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THE PROTECTION OF CULTURAL PROPERTY
Analysing the International and European Legal Framework
for its Return, Export and Import

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ABSTRACT

Cultural property represents a vital part of humanity's heritage. Hence, it is incumbent on society to ensure the protection of movable cultural goods against illicit trade and harmful practices. While illicit trafficking has been recorded throughout history, it has nowadays emerged as a global concern. Moreover, as long as there is an excess in demand that legally traded goods cannot satisfy and the profits remain considerable, the looting, smuggling, and illicit trade will persist. Given the unprecedented interconnectivity of global commerce today, disparate approaches by countries are unlikely to resolve the nature of the issues effectively. Instead, coordinated cooperation within international organisations and implemented nationally may provide a more beneficial solution. The proposition is that an optimal regulation of the import and export of movable cultural property at an international level may dissuade traffickers, thus mitigating the inherent harmful practices. To explore this argument, this dissertation comprehensively reviews current instruments designed to protect cultural property in both the International and European fields. Furthermore, it outlines the deficiencies in the current system and proposes optimal solutions for their reform.

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1. INTRODUCTION

Different approaches to cultural property protection inadvertently incentivise the continuation of illicit trafficking. Even though the export of cultural objects is usually regulated to control whether certain goods can leave their territory, illicit trafficking remains a challenge. It must be assumed that a significant, yet undetermined number of objects are unlawfully traded, undermining regulatory efforts. Inasmuch as countries maintain lenient import regulations, cultural goods will continue to flow into their territory, facilitating illicit ownership transfers (Quiñones, 2021, pp. 51-76). Therefore, implementing a uniform procedure on imports and exports at the international level would be the desirable solution (Szabados, 2022, p. 2).

As an integral component of humanity's heritage, cultural property has become an important issue within both national and international spheres. To address this, the international community has drafted various treaties, the most ratified being the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Despite its relevant advancements, the Convention results from compromise, which allows for different interpretations and implementation, not always aligned with the protection of cultural property (Prott, 2012, p. 4). Furthermore, until recently, the European Union lacked a specific regulation addressing imports of cultural goods despite 25 of its Member States having ratified the UNESCO Convention. This was regarded as a national matter, creating legal loopholes for introducing unlawfully exported property into countries with permissive legislation, laundering their provenience¹ and provenance², and affecting the entirety of the Single European Market.

The aforementioned factors and many others covered in this dissertation have enabled the looting of cultural heritage to expand, feeding an ever-growing illicit art market (Veres, 2014, p. 93). According to the European Commission, evidence links these illegal practices to criminal organisations involved in the traffic of other illicit goods – such as narcotics and firearms – money laundering and terrorist financing (European Commission, 2019, pp. 108-115). The opaque nature of the art market and the lack of information feed a vicious cycle: it is challenging to assemble an optimal solution and allocate the required resources without a clear

¹ Location of an object at the date it was discovered or created.

² The chain of custody of an object from origin to the present.

understanding of the problem's extent, and simultaneously, without a solution and sufficient resources, the issue itself remains elusive (European Commission, 2019, p. 79).

Nonetheless, these past decades have seen increasing awareness and interest in preventing illicit trafficking, and technological advancements have played a crucial role in detecting and averting such activities. For instance, the International Council of Museums has sponsored the ICOM Red List of Cultural Objects at Risk; this comprehensive database categorises objects likely to be subject to theft and trafficking. In parallel, INTERPOL has created the Stolen Works of Art database and the ID-Art mobile app, which helps identify over 52,000 stolen items through descriptions and images.

Before proceeding further, it should be noted that the subject examined, the protection of cultural property, has been largely unexplored. This novelty has translated into a challenge in delimiting the content of an unfathomable issue that encompasses various legal fields. Thus, the dissertation examines the legal framework, traces its evolution to the current system, and identifies the remaining areas that require further improvement. However, the materials and case studies presented throughout this project should not be regarded as an exhaustive depiction of the illicit trade, but rather to substantiate the information and arguments expressed.

Bearing in mind this background, the dissertation is organised as follows. First, it will focus on the lack of consensus on what constitutes cultural goods, the different types of definitions, and the characteristics of the illicit trade in cultural property. It then explores countries' roles in unlawful trafficking – whether as sources, transit hubs, or markets – and how this aspect determines their stance in promulgating further protective measures.

Second, the dissertation analyses the international framework for protecting cultural property, emphasising the 1954 Hague, 1970 UNESCO and 1995 UNIDROIT Conventions. The overview allows to observe how these instruments have evolved from safeguarding cultural property during wartime to peacetime. Moreover, it scrutinises their most relevant provisions and how these have influenced European Union legislation.

Succeeding, the legislation developed by the European Union on the protection of cultural property will be assessed. For this purpose, an outline of the primary European law relevant to the issue is compiled. It considers how its economic-oriented formulation and linguistics

aspects might curtail the effectiveness of the Union's measures against the illicit trade of cultural property. Subsequently, it examines the developed secondary law on the export, import, and return of unlawfully exported objects and the most significant provisions.

Finally, the dissertation delves into five illustrative cases, highlighting the involved actors and the routes these employ, as well as the deficiencies of the European legislation and International framework. It also proposes recommendations focused on promoting awareness, improving prevention and detection, and strengthening cooperation. These proposals could aid in protecting and averting the proliferation of the illicit trade in cultural property.

2. CULTURAL GOODS: DEFINITION AND CHARACTERISTICS OF THE ILLICIT TRADE

Cultural goods are unique and deserve protection because of the significant archeologic, artistic, prehistoric, literary and scientific value contributing to humankind's heritage. Notwithstanding the considerable role of cultural goods, there is no universally accepted definition for the broad term "cultural good". Related terms like "cultural property", "cultural heritage", and "cultural patrimony" are often employed to complement the conceptualisation of this class of objects (Dehouck, 2019, p. 14).

Analysing relevant literature and legislation of the field makes it possible to discern three distinct categories of definitions. The first category encompasses "open definitions", which present a broad perspective of objects that could be considered cultural, like the Directive 2014/60/EU. Goods featured in exhaustive or non-exhaustive lists constitute the second category, such as the 1954 Hague Convention. Lastly, some definitions incorporate characteristics of both previously described models, for instance, the 1995 UNIDROIT Convention (Dehouck, 2019, p. 15).

Proceeding with the present section, a description of the predominant characteristics inherent to the illicit trade in cultural goods will be provided. The distinction between market and source nations will also be discussed, highlighting the differences that arise when confronting these illegal activities.

2.1. CHARACTERISTICS OF THE ILLICIT TRADE IN CULTURAL PROPERTY

The illicit trade in cultural property, often a cross-border offence, proves to be a lucrative venture for organised crime and has been occasionally linked to financing terrorism and conflict parties³. The low risk, exacerbated by an industry accepting of secrecy and anonymity, and the high-profit margins on a steadily increasing global market worth \$67.8 billion (McAndrew, 2023, p. 20) contribute to the attractiveness of these activities. Moreover, the opaqueness surrounding the authenticity, provenance, and provenience of traded cultural objects further benefits the offenders. Distinguishing licit from illicit transactions becomes an arduous task that generally requires the assistance of experts. Nonetheless, the loss of cultural goods results in irreversible damage, depriving the country of origin and the international community of their cultural heritage (European Commission, 2022, pp. 1-2).

The European Union Action Plan against Trafficking in Cultural Goods (2022) sets out the illegal activities associated with illicit trade. These can be classified into three categories: theft and robbery, looting and pillaging, and forgery of cultural goods. These crimes often involve further offences such as the subsequent disposal of stolen goods, smuggling and corruption, which might lead to money laundering, sanctions, and tax evasion.

Trafficking in cultural goods results in the annual displacement of thousands of objects from historical sites, private collections, museums, and public institutions, which nurtures the black market. INTERPOL (2021, p. 12) reported that in 2021, 170,045 objects were seized globally, with approximately 35% of these in Europe. Considering that a sizeable number of cases remain undetected, the true magnitude of the problem could be much larger (European Commission, 2019, pp. 81, 159-160). In fact, its significance might fall just behind that of arms and drugs trafficking and money laundering (Veres, 2014, p. 94).

The absence of reliable data and statistics obstructs accurately determining the monetary value associated with illicit trade. However, it would be inappropriate to exclusively approach this issue from an economic perspective. The focus should not solely be on the financial repercussions but rather on mitigating the adverse effects these crimes inflict on cultural heritage.

³ E.g., UNSC Resolution 2347 (2017) S/RES/2347 (2017); UNSC Resolution 2617 (2021) S/RES/2617 (2021); G20 Culture Ministers Rome Declaration of 30 July 2021.

Indeed, the looting and trafficking of artworks can transpire during peacetime and conflict; however, the latter conditions tend to facilitate this detrimental phenomenon. This has been recently illustrated in Ukraine. The decline in security within the territory, which leaves cultural and archaeological sites unguarded, the ideological cleansing aimed at eroding ethnic and religious diversity, the need for financing operational capabilities, and the spoils of war are some factors contributing to the perpetration of these crimes (Veres, 2014, p. 94).

One observed instance of such activities occurring during conflict is the destruction perpetrated by the Islamic State of Iraq and the Levant (ISIS or ISIL). This terrorist organisation devastated the ancient city of Palmyra, assaulted the Mosul Museum, and exported cultural objects to fund their terrorist attacks. However, these offences were not exclusive to ISIS. At the outset of the Syrian conflict, the Free Syrian Army also engaged in the looting and selling of cultural goods to fund weapons purchases (Luck, 2013). In response to these activities, the United Nations Security Council (UNSC) issued Resolution 2199 in 2015, which states in point 16:

“16. Notes with concern that ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks;”

The European Union had previously condemned these actions in 2012, extending the prohibition on imports of cultural goods from Syria (Council Regulation (EU) No 36/2012). These restrictions had already been in place for goods proceeding from Iraq since 2003 (Council Regulation (EC) No 1210/2003).

Other criminal organisations, such as the Italian Camorra, have established links to art heists (European Commission, 2019, p. 120). Stolen artworks have been used for various purposes, including payment for drug deals, money laundering for other criminal activities, or even “art-napping⁴” (Dehouck, 2019, p. 7). A renowned case of this was the 2002 theft of two Van Gogh paintings from the Van Gogh Museum in Amsterdam. These artworks were later recovered in

⁴ Theft of artwork with the purpose of retaining it until a ransom is paid.

2018 in Naples during an investigation against the Amato-Pagano, a Camorra clan associated with cocaine trafficking (Kirchgaessner, 2016).

