary stone stelae bearing Phoenician inscriptions (Seeden 1992b: 39). The excavation that began inside the camp under the houses extended toward the Roman and Byzantine cemetery previously excavated by the Department of Antiquities and included in the World Heritage site of Tyre, South East of the camp (Salamé-Sarkis 1988). The discoveries were exhibited on the local market by the diggers at that time despite the newly issued Decision no. 8 of 21 November 1990, by the Minister of Tourism to ban the archaeological objects trade, Decision.

Intrigued by this discovery, which echoed the Tophet discovered in Carthage, Pr. Helga Seeden from the archaeology department of the American University of Beirut went to Tyre to inquire about the excavated pottery on the local market. There, she saw part of the discoveries consisting of cinerary urns with cremated bones mixed with sand cemented inside the jars, as well as an impressive collection of Tyrian red slip ware amphoras and various jugs and funerary *stelae* bearing Phoenician inscriptions (Seeden 1992b: 43).

(Fig. 3)

In an attempt to prevent the material from reaching local and international mafia via the antique dealer, due to the absence of instruments enabling seizure of these objects, it was decided to raise funds to buy the items discovered in order to offer them to the DGA (Seeden 1992b: 43-46). Comparable actions were taken by other people during the war. Cinerary urns that came from the same location were exhibited later in the Beiteddine Museum thanks to Minister of Tourism, Walid Joumbat. I had the chance to catalogue and study this collection inside the Beiteddine Museum in 1994 as part of my MA thesis (Seif 1995).

Public lectures were given both in Beirut and Tyre in order to raise public awareness on the importance of these artifacts and the necessity to salvage that heritage. Many positive responses followed of these lectures. This encouraged Pr. Seeden's team to carry on. And so, the collection was eventually bought and handed over to the DGA during an official ceremony at the Rif Bank in Beirut, where it was exhibited in June 1991. According to Seeden, the exhibition drew nearly 2,500 visitors during the summer (Seeden 1992b: 46). Furthermore, the collection was studied and the different material published in Beirut, and a publication edited by the AUB History and Archaeology Department, in the special issue of the 125th anniversary of the AUB was launched in 1992 (Seeden 1992b: 39-89; Ward 1992; Sader 1992).

The case of the mosaics seized at the Eastern border, Al Masnaa customs.

In January 2013, during a routine check on the road from Damasus to Beirut in western Beiqa, 18 mosaics were detected on the bus by customs agents. The smugglers were on board and they made a deal with the driver to pass through the Syrian and Lebanese borders wrought together in fabric and rolled up like carpets. The Attorney General ordered their arrest. The mosaics were inspected by a DGA archaeologist on-site upon official judicial request. These mosaics were later transferred to DGA warehouses.

The police report stated that the mosaics originated from Syria. Furthermore, their North Syrian origin was determined from their type and the nature of the scenes depicted. Official request for an expertise on the mosaics seized was thus submitted to the Directorate General of Antiquities and Museums (DGAM) in Damascus. Later on, the DGA received a team of DGAM mosaic experts, who identified the mosaic and ascertained their origin. The detailed examination of the mosaics revealed, however, revealed that some of them were fakes, and they were inserted within the lot in order to increase the number and get better prices. A committee from both countries was formed in order to prepare the repatriation of these mosaics. Then official restitution and repatriation occurred in early 2013. Two police cars escorted the truck transporting the mosaics from the DGA warehouse to the Lebanese eastern borders.

The fake manuscripts case

Two members of the Police force disguised as potential buyers arrested a dealer within Lebanese territory who was offering to sell old manuscripts, which he claimed were brought from a public library in Syria. These manuscripts had Ottoman certifications and Ottoman official papers indicating their nature (a Bible and a Qu'ran), marked with the official stamp of the last Ottoman Sultan, Abdul Hamid II. Once authorities had proceeded with the required arrests and seizure of objects, the manuscripts were transferred to the DGA who sent them for conservation and authentication to one of the most important paper conservation university labs in the country. Once a textual and paper expertise was carried, specialists declared that the manuscripts were fakes or counterfeit. These manuscripts are now held in the DGA's fake requisitions collection – a reference collection for any potential future use and comparison.

(See Figs. 4-5)

The case of stolen objects from Apamea and Palmyra.

In May 2013, the DGA received an email from the UNESCO Cultural Heritage Protection Treaties Section Office, indicating that dealers from Beirut are proposing objects for sale from Palmyra on the European market. The information was sent directly to the Ministry of Interior's dedicated department, so that the proper procedures might be carried out. At the same time, the general security department was following an inquiry done by a journalist on illicit traffic of cultural objects from Syria. Information from both sides confirmed the location of the objects in the southern suburb of Beirut. After first inspection of the area by the general security forces, they located a shop which was a normal flea market shop selling traditional antiques and there were additional exhibited objects of archaeological nature.

Since the number of mixed items (archaeological and fake) exhibited was enormous, and since the security forces did not have experts to identify the real from the fake, a decision was taken to get an expert from the DGA with the Hit Team that is to seize the merchandise. The expert's mission is to identify the real objects that will be seized. In fact, the intervention of the security forces on the ground had to be quick, since the objects seized had quickly been transferred to a truck. Furthermore, the number of objects in the shop was huge and could not fit in one truck. Consequently, a selection process had to be made in order to seize and move the real objects at once before the situation escalated on the ground.

The Hit Team broke in at 5 p.m and discovered that the objects were in two different locations: in the flea market shop and in a sculpture workshop, where items were to be restored. This added more stress to the mission, as it had to use the previously decided amount of time for both locations. Consequently, the expert was put under high stress in order to perform his job as fast as he can. The only solution for the expert was to grab a piece of charcoal and mark with an X all the archaeological objects held by the shop, so that the team may seize them and get them on truck. As soon as the identification process was done, police and experts went to second location where 14 funerary Palmyra-type sculptures were identified and seized, corresponding to the Internet files sent. The archaeological objects not only came from Palmyra, but also from Apamea and the Homs region. Around 83 objects were found, ranging between architectural stone elements from the Roman period to the Byzantine and Islamic periods, together with stone ossuaries and a tomb door from the Byzantine period in addition to pottery from earlier periods, mainly the Bronze Age. After the seizure by the General Security Forces with experts from the DGA, the objects were then transferred to the DGA warehouse and kept there. A Lebanese-Syrian joint commission inspected the objects and ascertained their provenance. As a result, these objects were repatriated to Syria in October 2013.

(Fig. 6)

The Borj Hammoud case

On 24 October 2013, the DGA received a call from the police division specialized in international theft and cultural trafficking requesting, an expert to accompany them in a bust in Bourj Hammoud region in Beirut's eastern suburbs. Authorities put a shop suspected of illicitly trafficking archaeological objects under surveillance. That same afternoon, the expert accompanied the hit squad that broke into the shop. In the office, many archaeological artifacts mixed with new second-hand antiques and lots of fake replicas of original archaeological objects were spotted. Much to the squad's surprise, more was discovered in a warehouse situated in the shop's close vicinity, as the owner of a warehouse of around 250 square meters filled with fake and original objects stored together indiscriminately. The fakes were replicas of Assyrian wall reliefs as well as Roman, Mesopotamian and Persian style replicas. When asked for the date of the import, the owner said that he received the merchandise long time ago, for more than 15 years. The information was ascertained by the police interrogations of the people working at the shop. Consequently, the smugglers who passed the objects across the border were untraceable.

(Fig. 7)

At the warehouse, the police found the workshop in which many fragments of objects illicitly trafficked through the borders were stored and restored – detached pieces of figurines and pottery shards restored by completing the missing parts and retouching the objects in order to look as good as the originals. Many of these objects are found on international markets and in renowned auction houses and sold for hundreds of thousands of dollars.

How do these objects pass authenticity tests? The arrested shop owner's answer was straightforward. He said that if you send an Islamic *sgraffiato* plate to a lab for authenticity test, the only place they can remove slices from for the test is the base, since

this part is invisible and the sampling process in this region will not damage the object. Consequently, authentic *sgraffiato* bases to are bought, and a fake upper part of the plate is added. Collectors trust that these are authentic pieces, even after they send them to be tested in specialized labs. As for the stone objects, qualified artists are hired in order to copy the original objects in similar stone types. Those copies are then dipped in earth mixed with acids and animal dung for a certain period of time in order to get a good surface ware. Then they are tarnished using clay soils from the archaeological sites where the original objects were excavated⁷.

A large number of objects were seized and brought to the DGA warehouses. But since the objects were transited through the borders long time ago and because they have types that can be found in many sites spread over minimum three countries (Lebanon, Syria and Iraq) they were kept in the possession of the DGA. The replicas and fakes are added to a separate collection intended to be a study and training collection in the future for the new recruits at the DGA.

Conclusion

Illegal activities related to cultural heritage, be it either clandestine digging, illicit trafficking or production of fakes were and are still performed in many Near Eastern countries rich with an archaeological and cultural past. Furthermore, war led these activities to increase strongly, also causing them to spread to a larger territory. This was the case of Lebanon during the civil war, as is now the case of Iraq and Syria. Needless to say, what is happening in other neighbouring countries where the occupying States did not sign the 1970 UNESCO Convention and considers the history of the other as a dark times in the history of the newly formed state and consequently needs to be cleansed.

This intentional cleansing and the destruction of the tangible traces of a people's entire history is now taking large-scale proportions in Syrian – at a rate that would have been inconceivable during the Lebanese war. In Syria and Iraq, the extremist jihadist terrorist groups are conducting systematic destruction of the cultural heritage of thousands of years of vivid cultural development. This is combined with illicit traffic of thousands of artifacts through organized networks and transnational mafia. The loss is irrevocable, as is the unnamable tragedy of the extermination of native minority populations.

Lebanon, through the application of the UNESCO conventions ratified, as well as the resolutions adopted by the UN Security Council, is trying to stop as much as possible the illicit traffic in cultural properties at its borders and inside its territory⁸. Currently, the Directorate General of Antiquities holds cultural objects from Syria, Iraq and Yemen. DGA authorities are communicating with the relevant administrations in these countries in order to find the best way to save the objects seized and to return them to the competent authorities when time and conditions are appropriate. The seized objects include archaeological objects as well as objects of worship stolen from religious sites.

It should be noted that an important number of the objects seized on the market are fakes and counterfeits, as experts estimate that around 55% are fakes. This said, it is our conviction that, for each trafficker in illicit antiquities caught by the police and gone on trial, there are hundreds 'if not thousands' who escape justice. This is unfortunately a widespread phenomenon in many other countries (Palmer 1991: 33; Herscher 1987). The need for international collaboration efforts to face such a widespread epidemic is most urgent.

Notes

1 Ernest Renan published his mission likewise entitled *Mission de Phénicie* in 1864.

2 See Lebanese Juridical Collection no. 15, p. 15-22.

3 This law was written by Charles Viroilleaud, a French archaeologist who served as director of the *Service des Antiquités de Syrie* between 1920 and 1929. At the time, he wrote the text of the law on antiquities for both Syria and Lebanon.

4 The DGA was part of the Ministry of Tourism at that period. It became part of the Ministry of Culture in 1993.

5 When an international convention is ratified through a law voted in Parliament, the articles of the convention are then applied, as if they were part of the Lebanese legislation.

6 Lebanon has not yet joined the UNIDROIT Convention.

7 Many bags of soil were found at the workshop, tagged with names of the different Lebanese, Mesopotamian and North Syrian archaeological sites. Also, many exhibition catalogues and site reports and publications were seized with the merchandise. According to the shop owner, these were the catalogues where the selection of objects is made by the dealers in order to send the replicas to Europe and other western countries.

Lebanon ratified most of the UNESCO conventions dealing with the protection of the cultural heritage of the others as well as its national and world heritage assets. These conventions are the Hage convention with its first protocol of 1954, the 1970 convention on illicit trade and the 1972 Convention on the Protection of Cultural World heritage. Lebanon also applies all the UN Security Council resolutions namely the resolution no. 1483 and no. 2199.

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Fig. 1. The Mithraeum of Sidon statues at the Louvre today.



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Fig. 2. The presumed Alexander sarcophagus in the Istanbul Museum today.



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Fig. 3. Funerary *stelae* depicting Phoenician inscriptions.



Fig. 4. Fake manuscript.



Fig. 5. Fake certificate indicating the content of the manuscript.



Fig. 6. Artifacts stored at the DGA warehouse.



Fig.7. The fake Assyrian Wall reliefs.

Archaeological Site Looting in Syria and Iraq: A Review of the Evidence

Brian I. Daniels and Katharyn Hanson

Since the 1990s, archaeological site looting throughout Syria and Iraq has witnessed a significant increase, threatening the integrity of some of the most acclaimed and significant ancient Mesopotamian cities and resulting in an incalculable loss to scientific knowledge about this region's history. In recent years, policy concerns about archaeological looting have also increased as research began to suggest this illicit activity may provide a certain amount of income to militant groups in Syria and Iraq and to organized crime more generally. At the same time, the clandestine and criminal qualities of extensive site looting as well as the security situation in Syria and Iraq have made conventional, field-based assessments difficult to achieve. However, there is some ability to conduct site-level assessments through other technological means. Following the Second Gulf War, archaeologists began to use high resolution satellite imagery in order to assess site damage and looting (Casana 2015; Hanson 2011; Hritz 2008; Hritz 2014; Stone 2008; Stone 2015). This use of satellite imagery became even more pronounced in Syria following the Arab Spring, as Google Earth and Bing imagery democratized access to a wider public audience (Hanson, in review). Publications and reports based upon careful imagery analysis are now available for Syria and Iraq, and there is a need to review the current state of the field.

This chapter presents a summary review of the already documented scale and scope of looting at archaeological sites in Syria and Iraq. Drawing upon peer-reviewed journal articles and published reports, it provides a summary of the information that is known about the scale of loss at specific sites in Syria and Iraq as well as three in-depth case studies of the sites of Mari (Tell Hariri), Syria; Umma, Iraq; and Dura-Europos, Syria.

Summary of looting in Syria

Following the 2011 eruption of the civil war in Syria, considerable scholarly, media, and law enforcement attention has been directed towards the relationship between this conflict and the illicit antiquities trade, particularly after the rise of the so-called Islamic State of Iraq and the Levant (ISIL). While many there are substantive assessments of war-related damage (Cunliffe 2012), to date, the most comprehensive assessment of archaeological site looting is Jesse Casana's 2015 overview of the American School of Oriental Research (ASOR)'s and the US Department of State's Syrian Heritage Initiative (Cassana 2015). Although the study does not address the status of individual sites, it offers an overview of the scale of looting in Syria. Based upon a sample of 1,289 sites, the study classified looting as 'minor' (fewer than 15 looting pits), 'moderate' (undefined), or 'severe' (undefined). For the 966 sites for which assessments of pre-civil war looting were possible, 227 (25%) showed evidence of looting: 18% minor looting, 5% moderate looting, and 2% severe looting. For the 945 sites for which looting damage could be evaluated during 2012 through 2015, 202 (22%) showed visible looting: 17% minor, 3% moderate, and 2% severe. 99 of the 202 sites looted after the conflict began had also been looted prior to the war. Pillage at the remaining sites represents new intrusions at previously unlooted sites. While the sample's absolute percentage of site looting during

the conflict period was similar to that of the pre-conflict period, all of the looting had taken place in the short span of three or four years, suggesting an absolute increase in the frequency of looting. Moreover, the study also showed a relative increase in site looting after 2014, as analysis of satellite imagery with later dates was more likely to show telltale signs of site looting.

Reports of looting at individual Syrian archaeological sites are less well-represented in scholarly literature at present. This lack of information reflects the inability of archaeologists to conduct regular field assessments and the very recent looting of sites. Much of what is known about the status of individual archaeological sites comes from targeted reviews of specific locations, rather than a randomized sample. Conclusions about looting patterns are therefore inherently speculative. In the early stages of Syria's civil war, Google Earth imagery revealed looting of approximately 2/3 of the surface area at the Roman site of Apamea (University of Glasgow Trafficking Culture Project 2012). The scale and scope of the looting garnered considerable international media attention and proved to be a harbinger of the conflict. Subsequent studies have confirmed extensive looting at some of Syria's most well-known archaeological sites.

Reports by the American Association for the Advancement of Science (AAAS) reviewed site damage, including archaeological site looting, at Syria's six UNESCO World Heritage Sites and six of Syria's 12 Tentative World Heritage Sites (AAAS 2014a; AAAS 2014b). The AAAS studies found evidence of looting at the Tentative World Heritage Sites of Ebla and Mari (Tell Hariri), both dating to the Bronze Age, as well as to the Roman frontier city of Dura-Europos. Widespread accounts of looting in the Ancient Cities of northern Syria World Heritage site could not be confirmed by the AAAS with satellite imagery, but the reports included on-the-ground photographic evidence of looting. A 2014 review of 18 'cultural heritage areas' with a high density of historic or archaeological features by UNOSAT suggested that earth disturbance was a widespread phenomenon, particularly at Roman, Late Antique, and Byzantine Period site. Similarly, following an assessment of thirty individual Syrian sites, Casana and Panahipour (2014) identified a preference for the pillage of sites dating to the Roman, late Roman or Early Islamic periods. In the coming months and years, more site specific analysis should become available to researchers. Shirin International, a European Union-based consortium of archaeologists, has been conducting site-level assessments using publicly-available Google Earth imagery. The Syrian Heritage Initiative also intends to release site condition reports based upon satellite imagery analysis through an online platform in the near future.

An ongoing question is what group or groups are primarily responsible for the looting activity in Syria. Based upon discussions with Syrian archaeologists and activists, Al Azm *et al.* (2014) reported that ISIS was extracting a tax for the right to loot archaeological sites and to sell the proceeds. This observation did not preclude archaeological site looting in other conflicted affected areas in Syria but drew additional attention to the role of ISIS using archaeological site looting as a funding mechanism. In point of fact, site looting in Syria is widespread in conflict-affected areas. Evaluating the total number of looted sites according to zones of control in early 2015, Casana (2015) concluded that the absolute percentage of looted sites in ISIS-controlled areas did not appear to be greater than those in non-ISIS controlled areas; in fact, looting appeared to be most frequent and widespread in Kurdish and 'opposition'-held areas in his sample. However, areas under ISIS-controlled demonstrated a much higher rate of moderate and severe looting, with 42% of looted sites in ISIS-held areas having severe or moderate looting, as compared

to 23% in regime-controlled areas, 14% in 'opposition'-held areas, and 9% in Kurdish-held areas. Extreme looting at sites like Dura-Europos and Mari (see case studies below) also appeared to have occurred after ISIS took control of the areas surrounding those sites. The discrepancy suggests that while looting is more frequent in areas outside of ISIS's control, it is more intense in areas where ISIS does have control. Casana attributes the frequency of looting to weak centralized authority in Kurdish and 'opposition'-held areas and suggests that the presence of moderate or severe looting, particularly in areas under ISIS control or regime control, may be indicative of some form of tacit support or formal consent from authorities.

Summary of looting in Iraq

During the 2003 Gulf War, the looting of the National Museum of Iraq in Baghdad briefly brought the plight of the country's ancient artifacts into public awareness. Yet, the longstanding and ongoing looting at archaeological sites throughout Iraq was largely ignored outside of the cultural heritage community. The history of looting at archaeological sites in Iraq is long, and was shaped by the many political and economic issues that have faced Iraq since the late 19th century. During the 1990s, Iraq's economic situation worsened with the imposition of UN sanctions and, in southern Iraq, the impoverished population suffered from a severe lack of water, exacerbated by the draining of the marshes. Very little protection was offered to archeological sites by the central government (Gibson 1997; Stone 2015). Market demand for Iraqi antiquities in the 1990s was noted by John Russell (1996), who observed that Assyrian sculptures and reliefs began to appear on the market around that time. The proliferation of Iraqi artifacts on the international art market mirrored a substantial increase in illegal digging and smuggling. Nine out of 13 of Iraq's regional museums were looted in addition to archaeological sites throughout the country. In response, the Iraqi government sponsored emergency excavations and guards for the archaeological sites. Both efforts led to a decrease in looting by the late 1990s (Gibson 2003).

After 2003, several general overviews were published about archaeological site looting (Emberling and Hanson 2008; Fisk 2008; Gibson 2008; Rothfield 2009; Stone 2015; Stone 2008; Stone and Bajjaly 2008). Initial ground observations showed that looters favored previously excavated sites already known to have produced valuable items. In the process, looters destroyed small, previously unknown archaeological sites across southern Iraq (Gibson 2003). The severity and extent of looting has been difficult to document from the ground due to periods of political instability and the limited resources of the Iraqi State Board of Antiquities have also been unable to keep pace with the rate of destruction. Thus, as with Syria, reviews have relied on satellite imagery to assess site damage (Global Heritage 2011; Hanson 2011; Hritz 2008; Russell 2008; Stone 2008; Stone 2015; Ur 2014).

To date, Elizabeth Stone's (2008; 2015) overviews remain the comprehensive surveys of looting in southern Iraq. These studies relied upon remote sensing technologies to show patterns of looting at large and small archaeological sites in over 10,000 square kilometres of southern Iraq (Stone 2008a). Although Stone's assessments do not discuss the status of specific sites in detail, they do provide an overview of the sheer scale of site pillage. Stone concludes that, of the 1,465 surveyed archaeological sites included in her study, the majority of site looting took place between February and August 2003, and, 12 years later, 23% of the sites showed damage (Stone 2015). Stone suggests that it

is the sites with material from the Ur III period through the Isin-Larsa period (3rd and early 2nd millennium BC) that are the most often targeted by looters, presumably for their cuneiform tablets. Stone also observes a shift to looting at sites further away from modern cities and roads.

Reports of looting at specific Iraqi archaeological sites are limited in the scholarly literature. However, it is important to note that the Iraqi State Board of Antiquities and Heritage (SBAH) has a department devoted to the investigation of damage to archaeological sites under its purview, and Iraqi archaeologists employed by SBAH produce regular internal reports on the status of sites through province-level SBAH offices. In areas of current ISIS control at the time of this writing, there is a near complete lack of information. Previous site-specific analysis has demonstrated that a dramatic uptick occurred in site looting in the winter and spring of 2003. For example, Carrie Hritz's investigation into the looting at the ancient site of Isin in southern Iraq showed an increase in looting from the winter of 2003 through the winter of 2006 (Hritz 2008). Hritz found that the looted area had increased from 37 hectares to 69 hectares of a site that is only 193 hectares in total.

Looting is tough work and is usually done by those who have no job opportunities or alternate forms of income. In 2005, Abdulmir Hamdani, the archaeologist responsible for the district of Nasiriya in Iraq, told Joanne Farchakh Bajjaly that 'a cylinder seal or a cuneiform tablet brings in under \$50 on the site for the looter' (Farchakh Bajjaly 2005). The links between whatever monetary gains can be made from looting and the weapons trade have been widely reported, although they have not been established in the scholarly literature for the current wave of ISIS violence in Iraq. A US raid on an ISIS leader in Syria has yielded artifacts with Iraq Museum numbers, however (US Department of State, 2015). Bogdanos (2008) has claimed that, in 2003, when he was recovering objects stolen from the National Museum of Iraq, they were often found associated with weapons. A link between stolen artifacts and weapons was corroborated in November 2003, when the US 812th Military Police Company and a team of Iraqi police recovered the wheeled brazier from Nimrud in a raid that seized the artifact stolen from the National Museum of Iraq but also two AK47s, a light machine gun, and a pistol (Russell 2003). Similarly, in 2005, in North West Iraq, ancient vases, seals and statuettes were found in an insurgent's underground bunker along with stockpiles of weapons and ammunition (Bogdanos 2008).

In order to contextualize further the damage caused by archaeological site looting in Syria and Iraq, we turn to an examination of three sites in more depth – Mari (Tell Hariri), Syria; Umma, Iraq; and Dura-Europos, Syria – all of which have been illicitly excavated and experienced extensive site damage. Destruction at these sites is emblematic of situations in which political instability during and after armed conflict prompts organized site looting (cf. MacKenzie and Davis 2014).

Case Study: Mari (Tell Hariri), Syria

Mari, also known as Tell Hariri, is an ancient Mesopotamian city on Euphrates River, South of the archaeological site of Dura-Europos (see below) and near the present-day Iraqi border. Mari was nominated to the UNESCO World Heritage Site Tentative List in 1999, and was consolidated with the ancient site of Dura-Europos as part of a proposed Sites of Euphrates Valley inscription in 2011. Founded in the early 3rd millennium BC, archaeological finds at Mari have shaped current understandings of

human history during the Bronze Age and contributed to our knowledge of the first great urban civilization. Mari prospered because of its location on the Euphrates River at the intersection of key trade routes. It began as a circular city with a diameter of some 1,900 metres. Over time, it covered more than 14 hectares and rose 14.5 metres above the surrounding plain. Mari's political control grew with the size of the city, and, by approximately 1800 BC, extended from Babylon in the South to the present-day Turkish border in the North. The palace complex of Zimri-lim, a unique example of a Bronze Age palace dates to this period. With more than 200 rooms and covering five acres, its size attests to the city's influence. Mari is also known for the archaeological recovery of an archive containing approximately 50,000 clay cuneiform tablets. Information from these texts has been valuable for the reconstruction of Mesopotamian political, economic, and cultural history in the 2nd millennium BC. For these reasons, Mari holds an important place in the field of Near Eastern archaeology.

The modern discovery of Mari at Tell Hariri occurred in 1933, when local Bedouin encountered an ancient statue while digging a grave. News of the spectacular find was relayed to Paris, where it garnered the interest of archaeologists. Mari has been the subject of nearly annual excavations since then, with field seasons between 1933 and 1939, 1951 and 1956, and from 1960 until the recent conflict. André Parrot acted as director between 1933 and 1975, followed by Jean-Claude Margueron until 2004, and Pascal Butterlin after 2005. This long history of continuous field research means that Mari is one of the most extensively excavated sites in Syria. The recovery of 3rd millennium BC material has produced a wealth of information about monumental architecture and the city's elites; less is known about the non-elite sectors of the community (Akkermans and Schwartz 2003). Although synthetic accounts of many of the finds at Mari have yet to be produced, a journal entitled, *Mari: Annales de recherches interdisciplinaires*, has been devoted to research at the site since 1982. Finds from the site of Mari have been distributed to the National Museum of Damascus, the National Museum of Aleppo, the Deir ez-Zor Museum, and the Louvre. The southern façade of the Court of the Palms room from the palace of Zimri-lim has also been reconstructed at the Deir ez-Zor Museum.

Mari is best known for its extensive textual record. Over 20,000 cuneiform tablets from the Old Babylonian period (early 2nd millennium BC) and an additional approximately 500 texts from the mid-2nd millennium BC were discovered at Mari. These include letters, economic, administrative, juridical texts, treaties, and literary and religious texts that offer insight into the geography, history, government, economics, and social life of ancient Mari. The tablets of the Mari archive are rectangular or square unbaked clay loaves that are thickest in the middle. They are especially fragile as the tablets were never baked and will crumble on contact (Margueron 2003). Tablets from the Mari archive were housed in several Syrian museums, including 8,000 tablets at the Deir ez-Zor Museum, 30 tablets at the Aleppo Museum, and 3,000 tablets in the Damascus Museum, which includes all tablets excavated since 1998 (CDLI 2015a). Their fate is currently unknown.

In addition to tablets, Mari is famous for its temple sculptures. These dedicatory sculptures were found associated with the temples of Ishtar, Ishtarat, and Ninni-zaza. Although the type has been found throughout Mesopotamia, nearly half of the known examples have been found at Mari. In addition to sculptures, excavations have recovered jewelry such as amulets, bracelets, and pins made of lapis lazuli, carnelian, and gold. Mari also produced remarkable cylinder seals. Other notable finds include clay figurines, ivory statuettes, stone vessels with cuneiform inscriptions, limestone plaques, and inlays of shell, limestone, and ivory (Aruz 2003).

Analysis of satellite imagery by the AAAS (2014b) showed that the site of Mari had been extensively looted. Between August 2011 and March 2014, 165 looters' pits could be identified. The spatial distribution of these pits was inconsistent, although the majority of the pits were dug on the north slope of the tell, especially to the east of the Palace of Zimri-Lim. Less concentrated clandestine excavations could be identified at the extreme northwestern and southern boundaries of the site. Imagery in March 2014 identified a vehicle at the site – possibly a medium-duty truck – and suggesting that looting might be ongoing at that time. With 165 pits formed over a period of 965 days, an average of 0.17 pits were formed per day. The overall distribution and frequency of looters' pits suggests that illicit activity was an *ad hoc* or irregular for this period. By November 2014, however, the number of looters' and in the rate of excavation had increased dramatically, indicating a shift in the process and frequency of extraction. For the period between 25 March 2014 and 11 November 2014, approximately 1,286 pits were excavated over 232 days, an average rate of 5.5 pits per day over the seven months. This pillage occurred during the same period that ISIS consolidated its control over the surrounding area, although we do not know whether ISIS sanctioned these excavations, conducted them as part of its operations, or whether conditions allowed illicit excavations to occur.

Case Study: Umma, Iraq

As with most archaeological sites in southern Iraq, Umma (also known as Tall Guha, Tall Jukha, Tall Jukhah, Tell Jukha, Tell Jukhah, Tell Jokha, Chokha, Djokha or Djoha) rises up from the flat landscape as a tell composed of collapsed ancient adobe structures and the remains of millennia of human habitation. Archaeologists have long noted Umma's large size (Adams and Nissen, 1972; Andrae, 1903; Ur, 2014); it has been generally assumed to cover about 2000 square kilometres (Adams, 2008). Umma has suffered from looting since the site was first recognized as a source for clay cuneiform tablets, a popular and collectable type of ancient Mesopotamian artifact. The history of the ancient city of Umma and its surrounding landscape is known primarily from this corpus of looted tablets. Umma began as a smaller prehistoric city that rose to prominence during the Early Dynastic Period (approximately 2950-2350 BC) and excavations and texts suggest that though it declined during the Akkadian through Ur III periods (approximately 2335-2000 BC), Umma regained its size again during the Old Babylonian period (2000-1600 BC) (Adams 2008; Ur 2014). The archives from the competing neighboring city of Girsu detail a long standing border dispute between the two powers, although recent excavations suggest that textual evidence from the looted tablet corpus may be misleading (Oraibi Almamori 2015). One of the great tragedies of the continuous looting at Umma is that without contextual evidence for the Umma tablets and other artifacts the role of this city in regional politics of the Early Dynastic period will be difficult to fully understand.

