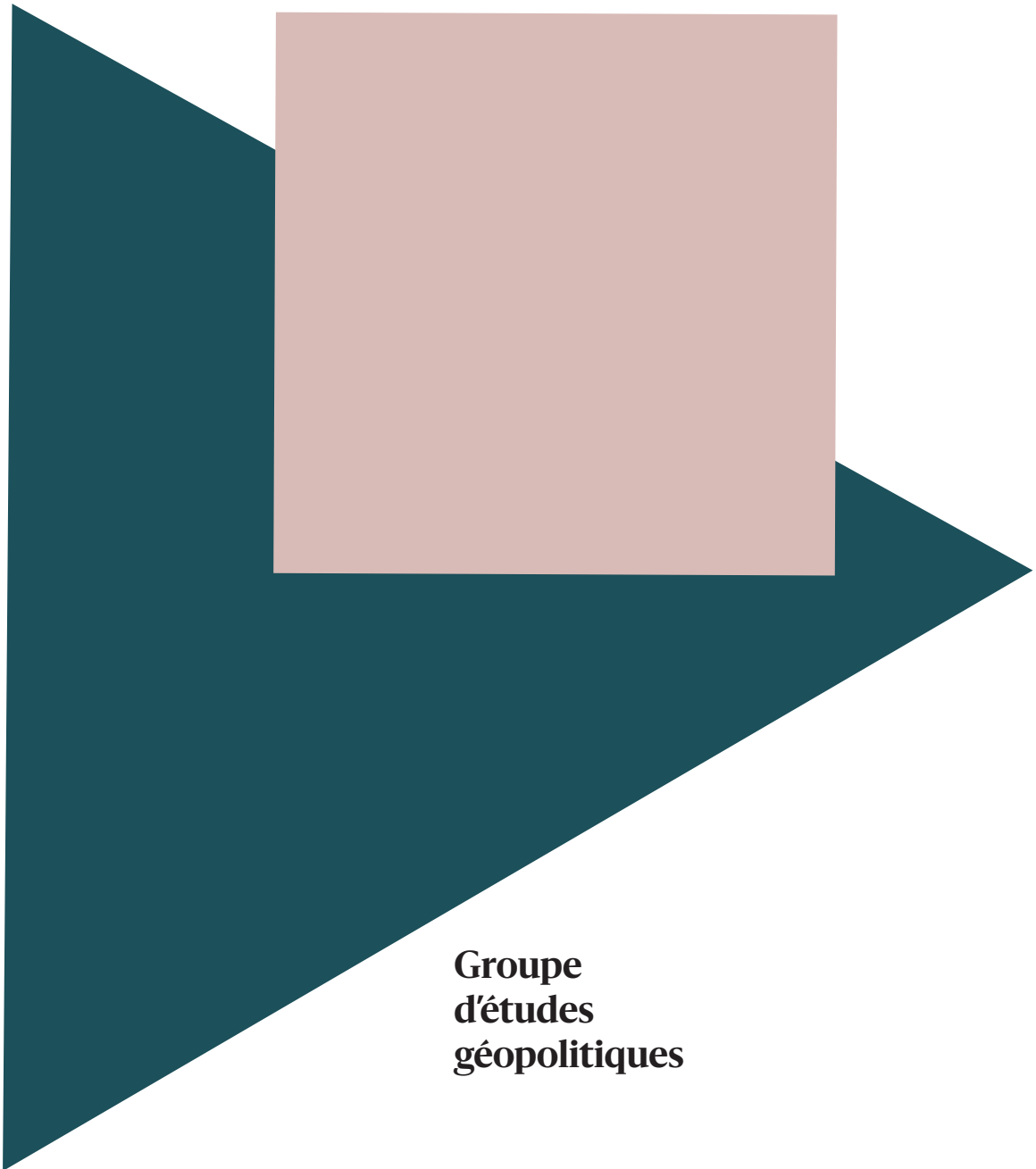


# Defeating terrorism and saving art: fighting the same battle



**Groupe  
d'études  
géopolitiques**

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### **Defeating terrorism and saving art: fighting the same battle**

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## Foreword

In June 2020, agents of the Central Office for the Fight against Trafficking in Cultural Property (OCBC) arrested five prominent figures from the Parisian antiques scene, including the president of the auction house Pierre Bergé & Associés and a former curator of the Louvre. They were suspected of having been involved in a vast trafficking network involving « hundreds of pieces and several tens of millions of euros » and aiming, according to Agence France Presse, « to launder antiques and works of art stolen or looted in several countries plagued by political instability since the early 2010s.