Indeed, respected art dealers, such as Jaume Bagot, arrested in March 2018, have exploited their prominence, trust, and expertise within the international art trade community. Bagot, a Barcelona-based dealer, was a member of the Confederation Internationale des Négociants en Oeuvres d'Art (CINOA) and the Spanish Federation of Antiques and hosted academic conferences discussing the cultural exploits in the Middle East. He was involved in the sale of Greek and Roman antiquities trafficked by members of the Daesh from Egypt or Libya into the European Union via the United Arab Emirates or Thailand. The provenience and provenance of the objects were manipulated and laundered to facilitate their entry into the European art market (European Commission, 2019, pp. 123-125).

Despite the difficulties in determining the extent of the collaboration, these examples illustrate the connection between the illicit trade of cultural goods, financing of terrorism, and organised crime. The following subsection offers an overview of the processes that unlawfully obtained pieces must undergo to access the legal art market.

2.2. THE NOTIONS OF SOURCE, TRANSIT, AND MARKET NATIONS

The place where a cultural object is recovered provides a glimpse into its journey to arrive at that location. Notwithstanding the unique characteristics inherent to each piece, tracing its provenience and the trafficking route it has endured – often through various countries with different regulations – poses a considerable challenge to law enforcement and those wishing to engage in licit transactions. Nevertheless, the illicit trade of cultural goods obeys the laws of supply and demand, akin to any other form of commerce. The trafficking provenance of illegal cultural objects is typically described in terms of “source”, “transit”, and “market” nations. Countries can accommodate more than one of these stages in their territory (European Commission, 2019, p. 97).

Countries from which unlawfully traded objects originate are labelled “source nations”. Hence, the supply of cultural property exceeds the internal demand. Generally, these nations are archaeologically and historically rich. Factors such as being marred in conflicts or extreme poverty, which weaken sovereignty and controls, can enhance the profitability of these illegal

activities. Examples include most African countries, particularly around the Near and Middle East, like Egypt and Syria, Mexico and Guatemala in Latin America, and Cambodia in Asia (Dehouck, 2019, p. 5).

Once objects have been illicitly extracted from their country of origin, they must be distanced from it to be sold on an open legal market. By repeatedly transferring its ownership across jurisdictions and concealing them from public scrutiny for years, traffickers obtain sufficient paperwork on their false provenance and history, thereby legalising the unlawful cultural good (European Commission, 2019, p. 103). These schemes often take place in “transit nations”. Such countries usually have the advantage of their geographical location and, crucially, lenient import-export legislation reinforced by so-called “free ports⁵” that provide long-term or permanent storage of goods. Switzerland is a prime example of a “transit nation” in the European art market (European Commission, 2019, p. 98).

Lastly, the countries that serve as the final destination for the illicit cultural good, previously “laundered”, are known as “market nations”. These countries typically have strong demand, exceeding the supply, and well-developed art markets. The United States, a significant portion of the EU Member States, such as France and Germany, the United Kingdom, and Japan constitute this group (Dehouck, 2019, p. 6).

As noted at the outset of this subsection, some countries may host more than one activity within their borders. Italy serves as a good illustration of this phenomenon. In its poorer areas, typically the south, numerous archaeological sites fall victim to looting and pillaging. Meanwhile, the northern and wealthiest regions find themselves on the demand side of the market (European Commission, 2019, pp. 74, 102).

According to Merryman (1986), the disparities between source and market nations are further reflected in the ideological perspective each endorses. On the one hand, source nations tend to advocate “cultural nationalism”, viewing cultural property as an integral part of national

⁵ Free ports are enclosed areas within “free zones” where goods can be introduced without duties, taxes, and customs declarations. Initially intended to serve as temporary storage for goods in transit, these facilities are increasingly used for long-term or even permanent storage of valuables. Given their high levels of discretion and security, free ports indulge transactions without drawing authorities' attention. This lack of transparency and oversight can inadvertently aid illicit trade in cultural goods and associated crimes such as money laundering, terrorist financing, and tax evasion.

heritage, legitimising export control and favouring repatriation. On the other hand, “cultural internationalism” considers cultural property as a component of the common human culture, irrespective of its origin, and advocates facilitating free trade in cultural goods. Market nations usually adopt the latter stance. The dichotomy between these doctrines shapes national regulations and interpretations of European primary law – which will be addressed in Section 4 – and determines countries’ involvement in conventions that protect cultural property.

Nonetheless, this binary approach simplifies the complex balance between the need for regulation and its utter rejection. Indeed, the preservation and trade of cultural goods require specific rules, and it is evident that source, transit, and market nations have specific provisions in place for cultural commerce. Consequently, the relevant question should not be about the existence of regulation but rather about where the line should be drawn between excessive and essential regulation (Szabados, 2022, pp. 4-5).

3. INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF CULTURAL PROPERTY

The existing international regulatory framework for the protection of cultural heritage can be traced back to the end of the Second World War, first focusing on protecting cultural property during wartime and later extending to peacetime. Prior to this conflict, some provisions for the protection of cultural goods were already established, such as the Roerich Pact and the Hague Conventions of 1889 and 1907. However, in light of the extensive devastation and calamities committed during the war, the international community emphasised the necessity for reform. Consequently, the 1954 Hague Convention and the First Protocol were drafted, and in 1999 the Second Protocol was developed.

Subsequently, the 1970 UNESCO Convention established a common framework for prohibiting and preventing the import, export, and transfer of illicit cultural property while broadening cooperation on return and restitution. Onward, the 1995 UNIDROIT Convention underpinned the provisions of the previous treaties, incorporating 25 years of reflection on these subjects, formulating minimal legal rules for the restitution and return of cultural objects exposed to illicit trafficking. Likewise, private actors at both international and national levels,

such as international trade organisations, dealers⁶, and museums' associations⁷, enacted guidelines and ethical rules⁸, addressing the present shortcomings within the sector.

It should be noted that UNESCO membership and ratification of the analysed conventions are exclusive to States. Despite this limitation, the European Union has developed a comprehensive cooperative relationship with the organisation. This is evidenced by the 2012 Memorandum of Understanding and the EU's position as the second largest extra-budgetary funding source. Additionally, the European Union holds an observer status, as permitted by Article 4(e) of the UNESCO Constitution, enabling participation in the General Conference without voting rights.

The present section provides an overview of the three main conventions that configure the foundation of the international legal framework on the protection of cultural property. These conventions have served as models for the European Union's regulatory approach to the circulation of cultural goods.

3.1. THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICTS

History demonstrates that wars, whether they involve multiple countries or are fought within one State, pose a significant threat to cultural property (Goretta, 2020, p. 17). Looting, pillaging, and destruction of cultural objects have been used to suppress cultures and national identities and as a medium to finance conflicts. Until the mid-20th century, some provisions aimed to protect the cultural heritage during wartimes. Nonetheless, these were contained within a broader body of principles governing belligerent conduct and not consistently widely recognised. The onset of the Second World War introduced technologies, strategies, and tactics under the notion of “total war”, leading to unprecedented destruction of cultural heritage. At

⁶ E.g., Antique Tribal Art Dealers Association (ATADA), *Trade Practices and Guarantee*, (1997, amended 2007); College Art Association (CAA), *A Code of Ethics for Art Historians and Guidelines for the Professional Practice of Art History* (1995); Confédération Internationale des Négociants en Oeuvres d'Art (CINOA), *International Support and Guidelines* (1987, amended 1998 and 2005); International Association of Dealers in Ancient Art (IADAA), *Code of Ethics and Practice*.

⁷ E.g., British Art Market Federation (BAMF), *Principles of Conduct of the UK Art Market Adopted by the British Art Market Federation* (2000); German Museum Association, *Code of Ethics*; J. Paul Getty Museum, *Acquisitions Policy* (2006); Metropolitan Museum of Art (MMA), *Collections Management Policy* (2008); Society for American Archaeology (SAA), *Principles of Archaeological Ethics* (1996); Swiss Association of Dealers in Arts and Antiques (SADAA), *Code of Ethics*.

⁸ E.g., ICOM, *Code of Ethics for Museums*, (1986 revised 2004); *Washington Principles on Nazi-looted Art* (1998); *Terezin Declaration* (2009); UNESCO, *International Code of Ethics for Dealers in Cultural Property* (1999).

the conclusion of the conflict, the existing regulations had been rendered inadequate. (Merryman, 1986, pp. 833-835).

The extensive looting of cultural property by the infamous Reichsleiter Rosenberg Einsatzstab, an organisation established by the Nazis and commanded by Alfred Rosenberg, exemplifies the main circumstances that led to enacting the first treaty focused solely on protecting cultural property. Furthermore, Rosenberg's indictment during the Nuremberg trials introduced the principle of individual international responsibility for offences against cultural property committed in its name. This principle, incorporated into Article 28 of the Convention, designates individuals as actors under international law, assigning them specific rights and obligations to protect cultural heritage and facing the consequences, sanctions, and prosecution if these are violated (Merryman, 1986, p. 836). Another significant aspect of the Hague Convention of 1954 is the rationale unveiled in its preamble:

“[...] damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world; [...] the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;”

Cultural property is defined in Article 1 as a list of movable and immovable properties that, irrespective of origin or ownership, possess inherent value for all humanity. By narrowing the definition of protected objects, the Convention aims to enhance their safeguarding (Goretta, 2020, p. 18). Article 3 instructs ratifying parties to undertake appropriate preparations during peacetime to ensure the success of protective measures during armed conflict. Furthermore, Article 4(1) prohibits using cultural sites and surrounding areas for military purposes, thus preventing potential destruction. The treaty also forbids theft, pillage, misappropriation, and vandalism that might endanger cultural property (Art. 4(3)).

As aforementioned, the Convention has two Protocols. The First Protocol was drafted alongside the 1954 Hague Convention, with the primary goal of preventing the potential export of cultural property from war-torn occupied territories and appealing for restitution to the territory of origin. The Second Protocol, codified in 1999, aimed to improve the effectiveness of the provisions and supersede the enhanced protection detailed in the Convention's second chapter for “cultural property of very great importance”. For this purpose, a new strengthened category

for the tangible cultural heritage of “greatest importance to humanity” was introduced, as set forth in Article 10 of said document.

All European Union Member States, except Malta, have ratified the 1954 Hague Convention and at least one of their subsequent Protocols. It is important to note that Ireland is not a party to the First Protocol, nor is Latvia a party to the Second Protocol. The treaty has influenced the import restrictions enacted by the European Union in response to the Iraqi and Syrian conflicts.