Despite its importance, Umma was not archaeologically excavated until the 1990s, although looting at the site dates back to the 19th century, if not earlier. It was clear that Umma was being looted precisely because significant numbers of unknown tablets from Umma were appearing for sale in Europe. Based on this information and following a visit by a journalist and SBAH officials, the Iraqi government funded an emergency salvage project at the site of Umma, and nearby Umm al-Aqarib between 1998 until 2003. SBAH deterred looters by hiring locals, stationing over 18 guards, and working continuously (Gibson 2008). The SBAH excavations discovered an Early Dynastic Temple of Shara and remarkable architecture with well-preserved elements, including

a niched and buttresses façade of the mud-brick temple. During these excavations, 19 cuneiform tablets were found, providing the only textual material from Umma that also includes archaeologically associated contextual evidence (Ur 2014). This number stands in contrast to the approximately 29,000 Umma tablets known from the Cuneiform Digital Library Initiative (CDLI). CDLI estimates that approximately 25,000 tablets from the Ur III period have been published, and an additional 4,000 tablets have been recorded but are not yet published. None of the known tablets were excavated, and CDLI states that the total number of Umma tablets in museums and private collections is unknown (CDLI 2015).

Umma is one of the most dramatic and best-known examples of an archaeological site severely impacted by looting in southern Iraq. Given that looting has been ongoing at the site since the 19th century, it is not surprising that it was impacted by the post-1990 wave of looting. It was the astonishing rate of pitting at the site in the lead-up and during the Second Gulf War that put Umma in the headlines. Pictures taken by Carabinieri, an Italian military police unit, photographed a moonscape of craters created by looters' pits and tunnels. Visitors have observed that the top five to ten metres of the site have been eaten away by looters' pits. Other accounts at the beginning of the 2003 invasion reported that more than 200 looters went out to Umma and nearby sites, driving away the site guards (Gibson 2008; Lawler 2003a; Lawler 2003b).

Several studies have noted damage at Umma. Russell (2008) drew attention to site looting following his helicopter flyover in August 2003, comparing his observations with earlier satellite imagery from 2000. Stone (2008 and 2015) included Umma in the sample of sites covered by her survey. These studies raised questions about the rate and density of looting at the site, and using satellite images dating to February 2003, June 2005, and July 2008, Hanson (2011) documented the number, rate, and frequency of pits on the site. In February 2003, there were approximately 2,644 looters' pits observable on Umma's surface. By June 2005, there were 8,318 observable pits, suggesting a rate of approximately 3,564 new looters' pits per year. Hanson (2011) calculated that approximately 1,517,917 square metres of Umma had been looted; Ur (2014) suggests that the post-1990 looting encompasses a total area of 45 hectares. Without additional analysis on the ground, these are only estimates; Umma's dune action and wind blown sand can quickly fill new pits.

Even after the region surrounding Umma became more secure, the looting did not stop completely. Although the degree of looting lessened, in July 2008, over 500 new looters' pits were visible on the surface of Umma (Hanson 2011). Global Heritage Network (2011) did a brief visual review of a 2010 satellite image of Umma that showed ongoing looting and estimated a total of 1.12 square kilometres of damaged site. Moreover, visits to the site in the summer of 2011 and the winter of 2012 were met with fresh looters' pits (Stone 2015). One of the most discouraging aspects of this case study is that the decline in pillage at Umma may not accurately reflect the typical pattern of looting in Iraq. Umma was one of the lucky sites that received a site guard, as well as some limited military protection, provided by the Carabinieri (Russell 2008).

Case study: Dura-Europos, Syria

Dura-Europos was first nominated to the UNESCO World Heritage Site Tentative List in 1999, and was renominated jointly with the ancient site of Mari as part of the proposed Sites of Euphrates Valley inscription in 2011. As implied by the nomination title, Dura-Europos is situated along the West bank of the Euphrates River in the Deir ez-Zor province of Syria. The site was founded by the Seleucids in the 3rd century BC

and grew to ultimately cover approximately 140 acres. It contains architectural remains that date to Hellenistic, Parthian, and Roman periods of occupation. Because of its strategic position, Dura-Europos was likely intended to act as a fortress to guard the river route toward present-day southern Iraq, acting as a border outpost between ancient empires in the East and West. As a frontier city and trade centre, the material culture found at Dura-Europos blended cultural traditions and showed Greek, Mesopotamian, Aramaic, Persian and Roman influences. Cultural mixing in the city is reflected in its sacred architecture, which includes a Greek temple to Zeus Kyrios, a shrine to the Syrian goddess Atargatis, and a temple to the Palmyran god Bel. Dura-Europos also contains the best preserved ancient Jewish synagogue, with stunning figurative wall paintings, and one of the earliest known Christian house chapels, which contains the oldest known depiction of Jesus Christ (235 AD). Some of the Dura-Europos architecture had been particularly well-preserved, leading to analogies of the site to the famous Italian site of Pompeii.

The existence of Dura-Europos was long known through literary sources. It was located during the Wolfe Expedition to Asia Minor in 1885, and its famous Palmyrene Gate was photographed by John Henry Haynes. Formal investigations at Dura-Europos began in 1920, when British troops stationed near the site uncovered well-preserved wall paintings underneath an embankment. Recognizing their significance, the American archaeologist James Henry Breasted, who was in Syria at the time, was asked to evaluate their significance. Breasted's analysis and publication of the wall paintings prompted the French Academy of Inscriptions and Letters to support the first systematic excavations in 1922 under the directorship of Belgian archaeologist Franz Cumot. Regional political unrest disrupted regular research, but regular archaeological excavations resumed in 1925, and Yale University joined the project in 1928. In 1936, however, the expedition at Dura-Europos came to an end when funds could not be obtained to continue research, and World War II thereafter prevented further work. No new excavations were undertaken until the mid-1980s, when a new Franco-Syrian project began under the directorship of Pierre Leriche. Collaborative research continued until the present conflict. Finds from Dura-Europos have been distributed to the National Museum of Damascus, the Deir ez-Zor Museum, the Yale University Art Gallery, the Royal Ontario Museum, the University of Chicago, the Museum at Beirut, and the Louvre.

As a frontier garrison, the finds at Dura-Europos reflect its multicultural milieu and the military and non-elite status of many of its inhabitants (for a recent overview, see Baird, 2014). Local material culture at Dura-Europos took hybrid forms and shared affinities with that found at Palmyra. The city is best known for its sacred architecture and associated finds, which include extensive decorative and figurative wall paintings from the synagogue and Christian chapel. Durene ceramics are generally utilitarian in quality and purpose, with local, Syrian, and Mesopotamian types. Conditions at the site permitted the rare preservation of wool and linen textiles from the Roman period as well as leather. Their quantity and preservation quality give the Dura-Europos particular significance. Moreover, the patterns found on the textiles suggest that they were local in production and reflected the tastes of Dura-Europos' inhabitants and the skills of its workers. Fragments of writing found on parchment, papyri, and carved inscriptions reflect the number of and quantity of languages understood and spoken in the city, ranging from Greek, Latin, Palmyrenean, Hebrew, Hatrian, Safaitic, and Pahlavi. A number of coin hoards have also been recovered throughout the city. As a consequence, any looting at Dura-Europos – particularly of the non-scientifically-excavated household areas –

may be intended to recover coin hordes and rare jewelry caches, which will destroy fragile textile fragments that may not have as ready a market.

Geospatial analysis of satellite imagery shows that the site of Dura-Europos has been subjected to extremely heavy looting following the outset of Syria's civil war (AAAS 2014b). The area inside the ancient city wall was so badly disrupted by April 2014 that counting individual looting pits was not possible; pits overlapped to the extent that one could not be distinguished from another. Rather than assessing the pits in aggregate number, an assessment by the AAAS aimed to identify what areas had not been disrupted by looting – an approximate estimate given that areas 'free' of damage might be undermined by lateral tunnels or other destructive acts not otherwise visible from satellite imagery. The walled portion of Dura-Europos has been previously calculated to measure 50 hectares, and an area of 38 hectares has been thoroughly impacted by site looting. Some 76% of the walled-city is now disrupted by recent looting activity. Four vehicles were also observed inside the site in imagery from April 2014, suggesting that looting was ongoing at that time. Outside the city wall, satellite imagery analysis showed the density of looting to be lower but also severe. Based upon observed pit densities, the extent of the affected area, and counts of individual pits on the city's outskirts, the AAAS (2014b) estimated the looting area beyond the city walls contain approximately 3,750 individual looting pits. At least some of the looting outside the city walls predated the outbreak of the Syrian civil war (Casana 2015), but the majority of the pits show recent earth disturbance. The combined damage inside and outside the wall illustrates the nearly complete loss of this important ancient site.

Conclusion

Archaeological sites across Syria and Iraq have suffered from substantial looting in recent years, and many of the sites that comprise the famed 'cradle of civilization' are at significant risk. The scientific loss from looting is staggering, and there is increasing evidence that links the profit from this plunder to violence and criminal activity. Although the worst of the damage seems to occur around the time of active conflict, ongoing political instability places sites at continued risk for damage. Given the current realities on the ground in Syria and Iraq, it is nearly impossible to ground truth damage to archaeological sites in this region. High-resolution satellite imagery has been the primary research methodology employed to assess the extent of site looting. It remains to be seen what is left of these sites; test excavations have suggested that site pillage may not inevitably mean total site loss (Hanson 2012). Only careful future survey will be able to identify precisely how much has been lost. Even in the midst of conflict, there is some hope. There have been emergency on-the-ground interventions to protect key heritage sites in Syria, although these have been very difficult to undertake (Al Quntar *et al.* 2015). One can only hope political stability will return soon to the conflict areas and archaeological research with our Syrian and Iraqi colleagues can resume.

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The Lasting Impact of *United States vs. Cambodian Sculpture*

Tess Davis

On 28 February 2012, the *New York Times* revealed that Sotheby's auction house in Manhattan was attempting to sell a thousand-year-old Khmer masterpiece for millions of dollars, despite evidence thieves had hacked the figure off at the ankles from a sacred Cambodian temple and trafficked it overseas in the chaos heralding the 'Killing Fields'. The newspaper illustrated this front-page story with a photograph of the larger-than-life 'mythic Warrior' as it appeared in the glossy pages of the sales catalogue. Another image showed its feet and pedestal – half a world away and still *in situ* – at the 10th century ruins of Koh Ker, deep in the Cambodian jungle (Blumenthal and Mashberg 2012).

The resulting scandal over the Koh Ker Warrior would eventually reveal a major antiquities trafficking network that stretched from the South East Asian Kingdom to the very heights of the global art market – implicating not only Sotheby's, but some of the world's top collectors, galleries, and museums. In doing so, it also launched an international – and ongoing – effort to bring home the plundered past of the Khmer people. Cambodia has triumphantly played David to the art market's Goliath, joining the host of nations fighting to recover their looted and stolen art through public appeals and legal action.

It is no wonder: while ancient sites have been pillaged throughout history, in recent decades, the illicit antiquities trade has become a lucrative and sweeping underground industry¹. Far from being mere treasure hunting, experts warn this illicit trade is furthering crime and conflict around the world, funding brutal dictatorships, armed insurgents, and even jihadists like the so-called Islamic State of Iraq and Syria (ISIS). In February 2015, the United Nations Security Council indeed confirmed that ISIS, the Al-Nusrah Front, and al Qaeda are arming themselves through 'the looting and smuggling of cultural heritage'². And a growing number of Western political leaders – including London's Mayor Boris Johnson, a coalition of United States Congressmen, and US Secretary of State John Kerry – have likewise sounded the alarm (Johnson 2015).

Four decades ago, the global hot spot was not Mesopotamia, but Indochina. During Cambodia's bloody 1970-1998 war with the Khmer Rouge – as is the case today in Iraq and Syria – violence and plunder went hand-in-hand. The conflict triggered organized antiquities looting and trafficking, which in turn, helped to bankroll the fighting. Few of the country's temples – not even the famous Angkor Wat – were spared from war profiteers. The fight for the Koh Ker Warrior revealed the inner workings of this illicit trade, and in the process, sent shockwaves through the art world. It led to a fundamental change, not only in how those in the market and museum community view Cambodian antiquities, but in how the Cambodian government and people do themselves. There appears to be no going back to the *status quo* that existed before. This paper therefore aims to revisit the case, evaluate its impact thus far, and reflect on the repercussions to come.

United States vs. 10th century Cambodian sandstone sculpture

Cambodia's art and archaeology has invaluable cultural, historic, and religious significance to the Khmer people. Since it attracts millions of tourists each year, this

heritage is also one of their most important economic resources. With the country now at peace, preservation has therefore become a matter of national pride, and increasingly a State priority.

The day after the *New York Times* piece came out, the Koh Ker Warrior was also front page news in Phnom Penh (Vrieze 2012). However, by then, beyond the reach of the headlines and behind the scenes, Cambodia and Sotheby's were already deep into negotiations. A wealthy donor had even stepped forward, pledging the auction house \$1,000,000 to repatriate the statue, but Sotheby's had refused this offer, continuing to demand the full catalogue price (Roasa 2015).

Having reached a dead end in the negotiations, Phnom Penh accepted the help of the United States Department of Justice. On 12 April 2012, at the Kingdom's request, the US Attorney for the Southern District of New York filed a civil forfeiture action against Sotheby's seeking to seize, recover and return the Warrior. As an *in rem* action, brought against the property itself, the case received the somewhat whimsical name of *United States vs. 10th Century Cambodian Sandstone Sculpture*.

US vs. Cambodian Sculpture charged that the Koh Ker Warrior was 'stolen property introduced into the United States contrary to law' – including the National Stolen Property Act, anti-smuggling laws, and customs laws³. Strengthened by internal emails from Sotheby's, the complaint revealed that the auction house's own expert had warned them the piece was 'definitely stolen', and suggested that its owners 'might want to offer it back to the National Museum of Cambodia as a gesture of good will and save everyone some embarrassment'. Six months later the government amended this complaint with more serious allegations, suggesting that the Koh Ker Warrior was not only stolen property, but what the press and public was increasingly labeling a 'blood antiquity' (Vlasic and Davis 2012).

According to the new evidence released by the Department of Justice, the Koh Ker Warrior had been looted around 1972, in the midst of the country's violent civil war with the Khmer Rouge. Moreover, it had been removed from territory under communist control, at least raising the possibility that its theft may have been carried out by the Khmer Rouge themselves. An organized trafficking network had then smuggled it as parts to a prominent collector Bangkok, and from there onward to Europe, where a premier London gallery quietly sold it to none other than Belgian royalty in 1975⁴.

That same year, Phnom Penh fell to the communists, beginning one of the 20th century's darkest periods. In the genocide that followed, two million Cambodians (a full fourth of the population) would die from murder, starvation and disease. And the sculptures that had adorned and guarded their nation's temples for millennia – outlasting empires, nature, and time itself – also fell victim, vanishing into the global black market by the thousands, if not tens of thousands. Centuries' worth of sacred relics flooded overseas, war loot sought after as fine art, and then sold to the highest bidder. An increasing body of research indicates that this organized traffic in Cambodian antiquities helped to finance all sides in the fighting, including the Cambodian army, paramilitary factions, and indeed the Khmer Rouge themselves. And while this illicit trade only started with the civil war, it has long outlasted it, continuing to this very day (Mackenzie and Davis 2014).

However, despite the duration and scale of this black market traffic in Cambodian conflict antiquities, few had resurfaced when *US vs. Cambodian Sculpture* went to court. But it would not take long for the *New York Times* to identify another five major

pieces looted from Koh Ker during the civil war that were nonetheless on display in top American museums. Cambodia quickly called for their repatriation as well⁵.

The Kingdom had its first success on 29 June 2013, when New York's Metropolitan Museum of Art returned two statues to Phnom Penh. According to the museum's spokesperson, Cambodia had presented 'dispositive' evidence that the pair were its rightful property. However, Sotheby's still continued to hold firm to its position, countering in a public statement that 'The Met's voluntary agreement does not shed any light on the key issues in our case, [and] we expect to prevail on each' (Felch 2013).

US vs. Cambodian Sculpture would continue another six months. Then, on 12 December 2013, with the case against it heating up in US district court and full discovery on the horizon, the auction house finally gave in. The settlement stated that Sotheby's had 'a good faith disagreement' regarding whether Cambodia owned the Koh Ker Warrior, but 'further litigation of this action would be burdensome', and so it had 'voluntarily determined' to return it to Cambodia (Mashberg and Blumenthal 2014).

On 3 June 2014, in Phnom Penh, Cambodia provided a hero's welcome to the Warrior. It was joined by two other statues – one returned from Christie's Auction House and another from the Norton Simon Museum – which had been looted from Koh Ker at the same time (and likely by the same people) as Sotheby's piece. Deputy Prime Minister Sok An, assisted by monks and traditional dancers dressed in gold and silk, led the homecoming ceremony. The event made the front page of all the local papers, both in the English and Khmer language press. The sculptures themselves, believed by many to be among the finest in the Khmer canon, are now the centrepiece of the National Museum in Phnom Penh.

The dominos have started to fall, and they show no sign of stopping. Each year new research continues to identify more looted statues from Koh Ker that are nevertheless in public and private collections around the world. The Royal Government of Cambodia has made their recovery a priority, with His Excellency Sok An and the Secretary of State Chan Tani themselves taking an active role in negotiations. At the time of writing, the Cleveland Museum has just returned another piece from Koh Ker, while negotiations are continuing with the Denver Museum for yet another. With the exception of Sotheby's, all of these institutions have acted – and are acting voluntarily – without any involvement from the courts.

The first chapter to this saga may have closed with Cambodia's victory against Sotheby's, but it took decades to loot Koh Ker's treasures, and it will likely take decades more to bring them home. However, *US vs. Cambodian Sculpture* and its aftermath have already had major and lasting implications, which go far beyond the return of the statues themselves. These consequences have been felt throughout the art world – at art galleries, museums, and auction houses – and of course throughout the country of Cambodia.

Impact of these developments in Cambodia

In light of the scandal over the Koh Ker Warrior, Cambodia has called anew for the protection of its past, at highest of levels. Under Prime Minister Hun Sen – who has ruled the country on and off since the mid-1980s – cultural heritage has always topped the national agenda (at least on paper, if not in practice). To this day, Cambodia is commendably one of the few States in the world to have ratified all of the major international agreements on preservation, and remains the only state in East or South East Asia to have done so (UNESCO 1954 [1999]; 1970 [1972]; 2001 and UNIDROIT 1995).

Indeed, when the decade-long Vietnamese occupation of the country ended in 1989 – during the so-called ‘transitional period’ before Cambodia even had a fully functioning government – Phnom Penh was already taking steps to implement the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, more commonly known as the 1970 UNESCO Convention, which remains the leading international law on the illicit antiquities trade (Askerud and Clément 1997: 5-6). As part of these efforts, in 1993, Cambodia worked with the International Council of Museums (ICOM) to publish *One Hundred Missing Objects: Looting in Angkor* (ICOM 2015). This selection of items stolen from the Conservation d’Angkor in the 1980s and 1990s brought international attention to Cambodia’s plight, and eventually led to the repatriation of around a dozen masterpieces, including three that had once gone on the block at Sotheby’s (National Museum of Cambodia 2015).

Also in 1993, the Kingdom’s new constitution required the State to ‘preserve and promote national culture’ including ‘ancient monuments and artifacts’ and further stipulated, in Articles 69 and 70, that ‘any offense affecting cultural artistic heritage shall carry a severe punishment’. While crimes against cultural property had been roughly addressed by the transitional period’s penal code, in 1996, the National Assembly strengthened these provisions, adopting the Law on the Protection of Cultural Heritage, in accordance with international best practices. However, despite these accomplishments, during the 1990s and early 2000s, top government and military officials (many in Hun Sen’s one Cambodian People’s Party) still faced repeated accusations of involvement in the illicit antiquities trade. These claims have lessened in the last few years, replaced instead with high profile arrests and convictions, which would have been inconceivable just a decade ago⁶. Such ground-breaking cases, while remaining few and far between, suggest that once ‘untouchable’ figures may now finally be held legally accountable for their role in plundering the country’s past.

US vs. Cambodian Sculpture came at a volatile time in Cambodian politics, overlapping exactly with the lead-up to and fallout from – the 2013 general elections, the results of which were strongly contested by the opposition (as well as some international observers). Post-election protests, and outbreaks of violence, were frequent until a new government formed in July 2014 (Sockhea and Ponias 2014). During the standoff, in which some politicians openly warned of a return to civil war, Cambodia’s fight to recover the Koh Ker statues ranked among the few positive headlines in the country.

The common enemy of Sotheby’s – alongside others deemed responsible for plundering Cambodia’s past, from the former colonial powers to the modern art market – proved to unify the Khmer people across party lines. There were even protests held against the auction house in Phnom Penh. In such an otherwise divisive time, the importance of taking back the country’s stolen heritage was one subject on which all Cambodians agreed, regardless of their political persuasion. No doubt this opportunity was not lost on Hun Sen, who is recognized as a seasoned politician, even by his most ardent critics.

Today, Hun Sen’s administration has taken an increasingly prominent role on the world stage when it comes to cultural preservation, despite receiving heated international criticism for alleged corruption, election fraud, and other human rights abuses. In June 2013, Cambodia hosted the 37th session of the World Heritage Committee Meetings in Phnom Penh, a major honour that ranks it alongside such metropolises as Paris (2011), Saint Petersburg (2012), and Doha (2014). This event happened to coincide with the Met’s return of two statues from Koh Ker, and the repatriation ceremony actually opened the

proceedings. Hun Sen himself presided over the festivities. Photographs of him kissing the statues, and blessing them with jasmine garlands, soon flooded the international wires (Seif 2015).

The subsequent repatriation ceremonies have also been led by some of the country's top officials – specifically Deputy Prime Minister Sok An and Secretary of State Chan Tani. Both men have taken a strong leadership role in this issue, not only nationally but globally, demonstrating Cambodia's dedication. The involvement of such prominent figures brought the world's attention upon itself. For example, Vijay Kumar, a noted activist and blogger working to trace and recover art looted from India, has encouraged New Delhi to follow Phnom Penh's example by noting that, '[e]ven countries like Cambodia have been able to exercise their rights and take back their cultural property within months, whereas Indian authorities run around for years chasing what rightfully belong to us' (Kumar 2015).

It is safe to say that Sotheby's did not see this coming. In their internal emails, which came to light during *US vs. Cambodian Sculpture*, the auction house had actually discussed Cambodia's stance on the illicit antiquities trade and repatriation. It eventually reached the conclusion that '[t]here are no plans at all for Cambodia or the National Museum of Cambodia in Phnom Penh to attempt to ask for the return of anything' as 'the major Cultural Property thrust' (*sic*) in the country was putting an end to looting, not recovering those pieces that had already been taken⁷. Therefore, Sotheby's felt it could safely proceed with the sale of the Koh Ker Warrior, and that if it did 'get bad press as a result, it would only come 'from academics and "temple huggers", not from Cambodians'⁸.

Whether Sotheby's was mistaken in this assessment of the Kingdom's politics at the time – or whether the revelations in *US vs. Cambodian Sculpture* prompted a change in the country's policy – can be debated. Regardless, Phnom Penh is now fully committed to the recovery of the Koh Ker statues, and the odds of success look very much in its favor.

Impact of *US vs. Cambodian Sculpture* on the art world

However, the impact of *US vs. Cambodian Sculpture* has been felt far beyond the country's borders, reaching to the very heights of the art world. Contrary to Classical art – which collectors have sought for hundreds of years – Khmer pieces only began to appear on the global market within the last century. Neil Brodie and Jenny Doole, of the Illicit Antiquities Research Centre at the University of Cambridge (which is regrettably now closed), have noted that 'When in 1913 the Metropolitan [Museum of Art in New York City] acquired a stone head from the temple of Angkor Wat, it was described as "one of the first three or four fragments of ancient Cambodian sculpture to reach America"'. However, the authors also observed that 'from the late 1960s onwards Cambodian material started to enter United States museums in increasing quantities' (Brodie and Doole 2001: 100). In addition, more and more such acquisitions were not just fragments, but complete statues.

Still, as late as 1966, *Oriental Art* observed that 'there is no public collection of first quality Khmer sculpture, or any collection at all worthy of the name' in the United Kingdom. The magazine attributed this absence 'to the policy of the French government which [had] protected the cultural heritage of its colonial empire by restricting the export of works of art from Indo-China' noting it 'has, naturally, been continued since

independence by the Cambodian government'. In conclusion, it lamented that 'for those of us who are not privileged to travel to Paris or Phnom-Penh, our only experience of Khmer sculpture for some time to come will be through the medium of books' (Lowry 1966).

This fear was unfounded. As the story of the Koh Ker Warriors makes clear, Cambodia meted out its heritage starting with the 1970 Civil War. But even in the subsequent decades, as the art world began to improve its practices – at least with regards to suspect classical, Near, and Middle Eastern antiquities – 'Asian collections [...] rarely figured into the debate' (Broodie and Doole 2001: 84). In 2004, Brodie and Doole observed that, '[m]ost Asian objects that appear on the market do so seemingly out of thin air [...] hardly ever accompanied by any details of find circumstances or previous ownership' (Brodie and Doole 2001: 100).

They were not the only experts troubled by this double standard. In 2008, in a *New York Times* op-ed piece, critic Souren Melikian lamented how 'art casualties from Tibet to Cambodia' still found 'an eager market' in the United States. With regards to a Sotheby's auction of Asian antiquities, he pondered 'how it is that so few questions are asked about just how works of art of major importance, for which no government would ever issue an export license, come to tumble on to the market. Do the temples of Cambodia, erected by the Khmers at the height of their culture between the 10th and 13th centuries, ring so few bells?' Melikian concluded his scathing argument with begrudging resignation: 'From Tibet to Cambodia, the common treasure of mankind is squandered at a rate that matches that of melting Antarctica. And business goes on' (Melikian 2008).

However, just five years later in 2012, business most assuredly did not 'go on' for Sotheby's, at least with regards to the Koh Ker Warrior. The auction house itself seemed caught off guard by the sudden change in circumstances, publically stating in the wake of *US vs. Cambodian Sculpture*, 'we are disappointed that this action has been filed and we intend to defend it vigorously' (Blumenthal and Mashberg 2012). The company's Vice President had earlier insisted that 'Sotheby's approach to the Khmer sculpture is one of responsible and ethical market behavior and international cooperation between private and public entities' (Blumenthal and Mashberg 2012). But just as Mr. Melikian had disagreed, so too did other experts vehemently disagree with lawyer and professor Herbert Larson who told the *Times*: 'Every red flag on the planet should have gone off when this was offered for sale. It screams "loot"' (Blumenthal and Mashberg 2012).

Sotheby's – publically at least – appeared confident of winning the case up until the signing of the settlement. Nor did the auction house completely abandon this position in that agreement, in which it insisted that 'Sotheby's and its client acted properly at all times.' (Blumenthal and Mashberg 2013). Regardless, *US vs. Cambodian Sculpture* has made clear that the federal government strongly believes that Cambodia has a valid legal claim under American law to its stolen antiquities, even those that have been in overseas collections for decades. The Department of Justice has moreover proved itself very willing to back that belief with litigation on Cambodia's behalf.

While Sotheby's may have been willing accepted to take on the full brunt of Washington, other institutions have apparently judged one antiquity not worth the risk. Again, with the exception of the Warrior, all the other returns thus far have been voluntarily – including those from the Metropolitan Museum of Modern Art, Norton Simon, and Cleveland Museums, as well as Sotheby's main rival, Christie's Auction House.

There is also some indication that even Sotheby's, or at the very least its customers,

may be proceeding with equal caution: at the time of writing, for the last three years, not a single Cambodian piece turns up in a search of the their sold lot archive⁹.

Conclusion

For those who advocate cultural heritage preservation, *US vs. Cambodian Sculpture* has been very positive. But the story of the Koh Ker Warriors should also serve as a warning to us all: one of its main lessons is that current international law and policy completely failed the Khmer people. It is a great irony that the UNESCO Convention was adopted the very same year (1970) that an organized trade in Cambodian antiquities first erupted. Moreover, the Koh Ker Warrior was looted around 1972, the exact year that Cambodia ratified this agreement. During this time, the government was in the midst of a civil war, and controlled little more than Phnom Penh, so of course it could not fully enforce this agreement or other laws.

It is harder to explain why so many other countries failed to meet their domestic and international legal obligations. We know that the Koh Ker Warrior – and probably the other statues plundered from the site – first crossed the Thai border to the major art market hub of Bangkok. From there the piece traveled to a premier gallery in London, and then to a private collection in Belgium, crossing numerous borders in the process. While it would remain in Belgium for decades, in 2012, it entered the United States. Then – 42 years after the UNESCO Convention – the Koh Ker Warrior landed on the block of a respected auction house, featured on the front page of the sales catalogue. All this even though it had first appeared on the market directly from a war zone, in the midst of a genocide, with its feet suspiciously chopped off at the ankles. There were numerous points during this journey where the Warrior could have been – and indeed should have been – stopped either by law enforcement or the art market's own internal codes and policies. It was not.

Despite these failures – which allowed the Koh Ker Warrior not only to be looted, but trafficked halfway around the world through the illicit and licit markets – once the scandal was public, law and policy did begin to work. An international team came together to secure the statue's return, including the Cambodian government, the US government, intergovernmental organizations like UNESCO, non-governmental organizations, and even the art market itself. Of the latter, Christie's and the Met are to be particularly commended for treating the repatriations not as a challenge, but an opportunity to strengthen their relationships with Cambodia.

Cambodia is likewise to be commended. Throughout the last few years, it has only used litigation as a last resort, and only targeted those pieces that left the country after 1970. That year is important as it marks both the UNESCO Convention's 'bright line' date, as well as the start of Cambodia's brutal war with the Khmer Rouge. Those collectors and institutions fearing a slippery slope in the early days of *US vs. Cambodian Sculpture* – where all Western museums would be emptied of their Khmer art – clearly need not have worried. The public can still readily see Cambodian masterpieces in American museums, and may actually be able to see more in upcoming years, as Cambodia is actively working on a number of overseas loans.

The overall message from the Sotheby's case – put forward by Phnom Penh, Washington, and the more responsible players in the art world itself – is that looting and trafficking of antiquities is a crime and it will no longer be tolerated, not by governments, not by law enforcement, and not by the art world's own leaders. These

players have demonstrated they are committed to righting past wrongs. Hopefully they will prove equally committed to preventing such wrongs in the first place, for what happened in Cambodia four decades ago, is happening now again in the ‘cradle of civilization’. Masterpieces from Iraq and Syria are now crossing borders, although this time into Lebanon or Turkey. What happens next is largely up to us. From there will they be stopped at the border? Or will they too be slapped with a plausible back-story and laundered into respectable auction houses, art galleries, private collections, or even museums? Or will someone – be it a border agent or an art curator – notice the ‘red flags’ and do the right thing?

Only time will tell, but hopefully, this time, it will not take 40 years.