These arrests, which came about after a long investigation, have put the spotlight on a little known crime, which has continued to grow in importance due to the chaos in which many countries in the Middle East and North Africa are plunged. Elie Cavigneaux, advisor to Gilles de Kerchove, the European Union's counter-terrorism coordinator, devotes an informed, penetrating and innovative analysis to this worrying phenomenon.

For the trafficking of cultural goods is not a traffic like any other. It is an important source of financing for terrorism and as such represents a global threat, a threat to peace and security. Security Council resolutions have duly documented this, as have UNESCO, the European Union and the financial investigation units of countries. Moreover, the self-proclaimed «Islamic State» had institutionalized this traffic as a source of fiscal income, issuing excavation permits and organizing the commercialization of stolen pieces to market countries.

Even though they have not yet made a massive appearance on the markets, the example of works looted by the Nazis during the Second World War shows that they can resurface many years later, after having been hidden to deceive the attention of experts. It is therefore necessary to invest now, says Elie Cavigneaux, in order to be ready for tomorrow.

Because it encompassing art and culture-related crime, the interest of this analysis goes far beyond the financing of terrorism. It shows that behind the resale of «blood antiques» another dimension has long since developed, linked to money laundering, fraud and tax evasion. It concerns the antiques market, but also, more generally, the art market, as shown by well-documented TRACFIN reports, with counterfeits pouring into online sales sites.

A global approach is likely to allow us to identify and take actions that are often interconnected: terrorism with money laundering, white-collar crime with organized crime, «blood antiques» with arms, drugs, diamonds

trafficking... This fight will also be won through more investment in our ability to detect and combat crime around objects related to culture and art, in times of war as in times of peace.

A number of actions and methods have proven to be effective. They must now be appropriated by the community of States, and developed, to contribute to this global public good that is the protection of heritage, the fight against terrorism and crime.

# Summary

The antiques market draws increasing attention both in Europe and in the United States<sup>1</sup> following both the unprecedented attacks on cultural landmarks around the world, and ISIS's institutionalisation of "blood antiquities" looting (leading some to raise concerns of a "mass destruction market"<sup>2</sup>). More generally, there are also questions about the art market's global functioning, specifically around its regulation and its weak compliance culture. Once combined, these elements pose explicit risks: geopolitic and security risk (terrorism financing, organized crime<sup>3</sup>, etc.); diplomatic<sup>4</sup> and cultural risk (identity destruction, sale of stolen objects); various economic risks stemming from irrational, subjective and variable prices (money laundering, fraud, tax evasion<sup>5</sup>), and finally the systemic risk for buyers<sup>6</sup> as fakes flood the market.

Similarly to "blood diamonds", only a global solution can solve such a global issue already exacerbated by the COVID-19 crisis (as demonstrated by the information from source countries<sup>7</sup> or online sales<sup>8</sup>). The European Union and the United States, which both represent a tremendous share of the global market, are making significant progress. Beyond law enforcement, the question of a global and adapted regulation remains unanswered.

1. <https://www.nytimes.com/2021/01/01/arts/design/antiquities-market-regulation.html>
2. [marketmassdestruction.com](https://marketmassdestruction.com)
3. <https://art-crime.blogspot.com/2020/01/vasil-bozhkovs-antiquities-collection.html> ; <https://art-crime.blogspot.com/2017/11/a-sicilian-mafia-primer-to-organized.html>
4. <https://www.foreignaffairs.com/articles/united-states/2021-01-14/regulating-art-market-good-foreign-policy>
5. <https://intpolicydigest.org/2021/01/21/is-the-curtain-coming-down-on-criminal-schemes-in-the-art-market/>
6. [https://www.rand.org/pubs/research\\_reports/RR2706.html](https://www.rand.org/pubs/research_reports/RR2706.html) ; [https://next.liberation.fr/culture/2000/12/05/art-faux-et-usage-de-faux\\_346606](https://next.liberation.fr/culture/2000/12/05/art-faux-et-usage-de-faux_346606) ; <https://www.sciencedirect.com/science/article/abs/pii/S0165176511002618> ; <https://news.artnet.com/art-world/recent-art-forgery-scandals-705428> ; <https://news.artnet.com/market/faberge-ivanov-hermitage-museum-1940514#.YBWNiSAJlZo>, [twitter](https://twitter.com)
7. <https://www.france24.com/fr/%C3%A9missions/focus/20210107-irak-le-trafic-d-antiquit%C3%A9s-en-forte-hausse-pendant-la-pand%C3%A9mie?ref=tw>
8. <https://www.forbes.com/sites/carlieporterfield/2020/04/30/smugglers-are-using-coronavirus-lockdowns-to-loot-artifacts/>