3.2. THE 1970 UNESCO CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

The 1970 UNESCO Convention aims, as indicated by its title, to establish rules that oversee the protection of cultural objects and inhibit international illicit trade during peacetime. Nonetheless, the effectiveness of these rules hinges on their implementation into national legislation. This requirement generates dichotomies between countries, depending on whether they are considered “source” or “market” nations (European Commission, 2019, p. 144; Prott, 2012, p. 4). The structure of the Convention can be broken down into three sections: the first section encompasses general rules enforced at the national level; the second section pertains to the restitution of illegally exported cultural property; and the final section is dedicated to international cooperation (Goretta, 2020, p. 20).

As part of the general rules, Article 1 defines cultural property as any “*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*”. These objects fall under eleven distinct categories. Similarly, Article 4 outlines five categories of objects that constitute national cultural heritage. Two include objects that originate within the state's territory, and the remaining three refer to objects that have been lawfully exchanged or obtained.

The signatory parties pledge to combat the impoverishment of the cultural heritage that countries suffer due to the illicit import, export, and transfer of ownership of cultural property, as specified in Article 2. Furthermore, Article 3 deems that any trade of a cultural object exported contrary to the law of the country of origin is “illicit”. To enforce this, Articles 5 and

6 of the Convention mandate the creation of inventories for protected property and introduce a certificate of export where the exporting State must confirm the authorisation of such activity.

The Convention's second section, mainly comprised of Articles 7 to 13, sets out measures guiding States on the restitution of unlawfully removed objects and sanctions. One of the most significant provisions is Article 7, particularly its (b)(ii) disposition. This article places the burden of proof on the State requesting the restitution, and it requires it to pay just compensation to the innocent purchaser or the individual with a valid title to the property:

“(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.”

Moreover, Articles 8 and 10 reiterate the principle of individual international responsibility, introduced by the previously analysed Convention, regarding penalties for infringing the prohibitions stipulated in the text. Even though the treaty does not entirely prohibit trade in cultural goods, Article 13(d) acknowledges a state's right to declare certain cultural property inalienable, thus, prohibiting its export.

Finally, Articles 15 to 17 of the 1970 UNESCO Convention underscores international cooperation. It demands that State Parties cooperate and assist one another on matters addressed in the text. However, this is not an exclusive mandate; the Convention encourages the formation of bilateral agreements to supplement potential deficiencies and enhance its reach, albeit within the broader framework of its provisions.

In 2012, with Lyndel Prott leading the effort, UNESCO published an evaluation marking 40 years since the adaption of the 1970 Convention. This paper covered the treaty's achievements and weaknesses, summarised below.

On the one hand, it has successfully reconciled radically opposing positions, setting a standard for cooperation in the field of cultural property across 143 countries. Secondly, the Convention has altered public attitudes towards cultural heritage, influencing academia, education, and media. A key impact of this shift is the emphasis now placed by museums on the provenance of pieces during their acquisition. Thirdly, many signatory parties, even those with considerable trading interests, have adapted their national legislations to align with the Convention's requirements. Perhaps more notably, it has influenced the development of other conventions and codes of ethics. For instance, the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage and the 1995 UNIDROIT Convention. Additionally, it has shaped European regulations such as Council Directive 93/7/EEC.

On the other hand, certain shortcomings eclipsed its success and highlighted the need for reform. Firstly, some vague clauses hinder the Convention's effectiveness since its transposition allows for greater divergences. An example can be found in Article 7(b)(ii) regarding the concept of "due diligence" during a purchase, a requirement to receive fair compensation for the object's return. Since Member Parties are obligated to create inventories, objects not catalogued become particularly challenging to return, granting looters a legal loophole to exploit. Furthermore, the Convention does not allow retroactivity. Hence, for the Convention to apply, two conditions must be met. First, the objects must have been removed from their territory after 1970. Second, their importation must have occurred after the treaty came into force for both States concerned, as detailed in Article 7(b)(ii).

As previously noted, the international community has widely ratified the Convention, although participation from market nations has been rather slow. This recognition is evident among the Member States of the European Union, where the majority have ratified and become Parties to it, with the exceptions being Ireland and Malta.

3.3. THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

The 1995 UNIDROIT Convention seeks to protect cultural heritage bearing in mind the weaknesses of the preceding 1970 UNESCO Convention. To this end, it pursues the harmonisation of private law, excluding reservations on its provisions (Art. 18) and defining

uniform legal measures to address the issues pertaining to cultural goods' restitution and reducing illicit trade profitability (Love Levine, 2011).

In contrast with the exhaustive definition of cultural objects provided by the 1970 UNESCO Convention, Article 2 offers a more comprehensive definition as *“those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention”*. It applies to all cultural goods, including those undiscovered, unexcavated, and unregistered, making no distinction between the pieces' importance (European Commission, 2019, p. 145).

Article 3 contains various rules relevant to the current analysis. Disposition (1) sets out an obligation for the return of a cultural object to its possessor if it can be proven to be stolen or illegally exported. Disposition (2) elaborates on the term “stolen”, referring to *“a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place”*.

The time restrictions for claims of restitution are outlined in Articles 3(3), 3(4), and 3(5). These indicate that the claim must be brought within three years since the claimant became aware of the location and identity of the possessor of the cultural object. An absolute time limitation of 75 years is also set for all requests. Therefore, the convention will not cover an item that exceeds this threshold.

Along the same lines, Article 5(3)(d) lays a provision not seen in prior treaties. It advocates for the return of illegally exported cultural objects which significantly impair the traditional or ritual use by a tribal or indigenous community. This provision could lay the foundations for the restitution of colonial exploits if it were not for the mentioned time limitations (Campfens, 2020, pp. 271-277). Nonetheless, this issue falls outside the scope of this dissertation.

Moreover, as specified in Article 4(1) concerning stolen objects and Article 6(1) regarding illegally exported objects, specific criteria must be met to be considered a good faith possessor. The holder should demonstrate that they *“neither knew or nor ought reasonably to have known”* of the object's unlawful provenance and provenience. Furthermore, these must prove that they *“exercised due diligence when acquiring the object”* to receive fair and reasonable

compensation. As opposed to the 1970 UNESCO Convention, this treaty provides clear definitions of the elements characterising due diligence, which are detailed in Articles 4(4) and 6(2), now displayed respectively:

“In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.”

“In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State.”

Notwithstanding the advancements and amendments made in the 1995 UNIDROIT Convention, when compared to previous treaties, its ratification has been limited. Only 46 States are part of the Convention, with 15 being Member States of the European Union, none of them being a major market nation. For instance, Germany is not a party, while France and the Netherlands have been signatory parties since 1995 and 1996 but have yet to implement it. The Convention’s limited success among the international community can be credited to its rigid stance on reservations (Love Levine, 2011, pp. 772-773). Nevertheless, a uniform legal framework across State Parties would not be feasible without it. In addition, most market states, influenced by their commercial interests, opted not to ratify the 1995 UNIDROIT Convention (European Commission, 2019, p. 146).

Interestingly, despite its relatively restricted implementation within EU Member States, the Convention has substantially influenced the legislation regarding stolen or illegally exported and imported cultural goods. This influence is patent in Directive 2014/60/EU and subsequent Regulation (EU) 2019/880, both subject to discussion in the following section.

4. EUROPEAN UNION LEGAL FRAMEWORK ON CULTURAL GOODS: PROTECTION AND TRADE REGULATIONS

The European Union is the largest exporter of art and antiquities and the second largest importer. In 2018, the European art market achieved a \$21.1 billion valuation (McAndrew, 2019, p. 45). Since then, the departure of the United Kingdom from the Union has caused a decrease in this figure. By 2023, estimates suggest a value of \$8.8 billion (McAndrew, 2023, pp. 26-28). Nonetheless, these estimates only encompass the licit trade, excluding the costs associated with illicit trafficking, looting, and destruction of cultural goods, which persists despite the authorities' efforts.

Recognising the significance of cultural heritage preservation, the European Union has undertaken legislative action within its scope of competence. However, as Peters (2015) notes, most provisions concern the movement and trade of cultural goods within the Single European Market (SEM). Hence, evidencing the solid economic orientation of the Union's approach towards cultural property. To understand this policy approach, its provisions must be examined.

This section explores how the European Union has sought to protect and impede illegal trafficking practices concerning cultural objects. Initially, the focus is on primary law and the fundamental provisions related to cultural goods. Thereupon, attention shifts to the directives and regulations that constitute the secondary law.

4.1. PRIMARY LAW ON CULTURAL PROPERTY

The primary legislation of the European Union, containing references to the cultural domain, comprises the Treaty on European Union (TUE) and the Treaty on the Functioning of the European Union (TFUE). The dichotomies between the approaches adopted by "source" and "market" countries, as outlined in Section 2, are reflected in the interpretation of specific terms within these treaties. These varying interpretations influence the scope of national legislation of Member States (Peters, 2015, p. 142).

Deriving from the Treaty on European Union, Article 3(3) acknowledges the responsibility of the EU in monitoring and safeguarding cultural patrimony. Similarly, Article 167(2) TFEU

under Title XIII “Culture” states the EU's goal to reinforce Member States’ regulations via incentive measures, excluding the pursuit of law harmonisation (Art. 167(5)).

“[...] 2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas: [...] conservation and safeguarding of cultural heritage of European significance; [...] 5. In order to contribute to the achievement of the objectives referred to in this Article: the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member State; the Council, on a proposal from the Commission, shall adopt recommendations.”

Nonetheless, culture remains primarily within the prerogative of the Member States (Peters, 2015, p. 142). This stance is corroborated by Article 107(3)(d) TFEU, which, under Section 2, “Aids Granted by States,” denotes the compatibility of certain subsidies with the functioning of the internal market. Moreover, the prohibitions established by Articles 34 and 35 TFEU on quantitative restrictions on imports and exports between Member States contain an exception in Article 36 TFEU, recognising the “*protection of national treasures possessing artistic, historic or archaeological value*” as a rationale for limiting one of the “four freedoms” of the EU (Goretta, 2020, p. 32).

Therefore, the exceptions on State aid and the free movement of goods emphasise that states largely retain their authority in matters concerning cultural property. However, the extent of this authority hinges on the interpretation of the conflicting linguistic versions of Article 36 TFEU among Member States.

In countries where demand for cultural objects typically exceeds supply, the language used in their versions tends to minimise their prerogative over objects subject to trade restrictions. This is the case with the English (*national treasures*) and French (*trésors nationaux*) versions, whilst the German text (*nationalen Kulturguts*) offers an intermediate notion. On the contrary, the Italian (*patrimonio artistico*) and Spanish (*patrimonio artístico*) terms reveal a more expansive view of the cultural objects that these Member States can protect (Peters, 2015, pp. 141-142).