Notes

1. In an often repeated – if never explained figure – the Federal Bureau of Investigation cites ‘losses running as high as \$6 billion annually from the illicit trade in cultural property. Despite this claim, the International Criminal Police Organization (INTERPOL) doubts ‘there will ever be any accurate statistics’, given the inherent difficulties in quantifying and qualifying it.
2. UNESCO, United Nations Security Council. 2015. Resolution no. 2199, ‘Letter to Ministers responsible for relations with UNESCO’, 3 August 2015. URL: < <http://unesdoc.unesco.org/images/0023/002321/232164e.pdf> > [last accessed 29 October 2015].
3. See United States District Court Southern District of New York. 2012. ‘Complaint at 2 “United States of America vs. a 10th Century Cambodian Sculpture, Currently Located at Sotheby’s in New York, New York”’, No. 12. United States District Court Southern District of New York.
4. See United States District Court Southern District of New York. 2012. ‘Amended Complaint at 8 and 9, “United States of America vs. A 10th Century Cambodian Sculpture, Currently Located at Sotheby’s in New York, New York”’, No. 12.
5. See Tom Mashberg article, ‘Cambodia Presses US Museums to Relinquish Antiquities’. In *The New York Times*, 15 May 2013. URL: < <http://www.nytimes.com/2013/05/16/arts/design/cambodia-presses-us-museums-to-return-antiquities.html> > [accessed 29 September 2015].
6. For example, in 2012, the Phnom Penh Municipal Court convicted former governor Lay Vireak and general Khuon Roen to 12 and 16 years in jail respectively after they were caught trafficking drugs, arms, and a 12th century Angkorian bronze artifact. See Buth Reaksmey Kongkea, ‘Ex-Governor Gets 12 Years in Jail’. In *Phnom Penh Post*, 4 July 2012. URL: < <http://www.phnompenhpost.com/national/former-governor-gets-12-years-jail> > [accessed 29 September 2015].
7. See United States District Court Southern District of New York. 2012. ‘Complaint at 13, “United States of America vs. a 10th Century Cambodian Sculpture, Currently Located at Sotheby’s in New York, New York”’, No. 12.
8. See United States District Court, Southern District of New York. 2012. ‘Complaint at 15, “United States of America vs. a 10th Century Cambodian Sculpture, Currently Located at Sotheby’s in New York, New York”’, No. 12.
9. See *Sotheby’s* ‘Sold Lot’ Archive. URL: < <http://www.sothebys.com/en/auctions/lots-archive.html> > [accessed 29 September 2015].

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Illicit trafficking in cultural goods in South East Europe: *'Fiat Lux!'*

Augustin Lazăr

The point of departure of this study is the final sentence issued recently by the Romanian High Court of Cassation and Justice against a criminal group specialized in archaeological poaching. The primary aim therein is to analyze the tried case in the broader context of illicit trafficking of cultural goods coming from South East Europe. The categories of participants in the illicit trafficking of cultural goods, which made the object of illicit trafficking as well as the international judicial cooperation actions undertaken for their recovery, will be successively examined: the *modus operandi* used for money and artifact laundering, illicit trafficking pathways, stolen Romanian hoards. As regards the increase of the protection level for all cultural goods, the following issues must be considered: the security and protection measures of cultural sites, the way EU Member States enforce the European Directive on the protection of cultural heritage and the restitution of stolen goods, the enforcement of the UNIDROIT Convention, the organization of specialized structures of the Judicial Police, as well as the use of international judicial assistance for the recovery of cultural goods.

According to European Commission documents, the material and immaterial heritage from Europe is our common wealth, our legacy from previous generations of Europeans passed on to future generations. The Preamble of the Treaty on the Functioning of the European Union (TFEU), specifies that the Signatory States were inspired by the 'cultural, religious and humanist inheritance of Europe'. Also, Article 3 Paragraph 3 of the above-mentioned Treaty stipulates that the European Union 'shall ensure that Europe's cultural heritage is safeguarded and enhanced' and Article 167 specifies that '[t]he Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'. The TFEU also recognizes the importance of preserving cultural diversity, as well as the necessity to ensure the protection of its heritage within the common market. For the purpose of protecting certain cultural goods pertaining to national heritage, Article 36 of the consolidated version of the TFEU allows prohibitions or restrictions to be established on imports, exports or goods in transit.

As an EU Member State, according to Directive 93/7/CEE¹, Romania has developed a legislative system to protect its National Cultural Heritage, which mainly comprises these regulations: Law no. 182/2000 on the protection of movable national cultural heritage, Government Ordinance no. 43/2000 on the protection of archeological heritage and on the proclamation of certain archeological sites, areas of national interest, Law no. 422/2001 on the protection of historical monuments, Law no. 26/2008 on the protection of immaterial cultural heritage. According to the Romanian legislation, 'national cultural heritage' is defined as the 'ensemble of goods identified as such, regardless of the ownership regime thereof, which represent a testimony and an expression of the values, beliefs and traditions that are in a continuous evolution'. It contains all the elements 'resulting from the interaction, in the course of time, between human and natural factors' (Article 1 Paragraph 2 of Law no. 182/2000 as amended and supplemented).

Both legislation and doctrine distinguish the following four national cultural heritage fields: immovable heritage (historical monuments), archaeological heritage, movable

heritage and immaterial heritage. National and international surveys listed criminality against cultural heritage as among the types of evolved transnational criminal manifestations, committed by an elevated class of 'white collar' criminals, whose deeds may prejudice certain fundamental social values, such as the national cultural heritage, history and identity (Ferri 2008). To traffick in and launder cultural artifacts are criminal activities which require energetic reactions on the part of competent authorities, both on a national and European level.

Final decision against a criminal group in archaeological poaching

On 17 December 2014, the High Court of Cassation and Justice of Romania sentenced 11 defendants for criminal association and aggravated theft of cultural property to sentences cumulating 45 years of imprisonment². The Court found, *inter alia*, that between May 2000 and May 2001, the defendants associated with a criminal group carried out detections and unauthorized excavations in the archaeological site *Sarmizegetusa Regia*, classified as a UNESCO monument. The criminal group stole two hoards containing 15 spiraling gold bracelets (about 15 kilograms), which were illegally exported and sold in auction houses in the EU and the US (Ciută and Rustoiu 2008: 213).

(Figs. 1-4)

The investigations carried out within the European judicial space from 2005 to 2015 resulted in the recovery, through international assistance requests, of 13 wanted Dacian bracelets (12,663 kilograms), pertaining to four different hoards, from New York, Zurich, Paris, Munich, Hunedoara – Romania (Oberlander-Tărnoveanu 2013). A series of other hoards stolen from the Romanian sites during the same period were internationally pursued by INTERPOL:

- the hoards of Koson gold coins stolen in 1993; 3,000 Koson gold coins stolen in August 1996; over the 1000 Koson gold coins, stolen in 2003-2004 from the Dealul Bodii archeological spot; the hoards of 5,000 and 6,000 roman denarii coins (Davis 2004) stolen in 2001-2004 from the same spot; 1200 Koson gold coins stolen in 2007 from the Dealul Muncelului archeological spot. 1.024 coins originating from that site were recovered in Orăștie, Romania, UK, Belgium, Germany, Poland, etc. and deposited at the Romanian National History Museum [poacher holes no. 14, 15A, 15B].

(See Fig. 8)

- the hoard consisting of 3,600 Lysimach, Pharnakes II and Asander gold coins stolen in August 1998 from the archeological spot Șesu Căprăreței. 34 pieces originating from that site were identified and recovered in London (UK), Romania, Germany [poacher hole no. 4]. They are thus described:

[...]The coins of Pharnakes II and Asander were found with the anonymous Staters struck in the name of Lysimachus. We have this information not only *from people who are in a position to know*, but also through *microscopic examination* of the encrustation on a coin of Asander

as Archon, and numerous Brutus gold staters struck in the name of Lysimachus. The lime encrustation on all of these coins is the same. It is off-white in color with black flecks that can only be seen under high magnification. These characteristics, especially the black flecks, are an important individual characteristic which is peculiar to this group, thus tying them to the same hoard (Berk Gold *undated*).

(See Fig. 5)

- the hoard consisting of 2,300 Koson silver coins, stolen in 2004 from the Dealul Bodii archeological spot. 252 pieces originating from that site were identified in Vienna, London, Munich, Chicago recovered and deposited at the Romanian National Museum of History [poacher hole no. 15] (UEFISCDI: 2001).

(Figs. 6 and 7)

- the stock of seven to eight iron shields and swords stolen in 2002 from the site of the Dacian fortress Piatra Roşie. two shields originating from that site were recovered in New York and deposited at the Romanian National Museum of History (poacher hole no. 1).

(Fig. 9)

- the two bronze *tabulae* containing the laws of the *Municipium Troesmis* stolen from the archeological site of this fortress in 2002 (poacher hole no. 1) and sold by one of the defendants to an auction house in London UK, were repatriated to Romania, etc.

***Modi operandi* specific to crimes in the field of national cultural heritage**

Statistical analysis revealed that the most frequent crimes against national cultural heritage are: artwork theft, archaeological and religious goods theft, the destruction of movable and immovable cultural goods, unauthorized detections or diggings in archaeological sites, illegal export operations of movable cultural goods. Specialized analyses of thefts reveal that the *modi operandi* methods most frequently used by criminals are the following: breaking doors and security systems, breaking and escalating windows, cutting bars, using forged keys, distracting the attention of the personnel hired to ensure the security of cultural goods (Lazăr and Condruz 2009).

1. *Archaeological 'poaching'* on the sites classified as historical monuments, some of which are cited in the UNESCO list of monuments of the world's cultural heritage, is a frequent crime in Romania. These acts are performed by specialized groups, organized in criminal associations, using state-of-the-art detection equipment, sport utility vehicles, radio communications, watchdogs and even guns. The archeological objects looted are then sold to certain collectors and 'investors' from the country, often public figures who ensure protection against judicial bodies, through press campaigns, counseling and public interventions, criminal denunciations, etc. These groups are also in contact with international networks of traffickers from Romania, Serbia, Germany, Italy (among

other countries) which illegally remove the looted cultural goods from Romania and place them onto the black market, through illegal transactions to certain collectors from EU States or from the USA.

Poachers are particularly interested in the sites of Dacian citadels and Roman camps from the area of the Orăștie Mountains located in the counties of Hunedoara and Alba, and those from other counties together with Greek citadels such as Olt, Teleorman, Tulcea, Constanța as well as Caraș-Severin, Timiș, Bihor, Bistrița-Năsăud and Sălaj. These sites have often been targeted by whole teams of poachers who engaged in unauthorized detections and diggings and stole thousands of objects. Thieves are particularly interested in monetary treasures, jewelry, funeral artifacts, guns and military equipment (swords, helmets, shields, clasps, etc.). Information on the location of archaeological sites that are rich in artifacts may be often found on ordinary Internet sites, and also in specialized books on archaeological sites written by researchers. These reports and books have been found upon conducting home and vehicle searches of the network members.

Occasional artifact finds in these areas triggered an interest in illegal searches in the hope of getting rich while there was minimal risk of punishment by the authorities. Unlike occasional finders, poachers who call themselves 'treasure hunters' carry out this activity professionally and without fail, as they are familiar with the environment and the rules regarding the secrecy of their illegal activity. They also know how to approach the locals, gather information on the areas where occasional finds took place, and identify the locations rich in archaeological vestiges and the channels for the illegal capitalization of artifacts.

Criminal prosecution cases in recent years confirm the observations made in specialized literature (Deppert-Lippitz 2007: 8). Local intermediaries between 'low profile poachers' groups and intermediaries or antiques traders that have national or international contacts are required as a rule. These intermediaries are fully aware of the factual situation on-site, they know how to evaluate the trading potential of the artifacts found and they have close relationships with certain local authority representatives to make the latter depend on them and promote their interests through blackmail.

Uncovered and stolen artifacts are usually deposited in safe hideouts located in forests, mountain chalets, etc. Only occasionally are they hidden in the thieves's residence and, if so, with great caution (arranged niches, pits, underdog shelters, etc.), so that chances of discovery by the authorities remain very low in the absence of reliable information. An 'evaluation' is conducted by the intermediaries, usually on-site, and the discovered objects are cautiously moved after making the call that 'there is merchandise'. Upon examining and consulting various catalogues of different auction houses, the intermediary decides whether or not to contact the higher rank representative of the network or the higher regional or international intermediary – depending on the value of the cultural objects.

The 'grey zone' intermediary is sometimes contacted on-site, depending on the value and volume of the discovery. The meeting is usually organized at a halfway location that has already been checked: a boarding house, a motel, etc. Thus, the Romanian intermediaries from Hunedoara County who are in possession of the sample 'merchandise' initially met the Belgrade and Vienna dealers in Deva and afterwards other Romanian towns located near the western border: Reșița, Timișoara, Arad, etc. Transport is secured by individuals designated by the intermediaries from among the poachers. The treasure is divided and moved separately in order to avoid any risk of total loss. The 'route' of the ancient objects from the place of their illegal excavation to the auction house may be divided into three main steps: stealing the artifacts from their original spot, illegally removing them from

the country of origin and legally introducing them into a country with an art market.

'Artifact capitalization' occurs in art market countries, most often by art dealers with very small businesses, sometimes even by a single individual or amateur traders, and less often by an auction house. The main commercial centres where valuable archaeological pieces surface 'spontaneously' are: Vienna, Zürich, Geneva, Munich, Osnabruek, Turin, Rome, London, and Paris in Europe along with Chicago, Los Angeles and New York in the United States. We find that artifacts often surface in the possession of intermediary traders coming from the same country of origin as the 'merchandise', who have sound knowledge of the language and mentality of that country. Whether they buy the objects or take them under consignment, the agent or intermediary trader is considered to be the last pawn on the illegal supply market and the first on the legal sale market. Although the exact route of the cultural goods before reaching the country with an art market is often soon forgotten, these intermediaries are aware of the illegal circumstances involved in the discovery of the objects in their country of origin and the 'actors' involved in the illegal trafficking. These intermediaries are also connected with the owners of art galleries or with the traders known on the sale market.

The Dacian treasures originating from archaeological sites in the Orăștie Mountains (koston coins, spiral-shaped golden bracelets, etc.) bear clear marks of the old routes in South East Europe used to traffic cultural goods (*iter criminis*). They followed the same itineraries: from the sites of origin to the intermediate area in Central Europe, to European and American auction houses, where they emerged shortly after having been stolen. The new IT technologies facilitate the search in these auction houses's electronic sales catalogue and the identification of the *corpus delicti*. It is interesting to note that the firms that accepted to sell these objects eventually became top leaders in the antiques market over the last 15 years. The items were accepted without any reservation – large quantities of stolen goods – on the grounds that 'coins circulate' and 'one cannot tell that they were stolen' – as dealers, indifferent to provenance as they are, tend to put it.

The trader whose country of origin possesses an art market does not usually risk getting involved in illegal export from the country of origin. If the risk is taken through his personal contacts and a sound knowledge of the mentality and language of the country, the discovery of this first criminal act will rapidly lead to the end of his trading activity. This was the case of a known perpetrator, a small Romanian trader established in the United Kingdom, who sold to certain New York and London auction houses, two Dacian gold bracelets (1,448 kilograms), two shields of forged iron, excavated and illegally removed from the Romanian sites of the Orăștie Mountains, and two bronze *tabulae* bearing the Latin inscription '*Lex municipii Troesmensium*', from Dobrogea, Romania, which were subsequently recovered by the Romanian authorities.

2. *Antiquities' laundering* is a fraudulent *manoeuvre* meant to conceal the illicit origin and nature of the archaeological pieces obtained through various criminal activities, to create the appearance of legality and to insert them into the flow of legitimate antiques. The false 'appearance of legality' created for the artifacts that cross the 'grey zone' and reach the country with an art market is facilitated by the opinion that the legal or illegal exit of an object 'cannot be seen on the object'. The trader knows or suspects the piece's country of origin, but prefers not to be informed in detail about its exact route before reaching the art gallery (Curry 2015). Under these circumstances, the buyer is aware of the risk taken and may claim that the artifact price should be brought down. The risk of a request for repatriation increases on a *pro rata* basis with the price of the artifacts, as

it includes its artistic quality, rare nature and cultural importance. To mitigate this risk, the traders' *modus operandi* consisted of several technical sale procedures such as taking the cultural good for sale under consignment subject to the payment of a commission representing a percentage from the sale price or lending the good to a museum in order to be exhibited for a period of time. The object is then considered as 'laundered', for the reason that no claims were raised during its public exhibition time (Deppert-Lippitz: 12).

In our analysis of the issue related to antique laundering that purposes to create an appearance of legality, we find similarities with the judicial practice in the field of fighting money laundering. Thus, the specialized literature in the field of money laundering revealed that any crime-related activity may be described by means of three specific elements (Lazăr 2004: 21):

- *iter criminis*. The itinerary followed by the perpetrator from the criminal resolution to the stage related to preparation acts, the execution stage, completed through the perpetration of a crime;
- *modus operandi*. The operation method involving a set of activities, habits and procedures used, which characterize a criminal's activity before, during and after the perpetration of a crime;
- *punctum saliens*. The characteristic point, and details of the perpetration that may be noted through the observation of the criminal itinerary.

With respect to the traffic in antiquities, these elements may appear upon careful examination of the circuit of acts, merchandise and payment methods, of the sequence and logic of the operations performed by traffickers, of the authenticity of documents, securities, etc.

The judicial experience with regard to combating money laundering and the ability to identify the nature of dirty money calls for an adaptation of the Latin proverb '*Pecunia non olet*' (Money does not smell), with the phrase '*Pecunia olet*' (Money does smell). It leaves verifiable tracks. Similarly, stolen cultural goods are traceable, starting with archaeological diggings Internet messages and images of the respective goods being offered for sale, the detectors and documents that indicate the poachers' concerns, other treasure pieces left behind (or, 'orphans'), the amounts transferred into the accounts of the individuals involved in the traffic, the procurement of valuable goods (luxury motor vehicles, houses, detection equipment, etc. A *modus operandi* similar to that used by the launderers of dirty money was the purchase by traffickers of a 'car wash' that allows them to maintain an appearance of legality after illegally capitalizing on the trafficked objects.

3. *The development of e-trade* provided an evolved *modus operandi* to the networks of traffickers, which trade in cultural goods without a known legal origin. Internet sites allow them to perform operations without giving any details to their customers on the origin of the traded goods, with a very low degree of control by site administrators, thus ensuring an increased chance of preserving their anonymity.

Web investigations highlighted the fact that a large number of heritage goods is sold on eBay, e.g. genuine art objects, archaeological artifacts and their reproductions. The most frequent sale method is the auction, whereby the seller can conceal the eBay identity of the auctioneer who, under the circumstances, does not know who their trading partners are. Another common sale method is when the seller sets a fixed price for an artifact, a method known on eBay as 'buy it now for this price'/'buy it now'. Payments are made

as indicated by the seller, either through PayPal involving an electronic money transfer from buyer account seller account, or through the money order system, which allows for the money to be collected from any bank, as does a bearer check.

Fast electronic trades offer the possibility to move large quantities of archaeological goods through auctions and to obtain significant amounts of money, resulting from their sale. Site administrators waive any responsibility regarding the reliability of the trades concluded on eBay and users are personally liable for all the aspects related to the accurate description of the object, its dispatch to the buyer, without any obligation whatsoever to inform any authority in connection with the provenience or ownership of the sold goods.

The criminal investigation practice for transactions concerning looted artifacts revealed a skilled *modus operandi*, which aims at hiding the criminal origin of the sold goods by laundering it. At the time of the sale, the exact location is concealed and a huge area belonging to the same culture is given as the looted artifact's region of provenance. artifact. Thus, the laundering of dirty money goes alongside the laundering of looted artifacts and this becomes past laundering. The perpetrator may be a Romanian citizen, or a business administrator of a company headquartered in the United Kingdom and in the USA for instance. They might present the bracelets on the website of the companies they own as artifacts of more general 'Thracian' origin that come from the cultural area of the Balkan Peninsula as they offer for sale golden Dacian bracelets and ancient monetary treasures which originate from the archaeological sites classified as a historical monuments from the Orăștie Mountains, Dobrogea and other regions of Romania (Alba Iulia Court of Appeal, File No. 41/97/2005).

Following the same cautious method of operation, sellers put on sale large treasures which are divided into tens or hundreds of pieces at each auction, this way trying to avoid endangering the entire treasure. Once many pieces are sold – such as Dacian gold bracelets – the 'good faith' resulting from the public sale of the previous pieces is invoked to sell the remaining pieces. In this case, the perpetrators who were members of a poaching team from the Orăștie Mountains offered for sale coins each to the National History Museum of Romania and the National Bank of Romania. These correspond to pieces of a stolen treasure of 3,000 Koson golden coins that originates from the archaeological site *Sarmizegetusa Regia*. They were represented as inherited from their predecessors. Dissatisfied with the received amounts, they capitalized the remaining treasure on the domestic and international black market of antiquities (Alba Iulia Court of Appeal, Prosecutor's Office File No. 92/P/2006).

This operating method entails other safety measures as well, such as setting 'reference prices' which are concealed to the auctioneers (also known as 'backup prices'). These 'references prices' offer an auctioneer the possibility to procure the pieces when they reach their price. The artifact is then only sold to the auctioneer when such price is offered. Otherwise, the piece is to be re-auctioned later on. Similar *modi operandi* have been identified by the researchers in this field in: Italy, Greece, Serbia, Macedonia, Bulgaria, etc. (Ferri et al. 2007).

Regulatory framework in the field of national cultural heritage

After the evaluation of the criminal phenomenon and the capacity of judicial bodies to respond, the research was consolidated as a practical strike back solution into a methodology for investigating crimes specific to this field. This meant turning

to specialized operative units (task-forces), led by a prosecutor specialized in field counselling and whose research is oriented in accordance with specific methodological guidelines (Lazăr 2004: 21). The Office for the Protection of the National Cultural Heritage was thus created within the General Inspectorate of Romanian police. The office is organized according to field regulations, seeking to prevent and fight against all illegal actions in the field of cultural heritage. The law articles on to illicit trafficking in cultural goods are:

- *aggravated theft of cultural goods*. Sanctioned by article 228 C.C., punishable by 2 to 7 years of imprisonment,
- *concealing*. Sanctioned by Article 270 C.C., punishable by 1 to 5 years of imprisonment and 180-300 days-fine,
- *illicit trafficking in cultural goods*. Sanctioned by Article 87 of Law. no. 182/2000, punishable by 2 to 7 years of imprisonment,
- *illicit trafficking in classified cultural goods*. Sanctioned by Article 88 of Law no. 182/2000, punishable by 3 to 10 years of imprisonment,
- *importing to Romania, possessing, trading or organizing exhibitions with movable cultural property of a Member State's cultural heritage*, illegally exported sanctioned by Article 89 of Law no.18/2000, punishable by 3 to 10 years of imprisonment,
- Article 26. The access *with metal detectors or their use* in areas containing archaeological artifacts, without previous authorization, as stipulated at Article 5 Paragraph 13, is considered a crime and is punishable by an imprisonment of 6 months to 3 years,
- Article 27 Paragraph 1. Selling or offering for sale metal detectors without authorization, as stipulated at Article 5 Paragraph 10 is considered a crime and is punishable by an imprisonment of 3 months to 2 years or by fine. Paragraph 2 stipulates that all detectors that are offered for sale under the conditions of Paragraph 1 are subject to confiscation,
- Article 32 Paragraph 1. Failure to communicate all archeological discoveries made during construction work is considered a crime and is punishable by an imprisonment of 3 months to 2 years, or by fine,
- Law 656/2002 on the prevention and punishment of money laundering, Article 29 (purchase, possession and use, transfer, agreement, property concealment for the false justification of the criminal origin of goods or income), punishable by 3 to 12 years of imprisonment.

Lessons from the past

The investigation of crimes in the cultural heritage field requires a deep understanding of the phenomenon. This can only be achieved by gathering, storing and processing in the databases a significant volume of information regarding criminals, their criminal records, criminal organizations, *modi operandi*, suspicious transactions, etc. The organization of a constant and efficient information flow allows for a cultural advancement in the criminal prosecution activity, from the empirical level to the level of professional specialization.

Mass media is a significant participant in the global information environment insofar as it is equipped with state-of-the-art means to record and transmit information in real time and at great distance. Through connections with national and international

agencies, government organizations, judicial authorities etc., mass media may influence in operational and strategic terms the gathering of judicial information and, in the end, the achievement of justice. Insofar as the role of mass media is increasingly important, an obvious challenge for criminal prosecution agencies is to discern between quality judicial information (Curry 2015) coming from this source and distorted information, whether by mistake or on purpose, within 'image' confrontations of adversary groups.

9 March 2002, Bucharest, Romania. On a commercial Romanian TV channel, an investigative journalist presented a report on the penetration of a trafficking network from Hunedoara County, which was introduced as the 'revolving plate' of illegal antiquities trade in Romania. The climax of the story was the presentation of a Dacian gold spiral, which had been stolen from the Sarmizegetusa Regia archeological site:

What you see here in my hand is a massive gold bracelet, hidden by a looter roaming the area. It is a bracelet which you can be sure any museum in the world would want. It weighs approximately 1,500 grams. It's incredible! As unbelievable as this may sound, it's true. The most valuable gold objects discovered in Romania are exhibited in an armored room of the National History Museum's basement. Yet, the establishment does not hold a bracelet such as the one currently in the possession of the Deva search bands. There is, though, another one, which is very much alike, but unfortunately that one is made of silver. (Hunedoara County Court, File No. 41/97/2005).³

In Deva, a number of artifacts stolen from the site and offered for sale are shown under the mask of anonymity: gold Lysimachos coins, Roman silver dinars, punch presses, vessels, Dacian bronze bracelets, etc. This information was essential for investigators. The progressive globalization of the economy triggered both the unification and the interdependence between criminal markets and perpetrators operating on those markets. Under these circumstances, internationally coordinated inquiries which benefit from a permanent flow of information exchanged in real time represent the 'last frontier' in the field of combating the illicit traffic in cultural goods.

19 September 2006, Paris, France. The Romanian judicial authorities were notified *ex officio* that a wanted Dacian gold bracelet was exhibited for sale at the Biennial Exhibition of Antiquarians organized at Grand Palais in Paris, at the stand of a New York-based company. French judicial authorities were notified through an international assistance request and on 20 September 2006, they seized the piece. The American gallery representative claimed that the bracelet was deposited to be sold on consignment by a Dutch citizen, residing in Munich, known for his implication in other cases involving artifacts stolen from archaeological sites in Europe.

In December 2006, at the request of Romanian authorities, the French judicial agencies ordered that a museographical expertise be performed at the *Centre de recherche et de restauration des musées de France* (Centre for Research and Restoration of the Museums of France), at the Louvre. Following the examination and analysis, the expert concluded that the piece represents an original Dacian bracelet and that 'the fabrication techniques are consistent with those known in ancient times, it is similar in typology with the silver bracelet discovered at Coada Malului, dating back to the 1st century BC'. The expert also stated that 'the bracelet from Dacia and the gold sample from Brad exhibit identical values' (C2RMF 2006). Pursuant to these conclusions, the French authorities released the bracelet to the Romanian judicial authorities, who deposited it on 24 January 2007 at

the Romanian National History Museum in Bucharest.

After repatriation, the artifact was examined by Romanian experts who concluded that 'the presented piece is a gold bracelet having more than one spiral pertaining to a category of typically Dacian jewelry [...] dating back to the 1st century BC' and that it can be 'considered a *token of Dacian royal rank*' (Babes, Marinescu and Trohani 2007). It also stipulated that 'as it is an original and comes from the Romanian territory, the examined bracelet is included in the national cultural heritage inventory, classified as treasure' for 'bracelet no. 5, although exhibiting all the characteristics of the Dacian bracelets, distinguishes itself from the other 4 through its higher gold title as well as through an elaborate decorating style' (Meyers in Hunedoara County Court, file no. 41/97/2005).

February 2007, New York, USA. Upon finding out the true origin of the bracelet pair weighing 683 grams, a New York firm notified the Romanian judicial agencies, providing them with the pictures, invoices and an expertise report of both bracelets. The expertise report performed by a well known Los Angeles expert revealed the fact that the two pieces were original Thracian bracelets, made out of natural 22 karat gold: 'the execution technique is consistent with the methods used to create ancient jewelry items,' and 'the combined technical indications, including those pertaining to the composition of common alluvial gold elements, the forging technique and the characteristics of the surface are consistent with the suggested creation date' (Meyers 2005).

The bracelet was examined by Dr Barbara Deppert, a Frankfurt-based expert, from whence it was recovered, upon confirmation of its origin through an international assistance request by Romanian judicial authorities. Pursuant to Article 4 of the Convention on Stolen or Illegally exported Cultural Objects signed in Rome on 24 June, 1995, ratified by Romania through the Law 149/1997, the Ministry of Culture, as a representative of the rightful owner, the Romanian State, paid the fair and reasonable compensation to W. & Co, which was in fact the amount the firm had paid to purchase the items. In order to retrieve the paid compensation, precautionary measures regarding the goods of the concerned individuals were taken.

On 2 August 2007, the pair-bracelet was remanded in custody of the Romanian National History Museum. The subsequent expertise led to the following conclusions: i) the execution technique and the bracelet's decorative art (i.e. bracelet no. 9) are consistent with those of the Dacian silver bracelets from the 2nd and the 1st centuries BC, as well as those of other Dacian or Geto-Dacian jewelry discovered in Romania, ii) they were therefore undoubtedly crafted under the guidance of the same craftsman: 'the objects subjected to expertise (i.e. bracelet no. 9) are original Dacian jewelry items from the 2nd and the 1st centuries BC' (Constantinescu, Niculescu and Oberländer-Târnoveanu 2007: 6).

The subsequent reconstitution of the track the bracelets revealed the surprising fact that the two artifacts had been stolen in August 1999, from a small terrace overlooking the sacred area of the Sarmizegetusa Regia fortress (the coordinates of the poacher hole are established in the research report) and by the year 2001 the items were already monetized at the USA firm X LLC. On 27 December 2002, the pieces were examined by a Los Angeles expert, who confirmed their authenticity in his expertise report. With invoice no. 1439/7 of May 2004, issued by X LLC, the manager sold a 683 grams bracelet to a New York firm for \$40,000. The second bracelet, weighing 764 grams, was sent to the same firm to be sold on consignment for \$45,000 and, as it remained without a buyer, it was sent back to the manager on 21 February 2005. He sold the bracelet in August 2006 to the New York firm for \$30,000 and the piece was exhibited for sale at the Biennial

Exhibition of Antiquarians organized at the Grand Palais in Paris.