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The cultural destructions of the 2000s, alongside obscurantism, truly took their toll. Beyond the annihilation of the ancient Syrian city of Palmyra, of the Timbuktu heritage (for which International Criminal Court convicted a Jihadist<sup>1</sup>), and that of the Bamian Buddhas in Afghanistan, it is important to acknowledge the various other crimes thriving amidst low public and buyer awareness<sup>2</sup> with the complicity of organized networks.

### I. The undeniable reach of terrorism and its risks

The art & antiques market poses the risk of terrorism financing (as well as money laundering, see below).

1. The terrorist dimension is widely acknowledged by the international community through numerous texts from the United Nations Security Council, the G20, the FATF, the EU, UNESCO, and Member States' financial investigation reports<sup>3</sup>. In Resolution 2347, the UN Security

1. <https://www.icc-cpi.int/mali/al-mahdi>
2. This article deals with “contemporary” cultural goods trafficking taking place “here and now”, as well as numerous other crimes related to art (counterfeit industry, money laundering). It does not bring up the debate around restituting items from the colonial era and those looted during the Nazi era. However, this essential, promising, and bold debate remains linked to (but distinct from) the aforementioned crimes.
3. United Nations Security Council Resolutions «2253» [https://www.undocs.org/S/RES/2253\(2015\)](https://www.undocs.org/S/RES/2253(2015)), «2199» [https://unesdoc.unesco.org/ark:/48223/pf0000232934\\_»2462](https://unesdoc.unesco.org/ark:/48223/pf0000232934_»2462)» <http://unscr.com/en/resolutions/doc/2462> (under the binding Chapter VII of the Charter of the United Nations) and 2347 <http://unscr.com/en/resolutions/doc/2347> note with grave concern that terrorist organizations generate income from the trafficking of cultural goods ii) the Resolution adopted by the United Nations General Assembly on Return or restitution of cultural property to the countries of origin on 13 December 2018. In particular its article 17, the ongoing work on this topic of the Financial Action Task Force (FATF), iii) the G20 Hamburg 2017 action plan G20 Hamburg 2017 action plan, iv) the Global Counter Terrorism Forum (GCTF) (<https://www.thegctf.org/>), v) the Global Coalition to Counter ISIL and other international bodies in combating the financing of terrorism. <https://www.consilium.europa.eu/en/press/press-releases/2016/02/12/conclusions-terrorism-financing/>; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0605&from=EN>

Council emphasizes that terrorist organisations “generate income by taking part directly or indirectly in illegal excavations and in looting and smuggling of cultural heritage objects from archaeological sites, museums, libraries, archives and other sites, which are then used to finance their recruitment efforts or to strengthen their operational capacity to stage and carry out terrorist attacks”. To those who question the scale of the phenomenon compared to other financing sources (weapons, oil, drugs), an INTERPOL officer once answered: “It only takes \$10 to make a bomb.”

2. Trafficking has always existed. Its institutionalization<sup>4</sup>, within the “Ministry of finance”, is nonetheless the specificity of the so-called “Islamic State”. ISIS generates substantial sums by issuing excavation permits, levying taxes, storing items, and directly staging their sale<sup>5</sup> to market countries<sup>6</sup>. In the meantime, ISIS carries out its ideological project: a tabula rasa of the past, a totalitarian identity remodelling of landmark-deprived societies, like the Nazis or the Khmer Rouge before them. Saving statues from destruction or looting counters the exactions of terrorists and criminals<sup>7 8</sup>.