This inclusive conception is particularly evident in Spain, where the law of Spanish Cultural Heritage (*Ley 16/1985 del Patrimonio Histórico Español*) is regarded as one of the most restrictive within the European Union. Under this law, items that fall under its scope, even privately owned, move into the public domain, indirectly affecting property rights (European Commission, 2019, p. 80).

The European Union's law holds equal authenticity in its 24 official languages, applicable to both primary, as established in article 55 TEU and 358 TFEU, and secondary law⁹. The discrepancies previously highlighted involve the use of specific terms, thus, can be classified as conceptual or semantic distinctions (van der Jeught, 2018, p. 10). The European Court of Justice (ECJ) first articulated its stance on this issue in 1967 and has since standardised its doctrine addressing linguistic divergences¹⁰. The ECJ argues that different language versions must be uniformly interpreted and applied. Hence, when a divergence arises among various versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part¹¹.

Considering that Article 36 TFEU serves as an exception to the general rule delineated by Articles 34 and 35 TFEU, an extensive interpretation of the terms discussed could contradict the purpose and general schemes of rules regulating the Single European Market.

Before discussing the secondary legislation, it is essential to emphasise the legal foundations whereon the European Union can act and formulate rules for the imports, exports, and trade of cultural goods. These directions are accommodated in the Treaty on the Functioning of the European Union. Particularly, Article 3 delineates the areas of exclusive competence and the authority to conclude international trade agreements. Additionally, Article 207 TFEU details the principles that must be used as a basis for a common commercial policy.

⁹ ECJ, case 283/81 *CILFIT*, ECLI:EU:C:1982:335, point 18.

¹⁰ ECJ, case 19/67 *Bestuur der Sociale Verzekeringsbank v Van der Vecht* ECLI:EU:C:1967:49, point 354.

¹¹ E.g., ECJ, case 29/26 *Erich Stauder v. City of Ulm - Sozialamt*, ECLI:EU:C:1969:57, point 3; ECJ, case 30/77 *Regina v Pierre Bouchereau*, ECLI:EU:C:1977:172, point 14; ECJ, case C-404/16 *Lombard Ingotlan L.zing* ECLI:EU:C:2017:759, point 21.

4.2. SECONDARY LAW ON CULTURAL PROPERTY

The secondary legislation on cultural goods within the European Union has evolved under the influence of international conventions and the diverse attitudes that Member States employ to safeguard their heritage and commercial interests. The common incentive behind its foundation lies in the creation of the Single European Market, devoid of customs controls (Art. 28 TFEU). Since Member States have transferred their commercial policy prerogatives to the European Union, regulations were necessary to counterbalance the loss of control over the protection of cultural property. Therefore, their enactment intended to prevent an increase in the trafficking of cultural property, akin to the surge observed in States with weakened controls (Peters, 2015, pp. 142-143)

Legislation pertaining to the return of unlawfully removed cultural objects from a Member State's territory takes the shape of Directives. These legislative acts are not directly applicable and require national transposition (Art. 288 TFEU). Directives aim to establish harmonised minimal standards that can be strengthened should the Member States deem it proper (Peters, 2016, p. 93). In contrast, rules on cultural property exports and imports are comprised of Regulations. These ensure direct and uniform applicability in all Member States, providing consistent controls on the trade of cultural property in the EU's external borders.

4.2.1. Return of Unlawfully Removed Cultural Property

Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from a Member State's territory, represented the first efforts to conciliate the protection granted to "national treasures" under Article 36 TFEU with the principle of free movement of goods of Article 26 TFEU (Peters, 2015, p. 144).

Despite the advancements Council Directive 93/7/ECC fostered, only a small number of objects were returned, revealing several shortcomings of the legislation (Peters, 2015, p. 145). Consequently, Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State was adopted.

Directive 2014/60/EU, in its Recital 8, acknowledges certain limitations of the preceding regulation. Specifically, it cites the infrequent application attributed to the limited scope of the

Annex's conditions, the brief period permitted for initiating return proceedings, the associated costs of its execution, and the lack of clarity surrounding certain terms, like "due care". Hence, in an attempt to enhance the directive's effectiveness, four substantial modifications were enacted (Peters, 2015, pp. 145-146).

First, Article 20 repeals the categories delineated in the Annex. Both Recital 9 and Article 2(1) assert that all cultural objects deemed as "national treasures" under Article 36 TFEU are subject to the obligation of return:

"(1) 'cultural object' means an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 TFEU; [...]"

Second, to strengthen cooperation and promote the exchange of information between Member States, Article 5 mandates the use of a module of the Internal Market Information System (IMI) (Regulation (EU) No 1024/2012) by the appointed central authorities. Moreover, Article 8(1) extends the period within which a Member State can initiate return proceedings from one to three years from the moment it becomes aware of the object's "holder" or "possessor" and its location.

Lastly, Article 10 shifts the burden of proof from the requestor to the requestee, essentially reproducing Articles 4(4) and 6(2) of the 1995 UNIDROIT Convention. The provision defines the attitudes and behaviours a possessor must demonstrate when acquiring a cultural object to be considered as having exercised "due care and attention".

The Directive 2014/60/EU also maintains some of the requirements of the previous legislation. Member States must designate the mentioned central authorities to facilitate the establishment of administrative cooperation and assistance (Art. 4). Furthermore, it elaborates on the instances where cooperation shall be observed to expedite the recovery of cultural goods (Art. 5).

Notwithstanding the improvements, certain issues have not been addressed. For instance, the execution expenses are still borne by the requesting Member States (Art. 11), which may prove

excessive in some cases. In addition, according to Article 13, the Directive only applies to objects unlawfully removed after 1 January 1993.

4.2.2. Export of Cultural Property

Council Regulation (EC) No 166/2009 of 18 December 2008, which codified the 1992 Regulation (EEC) No 3911/92, governs the export of cultural property outside the Single European Market. Both texts bear significant similarities, with the latter intending to consolidate all the amendments that the preceding Regulation had endured.

Under this regulation, the definition of “cultural goods” is provided in Article 1 and Recital 7. Rather than providing an open definition, these provisions refer to a list of 15 categories in the Regulation’s Annex I, specifying age, financial threshold, and object type. Nonetheless, this exhaustive list intends to respect the definition Member States might assign to their national treasures.

Article 2(1) stipulates that any good falling under the scope of Annex I must obtain an export license to be exported outside the customs territory of the EU. The competent authorities to issue such documentation are those designated by the Member State (Art. 3) in whose territory the cultural object is lawfully located (Art. 2(2)(a)). Once granted, the license is valid throughout the Union’s territory (Art. 2(3)).

However, Article 2(2) authorises Member States to refuse the expedition of an export license for goods classified as “national cultural property” protected by their national legislation. This restriction might be undermined by the ambiguity of the categories and disparities in legislation among Member States (Peters, 2015, p. 144). For instance, a country with a more flexible interpretation of the term “national treasures” might allow the export of a particular object that another country with a stricter stance might decline. Since licenses must be issued promptly, ensuring that said object does not contravene the rules of other Member States depicts a distorted expectation.

To avoid discrepancies in the application of the Regulation, Article 6 encourages administrative cooperation between the Member States’ customs authorities, particularly in the observance of Article 4 of Directive 93/7/EEC. This provision instructs the authorities designated by states on

how to cooperate when detecting an unlawfully removed object, ranging from identifying the possessor to the necessary measures for physical conservation and the return of the said object.

Furthermore, Article 9 mandates the Member State to establish laws on penalties applicable to infringements of the Regulation's provisions. These sanctions must follow the criteria of effectiveness, proportionality, and dissuasiveness.

Besides the mentioned issues, Peters (2015) highlights that while the economic and age thresholds used in the Regulation might constitute a comprehensive guide, most states do not use such elements to designate their national cultural heritage. Certain EU Members have raised criticism that the financial thresholds are too high. Conversely, art market operators argue the opposite, suggesting that these thresholds are, in fact, too low, thereby hindering their economic activities.

4.2.3. Import of Cultural Property

Until recently, and with very few exceptions, including Iraq (Council Regulation (EC) No 1210/2003) and Syria (Council Regulation (EU) No 36/2012), the European Union did not have specific regulations regarding the import of cultural goods from countries outside the Union's customs borders. As a result, the absence of national import regulations on cultural property in certain Member States created a legal loophole. Traffickers exploited these shortcomings by introducing unlawfully removed foreign cultural goods into the Single European Market, capitalising on the free movement of goods (Peters, 2019, p. 103).

Under the pretext of the 2016 EU Action Plan for strengthening the fight against terrorist financing, Regulation (EU) 2019/880 on the introduction and the import of cultural goods was enacted in April 2019. This legislative act was supplemented by Regulation 2021/1079/EU, which provided implementing details.

Regulation (EU) 2019/880, as outlined in Recital 1 and Article 1(1), sought to harmonise protective measures for cultural goods unlawfully exported from countries outside the Single European Market. Thus, preventing loss and destruction, preserving humanity's cultural heritage, and deterring criminal and terrorist organisations from benefiting from such unlawful

practices. However, objects discovered or created within the Union's customs territory are exempted from this regulation (Art. 1(2)).

Recital 7 states that the definitions in Article 2 draw inspiration from the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. Though the latter has not been universally ratified – with only 15 Member States as parties and none representing the principal market countries of the European Union – it provides significant improvements that were considered in establishing this regulation. Article 2(1) defines “*cultural goods means any item which is of importance for archaeology, prehistory, history, literature, art or science as listed in the Annex*”. Hence, it adopts a hybrid approach, combining an open definition and a list.

Article 3(1) imposes a general prohibition on importing cultural objects listed in Part A of the Annex, which were removed from their country of origin in violation of its national laws. Furthermore, for cultural property to enter the Single European Market, it requires either an import license or an importer statement. The type of documentation needed depends on the category into which the object is classified. As per Article 3(4), certain exceptions apply to these requirements, such as education, conservation, restoration, or temporary exhibition.

The Annex offers additional insight into the categorisation of cultural property. High-risk objects, listed in Part B of the Annex, need an import license (Art. 4(1)), whereas Part C goods only require an importer statement (Art. 5(1)). This statement consists of a description of the cultural goods and a declaration by the possessor claiming lawful export from the country where it was created or discovered, according to the laws in place at the time of its removal (Art. 5(2)).