The judicial expert appraisal is an activity of scientific research carried out at the request of judicial bodies, by persons with specialized knowledge, with regard to persons, objects or tacks in order to clarify facts or circumstances or to identify objects that leave tracks. With this tool, the authenticity of the Dacian bracelets was established, the looting sites examined by scholars, the origin of the gold certainly determined as alluvial gold from Transylvania, and the manufacturing process close analyzed. Also, another gold spiral was identified when published in 8 December, 1999, in the Ancient Jewelry sales catalogue, lot no. 26, of *Christie's* New York. It has disappeared since, just as two other spirals of which only the weight was recorded (Deppert-Lippitz 2013:157 and Deppert-Lippitz 2012: 55)

Future Perspectives

National and international surveys listed criminality against cultural heritage among the types of evolved transnational criminal manifestations, committed by an elevated class of 'white collar' criminals, whose deeds may unset certain fundamental social values, such as national cultural heritage, history and identity. This kind of criminality proved to be endemic for the States that have an ancient heritage and a developed art market (archaeological poaching, illegal traffic in cultural goods, etc.), – itself an inherent pathological component of the global trade in art objects. Just as it is frequently designated as an articulation of power, so too does this kind of criminality adjust its conduct and extent to the responses of each State's public administration and judicial authorities, as well as EU institutions. After having evaluated the data on the criminal phenomenon and the response capacity of judicial bodies, the practical Romanian judicial consisted in a rigorous methodology for the investigation of crimes specific to the cultural heritage environment. Thus, the recourse to specialized task forces and team action methods led by a prosecutor to counsel by specialists in the field of interest and the orientation of investigation according to the specific methodological directions have altogether become necessary. The main question behind the gathering of evidence in the European judicial area remains: Do we have cultural goods recovery systems and sufficient gathering of criminal evidence based on mutual trust between States, judicial authorities and citizens? (Vervaele 2014).

The practice and negotiation based on new Mutual Recognition (MR) instruments, as the European Evidence Warrant (EEW), also showed that blind mutual trust led to distrust between judicial authorities and that minimal standards were really necessary. iv In the second FSJ Program (the Hague Program) legislative action was foreseen to elaborate a minimum approximation of procedural safeguards. The EEW has functioned as a judicial assistance and repatriation instrument for the cultural goods that were stolen and 'laundered' in the relations with judicial authorities from the UK, Poland, Belgium, Spain and partially Germany. The search, recovery and successful repatriation of extremely important cultural pieces pertaining to the national Romanian heritage, which was scattered in EU countries and the US, was unprecedented in Romanian judicial practice. The following highlights were recovered among other pieces: 13 gold bracelets (12,633 kilograms), 1,024 Koson gold coins (8,5 kilograms), 2 royal shields, *Lex municipii Troesmensis*, 2 bronze *tabulae* stolen from the Troesmis archeological site. This process proved once more the positive role of European and international judicial assistance conventions, as well as of the UNIDROIT Convention in protecting stolen

and/or illegally exported cultural property.

The UNIDROIT Convention has been a successful judicial assistance and repatriation instrument for the stolen cultural goods that sold in auction houses, during the cooperation with judicial authorities from France, Italy and Spain. Certain EU and USA-based auction houses have agreed on their own initiative to the principle of the repatriation under the conditions stipulated by the UNIDROIT Convention for the recovery of goods stolen from Romanian archaeological sites. Romania, as the rightful owner of these goods, granted the fair compensation as stipulated by Art. 4 of the Convention, to the firms which proved they were *bona fides* buyers. Recently, the recast of Directive no. 93/7/EWG/1993 comes as a welcome extension of the scope to any cultural good classified or defined by a Member State as pertaining to the National Heritage and having an artistic, historical or archaeological value.

In addition, the criteria used for assessing the *bona fides* of dealers who purchased cultural goods that were illegally exported out of the country were tightened. The delay for submitting a restitution complaint has been extended from one year to three years. In the future, a sued collector from an EU country shall be required to prove having manifested due diligence in assessing their licit origin upon purchasing the claimed 'cultural goods having an artistic, historical and archaeological value'. It is clear that, with European integration, a number of subjects and fields are prone to become the focal point of researchers: the enhancement of security measures for museums, monuments and other collections, the organization of specialized structures, strengthening of inter-institutional cooperation, the elaboration of specific, uniform procedures for investigation and trial, of unconventional strategies for prevention and control.

Also, several tendencies of the evolution of crimes against the national cultural heritage at a continental level must be brought forward. The phenomenon of progressive and continued globalization of the economy sets a rate for the unification and growth of the degree of inter-dependence of criminal markets and perpetrators that operate within their territory. The adjustment capacity and mobility specific to criminal organizations determine the relocation of criminal activities from the areas of Western Europe, where the qualified pressure of judicial institutions is exerted to Eastern Europe, where new opportunities for illegal business has emerged (archaeological poaching, smuggling, money laundering, etc.) even as relevant investigative experience and logistic means of authorities are lower.

Our research reveals that, with the growing integration into the common European market as the free movement of goods, persons and services develops, conditions are created that favour the realization of specialized criminal networks at a European level, which is characterized by a sophisticated and occult *modus operandi*, itself integrated into traditional economic circuits by means of complex schemes and by their involvement in an international chain of intermediaries. The investigation of these criminal networks requires an acceleration of the prospective creation of a judicial European space, of the European Criminal Code (*corpus juris*), of the European judicial network (Eurojust) composed of prosecutors, judges, police officers with equivalent competences delegated by each Member State according to its legal system and the European Public Ministry as well as the European Prosecutor's institution for the protection of the financial interests of the Community.

Notes

1 European Directive no. 93/7/CEE was reformed by Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast).

2 The High Court of Cassation and Justice of Romania, Criminal Section, Pen. Dec. 3152/17.12.2014, File no. 41/97/2005 (unpublished).

3 Hunedoara County Court, File no. 41/97/2005.

4 A mutual recognition agreement (MRA) is an international agreement by which two or more countries agree to recognize one another's conformity assessments. With the coming into force of the Amsterdam Treaty, the European Council organized, in 1999, a special meeting on the theme of 'Freedom, Security and Justice' in Tampere. At the end of the meeting, 'mutual recognition' had become a cornerstone of judicial cooperation in criminal matters and the aim was to replace all Mutual Legal Assistance (MLA) conventions of the Council of Europe by proper EU MR instruments. The Council of Ministers and the Commission were asked to adopt a program of measures to implement the principle of mutual recognition. The term 'mutual recognition' was not defined in the EU Treaty). In 2000, the Commission published its Communication to the Council and the European Parliament: Mutual recognition of final decisions in criminal matters. Mutual recognition would apply to both court decisions and pre-trial decisions, as orders or warrants to gather evidence or to arrest and surrender suspects.

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Fig. 1. The sacred zone of Sarmizegetusa Regia (UNESCO monument) with the archaeological sites from Sub Muchea Cetății).



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Fig. 2. The Căprăreța point: the archaeological site (poacher hole no. 7) from which the hoard composed of 10 golden spirals was stolen on 6 May 2000.



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Fig. 3. The 'wanted' golden spirals. 13 pieces (12,663 kgs), recovered from New York, Paris, Zurich, and Hunedoara exposed at the Romanian National History Museum, Bucharest.



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Fig. 4. Image of a wanted golden spiral (*Christie's*, New York, lot. no. 26, December 1999).



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Fig. 5. Lysimachos golden coins, belonging to a wanted hoard composed of 3,600 staterae, composed by Lysimachos, Asander, Farnakes, Alexander golden coins stolen from Sarmizegetusa Regia, the archeological site of Căprăreța



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Fig. 6. Koson silver coins, wanted and, partially recovered, from the hoard of 2,300 pieces, stolen from the Dealul Muncelului archaeological point.



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Fig. 7. Koson-Droueis silver coins, wanted, partially recovered, from the hoard of 2,300 pieces, stolen from Dealul Muncelului.



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Fig. 8. Koson golden coins (staters), wanted, and partially recovered, from the hoard stolen from the Dealul Muncelului archaeological point.



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Fig. 9. Wanted Dacian iron shields stolen from the Piatra Roşie archaeological site. (Freeman & Sears, CA, U.S.A).

A Fight Yet To Be Waged: Underwater Heritage Protection

Michel L'Hour

At the dawning of the 20th century, bronze and marble statues were discovered in the Greek waters of Antikythera, the Cape of Artemision, and the shipwreck of Mahdia, off the coast of Tunisia. Some decades later, breathtaken by their unparalleled beauty and elegance, Salomon Reinach, a French archeologist, came to observe that 'the depths of the West Mediterranean sea are the world's greatest museum'. History, since then, has proven him right, but for the all too reductive scope of his diagnosis: the world's largest museum encompasses not just the western Mediterranean sea, but the entire vastness of the world's oceans.

For heritage enthusiasts, there should be much cause to rejoice, yet there is much cause to worry. That immense museum, which comprises 71% of the surface of our planet, remains without any surveillance or security system whatsoever, and is accessible day and night. No detailed inventory of the collections held therein exists; the objects can neither be identified nor described, even briefly, since most have remained unfound. Few countries have implemented an adapted legislation to secure and protect these underwater collections and, when such legislation *does* exist, financial sanctions and prison sentences are anything but a serious impediment to those who would unlawfully take hold of these objects. In cases where the perpetrator has been caught in the acts, evidence is either immediate or easily gathered. That, however, is an exception: material signs of unlawful act are often hard to provide, as evidence as the theft of an object whose existence remained unknown to all is unlikely to leave any trace.

Difficulties to stop underwater heritage trafficking

Doubtless, these conditions enable to understand why it is almost impossible to provide precise data on the significance of the looting and damage that, year after year, are perpetrated on underwater cultural heritage. Resting in the watery depths since that fateful day when a storm, naval battle, cargo tipping from excessive load or devastating fire hurled them into the bottomless pit – the archeological objects looters target remain, for the most part, unknown to us. Auction houses catalogues, museums or private collections have never listed, or held these objects, albeit temporarily. These objects never have been photographed, sketched or published. So too, are the eyewitnesses long gone, who would have confirmed the location of the artefact at the time of the shipwreck. Clues that would have evidenced the looting are hidden fathoms below. And so, the object's whereabouts is impossible to determine – all the more so that the looter often is the sole person to know. In the realm of infinite silence that surrounds underwater heritage, there is but one rule: 'unseen, uncaught'.

Notwithstanding these facts, are those who defend heritage bound to be utterly helpless, the spectators of a large clandestine market in underwater remnants? Of course not. Yet, it is adamant that, for the enterprise to be at all successful, specific legislation be drawn and all actors – relentless investigators, selfless archeologists who would dedicate some of their time to the cause, and cooperation between them – come together, to free that heritage from the bane of trafficking. The present article will look

at the long standing tradition of underwater cultural heritage protection in France, whose first legislation was drawn in the 16th century. With the creation of the French Underwater Archaeology Research Department (*Direction des recherches archéologiques sous-marines* – DRASSM) in 1966, specialized task forces, in particular in cooperation with customs, are continuously investigating, year after year, to safeguard untouched underwater heritage and punish infringements against the laws that protect it.

Let us bear in mind, then, that the argument proposed herein, as well as the figures provided below are the result of a most patient and painstaking labour. The situation is much worse, surely, in countries that are devoid of any specialized departments or efficient legislation to protect humanity's underwater heritage.

From misdemeanour to organized looting

The looting of underwater cultural property is manifold, ranging from the mere removal of an object found in a shipwreck by occasional treasure-hunters to organized pillage by extremely motivated divers. The former commit petty thefts and seldom feel any guilt for it. Justice, what's more, usually shows a certain benevolence that can only encourage that particular frame of mind. That benevolence evidences how inaccurate the understanding of that type of felony is. Many are the divers who indulge in 'souvenir picking'. These repeated collective intrusions cause considerable damage on the shipwrecks – invaluable archeological vestiges. Judges would do well to take this into account, and implement adequate judicial measures.

Organized looters are less numerous but much more dangerous, as they are well equipped and oftentimes well-experienced. And so, the damage they cause is somewhat akin to that of weapons of mass destruction, as the following statistics indicate. In 2007, DRASSM archeologists essentially concentrated on tracking these 'professional looters'. More than 2,700 significant objects were seized in the residences of network-organized divers. How can the destruction undergone be fully grasped from the mere sight of these objects? One can only guess. Defenders of underwater cultural heritage must primarily reinforce their pressure on looters. Unfortunately, however, underwater archeologists are in insufficient numbers and are thus incapable of maintaining a continuous struggle against these criminals, unless they forsake those activities that make the very stuff of their profession: research, study and the preservation of underwater heritage.

As a result, after the soaring success of 2007, the number of investigations and lawsuits has dwindled, while the recovery of stolen objects has decreased to a yearly dozen only, despite the proven efficiency of the actions taken systematically against looters at the time, in particular the tracking, and undoing of networks. This is particularly true today, insofar as some of these looters are internationally connected and familiar with networks – a knowledge that enables them to sell their loot on Internet blogs or in shops that specialize in 'nautical antiques'. As time goes by, the harder it is to recover these collections.

Insufficient exemplary penalties

The amount of the financial sanctions imposed upon caught looters is usually too insignificant for the punishment to dissuade. It should be pointed out that it is disproportionately low compared with the costs incurred by the State to end looting – which, in turn, makes law enforcement personnel doubt that heritage protection truly

is a crucial stake. It stands to reason that the same individuals involved in previous lootings should continue their illicit activity. Thus will the situation remain, until it is decided that theft and the destruction of maritime cultural objects are to be sanctioned more severely. Justice, in France, seems to have taken this in, since underwater looting is now prosecuted as are theft or property damage. The Montpellier Court of Justice has sentenced shipwreck looters to prison. The case is currently under appeal but it is a cornerstone that shows, surely, that authorities understand better the consequences of such criminal acts – the irreversible destruction of our common heritage.

Much work is still needed, for it appears that judges are, by and large, hardly aware of the impact of the destruction of archeological sites, i.e. prejudice in the form of disappearance of historical traces. Because of this lack of understanding, judges are likely to leave it unpunished. Unique remnants of our past have been callously destroyed by predators – resulting in the irretrievable loss of site integrity – only to keep artifacts whose pristine condition guarantees a quick sale on the market. The only criteria jurisdictions retain, however, is the mercantile value of the object instead of the scientific worth of the sites destroyed. Moral prejudice would have, in fact a much higher value. It is adamant that mentalities change and that the extent of the moral prejudice provoked hence be taken into account by judges, once and for all.

Looting hot spots

Underwater heritage is at risk throughout the world. Keenly attuned as they are with the environment they revolve around, looters, however, typically operate within specific areas. Their primary targets are countries with limited protection: absent or insufficient legislation, few coastguards (if any), low income or poverty – fertile ground for corruption as local authorities may easily be bought to turn a blind eye or even collaborate. Some countries in the Caribbean (Haiti, Santo Domingo, etc.) or Indian Ocean regions (Madagascar, Mozambique, etc.) are often rampaged by traffickers and uncivil divers from Europe, the United States, Australia, South Africa, and increasingly, Asia, and China in particular. While the sale of stolen objects remains discrete an activity, Internet is becoming the main platform whereby illegally removed objects are sold, e.g. an 18th century French 74-gunship of the line *Scipion* that was nearby Saint-Domingue, or bronze Portuguese canons stolen from an underwater archeological site in Madagascar. Experts are inclined to think that this is the location of the vestiges of the *San Ildefonso*, sunk on the Star Bank in 1527. Few are the solutions available, since international law enforcement forces have insufficient investigative capacity, with most of their agents assigned to cases of theft concerning more usual and easily identifiable movable cultural property such as objects stolen from places of worship, museums, castles, etc.

When heritage becomes Mafia interest

Underwater cultural heritage is less visible, and is therefore less the object of attention. It remains unlisted in INTERPOL or local enforcement authority databases, and is seldom searched for during routine controls. Things will only change when training in underwater heritage identification is provided to police staff. In addition, underwater archeology specialists are too few to train new recruits. This situation clearly explains why stolen treasures are still found on the market nowadays, world renowned auction houses still sell 3rd century BC coins from the Roman treasure of Lava – although it is

listed as 'national treasure' in France – and looters have been apprehended and sentenced. The fight against the circulation of stolen heritage and laundering of considerable sums is thus justified in many ways. Let us bear in mind that a Roman Imperial coin – be it, for instance, an *aureus* struck under Emperors Gallienus (253-268 B.C) or Claudius II Gothicus (268-270) – is worth some €600,000 to €800,000 per piece. That same coin, sold in Singapour or Costa Rica after having been bought in Paris and transported in a simple unverified wallet, can enable *de facto* near €1,000,000 to be laundered. A more systematic control of numismatists and leading antique coin dealers is thus advisable, if only to reinforce the fight against money laundering. Hence, for each piece of coin sold, dealers and auction houses should systematically be made to provide specific data: provenance, name of the inventor, or previous holder identity and residence, and method of payment, etc.

A fight yet to be won

In this article, I have described the many circumstances that explain the difficulties met by underwater heritage specialists today: the indifference or forgetfulness of law enforcement authorities, which stems from disinformation and insufficient training in heritage protection, except in a few countries such as Canada, China, and France (among others), who all have dedicated forces (e.g. in France, teams of underwater archaeologists and custom officers). Fostering global awareness on the stakes at hand for the preservation and protection of underwater heritage is more than ever critical. The ratification by a growing number of countries of the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage is one first, fruitful step. In the face of urgency, progress is slow. Since looting knows no boundary, investigators, archeologists and curators must, likewise, work together on a global scale. Time is short, and underwater heritage vanishing. It is our responsibility to protect it.

Note

All original data comes from the author's findings and field experience. Some relevant sources have been necessarily anonymized.

Ratification and Implementation of International Conventions to Fight Illicit Trafficking in Cultural Property

Sophie Delepierre and Marina Schneider

The second half of the 20th century and first decade of the 21st have seen increasing attention and responsibility of the international community focused on the safeguarding of cultural heritage. This awareness has taken a number of forms, including the development of international standards that protect this heritage, either in its various permutations (moveable or immovable, tangible and intangible) or via a particular lens, such as creativity or cultural diversity.

This heritage engenders and nourishes our human identity and potential, our cultural diversity and creative expression as fundamental human rights. Its full assimilation for scientific, cultural and educational purposes lies at the core of equitable and sustainable development, increases the shared knowledge of the historical achievements of humanity, enriches the life of all peoples and inspires dialogue, mutual respect and appreciation among nations. This essential contribution to our collective well-being is especially necessary in the current context in which global challenges continue to mount and the consolidation of a humanist vision is crucial (...).

[Quoted from the Joint Statement by the Chairpersons of the Committees of the UNESCO Culture Conventions, June 29, 2015, Bonn]

Based on extensive discussions among States, particularly in the context of intergovernmental organizations, differing types of instruments have been brought to bear: from simple declarations to international conventions, to recommendations. Beyond the variety of instruments used, it is important to underscore the diverse forms of cultural heritage addressed in such texts. These encompass archaeology, architecture, cultural objects, shipwrecks, landscapes, traditional practices and know-how, and yet more forms of cultural capital.

The insufferable reality that damage and destruction continue to afflict cultural heritage throughout the world today demonstrates, should there be any doubt, the continued relevance of these international instruments and the necessity for the international community to continue and strengthen their implementation. Media outlets regularly broadcast incidents of theft, trafficking and other developments concerning the destruction of cultural heritage. Among the countries most often cited are Afghanistan, Egypt, Iraq, Mali, Syria and Yemen, but they are far from being alone.

When political crises erupt and destructive forces ravage countries, the direct victims of the conflict must also include cultural heritage. Buildings are destroyed, some of them thousands of years old; precious objects are stolen, places of worship are looted, tombs pillaged and certain peoples can no longer hold their traditional ceremonies. Moveable cultural property is especially vulnerable due to its movability. Such goods are frequently stolen because of their market value or destroyed by armed groups, to stamp out vectors for knowledge transmission that embody the identity of a community/group, an identity that certain factions may seek to eliminate from history. Loss of cultural property, whether to destruction or theft, is not only harmful to the country where the objects originates from, but damages the international community as a whole: "The looting and illicit trafficking of cultural property erode the cement that holds communities and

societies together'. Establishing actions to safeguard these items is thus essential.

Within the framework of the debates conducted under the auspices of ICOM's International Observatory on Illicit Traffic in Cultural Goods, the present article seeks to present an overview of the main international agreements relating to such trafficking, namely the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter 'the 1970 Convention') and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereafter 'the 1995 Convention'), which together are considered to be the fundamental point of reference on the subject. This approach has certain limitations for various reasons. Firstly, concerning the instruments predating the 1970 Convention, which will not be addressed in this article. These include, notably, UNESCO's recommendations on the protection of cultural property, which indubitably constitute a body of legal principles that States belonging to the Organization must take into account². Secondly, restrictions related to other international agreements, whether established before or after the Conventions of 1970 and 1995, which broach the subject on the trafficking of cultural property indirectly, and certainly deserve to be studied in their own right³.

The first international instrument for the protection of cultural heritage during peacetime: The UNESCO 1970 Convention

True to its name, this international convention sets out measures for preventing and prohibiting the illegal import, export or transfer of ownership of cultural property. While the final text of the treaty is a compromise as a result of protracted negotiations, it has the merit of expounding a number of strong principles regarding prohibitions on the import and export of stolen or illicitly exported cultural property. The challenge for the international community – and for UNESCO, which oversees the initiative – is ensuring its implementation. By ratifying the Convention, States undertake to develop national legislation based on these principles, and specifically, to establish the legal and technical means necessary for the protection of cultural heritage. In other words, the burden lies with each State Party to the Convention of 1970 as regards the regulation of transactions involving cultural property within its territory and the definition of licit and illicit activities.

The substance of the Convention focuses on three areas commonly referred to as its 'three pillars'. The first of these concerns measures at the national level to effectively combat illicit trafficking in cultural property; the second addresses the issue of restitution; while the third pillar deals with cooperation among States⁴.

Preventive measures at the national level

To achieve the goals set out by the Convention's principles, States must undertake a certain number of preventive measures, which include creating a national system for taking inventory and compile a list of cultural property to be protected, requiring and issuing export certificates for all protected cultural property, regulating archaeological excavations, enforcing accurate transaction registers among antique dealers, recruiting and training not only heritage professionals but also the police force and custom officers, in addition to promoting the development of curatorial institutions such as museums, libraries and archives, to name only a few.

While the Convention strongly urges States to enact these measures, the latter may, in

some cases, lack the means to do so. It is in the interest of States to adopt the best possible national legislation for an effective implementation of the Convention, in order to benefit from its provisions and, more importantly, to comprehensively protect their heritage. Prevention is always the best protection. In order to assist the States Parties, UNESCO and its partner organizations have developed a series of technical tools at the disposal of States, particularly through the national and regional training UNESCO regularly organizes⁵. The stated goal of these measures is by no means to restrict the legitimate trade in cultural property, on the contrary. UNESCO, as a United Nations organization with mandates both cultural and educational, encourages cultural exchange in all its forms, insofar as these are fully consensual.

The issue of restitution as concerns stolen cultural property

The second 'pillar' of the Convention relates to the restitution of stolen cultural property. Article 7(b)(ii) of the Convention states that cultural property stolen from a museum or a religious or secular public monument must be returned to the State from which it was removed. This rule is, however, subject to several conditions: it must be demonstrated that the object figures in the institution's inventory (hence the importance of the above-mentioned inventory process); the object must have been imported after the Convention entered into effect in both States Parties involved. Furthermore, the requesting State must provide 'just compensation to an innocent purchaser or to a person who has valid title to that property'. In terms of procedure, requests for restitution must be sent via diplomatic channels. The requesting State is also obligated to provide all documents necessary to justify its demand for seizure and restitution.

Together, these criteria make for a relatively limited scope of action, which has certainly contributed to curtailing the number of restitutions of cultural property under the auspices of the Convention *stricto sensu*. Moreover, while the wording of this article is detailed in some respects, particularly the inventory requirement (which excludes by itself all archaeological finds exported illegally), it leaves considerable room for variance in interpretation by experts from differing legal traditions. This tension between stringent conditions for application and latitude in the wording is evidence of how politically charged the restitution of cultural heritage is, and how difficult it can be for States to agree on a text addressing this issue. Should we therefore conclude that the Convention of 1970 is ineffective when it comes to the restitution of cultural property? Certainly not, since the Convention has nourished a wealth of thoughtful discussions on international cooperation both in the realm of culture in general, and issues of restitution in particular. Over the course of numerous ratifications, and through the development of specialized legal and technical instruments, the States Parties have expanded the scope of action for return and restitution that go beyond what the text of the Convention foresees, and which would not have been possible had it not been adopted.

In 40 years of existence, the 1970 Convention has permitted significant instances of restitution and helped make cultural property central to cultural cooperation and diplomatic relations.

[Irina Bokova, 'From Baghdad to Cairo – combating trafficking in cultural property', in *Mondes, Les cahiers du Quai d'Orsay*, n°8, (Autumn, 2011) 81-89.]

Certain requests for return or restitution prove particularly complicated, however, usually because of highly sensitive political issues. In cases where no bilateral agreement can be reached, Member States of UNESCO may petition the Intergovernmental

Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. This intergovernmental body, created in 1978, provides a forum where States can address differences arising over cultural property of significant interest to which the provisions in the Convention of 1970 are not applicable. This entity is a purely consultative body providing mediation. While its decisions have no legal weight, it nonetheless provides a supportive environment for negotiation when discussions are particularly difficult.

Promoting international cooperation

Although the text of the Convention is primarily designed to be implemented through national legislation, it does contain provisions concerning international cooperation. In this way, the Convention equips States with mechanisms for acting beyond the limits of their national borders to effectively combat trafficking in cultural property, which is by nature, transnational. One major advantage the Convention offers is the possibility for States Parties to sign bilateral agreements to extend the scope of its provisions, particularly on restitution matters (for instance, States may agree by common accord to bypass the principle of non-retroactivity within the context of such bilateral agreements). However, the main thrust of this third pillar for action rests on Article 9 of the Convention, which calls for participation as a concerted international effort, to control the import, export and trade in these specific goods. States Parties to the Convention are not only encouraged to protect their own cultural property, but also to support and assist other States Parties when their cultural heritage is in danger of being pillaged. Thus, when significant risks threaten its cultural heritage, a State may call upon UNESCO and its partners, as well as other States Parties to the Convention (especially neighbouring countries) to carry out concrete emergency measures to forestall irremediable damage to cultural heritage.

While these vary according to the initial request made by a petitioning State, a certain number of actions are almost systematically included in UNESCO's plans of action. These include informing partner organizations⁶, engaging in dialogue with the authorities of neighbouring countries of the concerned State at risk and requesting reinforced monitoring of cultural property imports and exports by customs officials, requesting art market and transit countries to heighten their vigilance (special attention be given to any object from the State in question appearing on the international art market), providing legal expertise on matters of restitution, and giving visibility to national efforts. UNESCO has, for example, established action plans for the safeguard of cultural heritage in Iraq, Mali and Syria. The Organization took the lead of the coordination of international efforts pertaining to cultural heritage and encouraged the cooperation and collaboration of the international community. In fact, the international community expressed several times the will to see the Organization take its responsibilities as the unique UN Agency with cultural competencies. In this context, UNESCO played a role in bringing together the various efforts to protect cultural heritage but also in encouraging Member States to take position on this subject (i.e. the adoption of the UN Resolution 2199 in February 2015).

The UNIDROIT Convention of 1995

Clear mechanisms based on a fair compromise

The goal of the UNIDROIT Convention is to remedy the scourge of illicit trade in cultural

property, both stolen and illegally exported (the two often go together), particularly items from clandestine archaeological excavations. These crimes are essentially international in nature, as most thefts are followed by the transfer across national borders in order to 'launder' stolen goods through transactions involving intermediaries, after which they enter the legitimate market and end up in the hands of a possessor considered to be 'in good faith' under local laws. The central issue at stake is the sale of stolen property, and collaborative international efforts to combat trafficking must focus on harmonizing private law, not according to the provisions of common law governing the acquisition of moveable goods in general, but by establishing a distinct regime appropriate to the specificities of cultural property.

Precisely because the issue hinges on private law and a need for its harmonization, UNESCO's Member States approached the International Institute for the Unification of Private Law (UNIDROIT), in part due to its expertise developed in the course of drafting the Uniform Law on the Acquisition in Good Faith of Corporeal Movable (LUAB) during the 1960s⁷. UNIDROIT has also benefited from its 25 years of experience in addressing the issue of illicit trade in cultural goods, an increasing threat to all countries that has led States to more urgently want, and need, to cooperate in this area. The Convention's true objective is to expedite the procedures for return or restitution in cases of theft and/or illegal export, and, above all, to reduce trafficking by encouraging gradual but fundamental change in the behaviour of all actors in the market, especially buyers. And indeed, the Convention of 1995 did prompt substantial improvements in the behaviour of market agents involved in the sector, and particularly that of the potential buyers for cultural property of uncertain provenance.

Perhaps the most important provision of the Convention of 1995 is Article 3(1), which establishes the principle whereby the possessor of stolen property must return it in all cases. The intent is neither to punish the original owner nor the good faith purchaser, still less to cast moral judgement. Nevertheless, both parties cannot be fully protected. A pragmatic solution was therefore retained, obliging the purchaser to verify that an object has entered the market legally. The automatic restitution, coupled with the possibility of compensation for the possessor who demonstrates 'due diligence' per Article 4(1), constitutes one of the most significant legal measures in the struggle against illicit trafficking in cultural property. It has a direct impact on the art market, where a tendency subsists, despite tremendous efforts, for dealers not to reveal the provenance of cultural property, and for buyers to sometimes avoid from being too 'curious'.

The return of an illegally exported cultural object is subject to a twofold condition, that of violating legislation prohibiting export, and that of a significant injury to scientific interests or recognition that the object possesses 'important cultural significance'. While the Convention of 1970 constituted the first serious attempt to respond to the issue at the international level, the obligation of States Parties to ensure the return of cultural property unlawfully exported from its country of origin was extremely limited under Article 7. The UNIDROIT Convention of 1995 took a major step forward by requiring that cultural property be returned to its country of origin in a much larger number of cases.

It is also important to recall another type of cultural property covered under the Convention of 1995, archaeological artefacts taken from excavations, which are addressed in the Convention of 1970 only through the interpretation made by certain States of Article 9. The UNIDROIT Convention, however, raises the possibility of bringing action

based on provisions relating either to theft, or to illegal export: per Article 3(2), objects are considered stolen 'where consistent with the law of the State where the excavation took place.' Article 3(2) as well as Articles 5(3)(a), (b) and (c) also apply to objects from archaeological excavations. The choice of procedure is largely determined by how difficult it is to meet the burden of proof in a particular case.

The UNIDROIT Convention represents a compromise reached by addressing the various legitimate concerns involved. On the one hand, lies the importance of legal safeguards for market actors as well as for public and private collections, which is taken into account through the requirement of due compensation when due, and by the clearly set out non-retroactivity clause (Article 10). The need for legal safeguards is also satisfied by the relatively short statute of limitations on bringing an action to demand restitution. On the other hand, by designating a subset of cultural property to which applies a much longer statute of limitations (75 years), and in some cases, no limitations at all, the text takes into account the material and moral interests of the 'exporter' States and, more broadly, those of public collections, religious or cultural institutions, and the protection of archaeological and architectural heritage. The same exception to the statute of limitations is extended to sacred objects and communally important cultural objects of tribal or indigenous communities, bearing witness to a more inclusive dialogue among all cultures. The interests of exporter States are also taken into account in Article 4(2) providing for 'all reasonable efforts' to be made to ensure that compensation be paid by those responsible for illicit trafficking, rather than legitimate title holders or requesting States.