3. People’s resistance against extremist ideologies is intrinsically linked to their relationship with history. It takes a simple visit to the Bardo National Museum in Tunis, where terrorists struck in 2015, to understand not only the immensely rich Islamic past of the country but also what it holds of Roman, Carthaginian, Christian, Jewish. This museum has become a symbol of the fight against radicalisation. Many Iraqis, regardless of their religion or political affiliation (as shown by the allusion to history in Tahrir Square protesters’ slogans in 2019), can identify with the fact that various concepts underlying modern civilisations (such as writing, music, astronomy, the first laws, or the concept of State) appeared in their country. These are precisely what terrorists wanted to destroy and erase from our memory in order to impose their one-sided vision of History. France, through the Louvre

4. <https://www.nytimes.com/2005/12/10/opinion/the-terrorist-in-the-art-gallery.html>
5. <https://www.un.org/securitycouncil/sanctions/1267/monitoring-team/reports> «The Team established recently that, until at least late 2018, ISIL had directly managed the sale of some Syrian cultural goods. Those goods were brought to Turkey, from where they were moved to trans-shipment points in the western Balkans, then smuggled to Western Europe via yachts or trucks, in which the cultural goods were hidden in consignments of vegetables. Some ancient manuscripts were smuggled out of the Syrian Arab Republic sewn into the lining of travellers’ clothes.
6. <https://www.justice.gov/usao-dc/pr/united-states-files-complaint-seeking-forfeiture-antiquities-associated-islamic-state>; <https://www.fbi.gov/news/stories/isil-and-antiquities-trafficking>
7. See Floyd’s work on taliban iconoclasm in the 2000s and his analysis on the Western position
8. <https://foreignpolicy.com/2015/06/02/save-statues-save-lives-isis-palmyra-antiquities-syria-iraq-trafficking/>

museum, is currently involved in restoring the Mosul museum. Now that we prioritize easing crises, ending terrorism, and halting radicalization, shouldn't our interest be to help these nations build-up, educate, know themselves, and understand others?<sup>9</sup> The international coalition against ISIS made no mistake in 2018 when it claimed that the fight against cultural trafficking fully contributes to stabilizing the area<sup>10</sup>.

4. As TRACFIN<sup>11</sup> highlights in its 2020 report<sup>12</sup>, “The opening of judicial proceedings regarding antiquities trafficking by terrorist groups allowed us to identify the role of several intermediaries in Europe. European trafficking financial offshoots converge towards organised networks potentially involving Western museums, curators, art dealers, and gallery owners allegedly involved in the laundering of “blood antiquities”. Many international investigations are underway.

5. Beyond already known aspects, there is the prospect of incoming terrorist risk, based on our knowledge of the past and the threat analysis. For instance, in order to buy a plane, 9/11 hijacker Mohammed Atta allegedly tried to sell antiquities from Afghanistan, where he had stayed, in Hamburg<sup>13</sup>, where a dealer was arrested in 2020. The latter was accused of being the head of a trafficking network of Near and Middle Eastern antiquities linked to prestigious European dealers and auction houses<sup>14</sup>.

As early as 2005, ten years prior to the Caliphate's heyday, Colonel Matthew Bogdanos published in the NY Times an article entitled “The Terrorist in the Art Gallery”<sup>15</sup> He warned the world that anti-terrorist operations in Iraq regularly led to the discovery of antiques alongside weapons.

It is also worth looking into the story of Mohammed Al Bakraoui<sup>16</sup>, the perpetrator of the 2016 Brussels attacks, who generated tens of thousands of euros with his accom-

plishes from the theft of paintings in Belgium. Or we could look into the soaring online supply of items from war-torn countries such as Yemen or Libya; or the discovery by the Iraqi police in September 2020 of some twenty Syriac Bibles that had been stolen by ISIS and walled up in the kitchen of a house in Mosul, waiting to be passed on to a trafficker from a neighboring country. Or, we could look closer upon the fact that some dealers, known for selling antiques of sometimes ambiguous status, continue to be invited to prestigious international art fairs and that little is done to raise awareness among buyers.

## II. We all are victims of cultural goods trafficking.

1. Beyond terrorism: all countries around the world are now sources, transit and destinations of organized criminal trafficking. The so-called “source countries” feel powerless to protect the tens of thousands of sites around the world and fight against sprawling mafias. They are starting to call on their Western partners to “find the solution” and ask them to strengthen their monitoring of their art markets. A foreign minister from an Arab country once bemoaned: “our treasures are stolen to be sold to our friends because the system allows it.” The reality nonetheless, is that items in these “friend countries” too are stolen by criminal networks to be sold elsewhere.