Additionally, the Regulation establishes a more extended time threshold than those found in the previously explained European legislation. Articles 4(4) and 5(2) refer to 24 April 1972, which is the date the 1970 UNESCO Convention came into force (Art. 21 of the Convention). The mentioned provisions stipulate that if there is no available documentation to ascertain the country of creation or discovery, and if the export occurred prior to the aforementioned date, the required licenses and statements may be waived. Nonetheless, the import declaration must prove “*that the cultural goods in question have been exported in accordance with the laws and regulations of the last country where they were located for a period of more than five years and for purposes other than temporary use, transit, re-export or transshipment.*”

This exception could create a legal loophole in the import's regulation (Peters, 2019, p. 105). The risk is heightened because unlawfully exported cultural goods often disappear for years before re-emerging on the market. As indicated in Section 2, such objects accumulate paperwork during this period, effectively laundering their provenance and provenience.

The administrative cooperation, encouraged in Article 7, is further elaborated upon in Articles 8 and 9 of the Regulation. These latter articles lay the foundation for developing a centralised electronic system by the European Commission, set to become operational in 2025 (Art. 16). The register aims to streamline the work and strengthen the cooperation among national authorities involved in the administrative aspects of this legislation.

5. CASE STUDIES

This section aims to illustrate the intricacies of determining the trafficking routes endured by specific cultural objects through brief case studies. Nonetheless, these cases should not be considered as an exhaustive representation of the illicit trade phenomenon but rather as a means to underscore the relation with the findings in the previous sections. The information provided derives from open-source data published by the media and law enforcement authorities.

5.1. A ROMAN MARBLE EROS UNSTRINGING HIS BOW

In November 2019, Christie's London sought to auction a first-century Roman sculpture of Eros. The piece was identified in the catalogue for the auction by Dr Christos Tsirogiannis, who linked it to the disgraced dealer Robin Symes and his late partner, Christo Michaelides (Alberge, 2019).

Robin Symes was a renowned antiquities dealer until 1999. Following the death of his business partner, Michaelides's family pursued legal action to reclaim their share of the Symes company's assets. This legal process led to the discovery and subsequent 2005 conviction of Symes for concealing the extent and value of his collection and provenance of artworks stored in twenty-nine warehouses worldwide. In January 2016, Swiss authorities, assisted by the Italian Carabinieri, raided the Geneva Freeport in Switzerland, uncovering forty-five crates of Roman and Etruscan antiquities. Experts later confirmed that these items were illegally

excavated by the *tombaroli*¹² in the regions of Lazio and Umbria (Townsend, 2009). The objects had probably been sold to Giacomo Medici, an Italian antiquities trafficker and art dealer convicted in 2005 (Prescott, 2007), who distributed the pieces to other dealers, such as Symes.

Dr Christos Tsirogiannis, Head of the working group Illicit Antiquities Trafficking of the UNESCO Chair on Threats to Cultural Heritage and Cultural Heritage-related Activities, accused Christie's of neglecting their due diligence. He argued that comprehensive research, supported by Greek and Italian authorities, would have proven the connection with the dealer. Tsirogiannis, credited with the identification and securing the repatriation of over 1,100 looted artefacts, pointed to Medici's inventories. According to him, these inventories contained at least four photographs that corroborate Symes' association with the sculpture. In 2014, he had identified five more objects of dubious origin in a Christie's New York sale, which were consequently withdrawn from the auction.

On the other hand, Christie's insisted on the legitimacy of the statue's provenance, claiming it originated from "the property of a gentleman" (Corsi, 2019). The auction house stressed that they devote considerable resources to investigating the objects in their care. According to them, the provenance could be traced back to "Roger Peyrefitte's (1907-2000) collection, Paris, said to have been acquired from Nicolas Landau in the late 1960s. French private collector, purchased from the above in 1986."

Despite the controversy surrounding the item, the Eros sculpture was auctioned on December 4th, 2019, for £1,571,250 (Elbaor, 2019). If Tsirogiannis' identification is accurate, the object would have likely been looted in Italy by tomb raiders, purchased by Giacomo Medici, and unlawfully exported to a Swiss storage facility. There, the provenance and provenience could have been forged before being sold by Robin Symes to a French collector, who eventually offered it for public sale through Christie's.

The trajectory of the Roman Eros underscores the intricate cross-border movements that trafficked cultural property endures, effectively illustrating the source, transit, and market concepts discussed in Section 2. Furthermore, it highlights the difficulties faced in determining

¹² Italian term used to designate tomb raiders.

whether an item's provenance is licit or illicit, showcasing the sophistication of the laundering processes employed by traffickers.

5.2. THE METROPOLITAN MUSEUM OF ART RETURNS 29 ANTIQUITIES TO GREECE: BRONZE CALYX KRATER, EID MAR COIN, AND NEOLITHIC FAMILY GROUP

The second case study delves into museums' role in the illicit trafficking of cultural property. Notwithstanding increased awareness and improved due diligence processes, many renowned institutions, including the Metropolitan Museum of Art in New York (MET), continue to purchase or display unlawfully obtained objects in their collections.

In March 2023, Manhattan District Attorney Alvin L. Bragg, Jr. led the restitution of 29 looted antiquities to Greece, collectively valued over \$20 million. Some of these pieces were once part of the collection publicly displayed at the MET. The case focuses on three objects – a Bronze Calyx Krater, an Eid Mar Coin, and a Neolithic Family Group – considering their remarkable value, rarity, and antiquity (Manhattan District Attorney's Office, 2023).

The Bronze Calyx Krater, dating back to 350 B.C.E., was originally used for burial purposes. The object was looted from a tomb in Greece and smuggled to Switzerland by Robert E. Hecht, an American antiquities dealer (Weber, 2012). Hecht, a known collaborator of Giacomo Medici, was a defendant in a trafficking case in Italy from 2005 until his death in 2012. The Calyx was cleaned and restored in Switzerland by Zurich-based restorers Fritz and Harry Bürki, business partners of Hecht. The antiquities dealer subsequently exported it to New York, where it sold it to Leon Levy and Shelby White, major patrons of the MET.

The second piece analysed is a rare Eid Mar Coin, struck in gold in 42 B.C.E. This coin was minted to commemorate Julius Caesar's assassination and served as payment to Brutus's troops after he fled to Greece. Most of these coins were struck in silver, making the gold variety extremely valuable in the international art market. The coin first surfaced in Munich in 2016 without a recorded provenance and was smuggled into London. It was auctioned in 2020 for a record-breaking \$4.2 million to a U.S.-based buyer, from whom it was later impounded (Mashberg, 2023).

Lastly, the Neolithic Family Group (5000-3500 B.C.E.) is a set of six marble figures, composed of five human figures and one animal. The antiquity is believed to have been looted from the Island of Euboea by a Greek trafficker and unlawfully exported to Switzerland. Antiquities dealer Nicolas Koutoulakis, also accused of trafficking, sold the group to Leon Levy and Shelby White in 1982. In 2000, the Neolithic Family Group was loaned to the MET from White's collection, where it remained on display until its eventual seizure by D.A. Bragg's office.

Owing to recent cases of cultural property restitutions amid increased scrutiny of the Metropolitan Museum of Art's collection, the museum director has announced four new initiatives related to the institution's collecting policies (Akers, 2023). The most relevant plan involves hiring a team of researchers specialised in provenance, complementing the implementation of guidelines set by the museum and the International Council of Museums to ensure the acquisition of lawfully exported artefacts.

5.3. ITALIAN MAFIA TRADE WEAPONS TO ISIS FOR LOOTED ANTIQUITIES

This case study reveals tangible evidence of the collaboration among different criminal organisations involved in the illicit trade of cultural property. It specifically focuses on the intricate interaction between the Italian mafia groups, Camorra and 'Ndrangheta, Russian arms dealers, and the lootings perpetrated by the Islamic State of Iraq and Levant (ISIS or ISIL). Journalist Domenico Quirico initially reported these connections in an article published by La Stampa newspaper in October 2016 (Quirico, 2016). The Italian Minister of Interior later confirmed the information.

Historically, the Italian mafia has been linked to art trafficking. However, this form of criminal activity primarily occurred in Italy, often in collusion with the *tombalori*, to finance other illegal ventures such as drug deals. This case broadened the understanding of how crime syndicates across various countries interact for mutual benefit. While working undercover as a wealthy art collector from Turin, Journalist Domenico Quirico established contact with an art smuggler in Gioia Tauro, a port city known for its thriving narcotics trade. It is in this enclave that illicit transactions of antiquities have been observed.

Quirico recounts the meeting with a clan's family representative and trafficker who presented him with a second-century Roman marble sculpture of an emperor, valued at €60,000, along

with pictures of other objects, including a cyclopean head of a Greek deity priced over €800,000. These antiquities were looted from the ISIS-controlled Libyan territories of Sabratha, Cyrene, and Leptis Magna, all of which are UNESCO World Heritage sites (McGivern, 2016). They were then shipped on Chinese vessels from the city of Sirte to Gioia Tauro in the peninsula of Calabria.

Upon arriving in Italy, the Camorra and 'Ndrangheta exchanged these objects for weapons procured from Russian firearms traffickers, smuggled into Italy via Ukraine and Moldova. The looted antiquities were distributed among family clans, who sold them to dealers indifferent to their provenance and provenience. In turn, these items were typically sold to American buyers, museums, and private collectors. Nonetheless, given the increased scrutiny over the origins and parties involved, the clientele has reportedly shifted towards buyers from China, Russia, Japan and the United Arab Emirates.

Moreover, as the United Nations Security Council has highlighted in several resolutions¹³ – one of which is reproduced in Section 2 – this phenomenon is not exclusive to Libya. In these, it warned that the trafficking of cultural property, looted from territories in conflict such as Egypt, Syria, and Iraq, is used for funding terrorist activities and perpetuating hostilities.

In summary, this case study exemplifies the complex and transnational nature of the illicit trade in cultural objects. It outlines the interconnections between diverse criminal organisations and underscores that despite advancements in import regulations in the European Union, there remains a significant challenge in halting the flow of trafficked goods.

5.4. HEAD OF A YOUNG WOMAN, 1906 BY PABLO PICASSO

The final case study explores the recovery of an artwork unlawfully removed from Spanish territory. It provides an overview of the stringent protective measures that Mediterranean countries, typically considered source nations, place on their cultural heritage. It also showcases the successful cooperation with another European country to reinstitute a cultural object in its territory of origin.