A clear influence

Beyond the mandatory implementation of States Parties to the Convention of 1995, the principles expressed by the Convention, especially the notion of due diligence, have been adopted or recognized by the jurisprudence and incorporated into national legislation of States that are not Parties to the Convention, as is the case in Switzerland (Articles 16 and 24 of the Federal Act on the International Transfer of Cultural Property of 2003, or CPTA) and the Netherlands (new Article 3(87) of the Dutch Civil Code). These two States signed the Convention but did not subsequently ratify it mainly due to resistance from the art market. This has been called 'the Convention of 1970 plus option'.

At the European Union level, the revisions the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 relating to the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (UE) No. 1024/2012, incorporate, twenty years later, several features from the UNIDROIT Convention. Among the most significant features, the burden of proof regarding the exercise of due diligence to the possessor, as well as the criteria for due diligence, are taken, almost word for word, from Article 10 of the UNIDROIT Convention. The 28 Member States of the European Union have until the end of 2015 to enact domestic legislation in compliance with the Directive. This should remove one of the principal arguments raised by critics of the UNIDROIT Convention.

Universality of the international conventions: increasing the number of ratifications

The international conventions are conceived with universal application in mind, and thus the Secretariats of international organizations are called upon to develop communication tools that encourage States to ratify these international instruments. Although the

harmonization of domestic/national legal mechanisms for combating illicit trafficking in cultural objects is sometimes viewed as a utopian dream, intergovernmental organizations urge States to react more swiftly against this polymorphous trade, which has a track record of rapid adaptation. In the short term, the objective for additional ratifications is to prevent traffickers of cultural objects from taking advantage of loopholes in national legislation to reintroduce stolen or illegally exported objects back into the legitimate art market. By ratifying these conventions, States send a warning signal to traffickers, of increased vigilance in terms of legal safeguards for cultural property on the one hand, and on the other, stricter monitoring of the itineraries and hubs criminals employ to circulate these cultural objects.

Despite the best efforts of international organizations's Secretariats, such as UNESCO or UNIDROIT, as well as calls for ratification from other organizations in favour of the protection of cultural objects as well as from civil society and mass media, and in spite of ever more frequent diplomatic and political meetings with States that have thus far not ratified the conventions, certain countries, and indeed entire regions of the world, have yet to react even today (few countries in the Asia-Pacific and East Africa have ratified the 1970 Convention in particular). While the UNESCO Convention of 1970 and the UNIDROIT Convention of 1995 are the foundational building blocks for the effective legal protection of moveable cultural heritage, both face a myriad of obstacles for their respective ratification, such as political indifference often due to a poor understanding of the problem of illicit traffic in cultural objects and its criminal and economic aspects; pressure from the art market – particular strong against the UNIDROIT Convention because its provisions oblige a potential buyer to ask questions as to the provenance of the object; and confusion of the texts themselves.

In order for a truly universal international cooperation to take shape and make it possible to thwart the theft and illegal export of cultural objects, it is essential that non-States Parties examine – or re-examine, as the case may be – their position, and evaluate the benefits of international legal instruments in this area. On the basis of such a critical assessment, and the role they wish to play within the international community regarding the struggle against this illicit trade, they can decide whether or not to become Parties.

Implementing international conventions: collective responsibility for a shared objective⁸

Once the instrument of ratification deposited with the organization responsible for overseeing the convention, or the State serving as the Depository, the State must draft or update national legislation to incorporate, as part of its domestic laws, the principles and rules expressed in the international treaties. It is worth noting, however, that the Convention of 1995, contrary to the Convention of 1970, is applicable directly, and does not require that legislation be passed for implementation. The UNESCO Convention of 1970 is addressed to Member States and their legislative bodies, to whom devolves the task of implementing it into their national laws. At this stage, some States find themselves in the position of creating legislation in an unfamiliar area (for lack of specialists). For this reason, the expertise of the Secretariats is at the disposal of States Parties. If necessary, they will provide a regional expert fluent in the language of the requesting State, to counsel national authorities in drafting legislative texts. It is important to bear in mind that this drafting phase is particularly crucial, since all legal and technical mechanisms of protection have to be reviewed and incorporated into domestic law.

States also have the option of leaving out certain aspects of the international texts they ratify. This is notably the case that declarations and reservations are made when the State deposits an instrument for ratification, or are issued at a later date⁹. This flexibility awarded to States must be employed with caution so as not to negatively impact, at the very moment of ratification, the full scope of the principles expressed in the original text that need to be applied¹⁰. The UNIDROIT Convention, it should be noted, does not permit reservations to be made that may reduce the full force of the text. Its authors intended that, by becoming Parties, States express a clear desire for 'genuine' progress in the struggle against illicit trafficking, by accepting the whole text, or else remain outside the framework.

And lastly, in practice, should these conventions not be implemented at the national level, or domestic laws prove inadequate, the consequences for States is doubled: on the one hand, they do not fully benefit from the mechanisms for protection and cooperation established by these treaties, and on the other, their legislation fails to meet international standards, creating an obstacle for successful international cooperation. States do not, however, face the task entirely alone, and international organizations remain at their side to support this process by providing expertise. While States ratifying these conventions are indeed accountable, the international organizations overseeing these agreements are equally committed.

What conclusions can be drawn from these international conventions?

Answering this question alone could be the subject of an article in its own right. In fact, a number of internationally renowned experts have broached the topic¹¹. From those analysis, a few observations may be made, widely shared among specialists. First of all, growing numbers of ratifications have resulted in the drafting and/or revision of hundreds of national laws concerning the protection of cultural heritage. While not all such protection takes the form of legislation, this evolution certainly bears witness to growing political awareness and to the clear importance accorded to the protection of cultural heritage. This body of legislation has also provided a solid foundation for efforts and for dialogue between States that fall victim to the trafficking on the one hand, and on the other, States known for their 'art market'. It is on this basis that new technical, professional and ethical tools have been developed. These conventions are by no means running out of steam: they continue to support and influence the instruments for implementation at every level, as witness the recent case of the European Union Directive 2014/60/UE (update of Directive 93/7/CEE)¹².

Political recognition of the danger threatening cultural heritage, whether moveable or immovable, has gone hand in hand with increased awareness on the part of the general public. It is through media coverage that the international community as a whole has learned of the damage inflicted on cultural heritage during turmoil, such as armed conflicts. Today, when a despatch is broadcast all over the world in a matter of hours, the full magnitude of the traffic in cultural property and the issue of restitutions is being revealed to the public. To this end, the Secretariats of international organizations continue to increase their own communication outreach. The most effective means of combating the traffic in cultural objects is to hold all participants responsible, and to achieve this requires a shift in societal attitudes towards such practices.

What does the future hold?

Application of international conventions, especially the Convention of 1970 and Convention of 1995 is the keystone for an effective international campaign against illicit trafficking in cultural property. The overarching principles of these texts, recalled in the present article, are the fruit of a political consensus reached through laborious diplomatic negotiations and protracted legal debates. But the drafting and adoption of an agreement are not goals in themselves: successful protection of cultural heritage lies in the implementation of these texts at the national level. It is at this juncture that the full extent of Secretariat's expertise can be crucial to supporting States as they undertake the operational phase of monitoring trade and applying these texts. In this sense, implementation of these agreements and efficient protection of cultural heritage are a joint responsibility of States and the intergovernmental organizations entrusted with coordinating international conventions.

While conventions are accepted as the foundation for concrete and productive international cooperation on the part of States directly, a number of experts have raised questions on their future sustainability. Some consider that international law combating the illicit trafficking of cultural property as it stands needs to evolve and that the framework of international agreements requires the reinforcement of a new legally binding multilateral instrument. The idea of a single text that would combine the Conventions of 1970 and 1995, overcoming the problematic wording and multiple interpretations of the former, while bringing it up to date, may be compelling for some. In the meantime, the reality remains that there are 129 States Parties to the Convention of 1970, and 37 to the Convention of 1995, with a further handful of States at various stages of considering ratification of these treaties. It is essential to encourage them, and to universalize these conventions to create the common foundation that has proved so difficult to achieve.

Let us make the Conventions of 1970 and 1995 truly universal agreements and ensure they are fully operational. We have everything to gain, as the experience acquired through their implementation constitutes the 'best guide' for future action and will contribute to the further development of safeguards for cultural heritage (O'Keefe 2014: 148-149)¹³.

Notes

- 1 Irina Bokova, 'From Baghdad to Cairo – combating trafficking in cultural property', in *Mondes, Les cahiers du Quai d'Orsay*, n°8, (Autumn, 2011) 81-89. Available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/RevueMondesCahiersduQuaidOrsayENG.pdf>
- 2 *Recommendation on International Principles Applicable to Archaeological Excavations, 1956; Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, 1964.*
- 3 See also, L. V. Prott, *Cultural Heritage Conventions and other Instruments: A Compendium with Commentaries*, ed. by Patrick O'Keefe and Lyndel V. Prott (Leicester: Institute of Art and Law, 2011).
- 4 For a full analysis of the Convention, see: P. O'Keefe, *Commentary on the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import,*

- Export and Transfer of Ownership of Cultural Property*, 2nd ed. (Leicester: Institute of Art and Law, 2014).
- 5 These tools include the UNESCO Database of National Cultural Heritage Laws, the Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects (UNESCO-UNIDROIT), the Inventory and Object ID standard, UNESCO International Code of Ethics for Dealers in Cultural Property, and the UNESCO - WCO Model Export Certificate.
 - 6 In the struggle against illicit trafficking in cultural property, the main bodies are the International Institute for the Unification of Private Law (UNIDROIT), INTERPOL (Artworks crime area), the United Nations Office on Drugs and Crime (UNODC), the World Customs Organization (WCO), and the International Council of Museums (ICOM).
 - 7 <http://www.unidroit.org/english/documents/1975/study45/s-45-58-e.pdf>
 - 8 On the concept of collective responsibility for the protection of cultural heritage, see: E. Clément, 'Le concept de responsabilité collective de la communauté internationale pour la protection des biens culturels dans les conventions et recommandations de l'UNESCO', *Revue belge de droit international* 2 (1993) 535-551.
 - 9 Vienna Convention on the Law of Treaties, 1969, Article 19.
 - 10 On this topic, see analysis by Patrick O'Keefe: P. O'Keefe, *Commentary on the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 2nd ed. (Leicester: Institute of Art and Law, 2014), pp. 43-45.
 - 11 See analysis by Lyndel V. Prott: L. V. Prott, 'Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 years after its adoption', 2nd ed., (UNESCO, 2012). See also additional articles by experts presented at the Second Reunion of States Parties to the Convention of 1970, available at < <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/meeting-of-states-parties/2nd-mp-2012/> > [last accessed on 13 October 2015].
 - 12 Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast).
 - 13 On this topic, see the analysis of Patrick O'Keefe: P. O'Keefe, *Commentary on the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 2nd ed. (Leicester: Institute of Art and Law, 2014), pp.148-149.

Editors' Note

The original referencing style has been maintained at the request of the authors.

UNESCO Convention of 1970



Official name: Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)

Date: 14 November, 1970

Entry into force: April 24, 1972

Secretariat Headquarters: Paris (France)

Contact: convention1970@unesco.org

URL:

<http://www.unesco.org/new/fr/culture/themes/illicit-trafficking-of-cultural-property/>

UNIDROIT Convention of 1995



Official name: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Date: June 24, 1995

Entry into force: 1 July, 1998

Secretariat Headquarters: Rome (Italy)

Contact: m.schneider@unidroit.org, info@unidroit.org

URL:

<http://www.unidroit.org/fr/instruments/biens-culturels/convention-de-1995>

Other conventions



Official name: Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)

Second Protocol (1999)

Relevant Articles: Art. 9, Art. 15(e) and Art. 21(b)

URL:

<http://www.unesco.org/new/fr/culture/themes/armed-conflict-and-heritage/>



Official name: Convention on the Protection of the Underwater Cultural Heritage (2001)

Relevant Articles: Art. 10(4), Art. 12(3) and Art. 14

URL:

<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/>

The Protection of Cultural Property in EU Law: *Status Quo* and Future Perspectives

Robert Peters

The law of the European Union (EU) contains several provisions on cultural property. Most provisions, however, come under the heading of the movement of and the trade in 'cultural goods'. Thus, the location of these provisions within the context of the Single European Market (SEM) and the free movement of goods provide a strong indication of the economic orientation of the approach taken by EU law with regard to cultural property. In addition, the competence for cultural matters remains in the hands of the 28 Member States: Article 167 of the Treaty on the Functioning of the European Union (TFEU) reads: 'The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'. Consequently, the EU has only a complementary competence in cultural matters in relation to the Member States.

This article provides an overview of the existing legal instruments adopted by the EU with regard to 'cultural goods'. It will explain the rationale in adopting these instruments in conjunction with the creation of the SEM, and will analyze the shortcomings of the existing instruments. Moreover, it will explore future perspectives, particularly on what is needed at EU level in order to protect cultural property and to prevent its trafficking.

Single European Market, export, and national cultural property laws

With the creation of the SEM on 1 January 1993, customs controls were abolished in order to establish the free movement of goods without import and export restrictions between Member States. Articles 34 and 35 TFEU set out the two general rules prohibiting quantitative restrictions on both imports and exports, as well as all measures having equivalent effect². However, Article 36 TFEU – the only Article in the Treaty which specifically deals with the movement of cultural property – establishes a fundamental exception to the general principles of the free movement of goods, by allowing Member States to justify certain restrictions³. Article 36 TFEU reads:

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; *the protection of national treasures possessing artistic, historic or archaeological value* [italics mine].

The basis for this exception rests on the necessity to reconcile the principle of the free movement of goods with the protection of national cultural patrimony. Similarly to countries around the world, all EU Member States have enacted laws protecting national cultural patrimony by prohibiting the export of certain types or categories of cultural property – regardless of public or private ownership. Whereas Article 36 TFEU in the English and French versions refer to 'national treasures' (French: *trésors nationaux*), the Italian and Spanish versions of Article 36 TFEU refer to *patrimonio nazionale* (Spanish: *patrimonio nacional*). The latter suggest a much broader understanding of 'national

heritage' or 'national patrimony' than the term 'national treasures' – which indicates that the provisions might be limited to few precious items. These terminological differences imply that the legal concept underlying the conceptualization of cultural property may vary as well. Similarly to UN Treaty law, the EU Treaty does not grant supremacy to one language over the other. Rather, the texts of all official languages are authentic. It is important to note that while the UN has six official languages, the EU has 24⁴.

The present article focuses on EU provisions on cultural property, rather than a discussion of the effects of language discrepancy on principles of EU treaty interpretation. That said, the German text of the EU Treaty may help to reconcile this disparate understanding of the concept, at least for the purpose of this article. The German text speaks of *nationales Kulturgut*, which simply refers to 'national cultural goods' (or 'national cultural property') and thus offers an in-between concept. In addition, the UNESCO 1970 Convention⁵ – the major international convention on the protection of movable cultural property against illicit import, export and transfer of ownership – with currently 129 States Parties – uses the concept of 'cultural property' in a similar acception within its statutory provisions⁶. This analysis aims to demonstrate that the concept of 'national treasures' in the English and French versions of Article 36 TFEU is too narrow. Several Member States, with a very rich archeological past, such as Italy and Greece, have a relatively high level of legal protection for national cultural property. Others, including many Member States in Northern Europe, offer less protection and provide a narrower definition of the types of artwork considered to be national cultural property. As a result, these Member States also restrict exportation to a lesser degree.

Bearing in mind that the competence for cultural matters lies with the EU Member States, this analysis concludes that the definition of what 'national cultural property' encompasses under Article 36 TFEU also falls entirely within the competence of each Member State, and thus reflects its own conception of what should be protected as 'national cultural property'. The same applies to the UNESCO 1970 Convention, which states that 'for the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science' (Article 1) the loss of which would constitute 'the impoverishment of the cultural heritage' (Article 2) of that State. However, it is completely with the sovereignty of the State to designate what constitutes its national cultural property.

As a consequence, it is fundamental for States – EU Member States and States Parties to the 1970 UNESCO Convention alike – to control the import and export of cultural property. This is usually accomplished through border and customs controls. In times of war, political unrest or a failed State, the weakening or absence of these controls is frequently correlated with enormous increases in the trafficking in cultural property. By deliberately relinquishing customs control among Member States, the creation of the SEM has a remarkably similar effect, because it undermines the States' right to carry out export controls at national borders. In order to compensate the abolition of national customs controls within the SEM (more specifically, the Schengen area), the EU adopted in 1992 Regulation 3911/92 on the export of cultural goods⁷. This regulation is intended to ensure that the export of national cultural property outside the SEM became subject to uniform export controls at the EU's external borders.

While the 1992 EU Regulation was subsequently codified by Regulation 116/2009, the conversion did not make major modifications to its contents⁸. However, since a regulation is a legal act of the EU having general application and being binding in

its entirety, it is directly applicable in all Member States⁹. Therefore, it is immediately enforceable as law in all Member States without the need to be transposed into national law (whereas EU directives have to be transposed into national law), which serves to strengthen the uniformity of these provisions. On the basis of this EU export regulation, the export of national cultural property outside the EU's customs territory is subject to the presentation of an EU export license. The competent authorities of the Member States (in most cases, the Ministry of Culture or subordinated offices) issue the EU export license. An export license is required if the cultural objects falls in one of the categories (type of object, age and financial threshold) listed in Annex I to the Regulation. The Annex provides 15 categories, including archaeological objects (over 100 years, financial value: 0 Euro), paintings (over 50 years, more than €150,000), photographs and films (over 50 years, more than €15,000) and books (over 100 years, more than €50,000). However, contemporary art, for example, is completely exempted from EU export licenses.

There is a notable difference in the quantity of export licenses issued by Member States under these provisions. Whereas each year Italy issues around 9,000 export licenses, and the United Kingdom and France issue around 8,000 and 3,000 licenses respectively, other Member States issue far fewer. For example, Germany issues approximately 1,200 licenses while Poland normally issues a mere 70 per year; in addition, several Member States (e.g. Bulgaria or Greece) have been known to issue a single export license in a year. The different number of issued export licenses stems from a variety of factors, but a primary driver of this variation lies in the different 'quantities' of cultural objects and strength of national art markets (the United Kingdom being one of the largest in the EU). Moreover, it must be assumed that a certain number of cultural objects leaves the SEM without an EU export license (and thus illegally) each year. As both an 'island' within the SEM and an important art market, Switzerland creates an ideal loophole in this respect. This problem is further exacerbated by the availability of ample high-tech storage places for works of art within the country, and by the existence of several Swiss free ports.

In most cases, the EU export license is issued by the respective Member States, and applications for a license can be refused. The basis for refusal is established through Article 2 of Regulation 116/2009: 'The export license may be refused [...], where the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the Member State concerned'. Thus, the Regulation enables national authorities to check whether a certain object is or should be classified as 'national cultural property' and, as a consequence, to prohibit the export. That said, only a small number of applications for an export license are refused. While Italy refuses around 80 per year, and Spain around 25 per year, the vast majority of Member States do not refuse more than one or two export licenses per year¹¹. In addition to the EU export license for the export outside the EU, most Member States have – in line with Article 36 TFEU – provisions that also require a national export license for transfer to another Member State within the Single European Market. These national export restrictions vary from Member State to Member State, some are quite similar to the Regulation. Others, however, go beyond the Regulation by creating their own categories as well as age and financial thresholds, resulting in much stricter export controls.

The application of Regulation 116/2009 is based on mutual trust and solidarity between Member States. It requires that each Member State controls the export of not only its own national cultural property, but also of the national cultural property of other Member States. This, however, causes several problems. Firstly, it is very difficult – if not impossible – for one Member State to verify with certainty, with the means provided,

and within reasonable time for the applicant of an EU export license, whether a certain painting, book or manuscript belongs to the national cultural property of one of the other EU Member States. Secondly, the 15 categories of the Annex of the Regulation are rather ambiguous. This has caused, in practice, difficulty in the correct application and interpretation of the categories, in particular with regard to coins and single paleontological items, which do not fit properly in the categories given. Thirdly, for comprehensible reasons of manageability in all Member States, the Regulation provides only a rough 'filter' for national cultural property on the basis of age and financial thresholds. Most States do not designate their cultural national property on the basis of monetary value. Thus, it is not surprising that the thresholds have been criticized of being too high, particularly by new EU Member States. The art market, on the other side, has repeatedly criticized the thresholds of being too low.

Single European Market (SEM) and the return of unlawfully removed cultural property between Member States

With the creation of the SEM and the abolition of national customs controls, the EU adopted an additional legal instrument in 1993. Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State complements the EU Export Regulation, in order to reconcile the fundamental principle of the free movement of goods with the protection of national cultural property set out in Article 36 TFEU¹². Unlike the UNESCO 1970 Convention, this Directive is not in itself an instrument against trafficking in cultural property. Rather, it primarily compensates for the abolition of the national customs controls among Member States by discouraging illegal export within the Single Market. It does so by creating the obligation to return unlawfully removed cultural property. Unlike EU regulations, EU directives are not directly applicable. Therefore, directives require national implementation by each Member State before they take effect. Whereas Regulation 116/2009 requires a uniform EU export standard (all Member States issue the same EU export license), the Directive sets minimal standards allowing Member States to adopt higher (but not lower) standards in their national laws transposing the directive. By using a directive rather than a regulation as the legal instrument, the EU aims at establishing harmonized minimal standards, while still allowing Member States the flexibility to set higher ones, if deemed appropriate by the respective national parliament.

Directive 93/7/EEC on the return of unlawfully removed cultural property provides for administrative cooperation, in order to facilitate the return of cultural property. Therefore, Member States have several obligations under the Directive, such as appointing one or more central authorities to assist and cooperate with the other Member States. The obligation to return, however, does not apply to the Member State, but rather to the private individual – namely, the 'possessor' (if not, then the 'holder') of the cultural object in question. Consequently, the requesting Member State must initiate legal proceedings before the competent court in another Member State against the possessor, if negotiations and out-of-court settlement fail. The requesting Member State must demonstrate that the cultural object belongs to its national cultural property and was unlawfully removed from its territory after 1 January 1993. If it fails to do so, the legislation does not provide a legal obligation for the object to be returned. Moreover, the scope of the 1993 Directive is restricted to cultural objects listed in the Annex to the Directive. This means that a certain cultural object, although protected by national law

in a Member State, cannot be recovered under the Directive, if it does not meet the age and financial thresholds of the Annex. Similarly to the EU Export Regulation, the scope of the Directive is limited by a 'filter'. It is therefore unsurprising that since 1993 only a small number of cultural objects were returned under the auspices of this directive, and that even a smaller number of judicial claims for return were made in national courts.

On the basis of regular reports on the application of the Directive and after a process of evaluation with the Member States, the European Commission proposed the revision of Directive 93/7/EEC. On 15 May 2014, the European Parliament and the Council adopted a recast of the Directive in order to overcome several of its shortcomings. In comparison with its predecessor, Directive 2014/60/EU contains four substantial modifications.¹³ First of all, it extends the scope of the legislation by revoking the Annex. With this change, all cultural objects classified or defined as national cultural property by Member States must be returned, and all restrictions by age or financial threshold are eliminated. This is consistent with Article 36 TFEU, insofar as it is entirely up to the Member States to designate their national cultural property. Secondly, the revised Directive extends the time limit for initiating return proceedings: instead of one year, Member States now have three years in order to substantiate their request for return. In practical terms, this means more time for investigation and more time to assert the claim against the possessor or, failing him, the holder of the cultural object in question. Thirdly, the administrative cooperation between the national authorities of the Member States must be conducted through the Internal Market Information System (IMI); this fosters the exchange of information and creates a record of this exchange, which makes it more traceable for all authorities involved.

Fourthly and more importantly, the new Directive shifts the burden of proof with regard to the receipt of compensation, in cases when the return of the requested object is ordered by the competent national court. Article 10 of Directive 2014/60/EU establishes a new level of due diligence:

In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorizations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information, which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances.

It is now the possessor of a requested cultural object – not the requesting Member State – who has to provide evidence that s/he exercised due diligence at the time of acquisition in order to receive compensation from the requesting Member State. Thus, Article 10 of the 2014 Directive can be viewed as a binding EU standard of due diligence for cultural property exchange and not only with regard to the purpose of compensation. Interestingly, Article 10 corresponds practically *verbatim* with the provisions on due diligence in Article 4, Paragraph 4 and Article 6, Paragraph 2 of the UNIDROIT 1995 Convention on Stolen or Illegally Exported Cultural Objects¹⁴. This is remarkable, since only half of the EU Member States have ratified the UNIDROIT Convention.

Only the application of the new Directive over the course of the next few years will conclusively demonstrate the extent to which the modifications of the recast 1993 Directive improve the mechanism for the return of unlawfully removed cultural objects

among Member States. In practice, however, it will continue to be difficult for the requesting Member State to prove that a certain object was unlawfully removed from its territory after 1 January 1993.

Sanctions on the import and export of and trade in cultural property from Iraq and Syria
In addition to the provisions concerning the protection of Member States' national cultural patrimony on the basis of Regulation 116/2009 and Directive 2014/60/EU, an important exception to the free movement of goods is made for Iraqi and Syrian cultural property on EU level. Article 3 of Regulation (EC) No. 1210/2003 of 7 July 2003 prohibits the import, export or trade in all Iraqi cultural property. This prohibition does not apply under two circumstances¹⁵. Firstly, if the possessor of the cultural object in question can prove that the object in question was exported from Iraq prior to 6 August 1990 or, secondly, that the object is officially being returned to Iraqi institutions in accordance with the objective of safe return as set out in Paragraph 7 of UN Security Council Resolution 1483 (2003). Similarly, the EU has adopted Regulation (EU) No. 1332/2013 of 13 December 2013 concerning restrictive measures in view of the situation in Syria¹⁶. Just as the EU Export Regulation 116/2009, both of these regulations are directly applicable. Thus, import and export of and trade in Iraqi and Syrian cultural objects are banned within the entire SEM.

What is lacking: EU import regulations for cultural property

As discussed above, the EU Export Regulation No. 116/2009 and Directive 2014/60/EU on return aim at protecting the national cultural property of EU Member States. This legislation was necessary in order to allow Member States to exercise their right – granted by Article 36 TFEU – to protect cultural national patrimony. However, a key element in the protection of cultural property is still lacking. With the exception of the import restrictions on Iraqi and Syrian cultural objects, the EU does not provide for general import regulations in order to control the import of unlawfully removed cultural property from outside the EU. This creates a loophole, whereby unlawfully removed cultural property from outside the EU (even from the States Parties to the 1970 UNESCO Convention) can enter the SEM without any import control. Once these objects are within EU borders, smugglers benefit from the free movement provisions of the SEM, particularly the absence of national customs controls among Member States. In other words, trafficking in cultural property is not suppressed, but rather encouraged by the current state of EU legislation. As a result of the SEM, Member States do not have the competence to adopt measures in this field. Since national measures cannot prevail within a single market, the answer to this problem is a matter for the EU.

With regard to current import restrictions, the small number of cultural objects from Iraq and Syria that have been seized in the EU demonstrates that there are several obstacles in the practical application of both Regulations. Most notably, these regulations can be circumvented if the importer of cultural property claims that the object originated from another State in that region, e.g. Jordan or Dubai. Accurate identification of the origin of cultural property is extremely difficult, costly and time consuming. Therefore, the restrictive measures in the case of Iraq and Syria seem to have little effect in practice, due to this problem of proof of origin. Hence, a general EU import regulation is needed, also because most EU Member States cannot meet their legal obligation 'to prohibit the

import of cultural property' as established in Article 7 of the UNESCO 1970 Convention. Currently, only four EU Member States have not ratified the UNESCO 1970 Convention: Austria, Ireland, Latvia and Malta. One solution to this problem would therefore be the ratification of the UNESCO 1970 Convention by the EU as a whole. The EU did join the UNESCO 2005 Convention on Cultural Diversity in 2006¹⁷. However, UNESCO 2005 Convention provides in Article 29 for accession by 'regional economic integration organization'. Similar provisions are absent from the 1970 UNESCO Convention and the UNIDROIT 1995 Convention, both of which only allow States to join the Convention.

Since EU ratification of the UNESCO 1970 Convention is not permitted – unless the Convention is amended by a protocol – the only option is to adopt a new EU regulation on import restrictions. A recent proposal led by Germany calls for the adoption of an EU import regulation in order to combat the trafficking in cultural property into the European market. Such an instrument would also improve the implementation of the UNESCO 1970 Convention in EU Member States already party to the Convention. An important first step was taken in the realization of this proposal through its inclusion in the Work Plan for Culture (2015-2018) as adopted by the Council on 25 November 2014. The Commission will prepare a study until 2016 on 'Illicit trafficking of cultural objects, including EU import rules for cultural objects illegally exported from third countries'¹⁸.

Conclusion and future perspectives

This article provides an overview of the existing EU law on cultural property. Although the existing legal instruments (Regulation 116/2009, a codification of Regulation 3911/92, and Directive 2014/60/EU, a recast of 93/7/EEC) were adopted in conjunction with the creation of the SEM in 1993, and thus derive from the necessity to reconcile the free movement of goods with the right of Member States to protect their national cultural patrimony, further legislation is needed on EU level. The destruction, looting and trafficking in cultural property – especially in Iraq and Syria, but also in other States and regions in political unrest – have demonstrated the need for the EU to move beyond protections that only apply to the national cultural property of EU Member States. Therefore, the adoption of Regulation 1210/2003 on Iraqi cultural property and of Regulation 1332/2013 on Syrian cultural property that ban the import, export and trade of these objects, as well as the introduction of provisions, which shift the burden of proof in both instruments, indicate that the EU is moving in the right direction in combating trafficking in cultural property.

It is, however, not only the crises in Syria and Iraq, but also the growing number of EU Member States ratifying the UNESCO 1970 Convention (Luxembourg in early 2015 and Austria in July 2015) that illustrate the need for further action on EU level. Without additional legislation, EU Member States are not in a position to meet their legal obligation under the Convention, since they ceded their competence on import controls to the EU through the creation of the SEM. Therefore, the EU must not only improve existing mechanisms – as it did through the recasting of the 1993 Directive in May 2014 – but also close loopholes, such as the lack of an import regulation on cultural property originating from outside the EU. The provision on due diligence in Article 10 of the new directive provides hope that EU legislation can increase the standards in dealing with cultural property in the SEM and maybe even beyond.

The path to fighting against the traffick in cultural property should not be difficult. In fact, a simple equation is sufficient: illegally exported cultural property from one State should be considered as illegally imported into another State. This simple equation should be the basis for future legislation, be it on national, EU or international level.