According to INTERPOL reports, not a single region is spared<sup>17</sup>. As demonstrated by a record customs seizure in 2020 of 27,000 objects from various lootings in France<sup>18</sup>, even market countries are affected. Another example is the December 2020 crackdown by 1,600 German police officers against a Middle Eastern mafia, which stole priceless<sup>19</sup> historic gold and diamond items in Dresden and Berlin.

2. Whether they are criminals, terrorists or both, be they located in Europe or on other continents, networks are internationalised, organised and structured. They all communicate through social networks or encrypted messaging, sometimes using highly sophisticated equipment to dodge surveillance. Networks rely on various accomplices in every sector, including art. Various artifacts stolen in Greece indeed ended up in European auction houses<sup>20</sup>. Antiquities stolen in Egypt or Syria were found many years later as far as in Montevideo, Uruguay after having been channelled through other countries in a bid to mislead investigators.

9. <https://www.foreignaffairs.com/articles/united-states/2021-01-14/regulating-art-market-good-foreign-policy>

10. <https://home.treasury.gov/news/press-releases/sm494> « Members acknowledged the importance of preventing the trade in archeological property illegally removed by ISIS from Iraq and Syria and the value of recovery and reconstruction of cultural heritage in the stabilization process.»

11. «Traitement du renseignement et action contre les circuits financiers clandestins», intelligence unit under the authority of the Ministry of Economy and Finance.

12. <https://www.economie.gouv.fr/tracfin/tendances-et-analyse-des-risques-de-blanchiment-de-capitaux-et-de-financement-du-o>

13. <https://www.spiegel.de/consent-a-?targetUrl=https%3A%2F%2Fwww.spiegel.de%2Fspiegel%2Fvorab%2Fa-365376.html>

14. <https://www.lagazettedupatrimoine.fr/blog/files/aa7817cf94c4fc55ad-ceaafd6ec38bb9-119.html?fbclid=IwARovGTVqSn6blOcoF95r-JnNnNM-mtF2Uhp3uvko2gvB5RLL3AOsmjYH4> ; <https://www.lefigaro.fr/flash-actu/trafic-d-antiquites-du-moyen-orient-cinq-personnes-en-garde-a-vue-a-paris-20200623>

15. <https://www.nytimes.com/2005/12/10/opinion/the-terrorist-in-the-art-gallery.html>

16. [https://www.levif.be/actualite/belgique/le-terroriste-du-metro-khalid-el-bakraoui-bien-implique-dans-l-affaire-du-musee-a-uccele/article-belga-576811.html?cookie\\_check=1610644307](https://www.levif.be/actualite/belgique/le-terroriste-du-metro-khalid-el-bakraoui-bien-implique-dans-l-affaire-du-musee-a-uccele/article-belga-576811.html?cookie_check=1610644307) ; [https://fondspourlejournalisme.be/vitrine/IMG/pdf/trafic\\_art\\_antiquites\\_2.pdf](https://fondspourlejournalisme.be/vitrine/IMG/pdf/trafic_art_antiquites_2.pdf)

17. <http://www.wcoomd.org/-/media/wco/public/fr/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr-2019-fr.pdf?db=web>

18. <https://www.douane.gouv.fr/actualites/patrimoine-archeologique-pille-une-saisie-douaniere-record>

19. <https://www.dw.com/en/dresden-heist-suspect-evades-capture-after-berlin-raid/a-56138043> ; <https://www.courrierinternational.com/article/criminologie-en-allemande-le-clan-remmo-multiplie-les-vols-spectaculaires>

20. <https://greekcitytimes.com/2020/11/28/auction-houses-illegally-selling-stolen-artifacts/>

### III. From the resale (or «laundering») of stolen items to money laundering, via the counterfeit market: why cultural crime is so attractive for criminals.