¹³ E.g., UNSC Resolution 2199 (2015) S/RES/2199 (2015); UNSC Resolution 2253 (2015) S/RES/2253 (2015); UNSC Resolution 2347 (2017) S/RES/2347 (2017); UNSC Resolution 1483 (2003) S/RES/1483 (2003).

As stated in Section 2, Spain has one of the most restrictive laws protecting its national cultural heritage (*Ley 16/1985 del Patrimonio Histórico Español*). In particular, it limits private ownership rights over items falling under the scope of the legislation, thereby placing them under the public sphere of protection. The case revolves around Pablo Picasso's 1906 painting "Head of a Woman", valued at over €26,2 million. This artwork was previously owned by Jaime Botín, a former banker and member of one of the wealthiest families in Spain, who had been attempting to sell it since December 2012 (Koch, 2021).

Christie's Iberica, acting on behalf of Botín, sought the pertinent export license from the Ministry of Culture to allow the painting to leave Spain for an auction in London, scheduled for February 2013. The Ministry, however, argued that the artwork – created in Spain by the renowned Spanish artist Pablo Picasso and over a century old – should be regarded as a national cultural heritage and should not leave the country.

In defiance of the ruling, Botín transferred the piece aboard his sailing yacht, the Adix, and sailed to the port of Calvi in Corsica. In the summer of 2015, French authorities, acting at the request of Spain, boarded the vessel and seized the painting, which had already been wrapped up, conditioned, and prepared for transfer. Hence, this confirmed the suspicions that the artwork had been removed with the intention to store it in a Swiss facility and then transport it to London for auction.

The case had extensive media coverage, and Jaime Botín was tired and convicted of cultural property trafficking. He was sentenced to three years in prison, fined €91.7 million, and forfeiture of the Picasso to the Spanish State. Currently, the painting is at the Museo Reina Sofia (Porterfield, 2022).

6. RECOMMENDATIONS

This section presents a series of recommendations in accordance with the analysis conducted throughout this dissertation and mindful of the identified shortcomings in current strategies to counter the illicit trade in cultural property. These aim to improve the effectiveness of efforts to combat the issue and centre around awareness, prevention and detection, and international cooperation.

6.1. RAISE AWARENESS

Increasing awareness of the consequences that the illicit trade in cultural property entails is an essential step towards truly comprehending the full extent of the problem. This understanding is crucial to disrupting the cycle where resources continue to be ineffectively spent in the absence of adequate knowledge, inadvertently benefiting the perpetuation of trafficking (European Commission, 2019, p. 159). Certain aspects, such as the connection between the illicit trade in cultural objects and terrorist financing, have resonated more broadly in recent years. However, it is crucial not to lose sight of the lasting effects this phenomenon has on the preservation of cultural heritage and testimony of the history of humankind (European Commission, 2019, p. 203).

It is necessary to raise the problem's political profile and target the various groups of stakeholders in the art sector. The information conveyed should be tailored to each audience to enhance engagement further. For instance, cultural heritage professionals could be alerted about the implications of participating in cultural property trafficking; journalists and relevant personalities in the sector could disseminate information to sensitise the public; and intermediaries, such as postal services and marketing companies, who may unintentionally facilitate illicit trade in the course of their professional activities, should be educated on the subject (European Commission, 2022, p. 15).

On a national scale, States must encourage their academics and researchers. This can be achieved by offering grants on topics related to the trade and trafficking of cultural heritage. Establishing dedicated research institutions could also be beneficial. Alongside these initiatives, conducting awareness campaigns and workshops could play an essential role in informing and educating stakeholders.

The knowledge and evidence obtained through these efforts would enable a more accurate depiction of the issue's magnitude, routes, and peculiarities, thus helping to mitigate existing challenges and disparate opinions. Consequently, this would enhance the effectiveness of the measures undertaken to combat it (European Commission, 2019, 204).

Although most of these actions should be executed nationally, there are some measures in which International and European institutions could assist. These include coordinating and amplifying

awareness campaigns, complementing the funding for research¹⁴, creating teaching material¹⁵, and developing a comprehensive framework for gathering statistical information. Perhaps more importantly, adopting a firmer stance by publicly identifying countries that are non-compliant with the international agreements on cultural trade.

6.2. IMPROVE PREVENTION AND DETECTION

Art market operators, public and private collectors, and cultural heritage institutions are most at risk of encountering and being subject to the consequences of the illicit trade in cultural property (Europol, 2021, p. 88). Therefore, these first-line stakeholders are uniquely positioned to help detect and prevent such offences while ensuring the proper functioning of the market in line with current regulations and self-regulatory instruments. However, any proposal to improve the market's performance should acknowledge the heterogeneous nature of the art market participants. Hence, considering their size, influence and activity, versatile strategies tailored to different operators should be prioritised to ensure their effectiveness (European Commission, 2019, p. 205).

Despite the advantage that conscious and informed art market operators might have on its functioning, another pressing issue persists, fuelling the continuation of cultural goods trafficking. This concerns the procedures adopted for controlling and scrutinising the introduction of unlawfully obtained cultural property into a territory. The approaches differ widely among States and even between Single European Market countries where there is some level of legislative harmonisation. As stated, the divergences constitute legal loopholes that criminal organisations exploit, thereby disguising an item's provenance and provenience, enabling its entrance into the licit art market (Peters, 2019, p. 103).

To mitigate these occurrences and considering that the European Union holds exclusive competence over trade policy (Art. 3 TFUE), creating a centralised electronic system for import licenses and statements of cultural goods has been conceived under Articles 8 and 9 of

¹⁴ See for example the NETCHER Project, which brings together a broad range of actors involved in the protection of cultural heritage with the aim to catalogue best practices and build a joint action plan, research, and innovation to protect cultural heritage.

¹⁵ See for example the PITCHER Project, which builds upon the recommendations of the NETCHER Project, and aims to create teaching materials and a new model for showing young people how they could support the fight against the illicit trade in cultural property.

Regulation (EU) 2019/880. Steps could be taken to broaden the scope of this instrument to encompass export licenses, covered by Regulation (EC) 116/2009, as well as Directive 2014/60/EU, which addresses the return of cultural objects unlawfully removed from the territory of a Member State. This database could enhance communication between customs authorities and law enforcement, thus conciliating the disparate stances that Member States take towards protecting their cultural heritage. It is expected to become operational by June 2025 (Art. 16 Regulation (EU) 2019/880), which leaves ample time for the European Commission to propose such reform to ensure that both sides of the same coin – exports and imports – benefit from the same tools.

Measures aimed at increasing the traceability of property transfer, such as mandatory records, could substantially curtail the benefits enjoyed by traffickers, improve the detection of unlawfully obtained objects, and deter their introduction into market countries (European Commission, 2022, p. 5). Ideally, countries could apply this provenance resource to cultural property that falls under the scope of widely ratified treaties, such as the 1970 UNESCO Convention, and thereafter interconnect these systems. The result would likely provide a comprehensive illustration of the illicit trade in cultural property. To begin with, States should incentivise via legislative action its adoption and, in conjunction with the European Union, propose a standardised model.

Collectors, dealers, museums, and any cultural heritage institution, whether public or private, should embrace creating and maintaining inventories of any cultural property at risk of theft. Digitalising these inventories would complement the existing databases curated by organisations, such as INTERPOL or ICOM, facilitating the task of law enforcement and prospective purchasers exercising due diligence to determine whether an object has been stolen and retrieving it to its rightful owner¹⁶. The inventories should adhere to a standardised format, preferably agreed upon through a self-regulatory guideline. Should the stakeholders fail to enact this recommendation, legislation could encourage it.

Law enforcement authorities should thoroughly understand cultural trafficking-related crimes and have a robust set of resources, including the knowledge of when and how to deploy these to prosecute and detect illicitly obtained cultural property. Hence, States should capitalise on

¹⁶ United Nations Office on Drugs and Crime (2020). *Resolution 10/7: Combating transnational organized crime against cultural property*. Vienna, Austria: UNODC. point 9.

available technological advancements, improve inter-agency collaboration, and encourage partnerships with experts outside the force. The creation of specialised units could encompass all these initiatives¹⁷.

However, these specialised units should be adjusted to the needs of each territory rather than being homogeneous across all countries. To ensure successful integration, their training should be done in association with countries that already have such forces, like Italy. Interpol (2019, p. 8) enumerates some advantages a specialised unit might foment. For instance, these can improve the coordination among national and international law enforcement agencies, easing the identification of criminal networks involved and sharing knowledge and information. Furthermore, the units can increase cooperation concerning the falsification of import, export, and provenance documents. Finally, these can help better determine the tools and policies that might be more effective in detecting the illicit trade of cultural goods.

Moreover, considering the transnational nature of offences involving the illicit trade in cultural heritage, typically perpetrated by international criminal networks, investigations should broaden their focus beyond individual cases (European Commission, 2022, p. 10). The aim should be to detect and dismantle the criminal organisations involved, together with the dealers, facilitators, and looters, among others, and identify the routes used. For this purpose, these efforts could be reinforced by international institutions such as Interpol and World Customs Organisation. On the European level, organisations like the European Union Agency for Criminal Justice Cooperation (EUROJUST), Europol, and the European Border and Coast Guard Agency (Frontex) can provide significant support. Thus far, the cooperative approach has proven successful, as demonstrated by Europol's Operation Pandora, executed annually since 2016.

6.3. STRENGTHEN INTERNATIONAL COOPERATION

Effectively tackling the illicit trafficking of cultural property requires actions which transcend national borders while not disregarding the different approaches taken by States. Neglecting the disparate stances would frustrate the feasibility of any prospective policies and initiatives. Instead, the objective should be to acknowledge their strengths and strive for a compromise that

¹⁷ Ibid., point 12.

could benefit all parties, always considering the ulterior motive of protecting cultural heritage (European Commission, 2019, p. 212).

Solid diplomatic relations through consistent negotiation and dialogue are essential to strengthen international collaboration and secure the implementation of the measures described in this section. Bilateral and regional cooperation on the application of interconnected inventories and sale registers might be a constructive first step towards a global response. Moreover, it would prepare the ground for future conferences on harmonising customs control, trade regulations, and dealing with other legal fields, such as the repercussions of art-related crimes.

In that direction and to complement the protection system for cultural heritage, the Nicosia Convention on Offences relating to Cultural Property was drafted by the Council of Europe in 2017. This treaty, which entered into force on April 1, 2022, is the only international agreement that deals with the criminalisation of cultural property trafficking. Observing how a united approach to criminal law could prevent and combat cultural heritage destruction in the coming years will be of paramount interest. Furthermore, the European Commission introduced in 2022 a proposal for a Directive addressing the confiscation and asset recovery of unlawfully obtained cultural goods associated with the activity of criminal organisations. These developments at the European level underline the growing acknowledgement and importance of the issue. However, ensuring the ratification and transposition of existing conventions that harmonise rules on the industry, such as the 1995 UNIDROIT Convention, remains an uncompleted effort. This is particularly significant considering that many transit and market countries, representing a substantial market share, are still not part of these agreements.