Notes and References

1. See ex Article 151 of the EC Treaty (TEC).
2. See ex Article 28 and 29 TEC.
3. See ex Article 30 TEC.
4. There are six official languages of the UN: Arabic, Chinese, English, French, Russian and Spanish. All 24 EU Member State languages are official languages.
5. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, adopted 14 November 1970, entering into force 24 April 1972), 823 UNTS 231.
6. As of September 2015, 129 States Parties (by acceptance, ratification, or notification of succession). See current status of States Parties. URL: < <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E> > [accessed 2 September 2015].
7. Council Regulation (EEC) No. 3911/92 of 9 December 1992 on the Export of Cultural Goods, OJ L 395/1, 31 December 1992.
8. Regulation (EC) No. 116/2009 of 12 December 2008 on the Export of Cultural Goods, OJ L 39, 10 February 2009.
9. The legal basis for the enactment of regulations is Article 288 TFEU (ex Article 249 TEC).
10. Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implantation of Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods (1 January 2011 - 31 December 2013) of 1 April 2015 (COM(2015) 144 final, Annex 1).
11. See Report (footnote 12), Annex 5.
12. Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, 15 March 1993 OJ L74/74, 27 March 1993.
13. Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of 15 May 2014, OJ L 159/1, 28 May 2014. Member States have 18 months to transpose the new provisions of the Directive into national law (until 19 December 2015).
14. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, adopted 24 June 1995, entering into force 1 July 1998, 34 ILM 1322.
15. Council Regulation (EC) No. 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96, OJ L 169 of 8 July 2003.
16. Council Regulation (EU) No. 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, OJ L 335/3 of 14 December 2013.
17. Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005.
18. Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council on a Work Plan for Culture 2015-2018,

p. 17. URL: < <http://data.consilium.europa.eu/doc/document/ST-16094-2014-INIT/en/pdf> > [accessed 2 September 2015].

**Do we need a Kimberley Process for the Illicit Antiquities Trade?
Some lessons to learn from a comparative review
of transnational criminal markets and their regulation**

Simon Mackenzie

Markets in illicit drugs, diamonds and wildlife have established and well-researched international systems of control. International systems of control are thought to be required where national regulation is insufficient. In relation to transnational criminal markets, this is a function of the international nature of supply-demand forces (Efrat 2009). This means that some level of jurisdictional coordination is needed to exert coherent control upon the trading system without either letting unrestrained demand continue to drive a market in which supply has been legally restricted (the classic alcohol 'Prohibition era' problem), or alternatively trying to manage consumer demand for illicit products which are relatively freely available due to a failure to adequately control their supply (which is one of the issues faced in international drug market control, as well as international trades in counterfeit and pirated goods).

On the national level, both of these problems of supply-only or demand-only controls can be aggravated by law enforcement resource constraints, political economy in the form of the general global movement in the direction of trade liberalization and the more specific differentiation in costs and benefits of illicit trade across producer, transit and consumer countries. In short, regulating transnational criminal markets solely on a national basis is very unlikely to be significantly effective. This explains the proliferation of international regulatory regimes which all, to a greater or lesser extent, attempt to bind countries together to fight these various forms of crime together. Some of these international regulatory regimes link import and export certification and require the licensing of dealers, for example the system of categorization for protected animal and plant species in the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the 2003 Kimberley Process Certification Scheme (KPCS) for diamonds. Some have tried innovative extra-judicial diversionary schemes, like income replacement initiatives for source producers of illicit commodities. Some exert what amounts to blanket prohibition of transactions involving the commodity.

In the following sections, we will engage in a necessarily restricted overview of some of the headline features of a number of transnational criminal markets in the context of both principle and practice, or to put it another way the 'why' and the 'how' of the variety of international regulatory regimes to be addressed.

Diamonds

Recently, academic writers have begun to call for closer comparison of the illicit trade in antiquities and diamonds. Sometimes this call has been implicit, such as in the use of the term 'blood antiquities' in academic op-ed pieces in the popular press (Vlasic and Davis 2012), drawing from the discourse of 'blood diamonds' or as they are also known, 'conflict diamonds'. Conflict, or blood, diamonds are 'rough diamonds used by rebel movements or their allies to finance armed conflicts aimed at undermining legitimate governments' (Murphy 2012).

In a few cases, the call for comparison between illicit diamonds and antiquities has

been explicit, for example where it has been said that we should explore the possibility of a Kimberley Process for antiquities (Hardy and Aghlani 2015), although none of the authors who make this call have yet engaged in 'a full exploration of the Kimberley Process' but have so far sought 'merely to raise awareness of the security concerns surrounding the illicit antiquities trade and to suggest a parallel to blood diamonds' (Vlasic and DeSousa 2012). Vlasic and DeSousa express a hope that future studies might 'explore the similarities and differences between antiquities and blood diamonds to determine whether a regulatory framework similar to the Kimberley Process could be effectively applied as regulation of the illicit antiquities trade' (Vlasic and DeSousa 2012: 179). Requiring proof of legitimacy before a particular object or batch of commodities is allowed to enter the legal trading channel would indeed be a sea change for the antiquities trade, which currently functions in the opposite way as it generally requires 'proof of guilt' to act upon illicit antiquities rather than 'proof of innocence' as an entry requirement to trade.

The Kimberley Process is an import-export chain-of-custody certification scheme which requires participating governments to certify the origin of rough diamonds with the aim of preventing conflict diamonds entering the global market. The certification process requires that rough diamonds must move through the international market with standardized certificates. These include information such as the identities of the exporter and importer, and the value of the shipment. Member States are required to ensure that no shipment of rough diamonds is imported from or exported to a non-Kimberley country. This means that once a critical mass of signatory countries is reached then if you want to trade diamonds around the world, you will have few potential trading partners unless your country subscribes to the scheme. Exporting countries must ensure that a valid certificate accompanies every exported shipment, and importing countries must require shipments to have a certificate, and confirm receipt by sending a confirmation to the relevant exporting authority. Where the participating State is a transit State for any shipment, the shipment must remain unopened and not tampered with (Murphy 2012).

The scheme covers more than 90% of the world's legal trade in rough diamonds. Its status is interesting: it was negotiated by government, industry and NGO representatives, and it is not a treaty or other legislative instrument. It is merely an agreed set of principles: its provisions are 'recommendations' (Wexler 2010). So technically, it has no force of law in itself, but the principles have been implemented into regional and domestic legislation by many States, including the US via the Clean Diamond Trade Act, 19 USC 3901 (2003), and the EU in the form of directive. Thus, in the tripartite set-up that has been arranged around the KP, governments implement provisions in their domestic legislation and industry and 'civil society' (i.e. NGOs) participate by way of official observer status. The KP had, as of November 2013, 54 participants representing 80 countries, with the EU as a single participant.

Several deficiencies have been noted in the Kimberley Process (Gooch 2008; Feldman 2003). The NGOs observing the negotiations were highly critical of a process which failed to include monitoring, reporting of statistical data, and a secretariat independent of control by member nations (Feldman 2003). Without an independent arbiter, the voting system used to decide action against defaulting countries is not designed to promote enforcement. Small minorities of States can easily prevent action against a state party with which they have some sympathy, or strategic interest. This is because 'participants are to reach decisions by consensus' and 'when consensus proves impossible, the Chair is to conduct consultations' (Murphy 2012). The KP has come in for

quite widespread criticism for relying ‘too heavily on Participants policing themselves’ (Malamut 2005: 47) – a criticism which will be equally familiar to critics of a trade self-regulation approach to illicit antiquities (Gerstenblith 2007).

The strength of the KP lies in the honesty or incorruptibility of traders in the chain: so the system cannot

promise, with complete confidence, that no government inspector at the mining site was bribed to deny that guerilla forces controlled the mines, that no customs official was bribed to issue a certificate that the package of stones was conflict-free, and that no diamond merchant on 47th St. in Manhattan slipped a gem into the package bought cheap from someone who had smuggled it in under his tongue (Feldman 2003).

In many source countries, unlicensed ‘artisanal’ miners operate alongside licensed miners and dealers, and are allowed to do so by local government inspectors who may impose their own conditions on turning a blind eye. Licensed miners can purchase diamonds from unlicensed miners, so laundering them into the system at source (Malamut 2005; Kaplan 2003).

The flaws in the system are perceived to be so severe that Global Witness, the NGO that spearheaded the campaigning that led to the establishment of the KP in 2003, ‘left’ the KP in December 2011. It resigned its position at the helm of the Kimberley Process Civil Society Coalition, disappointed at the lack of enforcement action by governments and the absence of independent verification of the industry’s self-regulation approach to the provision of supply chain warranties. Charmain Gooch, co-founder of Global Witness and the leader of its KP related campaigning, has said the lack of serious control exercised by participants in the KP ‘has turned an international conflict prevention mechanism into a cynical corporate accreditation scheme’ (Gooch 2011). It ‘has done much that is useful but ultimately has failed to deliver[...]; it has proved beyond doubt that voluntary schemes are not going to cut it[...].’ (Gooch 2011); ‘it has become an accomplice to diamond laundering – whereby dirty diamonds are mixed in with clean gems’ (Global Witness 2011). The NGO has, along with others, expressed dismay at the KP’s failure adequately to sanction Zimbabwe in respect of widespread human rights abuses at mines in the Marange region (Human Rights Watch 2009). Being a case of violence, corruption and abuse by the police and the military of the Mugabe regime, the problem the KP has with state abuses was highlighted: these are not ‘conflict diamonds’ fuelling a rebel war, although they may be brought within the definition due to the obvious problems with supply chain integrity. Generally, however, human rights abuses at the hands of government forces are not relevant concerns for the KP with its emphasis on conflict diamonds.

Similar to the antiquities trade, diamond dealers have never been especially eager to reveal the source of their stock’ since ‘the traditions of the industry include secrecy and mystery’ (Feldman 2003). Diamond dealers use bourses in major diamond trading cities as venues in which to perform their middleman role in the industry, and those bourses are capable of expelling dealers who are considered untrustworthy, effectively barring them from further participation in the world trade. Antiquities dealers have associations too, but these do not exercise the same level of control over trading possibilities: many dealers are not association members, and expulsion from an association does not carry the same ‘excommunication’ meaning as where ‘it ends one’s ability to operate as a significant player in the diamond industry’ (Feldman 2003). The penalties of the industry self-regulatory approach in the KP do not therefore look like they would transfer across

to the antiquities market with nearly the same level of potential force; and as we see below there are reasons to suspect that even in the diamond trade this type of self-regulation penalty is not an effective control in practice.

We can scrutinize a little more closely the precise commitments made in the self-regulation aspect of the chain of supply regulated by the KP. Industry organizations, as part of the KP, commit to enforcing a code of conduct that includes:

- affirming on all invoices that the diamonds sold comply with the KP,
- not buying from firms without invoices,
- not buying from suspect or unknown sources of supply and/or that originate diamonds in countries that have not implemented the KP,
- not buying from any sources that have been adjudicated to violate government restrictions on conflict diamonds,
- not buying from regions subject to a government advisory unless they are in compliance with the KP requirements,
- not knowingly buying or selling or assisting others to buy or sell conflict diamonds,
- assuring that all company employees that buy or sell diamonds within the diamond trade are well-informed regarding trade resolutions and government regulations restricting the trade in conflict diamonds (Wexler 2010).

In the diamond trade, just as industry interests were able to exert a shaping influence on other aspects of the formulation of regulation in the supply chain, so they were able to influence the system of source-end control in the KP. There is therefore an Annex VI to the KP which binds industry (not governments, which is the orientation of the rest of the KP) to operate a system of intra-national warranties that do not set out to verify the provenance of each diamond but rather warrant that all diamonds originate from a clean source and have been traded consistent with the principles of the KP.

Unfortunately, 'industry implementation of this aspect of the institution has been uneven... [and] compliance with the warranty system leaves much room for improvement. While the industry committed to keeping records of KP invoices, no standards detail how the records should be kept and other elements that should be examined. So even if governments wanted to audit those records, it is not clear what they would review' (Wexler 2010). Penalties such as expulsion (with publicity) are meant to be developed, but 'no diamond trade bodies have provided any information to the public or to civil society about any members who have been expelled; nor have they shown what measures are being taken to ensure that self-regulation is being adhered to' (Global Witness 2004).

Unlike in the antiquities trade, source countries for diamonds want to be able to export diamonds. They are not 'diamond retentionist' in the same way authors like Merryman have criticized the antiquities source countries for wanting to keep all their cultural heritage within their borders (Merryman 1988). Diamond producing countries want to maintain a productive level of export trade, and therefore have an interest in agreeing to processes like Kimberley which allow for less strict export restrictions than the prospect of an outright ban on trade which might be the extreme end point of an educated public and an unregulated conflict-infused trade. In that respect, the CITES convention on wildlife trade may be a better fit with the problem of antiquities, since like the illicit antiquities problem, CITES is designed to keep the most endangered animals and plants in their source countries. Given that there is no legitimate supply of antiquities out of the ground, and that the rationale for the KP is as a process designed

to deal with certifying as secure an international chain of supply all the way from origin, any hypothetical 'antiquities Kimberley Process' would need to be certifying a history other than 'original production.' The first phase of the KP is secure container export where source is warranted on a certificate. After that, in the market, mixing takes place through the transit to the polishing stage (involving considerations like quality) so after the first phase all that can be warranted is that all the diamonds come from secure sources, but not the actual source of each diamond. High end cultural objects are not really subject to this 'batch mixing' approach, so in theory it should be easier to retain the emphasis on true origin throughout, but on the level of principle we can see that calls for a 'Kimberley Process for the antiquities trade' imply support for the creation of a legal channel of original supply of fresh cultural objects, presumably sanctioned by source countries which oversee and authorize their discovery, excavation, and export. There is no evidence that source countries are keen to create that kind of authorized source of supply.

The KP has a peer-review mechanism, where member States can send delegations to inspect the procedures in other countries. There has been some controversy over the effectiveness of this mechanism, however, since Venezuela refused to allow such a review visit, subsequently withdrawing from the KP for two years during 2008-2009. Again, aside from the weakness of these kinds of informal control, the main difference between the diamond case and the antiquities case is in the KP's interest in securing a legitimate flow of diamonds. In that global market context, review visits to source countries at the start of the supply chain make sense; but for the antiquities market where there is no significant legal supply from source countries, it is not clear what there would be to inspect, and what the incentive would be for source countries to participate. The diamonds case effectively amounts to a procedure that encapsulates the message: 'if you the source country (and the industry operating within the source country) want to sell your diamonds onto the international market, you must evidence compliance with these protocols.' In the antiquities case, the current source country reply would most likely be 'but we don't want to sell our cultural heritage onto the international market.'

One lesson that does seem valuable to learn from a review of the KP in the diamond trade is the power of public (and consumer) opinion. There was a real pressure on the diamond industry to agree to some new certification system, given the increasing risk of serious public backlash against conflict diamonds. Indeed the pressure was so great that the context of discussion about the prospect of what was to become the KP has been described as 'comply or die' for the industry. The involvement of influential NGOs like Global Witness seems to have been important not only in raising that level of public awareness, but also in galvanizing through political networks the social and political capital necessary to turn campaigning into a large scale agreement.

Again, however, we must be attentive to the structural differences between the diamond trade and the antiquities trade. The consumers of diamonds and antiquities are somewhat different demographics. Diamond consumption is rather more democratized: 'ordinary people buy them' (Hardy and Aghlani 2015). Antiquities markets are more rarefied, specialist, and professionalized or institutionalized (for example where museums are among the major end purchasers), so one might expect less capacity for consumer power to be exercised in the antiquities trade based on public awareness campaigns akin to those used to spur popular consumer resistance to conflict diamonds.

Wildlife

CITES has 173 Parties and protects more than 30,000 species of plants and animals. As with many other international treaties, the operative effect comes through countries passing national legislation to implement the Convention's recommendations. The incentive for countries to comply with CITES comes in the ability of other member countries to impose sanctions on the legal/regulated wildlife trade coming out of the defaulting country. Therefore, if you as a CITES member country want to remain an active exporter of protected wildlife, respecting the provisions and restrictions of the Convention is a sensible precaution to avoid a widespread ban on trade.

We shall focus here on two types of wildlife trade within CITES from which particularly topical or relevant lessons might be drawn. The first is the trade in ivory, which has been the subject of a quite well known general trade ban, and might help us to think about the likely consequences of a prohibition approach to the trade in antiquities, as well as permit systems among other issues. The second type of trade to mention is in illegal timber, where we can find an interesting approach to the concept and practice of due diligence; also clearly a matter of key contemporary relevance to the debate about regulating illicit trade in cultural objects.

Ivory: bans, technological innovations, and education campaigns

A worldwide ban on ivory sales was initiated in 1989, when the African elephant was moved from Appendix II to Appendix I of CITES. Discussions over one-off ivory stockpile sales started in 1996. Japan, China and some African countries have since re-opened 'limited' ivory trade. After the ban was fully implemented in 1990, poaching of elephants dropped and ivory prices dropped substantially, but the poaching figures are now increasing again. The International Fund for Animal Welfare (IFAW) attributes this growth to the legal market which 'provides poachers with a convenient smokescreen to sell their illegal stocks.' IFAW continues therefore to call for a total permanent worldwide ban on all ivory sales.

We can identify two completely opposing views on the etiology of transnational illicit commodity transactions. One view is that regulation, especially in the form of an outright ban, creates black markets: by restricting legitimate routes of supply, the market is 'forced underground'. The opposite view is seen in the ivory example above: that the absence of an outright ban allows the black market to exist, since laundering through a legitimate trade makes it difficult to tell for sure whether any given item is illicit. For regulatory thinkers, who would aspire to create a workable and effective system of control over the international trade in illicit commodities, this dialectic of opposing views on the mechanism of 'the ban' creates a 'damned if you do, damned if you don't' conundrum.

A significant problem that has been identified with the CITES ban on ivory sales is the issue of unregulated national markets. CITES is only designed to control movement across borders, so national markets in poached and undocumented animals remain. Combine this with weak border controls, e.g. between neighbouring countries in Africa, and there can be some pooling of poached animals occurring in these unregulated national trading zones. A recent study has shown that the worldwide ban on ivory trade has benefitted most countries' elephant stocks; but not all (Lemieux and Clarke 2009). Between 1989 and 2007, i.e. after the ban, 18 African countries showed increasing elephant populations, while decreases were observed in 17. In some of those 17 countries the ban was still achieving a positive effect in slowing the rate at which they were losing elephants,

and five countries in Central Africa accounted for the majority of the losses. These losses have been attributed to the continuation of unregulated ivory markets within and near those five countries. Significant correlates of elephant losses post-ban were found to be:

- presence of an unregulated domestic market,
- bordering three or more unregulated markets,
- civil war involvement,
- significant corruption.

It is not very clear why the international CITES ban would not dampen demand in unregulated domestic African markets, given the implications of a worldwide trade ban on ivory for the export potential from those markets.

Permit systems seem to be widely abused in the wildlife trade. Many countries issue permits or licences to hunt or trap animals, usually restricting both the number of permit holders in-country and the number of animals that may be taken per permit. There are many ways to use the permits to launder or legitimize the hunting of more animals than the permit would allow, depending on the enthusiasm and regularity with which government inspectors check up on what the hunters are actually doing (South and Wyatt 2011). This type of permit-related laundering in the illicit wildlife market is similar to that observed by Kersel in the illicit antiquities market in her case study of dealers in Israel (Kersel 2006).

More so than many other international illicit markets, and certainly much more so than in the case of illicit cultural property, new technologies are playing a role at the forefront of the fight against wildlife traffic, especially at the poaching stages. A recent IFAW report describes some of the technological and infrastructural tools which are being trialled (IFAW 2013). The Kenya Wildlife Service is installing an alarm system connected to fences around wildlife reserves that sends rangers a text message when poachers are detected. One conservation range in Kenya is protected using a 'military approach that includes an electric fence surrounding the 62,000 acres of savannah and a US\$ 1million-a-year security outfit of armed rangers, night trackers, dog handlers and a helicopter' (IFAW 2013: 24). A US firm has launched a drone fitted with surveillance cameras to monitor unwanted movement on the Ol Pejeta Conservancy in Kenya where the last northern white rhinos live, and Tanzania also uses anti-poaching drones. Most of this equipment is supplied by developed countries, sometimes via NGOs, and ongoing technical and financial support is required by the source countries in order to develop long term solutions. It is an interesting exercise, although one for another longer piece of work, to consider whether and to what extent these kinds of technological innovations, and inward investment mechanisms to inject crime prevention resources into developing countries, might be replicated and repurposed towards cultural heritage protection.

Like policy in the international diamond trade, consumer and public awareness raising has been a significant part of anti-wildlife trafficking policy. Some of this is quite sophisticated in design and evaluation. IFAW designs and conducts what it refers to as 'behaviour change communication campaigns in key consumer countries'. These are conducted through media partners and promise significant effects in raising consumer awareness; and notably they are sometimes evaluated to measure whether the desired 'behaviour change' has been achieved in the population exposed to the campaign.

Incorporated within a 'messaging' or 'communicative' approach to the somewhat diffuse prospect of molding public sensibilities which are the object of much wildlife

protection campaigning in this field, in the ivory trade we can see a more specific general deterrence approach in acts like the symbolic destruction of confiscated stockpiles of ivory. Clearly such symbolic destruction would be unthinkable for confiscated antiquities, but it might not be too much of a stretch to see the highly public ceremonies organized around repatriation of significant cultural objects as incorporating some of the same communicative elements. There is, after all, surely some level of general deterrent intent, if not yet measured effect, in the publicized return of expensive cultural objects to their source countries, especially if the buyer has lost money, or face, in the process.

Timber: risk assessment in due diligence

Regulation (EU) no. 995/2010 entered into force on 3 March 2013 and places obligations on timber traders operating in the EU. EU traders who place timber products on the EU market must exercise 'due diligence'. Interestingly, due diligence as it applies to the timber trade has come to be defined in a subtly different way to its use in the antiquities trade. For the purposes of the EU regulation, due diligence is explicitly a 'risk management exercise, so as to minimize the risk of placing illegally harvested timber [...] on the EU market' (European Commission 2015). The 'three key elements of the due diligence system' are:

- *Information.* The operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier and information on compliance with national legislation.
- *Risk assessment.* The operator should assess the risk of illegal timber in his supply chain, based on the information identified above and taking into account criteria set out in the regulation.
- *Risk mitigation.* When the assessment shows that there is a risk of illegal timber in the supply chain that risk can be mitigated by requiring additional information and verification from the supplier (European Commission 2015).

The emphasis here on risk assessment, and then if a risk is assessed to be present the requirement on traders to take further measures to mitigate the risk, is rather different from the approach to due diligence in the antiquities trade, which has too often taken the form of an 'innocent until proven guilty' approach to object provenance. The precautionary principle at work in the timber regulation's approach to due diligence has not been developed as an explicit part of the antiquities approach. The result is that in effect the operational due diligence question for antiquities dealers remains 'is there proof this has been looted' rather than 'is there a risk this has been looted'.

In order to maintain the integrity of the EU 'due diligence plus provenance system' in the timber trade, there are two layers of organizational auditors: 'competent authorities' and 'monitoring organizations'. Competent authorities are the relevant government agencies in the EU countries. Monitoring organizations are the trade bodies in source, transit and market countries who certify the timber as not from illegal logging. Competent authorities are instructed regularly to check the legitimacy and reliability of the certifications by the monitoring authorities, by way of spot checks and field audits, examination of documents of both the monitoring agency and the operators they are monitoring, and interviews with management and staff (Commission Implementing Regulation (EU) no. 607/2012).

Conclusion

Do we need a Kimberley Process for the antiquities market? Such are the attractions of multi-stakeholder collaborative initiatives, including self-regulatory elements, that in light of recent events in Syria and Iraq the call for such a parallel process has been framed even more precisely:

Those involved in the antiquities trade itself are likely the best placed to ensure that blood antiquities never enter the marketplace in the first place. A global stakeholder engagement group should be formed, perhaps in Davos, Switzerland, to ensure that all responsible parties in the antiquities market ‘value chain’ – governments, auction houses, museums, dealers, insurers, freeports and collectors – agree to a common sourcing and sales standard, to guarantee that any antiquities from active and recent conflict zones have been properly sourced before they can be sold, transferred, insured, stored or displayed.

To carry this out, the world can learn from past examples of combating illicit markets, including the successful Kimberley Process, which was established to clamp down on blood diamonds. Working together, we can once again save lives while helping to preserve our common heritage (Vlasic 2014).

A review of the critical evidence base on the KP casts something of a shadow alongside general claims to its effectiveness, however. Even if it were wholly effective, one would have to confront and overcome difficult questions of policy transfer to make the case for its applicability to the antiquities trade. And if it has not even been without problems as a mechanism for controlling the problem of the sale of conflict diamonds then it might be better to look for alternative solutions. Much of the apparent undoing of the KP in regulating the diamond trade has been for reasons which bear parallels to the situation pertaining in the antiquities trade, so we should expect similar problems in adopting or adapting the process. The KP suffers from a problematically low level of governmental interest and commitment to the issue, vested industry interests, a history of secrecy and lack of public scrutiny or accountability pervading the culture of the trade, and at source, corruption, poorly functioning bureaucracy (including law enforcement), and various degrees of social disorganization, sometimes related to conflict. All these issues will sound very familiar to observers of the international antiquities trade. Just as self-regulation has proven to be ‘an accomplice to laundering’ in the international diamond trade, it is hard to see any reason to doubt that the situation would be similar in the international antiquities trade. Therefore, a Davos-based global stakeholder group looks uncomfortably like asking the cat to guard the cream.

A more productive way forward might be to continue to build on current conversations about galvanizing consumer and public awareness, and in doing so to draw on our comparative method to learn from the governance of other transnational criminal markets. Some strategies effectively amount to making the prospective consumer feel bad about where the commodity has come from. This has been quite widely used in markets for illicit wildlife, counterfeit and pirated consumer goods, and even for drugs. Although it is regularly mooted as an intervention strategy in the antiquities trade, it has never really been tried, at least to the extent it has been used in some of these other markets. There are more, and more active, NGOs in the anti-wildlife-trafficking field than there are in the anti-antiquities-trafficking field, and these have managed to secure the involvement of high profile celebrities such as Harrison Ford in their advertising

campaigns.

In respect of counterfeit and pirated consumer goods, the recent trend has involved raising awareness of organized crime in the production and transit phases, and suggesting to consumers they are funding these if they buy. For drugs, one innovative policy has been to advertise the local community level harms in producer countries which are caused by, for example, the cocaine trade, and in this way to try to leverage a sense of guilt in educated consumers in market countries not about their breaking possession or consumption laws, but about their purchases being unethical in terms of global justice.

As well as raising consumer awareness, where that is relevant to the functioning of a given market, civil society organizations have also been notably effective in galvanizing public support for regulatory efforts in relation to some trades. Efrat points out that the International Campaign to Ban Landmines (ICBL) was initiated by a group of six NGOs but had grown by 2009 into a network of more than 1400 groups in over ninety countries; and the International Action Network on Small Arms (IANSA) consisted of 800 civil society organizations in over 100 countries (Efrat 2009: 1498). These very large networks and the impact on public sentiment they represent make the network of NGO actors lobbying for regulation of illicit antiquities look like a very small group indeed.

In the development of regulation of conflict diamonds, NGOs have been noted as playing a significant part, campaigning to develop public pressure on governments and industry to develop and raise international standards, and promoting the idea of the social acceptability and indeed duty of consumers in asking sellers about the sources and origins of the diamonds they were being offered for sale (Grant and Taylor 2004). We have seen little such public pressure developing in the antiquities trade to push governments and traders into raising standards, and despite sustained calls from observers and experts to encourage buyers to ask for clear details of provenance, that process of information transfer still suffers gravely at the hands of the historical preference of the antiquities trade for privacy and confidentiality.

Acknowledgement

This research has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013) / ERC Grant agreement no. 283873 GTICO.

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Military Protection of Cultural Property

Laurie W. Rush

In recent years, the world has been experiencing deliberate destruction of cultural property at a scale unrivalled since the Second World War. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was designed in response to the atrocities committed at that time: 126 countries are party to the Treaty. Given the obligations of the Convention and current circumstances, it is important to consider the role that the military can and will play in the future preservation of the world's heritage.

The military protection of cultural property is accomplished both in the context of domestic cultural resources management and in preparation for foreign missions. It includes the development and use of comprehensive geospatial data layers for cultural property in operations planning, combined with the implementation of cultural property awareness and professional military education programs. Skills range from limited expertise to the ability to deploy an archaeological protection force. In addition, the military assets of international organizations and alliances are currently working together to create institutionalized cultural property protection programs among the Defence ministries of member countries.

Armed forces tend to be organizations steeped in history and tradition. As a result, military leaders and personnel manifest a far more genuine interest and appreciation of heritage than many would expect. Over the decades and centuries, military approach to cultural property has shifted from cases where military personnel were paid with property looted from the vanquished to pro-active approaches for protection and preservation of cultural heritage both at domestic military facilities and during the course of deployed military operations. The Ministries of Defence in the US and Europe invest in archaeological surveys, hire historic preservation specialists, work with subject matter experts to develop lists of properties that should be spared during the course of aerial bombardment, and are beginning to educate military personnel concerning the cultural features that they may encounter in unfamiliar host nation landscapes.

Historical context

The military obligation to protect the cultural property of others is a recent phenomenon in the history of human conflict. Let us note in passing that some religious texts mention the protection of sacred places (Bugnion 2004). Yet, the recourse to looting and destruction is a bygone strategy: the ancient Romans used theft persistently as a method for crippling the populations of the territories they conquered and payment for their legions, just as the plundering by the armies of Napoleon is legendary.

Military histories of ancient and historic conflict make it very clear that the complete destruction of conquered territory and cities was the likely norm rather than the exception. The distinction between civilian and military targets finds its premises in Enlightenment philosophy – an unprecedented debate that, in time, would lead to the implementation of international legislations. As Bugnion points out, Article 17 of the Brussels Declaration of 27 August 1874 already stipulated that:

if a defended town, fortress or village were to be bombarded, all necessary steps must be taken to spare, as far as possible, buildings dedicated to worship, art and science (Bugnion 2004).

In 1907, the Hague Convention Respecting the Laws and Customs of War on Land established the provision for the immunity of cultural objects (Bugnion 2004). These concepts established cultural property protection as customary international laws of war. At the outset of World War II, in response to concerns raised by the museum and arts communities, President Roosevelt and Chief Justice Roberts recognized that the Allies needed to prepare, to minimize the inevitable damage to the treasures of Europe. In response, Departments of Defence in the US and UK established corps of Monuments, Fine Arts, and Archives Officers, often referred to as 'The Monuments Men' albeit women served in their ranks. Not only did these officers distinguish themselves by recovering priceless works of art that had been stolen by the Third Reich, but they also demonstrated the additional strategic value of their expertise by locating and recovering the entire German treasury and other critical assets (Nicholas 1995; Edsel 2013).