A criminal always conducts a cost/benefit analysis, which makes him a “rational entrepreneur.” So far, the financial return of cultural crime was considered quite attractive. But times are changing :

So far, the fight against cultural crime has been given low priority. The numerous problems - such as the imminent threats of terrorist attacks, human, firearms, or drug trafficking - fail to always justify this low priority. Unlike a stolen car or mobile phone, which depreciate over the years, art items appreciate over time. Furthermore, since the price of an art item is essentially the price a buyer is willing to pay, art does not always respond to the traditional economic rationality. This comes with a large range of possible abuses in terms of money laundering.

Besides, support for investigators is not commensurate with the attention given to cultural protection. For instance, following the 2003 looting of the Baghdad Museum, the international community spent tens of thousands of euros in order to renovate the rooms and laboratory; but relatively little was done at the time to help INTERPOL recover the stolen treasures. Yet, a stolen item obviously cannot be restored until recovered.

An art smuggler faces lower risk of imprisonment than a drug smuggler, for it is difficult to gather proof of a criminal offense in which the individual was directly involved. Sometimes, this is also due to a weak (if not non-existent) criminalization: in some countries, the only sanction for selling a stolen item is to restate it.

Weapons or cocaine smugglers are well-aware of the risks, but art items from unclear origin draw less attention as they are bought and sold based on their beauty and historical value.

2. As described in TRACFIN's official reports<sup>21</sup>, the «compliance culture» is «mostly unknown» (sic)<sup>22</sup> to the antiques market. Transactions remain widely anonymous (especially in online sales) and sometimes settled in cash. This makes the market conducive to the resale of stolen objects, but also to money laundering, fraud and tax evasion. Art prices are subjective and are thus easily moving. Dealers sometimes strike impressive profit margins upon resale without any link to market prices. Some people even draw an association between the global gradual

end of banking secrecy, the multiplication of free ports<sup>23</sup> around the world, and the skyrocketing value of the art market<sup>24</sup>.

3. The struggle of distinguishing legal from illegal items in a “grey”<sup>25</sup> market. In 2019, the German public study ILLICID<sup>26</sup> revealed that today, less than 2% of antiquities (only 0.4% in the case of Iraqi antiquities) have known origins. Unlike drugs, cultural items are not necessarily illegal in themselves. In reality, the same object could be legal or illegal. There is a perfectly legal market for antiquities: everything depends on the origin, which itself depends on landmark dates. For example: the certificates accompanying antiques often mention “object belonging to a private collection X from 1969”, that is to say before the UNESCO Convention of 1970 (this date of 1970 is also sometimes used incorrectly. Systematically mentioning “1970” on certificates may indicate a lack of awareness of the need for ratifications, by the signatory States of the Convention, for it to enter into force in their territory). With the advantages and disadvantages that one can imagine of this type of system.

Trade of legal and illegal objects can be intertwined, sometimes within a single collection to dodge the eye of experts. An artifact may even shift from legal to illegal (or vice-versa) by crossing a border. While items may have illegally been smuggled out from the origin country, they could, over time, be legally sold in the destination country<sup>27</sup>. Some take advantage of weak legal protections in some countries to make the stolen/fake artifact appear real and legitimate. Smugglers and dealers are well aware of these loopholes in international jurisdiction and know both the techniques for laundering «dirty»<sup>28</sup> antiques and

21. [https://www.economie.gouv.fr/files/Lettre\\_Tracfin\\_16.pdf](https://www.economie.gouv.fr/files/Lettre_Tracfin_16.pdf)

22. [https://www.economie.gouv.fr/files/TRACFIN\\_Rapport\\_Analyse\\_2017\\_2018\\_Web.pdf](https://www.economie.gouv.fr/files/TRACFIN_Rapport_Analyse_2017_2018_Web.pdf)

23. [https://www.europarl.europa.eu/cmsdata/155721/EPRS\\_STUD\\_627114\\_Money%20laundering-FINAL.pdf](https://www.europarl.europa.eu/cmsdata/155721/EPRS_STUD_627114_Money%20laundering-FINAL.pdf) Report from the European Parliament upon request from the “TAX3” committee

24. <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/finance/us-five-insights-into-the-art-market-and-money-laundering.pdf> «The art market is especially vulnerable to trade-based money laundering» ; [https://www.swissinfo.ch/fre/culture/lutte-contre-le-blanchiment\\_transparence-du-march%C3%A9-A9-de-l-art-la-suisse-peut-faire-mieux/41453588](https://www.swissinfo.ch/fre/culture/lutte-contre-le-blanchiment_transparence-du-march%C3%A9-A9-de-l-art-la-suisse-peut-faire-mieux/41453588)