Hence, diplomatic missions should pursue extending the scope of provisions aimed at protecting cultural heritage to future trade agreements, thereby trying to upend the relevance of illicit trade in cultural property globally. This strategy has been successfully implemented at the European Union with the EU-Egypt Partnership Priorities and the Europe Latin America Programme of Assistance against Transnational Organised Crime (EL PAcCTO). Nonetheless, the focus should extend beyond source countries and consider transit, like Switzerland, and market countries, such as the United States, United Kingdom, or China. Without confronting the complex problem as a whole and considering all participants involved, the illicit trafficking

of cultural goods will continue to strive and exploit the divergences in cultural heritage protection.

This broader focus does not entail diverting valuable resources from territories most in need, such as those regions enduring conflicts and instability, where cultural heritage is at greater risk of falling victim to damage. Following the recommendations of UNESCO, the European External Action Service (EEAS), the European Commission, and Member States have constituted informal task forces of experts on cultural property deployed on missions in conflict territories. These teams provide a better understanding of the situation on the ground and the potential actions to prevent the destruction and looting of relevant cultural sites (European Exterior Action Service, 2022). Measures include financing to reinforce cultural heritage protection, the temporary evacuation of the most valuable pieces, and training professionals on the ground.

The latest instance of the implementation of these initiatives was during the Russian Invasion of Ukraine, along with the first activation of the EU Civil Protection Mechanism to assist in protecting cultural property. At present, and considering that the conflict is ongoing, the results seem satisfactory. Thus, such efforts should be extrapolated to other conflicts, ideally with the collaboration of other countries and international organisations that place importance on the conservation of cultural heritage.

7. CONCLUSIONS

The illicit trade of cultural property has been examined throughout this dissertation from various perspectives, demonstrating that its consequences transcend far beyond the economic aspects. It has exposed the participation of criminal organisations and other illegal activities that significantly threaten cultural heritage preservation. The issue represents an international and complex phenomenon that has proved resilient and adaptable, even though the groundwork has remained unchanged. Cultural goods continue to be stolen, looted, illegally excavated, or forged and thereafter smuggled through different countries to their destination. This cycle, as explained in Section 2, emphasises the necessity of addressing the illicit trade of cultural property.

The analysis of the current legal framework underscores an intricate concurrence of international, European, and national legislation. These provisions aim to regulate their respective scope and territorial jurisdiction, allowing to perceive the evolution these regulations have experienced. On the international stage, the protection of cultural heritage has progressed from the 1954 Hague Convention, which focuses on times of conflict, to peacetimes with the 1970 UNESCO Convention, and later the 1995 UNIDROIT Convention. These three conform the most notable international instruments safeguarding the trade of artworks.

The European Union has developed its approach extensively, initially tackling the illicit trade in cultural property covering the goods originating from its territory – basically, the exports – under Regulation (ECC) No 3911/92 and Regulation (EC) No 116/2009. Subsequently, focusing on the imports via the relatively recent Regulation (EU) No 2019/880. The Directive 2014/60/EU, concerning the return of cultural objects unlawfully removed from the Member States, completes the European protection regime, providing equal and symmetric protection to the cultural objects whether they originate from the Union or third countries. This global vision, followed by the European Union’s economic-centred approach, transcends the earlier doctrines of cultural internationalism and cultural nationalism.

Notwithstanding the advances and foundations these instruments have contributed to fight the issue, certain shortcomings continue to obstruct the optimal resolution of the illicit trade of cultural property. These deficiencies include legal loopholes, uneven implementation and enforcement, inconsistency in their formulation and linguistics, and lack of harmonisation across jurisdictions. Given the global extent of the problem, an equally global response is required to consistently improve the effectiveness of the tools directed at combating it.

The case studies presented in Section 5 further highlight the complexity and ramifications of the issue, offering tangible illustrations of the operations entangling the illicit trade in cultural property. This information sheds light on the importance of enhancing the practical and legal measures. These cases outline the roles of diverse actors and criminal networks, including the Italian Camorra and ‘Ndrangheta, and the terrorist organisation ISIS, involved in such illegal activities. They detail the routes and strategies employed to falsify the provenance and provenience to introduce the unlawfully obtained pieces to market countries, ultimately complicating the differentiation of which cultural objects can be licitly traded.

To confront the challenges the issue poses, the dissertation suggests several recommendations focused on increasing awareness, improving prevention and detection, and strengthening international cooperation. Acknowledging the problem and repercussions among market participants and the broader public is essential to understanding its extent. Thus, tailored information and awareness campaigns targeting various stakeholders, coupled with pertinent research, could help in this direction. Actions oriented towards prevention and detection should encompass improved import and export administration, the generalisation and interconnection of digitalised inventories and sale registers, and comprehensive training of law enforcement authorities. These initiatives could contribute significantly to mitigating the illicit trade in cultural property and disrupt the activities of implicated criminal organisations.

International cooperation is paramount and perhaps the area where much work remains. It emphasises the need for consistent and honest negotiation, promoting dialogue between countries, international organisations and private institutions. Furthermore, with improvements to existing provisions, the ratification and subsequent transposition of conventions are fundamental steps in assembling a robust global response against the illicit trade threatening cultural heritage.

The prospects of combating the issue hinge on our collective ability to execute the proposed recommendations and anticipate future challenges. It is equally crucial to mobilise sufficient support to address these, remain vigilant and adaptable to accommodate the ever-evolving circumstances of the art market. Future research should evaluate the effectiveness of any adopted measures and suggest necessary modifications to reinforce their success. Only through concentrated and coordinated efforts can one expect to safeguard cultural heritage from the damaging effects of illicit trade.

In conclusion, the task ahead is undoubtedly challenging. The intricate nature of the trafficking of cultural property requires a comprehensive and miscellaneous approach. It is an endeavour that demands concerted will, resolute diligence, and an unwavering commitment to protecting cultural heritage. Ultimately, it is our responsibility to ensure that future generations inherit the diverse, rich, and untainted testimony of the history of humankind, which is represented in our cultural heritage.

8. BIBLIOGRAPHY

BIBLIOGRAPHIC REFERENCES

Akers, T. (2023). Amid Mounting Scrutiny of Its Collecting Practices, Metropolitan Museum Will Form Provenance Research Squad. *The Art Newspaper*. [online] 10 May. Available at: <https://www.theartnewspaper.com/2023/05/10/metropolitan-museum-provenance-research-squad> [Accessed 11 Jun. 2023].

Alberge, D. (2019). Christie's Urged to Pull Sale of Roman Statue 'Linked to Illicit Dealers'. *The Guardian*. [online] 24 Nov. Available at: <https://www.theguardian.com/artanddesign/2019/nov/24/christies-urged-to-pull-sale-of-roman-statue-linked-to-illicit-dealers> [Accessed 11 Jun. 2023].

Campbell, P. B. (2013). The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage. *International Journal of Cultural Property*. Cambridge University Press, 20(2), pp.113–153. doi: <https://doi.org/10.1017/S0940739113000015>.

Campfens, E. (2020). Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims. *Netherlands International Law Review*, 67, pp.257–295. doi:<https://doi.org/10.1007/s40802-020-00174-3>

Corsi, C. (2019). A Roman Marble Eros Unstringing His Bow. *Christie's*. [online] Available at: <https://www.christies.com/en/lot/lot-6239347> [Accessed 11 Jun. 2023].

Dehouck, M.R.J. (2019). Balancing Markets, Morals and Law: The Fight to Regulate Illicit Trafficking in Cultural Goods and the EU Regulation on the Import of Cultural Goods. *Art Antiquity & Law*, 24(1), p.1-38.

El PAcCTO (2022). *Europe Latin America Programme of Assistance against Transnational Organised Crime*. [online] Available at: <https://www.elpaccto.eu/en/> [Accessed 12 Jun. 2023].

Elbaor, C. (2019). Christie's Stands by Its Decision to Sell a \$1 Million Roman Sculpture Despite Its Links to a Disgraced Dealer. *Artnet News*. [online] 26 Nov. Available at: <https://news.artnet.com/market/christies-provenance-roman-statue-slated-auction-1716051> [Accessed 11 Jun. 2023].

European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al. (2019) *Illicit trade in cultural goods in Europe – Characteristics, Criminal Justice Responses and an Analysis of the Applicability of Technologies in the Combat Against the Trade: Final Report*. Publications Office. Available at: <https://data.europa.eu/doi/10.2766/183649>

European Exterior Action Service (2022). *2022 Report on the progress in the implementation of the “Concept on Cultural Heritage in conflicts and crises. A component for peace and security in European Union’s external action” and the dedicated Council Conclusions*. EEAS(2022) 1556. [Online]. 12 Sep. Available at: <https://data.consilium.europa.eu/doc/document/ST-12398-2022-INIT/en/pdf>

EUROPOL (2023). *International art trafficking sting leads to 60 arrests and over 11 000 objects recovered*. [online] Europol. Available at: <https://www.europol.europa.eu/media-press/newsroom/news/international-art-trafficking-sting-leads-to-60-arrests-and-over-11-000-objects-recovered#:~:text=Operation%20Pandora%2C%20which%20was%20first> [Accessed 12 Jun. 2023].

Goretta, G. (2020). *The Free Movement of Cultural Goods under European Union Law*. Master’s Degree Thesis. Luiss Guido Carli.

INTERPOL (2019). *Creating a National Cultural Heritage Unit. The Value of a National Unit Dedicated to Fighting Crimes against Cultural Heritage and the Illicit Traffic of Cultural Property*.

INTERPOL (2021). *Assessing Crimes against Cultural Property 2021*.

Kirchgaessner, S. (2016). Italian Camorra inquiry recovers Van Goghs 14 years after infamous heist. *The Guardian*. [online] 30 Sep. Available at: <https://www.theguardian.com/artanddesign/2016/sep/30/italian-police-find-van-goghs-stolen-in-amsterdam-gallery-heist> [Accessed 11 Jun. 2023].