After the destruction of property and the theft of art from across Europe during both world wars, the international community agreed that there needed to be additional protection for cultural property during future conflict. The result was the development of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its subsequent two protocols. There are currently 115 States Parties to the Convention. States Parties to the Convention agree to train their forces to identify and respect cultural property, to establish specialists within their forces who have appropriate knowledge and expertise, and to develop lists and measures for the protection of their own cultural property at home.

The Convention proposed a blue shield symbol to be used in a manner analogous to the Red Cross and Red Crescent to identify properties to be protected, and cultural property professionals as non-combatants in conflict zones. The Convention also encourages the creation of national committees of the Blue Shield whose role is to support military efforts to implement the Convention. Implementation ranges from States Parties who, tragically, used military force to deliberately destroy cultural property, to nations such as Austria – a world leader in educating military forces on this particular issue. Currently, international organizations (i.e. the UN and the International Criminal Court) and their Member States generally agree that the deliberate destruction of cultural property during the course of conflict is a war crime.

Domestic protection of cultural property by the military

In the US and the UK, preservation legislation enacted in the 1960s and 1970s mandates the protection of archaeological sites and historic structures on federally held lands. As a result, the Departments of Defence in both of these nations have become stewards of cultural heritage located on defence properties. In essence, historic preservation on military land is managed to the same standards as heritage located within national parks or any other form of federal property.

Legal requirements include the responsibility to identify and protect archaeological sites deemed important enough to be considered for the National Register of Historic Places in the US or listed with English Heritage in the UK. The care of historic structures must also meet national standards and criteria. The US and the UK have therefore established robust historic preservation programs with highly trained civilian

archaeologists, preservation architects, and other professionals on staff. The challenge these two countries have faced since 2001 has been to apply the rigorous heritage protection standards followed at home to operations abroad.

Ministries of Defence and military organizations tend to take their own history very seriously and often establish departments of military history and military museums. One example is the preservation of Yugoslavian Leader Tito's nuclear bunker in Konjic, Bosnia and Herzegovina. The nation's military preserved the bunker and all of its furnishings completely intact and in operational order and turned it over to the Ministry of Culture in 2015.

The protection of cultural property during military operations

The looting of the Iraq National Museum in Baghdad in 2003 brought the implementation of the 1954 Hague Convention in the global media spotlight. In addition, when the international press reported damage by coalition forces assigned to protect the ancient site of Babylon, it became clear that military personnel assigned to protect archaeological sites lacked the necessary awareness, materials, and skills to minimize the impacts of their presence on the ruins for which they were responsible.

Since then, the issues and challenges related to cultural property protection during the course of military operations have continued to increase in frequency and significance. Examples include the recovery of art and frescoes after the earthquake in Haiti, the successful implementation by NATO of a list for World Heritage sites in Libya, the destruction of Sufi tombs and evacuation of ancient manuscripts from Timbuktu, Mali, the measured response for recovery of collapsed sacred sites in Nepal, the deliberate destruction of archaeological sites and museum artifacts, and the massive scale looting by ISIS. These events evidence that primary stakes in modern conflict and disaster response increasingly revolve around heritage. Recent history and regional circumstances have resulted in tremendous variation in awareness, capability, capacity, and practices for cultural property protection by the responding military organizations.

One way to develop a more nuanced understanding of cultural property protection during the course of modern military operations is to examine a range of variation in approach to the issue illustrated here by a series of Western military organizations.

Austria

The Austrian military demonstrates, to this day, tremendous commitment to the protection of cultural property, and is a world leader in this arena. In a presentation to an international conference held at the Hague in 2008, Karl Habsburg, Board member of Blue Shield International, mentioned that a contributing factor to the current Austrian emphasis on military protection of cultural property was the pro-active labeling of historic structures using the 1954 'Blue Shield' Convention during the Cold War. Many Austrians credit the signs as a factor in discouraging aggressive maneuvers from the East crossing Austrian territory.

The Austrians have also had positive experiences with prioritizing recovery during disaster response. During a World Archaeological Congress held in Vienna in 2008, BG Furstenhofer – who is now retired – described his experience of participating in an Austrian mission to assist the Italians after the 1980 Calabritto earthquake. BG Furstenhofer's unit was working in a village where nearly every structure had been completely destroyed. Since all of the potential survivors had been rescued, the Austrians,

chose to focus on the area of the church where they successfully recovered sacred objects including nearly intact statues of three saints, hidden in the rubble. They returned these objects to the village priest, who was able to gather the traumatized members of the community together for the Holy Eucharist.

As the priest later described the ceremony, it became clear that this gesture was the first sign of hope that the survivors might also recover, not just as individuals but also as a community. As a young officer, BG Furstenhofer took this lesson home to Vienna and formed the Austrian Society for the Protection of Cultural Property. The membership of this organization is largely composed of military officers, and their influence over military education and planning for operations is clear. In addition, the Austrian military offers a specific Military Occupation Specialty (MOS) for individuals to serve as Cultural Property Officers, and one of these officers also serves as a faculty member at the Austrian Defence Academy.

The success and reputation of the Austrian Military Cultural Property protection program is well known within the cultural property protection community. UNESCO and other international organizations call upon the Austrians to offer cultural property protection training to representatives of other Ministries of Defence from all over the world. The courses include detailed discussions on the Austrian and international legal requirements governing behaviour of Austrian military personnel with respect to cultural property, with a particular focus on how to identify cultural property in cross cultural contexts, practical methods for protecting cultural property during military occupation – especially when the mission includes protection of historic structures, sacred places, and archaeological sites. In addition, the course provides practical methods to protect, secure, and, if necessary, evacuate cultural property collections as well as the strategic and tactical implications of cultural property protection for mission success.

The Austrians have also developed an actual military exercise that challenges the participants to minimize damage to the Theresian Military Academy located in the castle of Wiener Neustadt when it must be recovered from insurgent by friendly forces. The Austrian teaching methods include lectures, field trips, field exercises, and workshops.

The Netherlands and Germany

Like the Austrians, the Netherlands offers an MOS for cultural property protection by mobilizing reserve officers with special expertise. Netherlands cultural property officers responded to monasteries in Macedonia where frescoes had been vandalized and deployed with peace keeping forces to the conflict in Mali. In 2003, LTC Joris Kila, a reservist with the Netherlands, in cooperation with US personnel, delivered funds to Sheik Altubi and his family from the German Institute of Archaeology. The aim was to provide financial support for continued site protection for the ancient city of Warka or Uruk. This accomplishment prevented the looting of the site and contributed to stabilize the local area. LTC Kila also played an important role in introducing US personnel to Dr Zahi Hawass, Secretary General of the Supreme Council of Egyptian Antiquities, in order to organize on site archaeological training opportunities for US and coalition personnel at Saqqara, El Alamein as well as the Citadel of Cairo as part of the *Bright Star War Games* in Egypt, in 2009. This training event was the first onsite training for Western military personnel in the Middle East since Sir Leonard Woolley instructed British troops in Cyrenaica prior to the World War II Italian Campaign.

The Netherlands and Germany co-host the Centre of Excellence for Civil Military Cooperation (or CCEO CIMIC), now located just outside of the Hague. Traditionally,

in European military organizations, responsibility for Cultural Property protection has fallen to this division of the military known as CIMIC officers. CIMIC CCOE teaches a course module on the subject and is just about to publish a document for military personnel entitled 'CPP Makes Sense'.

Balkans

In 2010, UNESCO, in partnership with the Austrian Ministry of Defence, sponsored a training course on protection of heritage for representatives of nations from the former Yugoslavia. According to Jan Hladik, Chief of Cultural Heritage Protection for UNESCO, the course marked the first time that representatives of all of the nations agreed to meet in the same room to discuss any issue. Cultural property officers and professionals from Macedonia, Serbia, Croatia, Montenegro, and Bosnia and Herzegovina gathered in Vienna for a combination of lectures and field exercises to learn about establishing and managing national lists, protecting and evacuating libraries and archives, and training military personnel. As the workshop unfolded, the faculty witnessed the building up of relationships amidst participants as they found common ground and realized they shared the values associated with protecting heritage.

The Balkans have offered some of the most sobering examples of deliberate destruction of cultural property as a component of ethnic and genocidal conflict with the destruction of the bridge at Mostar, the shelling of the UNESCO World Heritage Site of Dubrovnic, the burning of the library at Sarajevo, the deliberate vandalism and destruction of churches, monasteries, and mosques. General Strugar was sentenced to seven additional years in military prison for his role in the shelling of Dubrovnic. By the same token, the Balkans now offer hope. Much of Dubrovnic has been reconstructed, as has the bridge at Mostar. The Army of Bosnia and Herzegovina currently contributes to protection of cultural property by demining cultural sites. The issue is so important in this part of the world that, when an entering soldier swears his/her oath, it includes a promise to never damage cultural property even if ordered to by a superior officer (LTC Hodzic 2010, personal communication). The participation of the former Yugoslavian States not only represents practical accomplishment in terms of training, but also illustrates the tremendous potential for heritage protection as common ground for conflict resolution.

United States

Historically, it may be argued that the United States military have been keen on protecting cultural property during military operations. However, by the 21st century, this became less of an imperative. The United States Army and Marine Corps both have cadres of Civil Affairs officers – most of whom serve in reserve units. One of the organizing principles is the idea that these individuals can bring their civilian expertise or 'functional specialty' forward as a form of mission support. For example, Major Corinne Wegener (now retired), Curator of Decorative Arts at the Minneapolis Museum of Fine Arts in her civilian life, responded to the catastrophic looting at the Museum in Baghdad as a Civil Affairs Officer. However, there are all too few officers with that type of expertise nowadays.

From time to time, a US Soldier, Marine or Airman with the right educational or professional background fortuitously use their expertise in challenging situations forward. Notable examples include Airman Darrell Pinckney, who served as a cultural resources manager in addition to his assigned duties as a First Sergeant for Warrior Base

Kirkuk – where Saddam Hussein had placed a military installation atop the tell where the ancient Assyrian capital was located. Captain Jesse Ballinger worked to protect Hatra, Iraq, where he served as a logistics officer with the 153rd Field Artillery Brigade, and Sergeant James Peterson, an art historian, identified and protected an ancient archaeological site that was located within Forward Operating Base Hammer, North East of Baghdad. As of the second decade of the 21st century, there may be only one currently serving Civil Affairs Officer with civilian cultural property expertise, Major Thomas Livoti, a Doctor in Archeology from the University of Montana.

However, alongside the mobilization of Civil Affairs, the US Department of Defence draws on a wide range of programs and expertise in order to begin to implement the commitments made when the US ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. A critical defence asset consisted of the contribution of expertise offered by the cultural property professionals who serve as domestic preservation architects, archaeologists, and cultural resource managers. A group of these professionals partnered with civilian colleagues to form an *ad hoc* organization, the Combatant Command Cultural Heritage Action Group (CCHAG).

The purpose of this organization is to provide reference and educational materials designed to enhance military capability for identifying and responding appropriately to the presence of cultural property in the host nation environment. Accomplishments of the CCHAG include: the design, printing and distribution of archaeology awareness playing cards for Iraq, Afghanistan, and Egypt as well as the creation of a wide range of PowerPoint cultural property training presentations. Some are country-specific while others focus on a variety of military functions like reconnaissance and engineering. The CCHAG has also established a foundation for Reserve Officer Training Corps (ROTC) curriculum and encourages research and publications on the dynamics of cultural property protection during the course of ongoing deployment, conflict, and disaster response.

The 10th Mountain Division and Fort Drum have assumed a leadership role in this regard. BG Erik Peterson received the first ever US Committee of the Blue Shield Award for his role in contributing to an ethics of cultural property protection as Chief of Staff for the Division, and during his tenure as Deputy Commanding General of Cadet Command for adding an introduction to cultural property protection as a required element of ROTC military education. From then on, prospective US Army officers who graduate from this program will have at least an introductory level appreciation of the importance of cultural property protection, and its potential as a force multiplier for mission success.

In addition and prior to the CCHAG, thanks to the efforts of Major Corinne Wegener, the US established a Committee of the Blue Shield. Blue Shield Committees have representation from all types of cultural property professionals including librarians, museum curators, conservators, archaeologists, and archivists and are committed to supporting military education and training for cultural property protection. In 2011, an international working group encouraged by the US State Department and the US Committee of the Blue Shield, created a list of cultural properties in Libya that were to be avoided during the NATO operation Unified Protector. This list was provided to the US Defence Intelligence Agency, who in turn shared it with the planning group preparing the targeting information for NATO pilots. All military operations have what is called a no-strike list. Under international laws of war, these are properties that all responsible military organizations agree should be spared. Examples include embassies, schools,

churches, museums, and with the advent of the Libyan campaign, archaeological sites.

As NATO involvement in the Libyan conflict came to an end, a mission representing the Blue Shield went to Libya and confirmed in their report (ANCBS 2011) that the list had been used effectively to spare the ancient Roman cities on the coast in addition to less well known properties like the Roman fortification of Ras Al Mahgrib which Ghaddafi had transformed into a military target by installing radar. The Associated Press publicized this success with a story by Francis D'Emilio published in 2011, which came to be disseminated around the world. The good publicity has encouraged additional interest and effort to maintain – to date – proactive cultural property protection among the US and its allies.

United Kingdom

The approach to military cultural property protection in the UK is very similar to that in the US. Let us note that one of the key partners for creation of the Libya heritage no-strike list was an Oxford scholar, Richard Osgood. There are three full-time military archaeologists led by Mr. Osgood who are responsible for protection of archaeological sites and historic properties on the Defence Estates. These individuals are also very proactive in terms of training military personnel for the protection of cultural properties they may encounter in the deployed setting. Insofar as Salisbury Defence Estate is one of the most intact archaeological landscapes in the UK, British military personnel are already sensitized to the concept of heritage in the environment. In addition, the archaeology team works to add realism to the training environment: they even have a replica museum in one of their training villages so that soldiers can practice securing it.

During the Iraq conflict, British General Harvey White-Spunner showed a special interest in the ancient heritage of Iraq, and established 'Operation Heritage' whose goal was to partner with scholars from the British Museum along with representatives of the Iraq Ministry of Culture in order to create a museum for the Iraqi people in Saddam's former palace in Basra. The British Ministry of Defence has also called upon scholars to assist with identification of cultural property on the battlefield. Professor Peter Stone, OBE of Newcastle University, has volunteered since 2003 to assist the ministry with these issues. He is President of the UK Committee of the Blue Shield which is currently working to encourage the British Parliament to ratify the 1954 Hague Convention and its protocols, and is Secretary of Blue Shield International.

The British Military also established Operation Nightingale, a program that offers archaeological training and field experience to wounded military personnel. This therapeutic program uses soldiers as field crew for compliance archaeology on the Defence Estates while teaching them a wide range of skills, including excavation techniques, surveying, photo documentation; and technical drawing. Some program graduates return to the military setting, enhancing the force's capability to protect cultural property, while others have chosen to become professional archaeologists.

Scandinavia

Three Scandinavian allies have expressed considerable interest in implementation of the 1954 Hague Convention: Denmark, Finland, and Norway. The latter both have Blue Shield Committees. The Norwegian committee has been especially active. It provided a Board member to the International Blue Shield organization and developed heritage awareness playing cards inspired by the US deck. Finland focused on the identification and prioritization of the protection of cultural property at home by developing a list of

cultural property valued by their citizens in a perceived order of importance. The primary objective is to enable protection by Finnish military forces in the event of an attack or natural disaster. The Danish Institute of International Studies has taken a special interest in the subject of cultural property protection and undertook a serious study of whether the Danish military had implemented its obligations under 1954 Hague. The Institute hosted an international conference on the issue in 2013, the Danish Mission to the UN hosted a UN meeting on the issue in 2014 that focused on Mali, and then led the NATO effort discussed below.

Switzerland

Switzerland, like Finland, focuses on the identification and defence of its own cultural heritage. The Swiss military is based on a civil defence model wherein the protection of heritage plays an extremely important role. The government has also established the Swiss Agency for the Protection of Cultural Property. The Swiss contribute to the global protection of cultural property by sharing their information and experience.

Poland

When the global media broadcasted news of damage by coalition forces in Babylon, the US were mostly blamed. Polish forces, who were also present, decided to act upon the experience. In response, the Polish Ministry of Defence dedicated full-time personnel to the training the cultural protection force. The Poles have also sent archaeologists into conflict zones. Most recently, they provided their expertise for very detailed documentation on the heritage area of Ghazni, Afghanistan. In 2004, the Poles hosted an international conference to celebrate the 50th anniversary of the Hague Convention entitled 'Cultural Heritage in the Face of Threats in War and Peace Time'. The conference featured delegates from Italy, the Czech Republic, Finland, Canada, Slovakia, Austria, Lebanon, and Macedonia. The Estonians hosted a similar conference focusing on the implementation of the Second Protocol in 2008 with 19 speakers and over 100 participants.

Italy

Italy offers a very different and extremely effective approach to cultural property protection and the military. The Italian militarized police force, the Carabinieri, has a special Command for the Protection of Cultural Heritage (from the Italian, *Carabinieri Tutela Patrimonio Culturale*). Over 300 officers serving in the national headquarters or in one of the 13 regional offices, focus on all aspects of crime against art and heritage from protecting archaeological sites from looters to tracking forgers who are laundering money using counterfeit works of art. The officers on this force can be deployed to conflict zones and disaster areas to protect and/or assist recovery for archaeological sites, monuments, sacred places, and collections of cultural property. Officers from the Carabinieri TPC responded to the Baghdad Museum looting and assisted the museum staff with an inventory and documentation on objects stolen from the collections. The list of missing objects is still available on the TPC website.

In addition, the TPC sent officers with a multi-disciplinary force of Carabinieri as part of a UNESCO peace-keeping mission to Nasariyah Province, Iraq. These officers worked with their counterparts to fly missions, mapping and documenting the ancient Mesopotamian City sites throughout the region. They set up interdiction operations in order to catch looters *in situ* and recovered hundreds of stolen artifacts. The Carabinieri

also played an active role in supporting the professionalization and development of an Iraq site guards program, assisting them with training, weapons, uniforms, and vehicles.

The Italian Armed Forces as a whole also take cultural property protection seriously. The Italians recognize the value of heritage projects as a form of stabilization and support reconstruction of museums, libraries, and other forms of cultural institutions as an investment in recovery at the community level. One example was the renovation of the citadel of Herat into a museum and community centre, a project led by Italian reserve officer Dr Elena Croci. Dr Croci also co-authored a bilingual publication in English and Dari entitled *Herat: the Florence of the East* in 2011 that was designed to teach the history of the region to the next generation. Dr Croci and her chain-of-command in the Italian army recognize that a community aware of the importance of shared heritage is more likely to join efforts and work collaboratively towards peace.

International and cooperative efforts

NATO

In 2014, the NATO Science for Peace and Security Program funded a project entitled 'Best Practices for Cultural Property Protection during Military Operations.' It was led by D. Frederik Rosen of the Danish Institute of International Studies and co-directed by representatives of the US, UK as well as Bosnia and Herzegovina. It was encouraged by the success of the list implemented during the Libyan conflict. After the positive publicity, NATO's Centre for Lessons Learned analyzed the event and drafted a report recommending a more institutionalized approach to cultural property protection for the Alliance. As an initial response, NATO offered a pilot week-long training course for cultural property protection which was hosted by the Austrian Defence Academy whose students included military personnel from Italy, Hungary, Poland, the Netherlands, Austria, Germany, and the US.

The NATO SPS project is working on recommendations for doctrine and best practices for the incorporation of cultural property protection into military training for member and partner nations, as well as the inclusion of cultural property protection issues in NATO exercises and the addition of geospatial data layers that indicate the nature and location of significant cultural property in operational areas. It also stipulates that cultural property should be considered in the planning and implementation of military operations. Should the NATO project be successful, then project recommendations could be offered to UN Peace Keeping forces and the European Union.

United Nations Peace Keeping Operations and Cultural Property Protection

In 2008, the United Nations learnt a bitter lesson when the media shared scholarly documentation of damage to rock art in the Western Sahara caused by members of the UN Mission for the Referendum in Western Sahara or MINURSO. Drs Joaquim Soler i Subils and Nick Brooks reported that military personnel had marked engraved rock art panels as way points. Some of the panels defaced by representatives of the United Nations were sacred to the Sahrawi people. The failure to respect these sacred features lessened the confidence of host nation personnel in the motives, goals, and loyalties of the MINURSO force, compromising the potential success of the mission. In addition, the international press coverage offered an image of the UN forces as poorly trained and poorly disciplined causing some to question continued support for the overall effort. In a meeting held at the Danish Mission to the UN in 2014, a representative of the DPKO

assured the assembled personnel that training for UN forces had improved in response to these events.

The conflict in Mali further evidenced the critical role cultural property plays in the escalation and resolution of ethnic and genocidal conflict. In response to the performance destruction of Sufi tombs, mosques, and burning of Timbuktu's libraries by Islamic extremists, a UN peacekeeping resolution called for the protection of cultural heritage using all necessary means as a stated priority for the mission. This was the very first time that such an appeal was made. When the situation in Timbuktu stabilized, the world learned that courageous citizens had evacuated the majority of the ancient library collections using German food containers and any and all forms of transportation. The peacekeepers included sacred places, archaeological sites, museums and libraries on their patrols and thus demonstrated respect for local heritage and culture. This enabled an increased acceptance of their presence by the local populations, and the reduction of potential local conflict.

Lessons from the African experience

Senegal

Many of the most important accomplishments have clearly been achieved by a relatively small number of extremely dedicated individuals with a talent for dialogue and shared values, and a capacity for leadership. Officer Ismaila Diatta is the personification of this type of individual. Not only is he a reserve officer in the Senegalese military, but is also responsible for the 'Museobus' – the Mobile Museum of the Senegalese Army Museum in Dakar. The bus provides cultural property protection lessons to military personnel across Africa. These principles are very similar to the *Do's and Don'ts* and guidance offered on the CCHAG website.

The basic principles Officer Diatta teaches include the following:

- It is your duty to respect and safeguard cultural heritage,
- Never direct your fire towards clearly listed heritage buildings and sites, except in cases of military necessity,
- Identify and protect places of worship, the flora and the fauna,
- Refrain from criminal acts: theft, looting or vandalism,
- Monitor cultural property housed in a shelter or listed in the *International Register of Cultural Property under Special Protection*,
- Do not enter national or international heritage institutions without prior authorization,
- If possible, establish contact with those responsible for cultural heritage in the conflict zone,
- Every time a cultural object is seized, check its inventory number and alert the competent authorities (INTERPOL, special brigade, etc.) to verify whether the object belongs to a museum,
- Collaborate with, and support the work of, the special brigade appointed to monitor cultural objects,
- Write a progress report after each mission to protect the heritage.

What can we learn from the African experience?

Even though these efforts are in their infancy, the example provided above demonstrates that *individual* efforts can make a significant difference, even across an entire continent. Mali has stirred awareness in the international community on the role that destruction and protection of cultural property plays in 21st century conflict, and that in conflict zones will risk their lives to protect and defend their heritage. Some members of the international community have taken notice. For example, after the events in Mali, Congressman Elliot Engel (NY) added an amendment to the US Defence Authorization Bill requesting a report on US implementation of its responsibilities under Hague.

In addition, the implementation of the UN Resolution's terms on the protection of heritage has clearly increased the effectiveness of the military presence. In military terms, this phenomenon is known as 'force multiplication'. Let us hope that combatant commanders of deploying forces will take into account the Mali mission experience. We see similar efforts in Iraq, Syria, Palestine, and elsewhere around the globe. There are grounds for optimism, as military personnel seem to have become part of the solution for saving our universal cultural heritage.

Notes

1. Their publication series is available online at URL: < <http://www.bevoelkerungsschutz.admin.ch/internet/bs/en/home/dienstleistungen/infomatbabs/infomatkgs.html> > [accessed on 14 August 2015].
2. The list of missing objects is still cited on the Carabinieri-TPC website: URL: < <http://tpcweb.carabinieri.it/SitoPubblico/getReperitiIraq> > [accessed on 16 August 2015].

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Museum Security and Risk Assessment in French Museums: An Overview

Guy Tubiana

Museums present creations that, admired as they are for their timeless beauty, are also coveted. How then, can museums be preserved from theft, yet allow their collections to remain accessible to the public? The work of museum security experts is based, precisely, on that paradox: displays must allow objects to be visible, somewhat within reach, but unremittingly protected.

More accessibility, less vulnerability: in a nutshell, the conundrum illustrates the challenges museums and security experts currently face. To prevent all risks of theft, should works of art be secluded at all costs, to the point of depriving the public from the enjoyment of original pieces? The Rotterdam Kunsthall Museum art heist in October 2012 exemplifies, in many ways, the tragic consequences of security failings: seven valuable paintings were pilfered and allegedly destroyed in the aftermath. Human presence alone can vouch for immediate response in case of intrusion, and many were the flaws that forebode impending trespass: the premises were left unprotected at closing hours with no security guards in attendance at night and obsolete cameras did the work instead (the alarm *did* go off).

Theft is not the only threat museum collections face; another ongoing problem is willful damage. Vandalism, essentially in the form of wanton destruction or disfigurement, is all too frequent. Most acts of vandalism are opportunistic, carried out by visitors, and there are countless reasons for deliberate damage of works of art. How can such damage be prevented? Should these unique pieces be protected in glass exhibit cases or – in the case of paintings – locked away in climate-controlled and secured showcases, and copies presented in their stead? When, in early February 2013, a visitor defaced (albeit ever so slightly) the celebrated Delacroix masterpiece, ‘Liberty Guiding the People’ (*La Liberté guidant le peuple*) then held by the Louvre-Lens, was apprehended by a security officer, taken to police and put in custody, we went on-site for inspection and observed no anomaly. How can museum security officers possibly prevent visitors from carrying pens or markers? Glass protection, in the case of the iconic Delacroix, was impossible because of the canvas’s size and weight.

Art heist is the result of many dysfunctions that altogether create a propitious situation for thieves, e.g. dwindling personnel, obsolete technology, and weak mechanical protection. On-site police investigation is systematically required to study the exact conditions of the theft insofar as it allows security protocols to be redefined – the only way to prevent future theft. It has been observed that, in France, most thefts occur during daytime. This highlights the insufficient numbers of museum staff in direct contact with visitors, receptionists and security personnel alike. There can be no doubt that human presence is the foremost dissuasion against malicious acts even as psychological acumen and physical training are, more and more, required. The unsolved 1990 Gardner Museum burglary, whereby a pair of thieves dressed up as Boston police officers were permitted to enter through the museum’s security door on a fateful error, neutralized the night guards on duty, and roamed the galleries stealing 13 priceless works of art, illustrates the near irreversible loss provoked by lax museum security.

Investigators and museum security experts are confronted with the urgency of

adjusting to new conditions with the ever-evolving methodology, technology, and material used in theft. As a consequence, security must be constantly reconsidered and re-invented. It is important to bear in mind that, regardless of technological prowess made available to museums nowadays, the recourse to human personnel will always be the most efficient means to fight against theft. The present article will focus on collection security and protection measures adopted in France. The initial assessment of theft in recent years will lead to the analysis of the procedures adopted for museum security according to numerous parameters: collection space access, applicability and cost of physical security measures, and personnel training.

Museum security and risk assessment

The opening paragraph of an EU-commissioned study highlights a growing concern for illicit trafficking in cultural goods insofar as it 'is among the biggest criminal trades, estimated by some to be the third or fourth largest, despite the fact that, as INTERPOL notes, there are hardly any instruments for measuring this trade or any data on illicit commerce' (CECOJI-CNRS 2011: 16).

In recent years, the vulnerability of French museums to theft has been a whispered concern. In 2014, a series of thefts occurred, with 17 cases reported. How are statistics to be interpreted? Firstly, let us point out that inasmuch as there are 65 million museum visitors yearly in France, that in the past 10 years thefts have occurred during daytime by *occasional thieves*, it is safe to say that theft is decreasing regularly, and is always reported as a singular act. In addition, just as the financial and cultural value of the stolen works varies considerably from secondary art work to priceless masterpieces, so too does the prejudice resulting from the loss. Finally, it is important to note that the conducting of the inventory of a museum's collections also helps understand these numbers, e.g. for 17 stolen artworks, two had disappeared subsequent to the inventory conduct.

Museums are so diverse in nature that no unique systematic approach to security and protection can be defined. Thus, each case begs the security issue to be reconsidered, and more effective measures implemented. Let us dwell on another example: the Chinese art stolen from the palace of Fontainebleau in a lightning raid was facilitated because, although the room was deemed to be one of the most secure in the palace, agents were unarmed – a policy adopted in all French museums. Such a choice requires that mechanical and electronic security means to be reinforced. At the same time, the illusion of collection safety often derives from state-of-the-art security technology. When radio transmission is defective, the recourse to simple whistles is more likely to deter theft, for instance. And when the recourse to high precision electronical devices, such as facial detection camera systems or computerized tracking of artworks has been employed in major Parisian museums, small museums are devoid of such means.

Security is essentially based on three primary elements whose roles are usually imbalanced roles: human, electronic and mechanical resources. However, beyond surveillance and security equipment, regulation is scarce. Exhibition premises require teletechnical surveillance aids which encompasses intrusion detection and signaling systems such as i) mechanical burglary protection comprising the enclosed area, i.e. walls, floors, ceilings, door, openings for ventilation (windows, etc.), locks and fittings, doors, gates and other movable devices; ii) monitoring stations equipped with CCTV systems and iii) surveillance officers working in galleries or within specific collections. Surveillance officers *alone* can detect and deter theft efficiently as they enforce basic

rules, ensure visitor safety and protect the collections. Integrated security systems play an increasingly important *supporting* role to surveillance teams, as does embedded protection – the triggering of local alarm systems upon trespassing that alert central monitoring. The recourse to fog prevention system installations, for instance, is increasingly adopted in museums, as well as radar detection.

Yet, human resources are the most crucial asset, insofar as surveillance officers directly interact with the public and access collection space. In addition, museum security experts provide regular assessments of security arrangements, ensuring that current technical standards are applied, and prescribe the most appropriate and cost-effective expert measures to meet the particular needs of individual museums. The protection of museum premises and collections is necessarily adjusted to each edifice. Interestingly, small remotely located museums often require more preliminary risk assessment work than major metropolitan museums.

There are *patterns* of risks that are defined according to a series of criteria. In the site-risk assessment, the first parameter considered is the nature of misdeeds: depending on the type of exhibition venue or museum, it may be assumed that the probability of theft is higher than degradation. For instance, fetishists and collectors are more likely to target museums dedicated to historical figures. The second criteria to determine and take into account are high-risk periods (daytime and nighttime risks, external or interior-related risks) insofar as the measures implemented differ whether the theft takes place during opening or closing hours. It all depends, however, on the sites, and the strategy chosen by each museum.