Koch, T. (2021). Jaime Botín paga la multa de 91,7 millones por el contrabando de un ‘picasso’ y espera evitar el ingreso en prisión. *El País*. [online] 22 Sep. Available at: <https://elpais.com/cultura/2021-09-22/jaime-botin-paga-la-multa-de-917-millones-por-el-contrabando-de-un-picasso-y-espera-evitar-el-ingreso-en-prision.html> [Accessed 12 Jun. 2023].

Love Levine, A. (2011). The Need for Uniform Legal Protection Against Cultural Property Theft: A Final Cry for the 1995 UNIDROIT Convention. *Brooklyn Journal of International Law*, [online] 36(2). Available at: <https://brooklynworks.brooklaw.edu/bjil/vol36/iss2/9>.

Luck, T. (2013). Syrian rebels loot artifacts to raise money for fight against Assad. *The Washington Post*. [online] 12 Feb. Available at: https://www.washingtonpost.com/world/middle_east/syrian-rebels-loot-artifacts-to-raise-money-for-fight-against-assad/2013/02/12/ae0cf01e-6ede-11e2-8b8d-e0b59a1b8e2a_story.html [Accessed 12 Jun. 2023].

Mashberg, T. (2023). Rare Coin, Minted by Brutus to Mark Caesar's Death, Is Returned to Greece. *The New York Times*. [online] 22 Mar. Available at: <https://www.nytimes.com/2023/03/22/arts/design/rare-coin-returned-greece-eid-mar.html> [Accessed 10 Jun. 2023].

McAndrew, C. (2019). *The Art Market 2019*. Art Basel & UBS Report.

McAndrew, C. (2023). *The Art Market 2023*. Art Basel & UBS Report.

McGivern, H. (2016). Italian Mafia Trading Weapons for Libyan Artefacts Plundered by Isil? *The Art Newspaper*. [online] 17 Oct. Available at: <https://www.theartnewspaper.com/2016/10/17/italian-mafia-trading-weapons-for-libyan-artefacts-plundered-by-isil> [Accessed 25 May 2023].

Merryman, J.H. (1986). Two Ways of Thinking About Cultural Property. *The American Journal of International Law*, 80(4), pp.831–853. doi:<https://doi.org/10.2307/2202065>.

NETCHER (2021). *NETwork and digital platform for Cultural Heritage Enhancing and Rebuilding*. [online] doi:<https://doi.org/10.3030/822585> [Accessed 12 Jun. 2023].

Peters, R. (2015). The Protection of Cultural Property in EU Law: Status Quo and Future Perspectives. In Desmarais, F. (ed.) *Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage*. ICOM International Observatory on Illicit Traffic in Cultural Goods, Paris, pp.141-149.

Peters, R. (2016). The Protection of Cultural Property: Recent Developments in Germany in the Context of New EU Law and the 1970 UNESCO Convention. *Santander Art and Culture Law Review*, 2(2), pp.85–102. doi:<https://doi.org/10.4467/2450050xsr.16.020.6128>.

Peters, R. (2019). Preventing Trafficking in Cultural Property: Import and Export Provisions as Two Sides of the Same Coin. *Santander Art and Culture Law Review*, 2(5), pp.95–108. doi:<https://doi.org/10.4467/2450050xsnr.19.015.11563>.

PITCHER (2022). *Preventing Illicit Trafficking of Cultural Heritage: Educational Resources*. [online] Available at: <https://www.pitcher-project.eu> [Accessed 12 Jun. 2023].

Porterfield, C. (2022). Picasso Painting Put On Display After Failed Attempt By Billionaire To Smuggle It Out Of Spain. *Forbes*. [online] 11 Feb. Available at: <https://www.forbes.com/sites/carlieporterfield/2022/02/11/picasso-painting-put-on-display-after-failed-attempt-to-smuggle-it-out-of-spain-by-billionaire/?sh=5492d79c234a> [Accessed 10 Jun. 2023].

Prescott, G.M. (2007). The Medici Conspiracy: The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Greatest Museums. *The British Journal of Criminology*, 47(2), pp.367–370. doi:<https://doi.org/10.1093/bjc/azm009>.

Prott, L.V. (2012). Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 years after its adoption. In: *Background paper for the Second Meeting of States Parties to the 1970 Convention*. Paris: UNESCO Headquarters.

Quiñones Vilá, C.S. (2021). On the Borderline – Using National and International Legal Frameworks to Address the Traffic of Pre-Columbian Antiquities between Mexico and the United States. *Santander Art and Culture Law Review*, 2(7), pp.51–76. doi:<https://doi.org/10.4467/2450050xsnr.21.018.15263>.

Quirico, D. (2016). Arte antica in cambio di armi, affari d'oro in Italia. *La Stampa*. [online] 16 Oct. Available at: <https://www.lastampa.it/esteri/2016/10/16/news/arte-antica-in-cambio-di-armi-affari-d-oro-in-italia-1.34788871> [Accessed 12 Jun. 2023].

Red Lists Database. International Council of Museums (ICOM). <https://icom.museum/en/resources/red-lists/>

Szabados, T. (2022). The EU Regulation on the Import of Cultural Goods: A Paradigm Shift in EU Cultural Property Legislation? *Croatian Yearbook of European Law and Policy*, 18, pp.1–23. doi:<https://doi.org/10.3935/cyelp.18.2022.472>.

Townsend, M. (2009). The dealer, the \$10m and the missing art treasures. *The Guardian*. [online] 12 Sep. Available at: <https://www.theguardian.com/artanddesign/2009/sep/13/antiques-art-business-robin-symes> [Accessed 12 Jun. 2023].

Van Der Jeught, S. (2018). Current practices with regard to the interpretation of multilingual EU law : how to deal with diverging language versions? *European Journal of Legal Studies*, [online] 11(1), pp.5–38. Available at: <https://cadmus.eui.eu/handle/1814/60466>.

Veres, Z. (2014). The Fight Against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention. *Santa Clara Journal of International Law*, [online] 12(2), p.91. Available at: <https://digitalcommons.law.scu.edu/scujil/vol12/iss2/4/>.

Weber, B. (2012). Robert Hecht, Antiquities Dealer, Dies at 92. *The New York Times*. [online] 10 Feb. Available at: <https://www.nytimes.com/2012/02/10/arts/design/robert-hecht-antiquities-dealer-dies-at-92.html> [Accessed 12 Jun. 2023].

CASE LAW OF THE EUROPEAN COURT OF JUSTICE

Bestuur der Sociale Verzekeringsbank v J. H. van der Vecht. (1967). C-19/67. ECLI:EU:C:1967:49. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A61967CJ0019>.

Erich Stauder v City of Ulm - Sozialamt. (1969). C-29/69. ECLI:EU:C:1969:57. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61969CJ0029>.

Lombard Ingatlan Lízing Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság. (2017). C-404/16. ECLI:EU:C:2017:759. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0404>.

Régina v Pierre Bouchereau. (1977). C-30/77. ECLI:EU:C:1977:172. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=ecli%3AECLI%3AEU%3AC%3A1977%3A172>.

Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. (1982). C-283/81. ECLI:EU:C:1982:335. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61981CJ0283>.

LEGISLATION

Consolidated version of the Treaty on European Union. Official Journal of the European Union, C 326, pp. 13-390.

Consolidated version of the Treaty on the Functioning of the European Union. Official Journal of the European Union, C 326, pp. 47-390.

Constitution of the United Nations Educational, Scientific and Cultural Organization. London, 1945.

Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 1954.

Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State. (1993). *Official Journal of the European Union*, L 74, pp. 74-79.

Council of Europe Convention on Offences Relating to Cultural Property. Nicosia, 19 May 2017.

Council of the European Union. (2022). *Recommendation of the EU-Egypt Association Council on the EU-Egypt Partnership Priorities 2021-2027*. UE-EG 2803/22. [Online]. 16 Jun. Available at: <https://data.consilium.europa.eu/doc/document/ST-2803-2022-ADD-1/en/pdf>.

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. (2003). *Official Journal of the European Union*, L 169, pp. 6-23.

Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods. (2008). *Official Journal of the European Union*, L 39, pp. 1-7.

Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods. (1992). *Official Journal of the European Union*, L 395, pp. 1-5.

Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011. (2012). *Official Journal of the European Union*, L 16, pp. 1-32.

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. (2014). *Official Journal of the European Union*, L 159, pp. 1-10.

España. Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español. *Boletín Oficial del Estado*, 29 de junio de 1985, núm. 155, pp. 20342-20352.

European Commission (2022). *EU Action Plan against Trafficking in Cultural Goods*. COM(2022) 800 final. [Online]. 13 Dec. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0800>. [Accessed 11 Jun. 2023].

European Commission (2022). *Proposal for a Directive of the European Parliament and of the Council on Asset Recovery and Confiscation*. COM(2022) 245 final. [Online]. 25 May. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0245>. [Accessed 11 Jun. 2023].

First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflicts. The Hague, 1954.

Hague Convention (II) with Respect to the Laws and Customs of War on Land. The Hague, 1899.

Hague Convention (IV) respecting the Laws and Customs of War on Land. The Hague, 1907.

Memorandum of Understanding concerning the establishment of a partnership between the United Nations Educational, Scientific and Cultural Organisation Secretariat and its subsidiary bodies and the European Union. Paris, 2012.

Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods. (2019). *Official Journal of the European Union*, L 151, pp. 1-14.

Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'). (2012). *Official Journal of the European Union*, L 316, pp. 1-11.

Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflicts. The Hague, 1999.

Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact). Washington, 1935.

UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 1970.

UNIDROIT Convention on Stolen or Illegally Exported Cultural Goods. Rome, 1995.

United Nations Office on Drugs and Crime. (2020). *Resolution 10/7: Combating transnational organized crime against cultural property*. Vienna, Austria: UNODC.

United Nations Security Council. (2003). *Resolution 1483*. 22 May. [Online]. S/RES/1483 (2003). Available at: <https://digitallibrary.un.org/record/495555?ln=en>.

United Nations Security Council. (2015). *Resolution 2199*. 12 Feb. [Online]. S/RES/2199 (2015). Available at: <https://digitallibrary.un.org/record/787858?ln=es>.

United Nations Security Council. (2015). *Resolution 2253*. 17 Dec. [Online]. S/RES/2253 (2015). Available at: <https://digitallibrary.un.org/record/814700?ln=es>.

United Nations Security Council. (2017). *Resolution 2347*. 24 Mar. [Online]. S/RES/2347 (2017). Available at: <https://digitallibrary.un.org/record/862506?ln=es>.

United Nations Security Council. (2021). *Resolution 2617*. 30 Dec. [Online]. S/RES/2617 (2021). Available at: <https://digitallibrary.un.org/record/3952742?ln=en>