Threats to collections also vary. Criminal acts are most likely to occur during periods of high visitor affluence such as Heritage Day (*Journées du patrimoine*), the launch of spotlight exhibitions, major festivities nationwide such as the 14th of July which divert law enforcement officers' attention from museums, etc. All in all, closing time and the quieter hours of night are delicate periods. A museum may well be deserted, or scarcely visited during the day, it remains under constant threat no less. In 2013, the mold of a coin was stolen from a museum in Normandy, which only received two visitors over the course of the day. Let us bear in mind that quiet periods may be favoured by thieves like Stéphane Breitweiser (sentenced in 2003). He was spurred into action during lunchtime (from 12:00 p.m to 2:00 p.m), encouraged by the aloofness of guards who tend to remain scrupulously discreet for fear of *disturbing*.

The third parameter is evaluating the objects at risk *per se*, so that the threat may be determined according to size, market value and surrounding events, as well as the rarity of the object. If, for instance, a temporary exhibition of ancient objects is taking place at the same time than a fair in the neighbouring country, then tighter security may be required for specific, extremely precious objects.

An analysis of theft prevention measures in France

In France, the centralization of relevant information and actions against theft is a long-standing effort. Since four Monet and two Renoir paintings were stolen from the Musée Marmottant in November 1985, two French ministries – the *Ministère de l'Intérieur* and the *Ministère de la Culture et de la Communication* – have combined efforts to protect museums against theft. This led to a nationwide risk management programme (including fire prevention) that involves local and national police investigators, advisors, in theft and misdeed prevention, and more recently, firefighters at the *Direction des Musées de France*.

Today, a central network monitored by the *Ministère de l'Intérieur* was implemented in 2007. If security is breached in a partner museum, it alerts law enforcement forces in real time. The measures implemented in case of theft differ whether the theft takes place during opening or closing hours. Conversely, they depend mainly on the sites, and the strategy chosen by each museum. In addition, the scope of any theft prevention mission supersedes the sole protection of museums now encompassing other places of interest, such as religious and historic monuments, archives and archeological sites. The expertise of law enforcement officers lies in an acute knowledge of the *modus operandi* of thieving minds, reinforced by first-hand experience in prevention and apprehension.

While a security adviser will focus on the most efficient technological equipments, a law enforcement officer is most likely to actively discourage criminal intention. They are familiar with the way a criminal mind works, and can anticipate flaws in security and protection or possible escape routes. And so, preventive measures against theft (routine perimeter checks, object surveillance, etc.) are to be undertaken to gauge the threat levels by potential aggressors, determine the threat environment and the best protective measures so as to establish an action plan for efficient response. The measures implemented in case of theft differ whether it takes place during the opening or the closing hours. But it mainly depends on the sites, and the strategy chosen by each museum.

Routine perimeter checks and object surveillance altogether are thus among the necessary steps for risk preparedness to ensure viable protection. In recent years, law enforcement officers have been trained to offer an immediate and appropriate response to a theft. There are now two police officers in charge of prevention in all French museums, whether national and unlabelled museums or private venues. The team may be required to protect a high-profile exhibition offsite, assess security provision at host venues – a town hall or company office – and improve protection, if required.

Conclusion

In 2010, the *Ministère de la Culture et de la Communication* issued an information guide on the security of cultural objects for public and private owners. Concerning the fight against illicit trafficking, it is stated therein that the following measures are to be implemented simultaneously: i) reinforce theft prevention, ii) raise awareness in public and private owners of cultural goods, iii) create and provide appropriate documentation (guidelines, tools, reports) and iv) improve communication between collaborators involved.

Efforts to attain these objectives must be maintained, for museum collections are constantly in jeopardy. Yet constant efforts to improve their protection are to be observed in France, especially in recent years. The museum security expert intervenes to shed light on the existing, or potential security vulnerabilities into buildings which may be design-based, or concern access and adjacency as well as logistic requirements. Thus, capacity building in museum security, close collaboration between security experts and museum professionals must come foremost, and dialogue at a local, national and international level is essential.

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Back to Kabul:
Case studies of successful collaboration between
the National Museum of Afghanistan, the British Museum, the UK Border Force
and others in the return of stolen antiquities to Afghanistan

St John Simpson

Museums play a leading role in the understanding and promotion of culture, whether internationally or locally. They share common challenges, ideals and goals, and often collaborate on a wide range of activities ranging from exhibition loans to training and capacity building. The following paper illustrates a less well-known area of collaboration involving the work of museums as independent and confidential centres of expertise on the probable origin of trafficked antiquities, and how they advise government authorities and other parties in connection with stolen antiquities. It also illustrates the close collaboration between two museums, the British Museum and the National Museum of Afghanistan, and how this has led to the successful restitution to Kabul of large numbers of antiquities either stolen from the latter museum during the civil war in the 1990s or illegally excavated from sites across Afghanistan.

This collaboration has continued over many years but its profile was raised in 2011 when the special exhibition, *Afghanistan: Crossroads of the Ancient World*, was held at the British Museum in London from 3 March to 17 July 2011 and generously supported by Bank of America Merrill Lynch (Hiebert & Cambon eds 2011). The main part of this exhibition revolved around the four archaeological assemblages from the famous sites of Tepe Fullol, Ai Khanum, Begram and Tillya Tepe. It used these important groups as case studies of rich cultural development within the country and interaction with its neighbours, but also highlighted the fragility of culture at times of conflict, whether in Antiquity or recent times (Simpson 2012). The exhibition was opened by former President Hamid Karzai and former British Foreign Secretary William Hague, attracted 124,551 visitors and reached millions more through a carefully coordinated media and marketing campaign. It was on this occasion that Dr Masoudi and Neil MacGregor, then respective directors of the National Museum of Afghanistan and the British Museum, signed a Memorandum of Understanding which detailed areas of collaboration between these two institutions (Fig. 1). This was part of a wider series of bilateral agreements also involving the UK Border Force, which manages front line British border control including immigration, customs and security, and the Metropolitan Police (Art & Antiques Unit) in Britain. This paper outlines some of the positive and tangible results of these collaborative arrangements.

Introduction

Afghanistan has a very rich cultural heritage but many were those who attempted to commercially exploit this. Systematic looting of Bronze Age cemeteries in northern Afghanistan started in the 1960s (Dupree 2006: 85), although others have stated that it only began between 1970 and 1972 (Amiet 1988a: 159; Pottier 1984: 7). The late Viktor Sarianidi estimated that about 80% of the Bronze Age sites in the Dashly, Nichkin and Farukhabad oases of North West Afghanistan were destroyed in this manner and he

witnessed large-scale daylight looting in progress during the 1970s (Fig. 2). Moreover, on the basis of personal observations, he surmised that these looted burials belonged to the same types as he had excavated shortly before at Dashly and Farukhabad. Unfortunately, the fact they were in brick-lined pits facilitated their discovery as he reported that ‘such graves are easily discovered by looters who scrape and bang their shovels to detect the hollow pits’ (cf. Kohl 1984: 160-169). Large quantities of objects from these cemeteries soon began to appear in the shops and pavement stalls of petty dealers in the bazaars of Balkh, Mazar-i Sharif and Kabul, along with medieval pottery, ethnographic items and beads (Fig. 3). As many as 332 items spanning most of the typical classes of metalwork and stone objects circulating through the Kabul bazaar during the winter of 1978-1979 were recorded by Marie-Hélène Pottier (1984), and a selection of these was later acquired by the Musée du Louvre (Amiet 1988a: p. 159). Other types, including decorated silver and gold vessels, appeared on the Kabul art market in 1975 (Deshayes 1977, Figs. 7-8).

When I arrived in Afghanistan in summer 1975 and expressed an interest in its Bronze Age, I was told to visit the Kabul bazaar to learn what was known. It made sense to inspect and familiarize myself with the clandestinely excavated vessels, seals, metal and stone tools and weapons, and precious jewelry before they were shipped to the West (Kohl 2005: 65).

As this archaeologist implies, these classes of object soon began to pass onto the international market via neighbouring countries, and this pattern of circulation has continued up until the present day. As the first discoveries coincided with similar finds being reported from commercial and archaeological investigations at Shahdad in the Kerman region of South East Iran, the objects also began to be bought up by Tehran dealers and entered the Iranian, as well as international, art market where they were consequently catalogued as ‘Elamite’ and commanded higher prices.

Amiet (1988b: 135) has explicitly stated that Iranian dealers were buying up material on the Afghan market and ‘it would thus appear that most of the items which the dealers attributed to the province of Kerman actually came from Bactria’. The mixed date-range of pieces offered in Kabul doubtless meant that later (including Islamic) objects entered these interwoven markets at the same time, and Dupree (2002: 8) has remarked on how ‘even Islamic gravestones were not spared, as they find a ready market in Iran’. Moreover, given the large-scale flow of opium and heroin from Afghanistan into Russia via the intervening countries, it is likely that other antiquities passed north, particularly through the railway system. Lee (2000) has commented on how items from Bactria have been sent in recent years via Uzbekistan into Russia, and others were driven over the border into Iran. Moreover, during the mid-1990s, the author saw medieval metalwork on open sale in the Sunday bazaar in Ashgabat: the objects were said to come from Merv but were certainly not from that site as there were no traces of illegal digging there or indeed other sites visited in the area, and it is more likely that they derived from Afghanistan.

This period of the 1990s coincides with the civil war in Afghanistan, when looting reached its highest levels and museums as well as sites were targeted. Large sites were a particular focus of attention, and the scale of destruction well documented at Ai Khanum (Bernard 2001, Figs. 7, 9, 18, 22) and Tepe Zargaran, where looters’ pits and tunnels penetrated up to five metres below the surface and the fine stonework which characterised the earliest levels had been especially sought after (Bernard, Besenval & Marquis 2006: 1178 and 1188, Figs. 2-3; Bernard, Jarrige & Besenval 2002: 1403-408; Tarzi & Feroozi 2004: 4-5, Figs. 8-10).

The causes of looting of museums and stores are multiple and include opportunism,

greed, revenge and vandalism, but in the case of digging at sites are often rooted in a desire for short-term returns and/or a lucky break at times of economic hardship. These are not cases of simple subsistence digging, whereby areas of known archaeological potential were worked over like fields in order to generate cash rather than crops, and accusations have been levelled instead at local commanders keen to use antiquities, like opium poppy cultivation, as a source of revenue to pay their soldiers (Lee 2000; van der Schriek 2004). Moreover, the scale of operations at many sites implies a chain of collaboration and mutual incentive connecting local and foreign dealers, commanders and local inhabitants. International authorities were late in recognizing the problem or attempting to deal with it effectively but valiant efforts were made by a small number of individuals working with SPACH who, despite the disapproval of UNESCO and ICOM, purchased items seen on the market in Peshawar and elsewhere which were identified as having been previously looted from the Kabul Museum (SPACH 1997). News of these actions and an amnesty on returned objects led to other items being donated by residents of Kabul, although none apparently originated from the original museum collections. In the summer of 1998, Paul and Veronika Bucherer-Dietschi founded the so-called 'Afghan Museum-in-Exile' in Bubendorf, near Basel in Switzerland, as a last resort safe-house and this encouraged a large number of private donations, particularly of ethnographic items (Bailey 1999; van Krieken-Pieters 2006: 215–23).

In 2001, the world was shocked into political reaction after the destruction of the Buddhas of Bamiyan and the events of 9/11. The Taliban government was overthrown in November that year and the international community started to put tougher measures in place for counter-terrorism, counter-proliferation, counter-narcotics and sanctions enforcement. In 2003, America led the invasion of Iraq and in the chaos which followed the overthrow of Saddam Hussein's regime, the Iraq Museum was looted and archaeological sites in the southern part of the country, as well as apparently parts of Kurdistan, were the scene of systematic commercial digging. Large numbers of cuneiform tablets, personal cylinder and stamp seals, fired clay figurines, incantation bowls and other antiquities originating from Iraq appeared on local and international markets at this time (Stone & Bajjaly eds. 2008). In some cases, as in Palestine and now Syria, the loss of earnings from archaeological expeditions which had previously employed local villagers as workers contributed to the later looting of the sites by the same individuals (Bajjaly 2008: 139–40). One Iraqi looter found digging at the 3rd millennium BC city-site of Jokha explained the situation thus:

These are fields full of pottery that we come and dig up whenever we are broke. Sometimes we find a plate or bowl that is broken, and then we cannot sell them. But perhaps, we will find something with some writings on it, and it's still intact, and that will be sold very fast for USA dollars (Farchakh 2003).

The effects of site looting

The perilous plight of cultural heritage in conflict zones was now widely acknowledged (Curtis 2011). Awareness of antiquities smuggling was raised among international law enforcement and border control agencies through training programmes and the circulation of illustrated checklists of generic types of antiquities or items known to have been stolen from museums and stores (Mittmann & Priskil 1992; Gibson & McMahon 1992; Baker, Matthews & Postgate 1993; Fujii & Oguchi 1996), the American armed forces issued playing cards highlighting risks to cultural heritage (Fig. 4), and a detailed

catalogue published of objects of Iraqi origin which were identified in Jordan (Menegazzi ed. 2005). Most of the focus was on Iraq, rather than Afghanistan, but in 2003 a large number of objects originating in the latter country were seized in London (Alberge 2003). Between 2005 and 2007, further objects were seized in Britain by the UK Border Agency (later known as the UK Border Force) and forfeited to the Crown. An announcement was released by Scotland Yard to that effect and stating that the total now amounted to between three and four tons (Kirby 2006; Lamb 2006). Vernon Rapley, then the Head of the Metropolitan Police Art & Antiques Unit, was quoted in an interview as stating:

With Afghanistan, antiquities are also not coming directly, but are transiting through the United Arab Emirates or Pakistan. We have seized tons of material, but because of the problems of proving it, we are not seizing anything like as much as we did (Rapley 2009: 7).

Throughout this period, the objects were brought to the British Museum for formal identification. They were inventoried with the help of many individuals, including the late Carla Grissmann and Dr Fredrik Hiebert, and then packed into two consignments for eventual return to Kabul. Sample photographs of these objects were used to illustrate the ICOM Red List of Afghan Antiquities at Risk which was initially proposed in Paris in 2005 and launched at the British Museum on 30 September 2008 (Fig. 5).

Over the following years, a total of five other groups of antiquities was confiscated by the UK Border Force with the assistance of the Metropolitan Police (Art & Antiques Unit) and delivered to the British Museum. News of this latest development was released to the public as an exclusive story (Alberge 2011b). They totalled 821 objects of various periods. Some were typical Bronze Age cemetery finds, including compartmented copper alloy stamp-seals, cosmetic containers and chlorite vessels, but also objects of Achaemenid, Seleucid, medieval and later periods such as four small lidded stone bowls with coloured inlays on the top which are best known from the excavations at Ai Khanum in northern Afghanistan (Francfort 2013). After unpacking, the objects were sorted by type within each consignment, assigned unique numbers, measured, weighed, photographed and summarily described. Small objects of identical or very similar types were occasionally grouped under one number but the individual pieces identified by part numbers. However, a selection of the most important objects was photographed to a professional standard for press purposes (Fig. 6).

In addition, a selection of the most important and visually striking pieces was conserved for the benefit of the National Museum of Afghanistan and others were x-rayed and/or scientifically examined in order to detect details of manufacture and provide material identifications. This work was carried out at the British Museum and conducted in close consultation with colleagues from Kabul. The information was recorded on individual object inventory sheets. The content of these was based on those used by the late Carla Grissmann and others when they established a catalogue of the collection in the 'Afghanistan Museum-in-Exile' in Bubendorf. The design of these inventory records was also developed with the approval of curators at the National Museum of Afghanistan. A published catalogue of these objects, incorporating scientific analyses and a detailed comparative discussion, is in preparation as a monograph (Simpson *et al.* forthcoming).

Looting from the Kabul museum: (1) The ‘Begram ivories’

During the civil war in Afghanistan in the 1990s, a large part of the collections was either destroyed or stolen from the National Museum in Kabul. Among these were many pieces excavated at the ancient site of Begram, including many carved and/or painted ivory and bone overlays which had been set originally onto items of wooden furniture deposited in antiquity in a so-called ‘Palace’ in the late first or early second century and discovered in 1937 and 1939.

Following these excavations, the finds had been divided between the National Museum of Afghanistan in Kabul and the Musée national des arts asiatiques – Guimet in Paris. A selection from the first season was put on display in the museum in Kabul as early as August 1937, only a month after the end of the season. During the closing months of 1946, the finds from the second season were studied and further conserved in Kabul by Pierre Hamelin, and the exported portion arrived in Paris in January 1947. A decade later, the contents of the Begram and Islamic rooms in the museum in Kabul were re-designed: these marked the first substantial effort to change the displays since the museum opened in 1931. The Begram room included a large selection of the ivories, including the most important pieces allocated to Kabul. Published plans and descriptions of these displays indicate that they filled as many as seven of the 15 showcases and several of the objects referred to below were among those displayed here (Ambers *et al.* 2014).

Some of the collections were successfully concealed by staff members at the outbreak of war and have been exhibited since in a travelling exhibition (Hiebert & Cambon eds 2011). However, much of the remainder appear to have been lost. The late Carla Grissmann recalls how

since they had been cleaned for inventorying in July 1995, the storerooms had been pilfered yet again. The floors were littered with sherds and objects flung randomly in all directions ex: [...]. The reconstructed ivory throne back from Begram had been demolished in order to remove the thirteen small carved panels, and splinters of the frame were found strewn over the floor. Countless fragments of smashed Greek plaster emblems were swept up from the Begram storeroom. Not a single object from the Begram storeroom remained intact (Grissmann forthcoming).

Several press stories have highlighted how many pieces of the ‘Begram ivories’ passed through the market and/or into private collections in Pakistan or abroad (Rashid 1995: 61 ; Akhtar & Neubacher 1998: 3; Eskenazi 2002). In April 1997, two of the stolen Begram ivories were identified on the market in Peshawar and were acquired on behalf of the Kabul Museum by the newly formed Society for the Preservation of Afghanistan’s Heritage [SPACH], temporarily held in the self-styled ‘Afghan Museum-in-Exile’ in Bubendorf, Switzerland, and returned to the National Museum of Afghanistan in Kabul 10 years later (Grissmann 2006: 73). A second group of pieces, including several originally belonging to Footstool IX, was acquired in London and deposited in the Musée Guimet where they were temporarily exhibited in 2006 prior to conservation and future return to Kabul.

It subsequently transpired that an additional group of 20 pieces were in another collection and the possibility was raised that these might also be returned. Following discussions in London and Kabul, and with the generous support of a private donor, this offer was turned into reality with the physical transfer of the objects to the British Museum in late 2010. They proved one of the highlights of the exhibition but this

section was kept a highly confidential surprise until the day of the opening, and after the main press preview, in order to maximise their impact. It triggered a great deal of additional press interest (Jury 2011; Bailey 2011a), and prompted the daughter of one English visitor to the Kabul museum in 1974 to present a collection of slides she had taken of these and other objects while they had been on exhibition there. These include the first photographs taken of some of these objects which had not been illustrated in the excavation reports or Francine Tissot's (2006) *Catalogue of the National Museum of Afghanistan, 1931–1985*.

Immediately prior to their exhibition, these objects underwent an intensive programme of conservation and scientific analysis in the British Museum. The results led to a completely new understanding of the extent of polychromy on ancient Indian ivories and forces a complete re-evaluation of the original appearance of the ancient furniture which they formed part and which have hitherto been viewed in monochrome. A small illustrated book giving the preliminary results was rapidly published to accompany the exhibition (Simpson 2011). A refereed paper aimed at a curatorial, science and conservation readership appeared in the *British Museum Technical Research Bulletin* (Passmore *et al.* 2011). This was followed by a third publication in the form of a peer-reviewed monograph which contained all the analyses and conservation treatments, together with a detailed discussion of the circumstances of discovery and a full catalogue, and this book was presented in Kabul in 2014 (Ambers *et al.* 2014) (Fig. 7).

Looting from the Kabul museum: (2) The 'Fire Buddha'

During the installation of the exhibition in London, the whereabouts of another important antiquity stolen from the National Museum of Afghanistan in Kabul became known to the organizers (Fig. 8). This was the so-called 'Fire Buddha' which was one of two found at Sarai Khujja, north of Kabul, in 1965 (Tissot 2006: 354). The present piece had been stolen overnight from the National Museum in Kabul in 1996 and subsequently entered a private collection abroad (Leslie 1996). The anonymous owner could not be persuaded to donate it and was resident in a country which has not signed the UNESCO Convention: the piece therefore lay beyond the reach of Kabul and the museum authorities there agreed on the last resort option open to them if they wished to regain this piece within a reasonable timescale, and that was for the piece to be bought on their behalf through a private sale. This was very generously undertaken by a private individual who imported it into Britain on the understanding that the sculpture would be returned to Kabul by the British Museum. In the meantime, this splendid piece was placed on temporary exhibition at the British Museum in 2011 and it generated further attention to the issue of returning stolen heritage (Alberge 2011a; Bailey 2011b).

Returned to Kabul

All of the objects discussed above have been safely and successfully returned to Kabul. The decision and timing of this was carried out in close consultation with the museum authorities in Kabul who felt that the conditions were now appropriate for the return of these antiquities. The first consignment was sent in February 2009, with the assistance of the International Red Cross and the British Foreign & Commonwealth Office, and consisted of a total of 22 crates weighing 3.39 tons and containing just over 1,500 objects seized in Britain between 2003 and 2007 (Bailey 2008; Farmer 2009; Tavernise 2009;

Hiebert & Cambon eds. 2011: 31; Masoudi 2012, p. 15). A selection of these objects was later put on display in the National Museum of Afghanistan in Kabul and the exhibition opened on 6 October 2009 by Mark Sedwill, then Acting British Ambassador in Kabul, and Abdul Karim Khurram, then Minister for Information and Culture in Afghanistan (Masoudi 2012, Fig. 12).

In July 2012, immediately before the opening of the Olympic Games in London, the Begram ivories, the Sarai Khuja Buddha and the second consignment of illicitly excavated objects were carefully packed and despatched to Kabul with the assistance of the British Armed Forces, and a fully illustrated inventory and a set of condition reports were handed in advance to Dr Masoudi (Figs. 9-10). The safe return of this second consignment was announced on 19 July by Prime Minister David Cameron during the course of an official visit to Kabul. This was followed by a formal hand-over ceremony at the museum in Kabul on 5 August 2012 with Colin Crockin, the British Consul General in Afghanistan, acting on behalf of the British Museum. Identical press releases in Dari and English were simultaneously issued by the National Museum of Afghanistan and the British Museum, and a number of local and international press stories followed immediately (e.g., Alberge 2012; Farmer 2012; Ralph 2012). In addition, footage was released by the Ministry of Defence and a blog post simultaneously issued on the British Museum website at URL: < <http://blog.britishmuseum.org/category/exhibitions/afghanistan-crossroads-of-the-ancient-world/> >.

Conclusion

These examples highlight some of the areas of very successful collaboration which the two museums have enjoyed in the past years. They also highlight several key points. The first is the effectiveness of close cooperation between different organizations, in this case between two national museums, the UK Border Force and the Metropolitan Police in London. These relationships were built over time with regular dialogue and trust, and underpinned by official Memoranda of Understanding. Seizing the opportunity to catalogue confiscated objects, use scientific techniques where possible, and publishing the results are also important outcomes of these actions and they help compensate for the loss of archaeological context, offer more information to the receiving museum, and create a full and open record for the academic as well as the law enforcement community. It is essential that the wider public is aware of what can and is being done, and to highlight positive outcomes rather than simply dwell on the problems without offering solutions.

This approach underlines the importance of harnessing the considerable public and media interest in this topic by issuing regular reports which highlight positive results. These stories reach a huge global audience and build awareness of international efforts to combat illegal trafficking. They show that museums have an important role in this process as they are centres of specialist knowledge in ancient cultures, have curators who understand objects and they share the same fundamental concerns over the preservation, interpretation and display of past or living cultures.

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Fig. 1. Dr Masoudi, Director of the National Museum of Afghanistan, signs an MOU with Neil MacGregor, Director of the British Museum, in 2011.



Fig. 2. Looting in progress of a Bronze Age cemetery in northern Afghanistan.



Fig. 3. Large numbers of antiquities and other items are openly sold on the streets of Kabul and other major cities in Afghanistan during the 1970s.



Fig. 4. Playing card issued by American armed forces in Iraq.

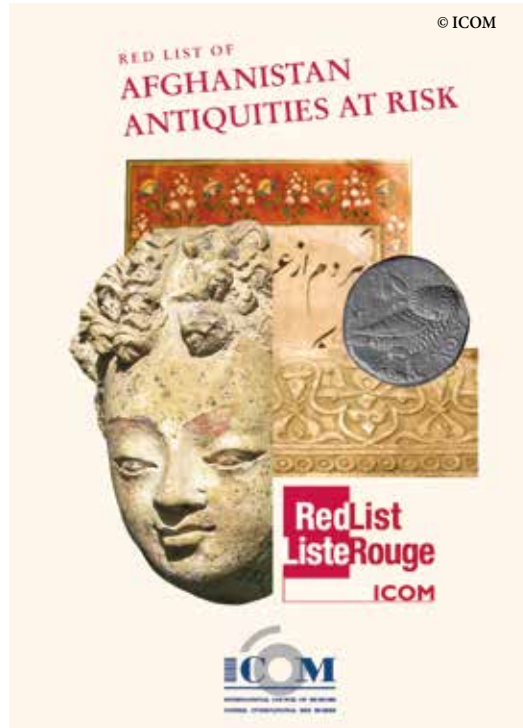


Fig. 5. The ICOM Red List of Afghan Antiquities at Risk was launched at the British Museum in 2008.



Fig. 6. A Bronze Age cosmetic container in the form of a partially hollow bull, with the applicator inserted in the top, was part of a large number of illegally excavated antiquities from Afghanistan which were seized in Britain and returned directly to Kabul in 2009 and 2012.

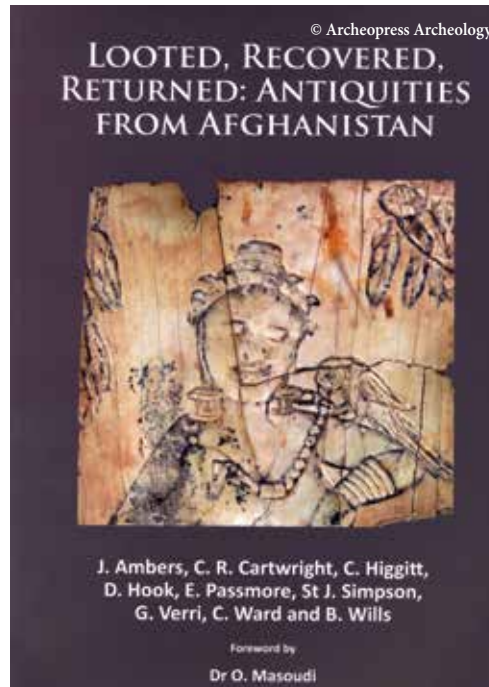


Fig. 7. A detailed account of the 'Begram ivories' which were scientifically analyzed and conserved at the British Museum and successfully returned to Kabul has been published in full.



Fig. 8. The so-called 'Fire Buddha' of Sarai Khuja was stolen from the National Museum of Afghanistan but was identified in a private collection and returned to Kabul in 2012.

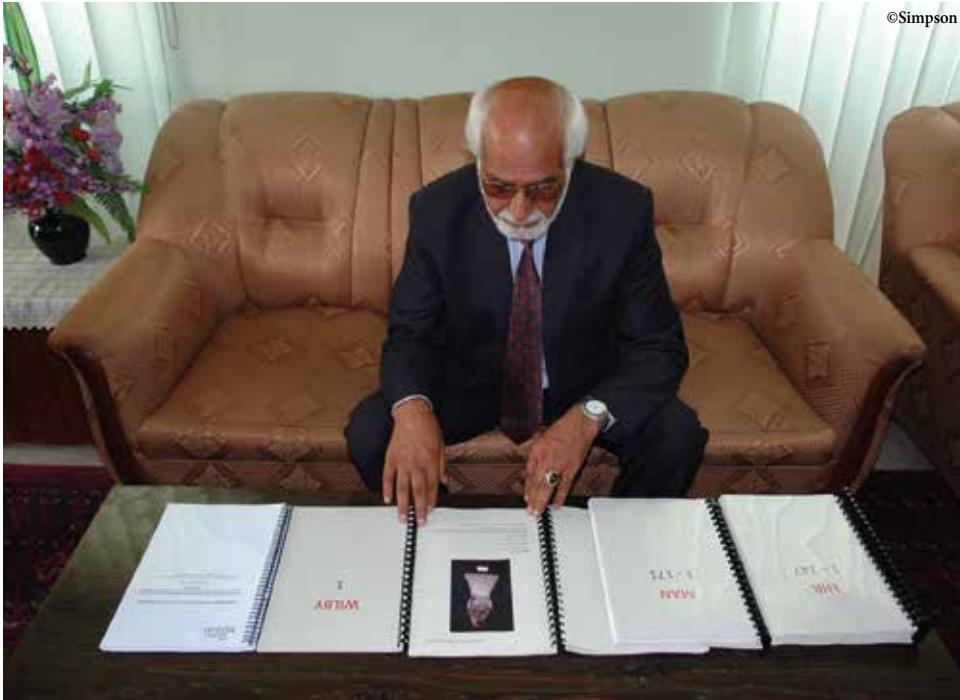


Fig. 9. Dr Masoudi inspects condition reports on stolen antiquities which were identified, catalogued and returned by the British Museum in 2012.



Fig. 10. The British Armed Forces assist with the secure return of antiquities to Kabul in 2012.



INTERNATIONAL COUNCIL OF MUSEUMS (ICOM)

The International Council of Museums (ICOM), created in 1946 to represent museums and museum professionals worldwide, is committed to the promotion and protection of natural and cultural heritage, present and future, tangible and intangible. With a unique network of over 35,000 members in 137 countries, ICOM is active in a wide range of museum- and heritage-related disciplines.

ICOM maintains formal relations with UNESCO and has a consultative status with the United Nations Economic and Social Council (ECOSOC) as an expert in the fight against illicit traffic in cultural goods. ICOM also works in collaboration with organizations such as INTERPOL and the World Customs Organization (WCO) to carry out some of its international public service missions.

The protection of heritage in the case of natural disasters or armed conflict is also at the core of ICOM's work, carried out by its Disaster Relief Task Force (DRTF) and through its strong involvement in the International Committee of the Blue Shield (ICBS). ICOM has the ability to mobilise experts in the field of cultural heritage from all over the world thanks to its numerous programmes.

In 2013, ICOM created the first International Observatory on Illicit Traffic in Cultural Goods in order to reinforce its action in fighting illicit traffic.

The Red Lists have been designed as practical tools to fight the illegal trade in cultural objects. ICOM is grateful for the unwavering commitment of the experts and institutions who generously contribute to the success of the Red Lists.