25. <https://op.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-search>

26. <https://www.auswaertiges-amt.de/en/newsroom/news/muentefering-eu-cultural-heritage/2418012> «Only 2.1 percent of cultural objects from the eastern Mediterranean region which are offered on the German market are being traded legally. For objects from Iraq, this figure is just 0.4 percent. That alone tells us all we need to know – just four in a thousand items are being traded legally!» <https://www.kulturstiftung.de/wp-content/uploads/2020/03/Fakten-und-Handlungsempfehlungen-zum-Handel-mit-antiken-Kultur%C3%BCtern-in-Deutschland.pdf>

27. (Brodie 2003, p 186)

28. 6 laundering techniques for an antiquity described in the article “Razzia sur l'antique” [https://www.journalistefreelance.be/IMG/pdf/trafic\\_antiquites\\_5.pdf](https://www.journalistefreelance.be/IMG/pdf/trafic_antiquites_5.pdf): “Acquire old (pre-1970) sale catalogs without photographs, and then match the description of an item in the catalog with the one you hold, even if it means damaging it. 2. Recycle documents (cardboard) formerly used in exhibition venues and insert new pictures of pieces you want to legitimize. 3. Manually make up & write false reference numbers on items to grant them an appearance of legitimacy. 4. Establish false invoices, or real ones issued by offshore, exotic-heaven-based companies that cover the true beneficiaries, or even issued by Latin-American or Asian dealers that no one knows. 5. Mix similar legal and illegal items. Known and documented items belonging to



their associated opportunities

4. Money, and especially hard cash, undeniably runs in the art market (not to mention in the contemporary art market). A historical alabaster statuette can easily cost over 200,000 euros. In 2018, an Iraqi Assyrian relief from the Nimrud Palace<sup>29</sup> became the second most expensive antiquity in History after it was auctioned (legally and with a known origin) for \$27.5 million. This gives an idea of the price that some (anonymous) buyers are willing to pay.

5. Despite the risk it poses to investors, the often-ignored fake art industry persists. It is difficult for an uninformed buyer (especially on the internet where a majority of items are fakes<sup>30</sup>) to distinguish genuine artifacts from industrially-produced counterfeits<sup>31</sup>. The counterfeit industry becomes increasingly sophisticated over time (some items are even buried for years to give them an aged appearance) and can also finance criminal networks. This peculiar industry remarkably adapts and even anticipates market expectations based on geopolitical developments. Since the proclamation of the ISIS ‘caliphate’, the number of fake Syrian antiquities for sale on the internet has skyrocketed. Some see a clear correlation between the two phenomena<sup>32</sup>; but all in all, buying a counterfeit antique could not only be a «bad investment», it could also fund terrorism.

Nowadays, the fight against the counterfeit industry is even less prioritised than the fight against stealing since it is less of a threat to culture than to buyers.

In sum: laundering of stolen or counterfeit items(-making an item look authentic by making up its origins with false documentation) and laundering dirty money<sup>33</sup> through art (which is made possible by the opacity of transactions<sup>34</sup>, and economically irrational, subjective, and volatile prices<sup>35</sup>) are two distinct phenomenon that might be linked to one another. It is also possible to launder money with a perfectly legal and authentic painting of contemporary art.

Recently, a specialised investigator, who tackled plenty

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identified series will cover the other pieces. As such, the whole set is sold as part of a single collection. The only thing left is to include them in the catalog of an auction house for example. 6. Send an item to a transit country where there is little scrutiny, and then obtain from this same country an export permit to a destination country.

29. <https://www.antiquestradegazette.com/news/2018/assyrian-relief-sets-second-highest-price-for-ancient-art-at-christie-s-new-york-despite-iraq-s-repatriation-call/>
30. <https://theantiquitiescoalition.org/antiquities-sold-online-fake-illegal/>
31. <http://www.forgingantiquity.com/forgeries>
32. <https://www.latimes.com/world/middleeast/la-fg-syria-fake-antiquities-2016-story.html>
33. <https://www.imf.org/external/pubs/ft/fandd/2019/09/the-art-of-money-laundering-and-washing-illicit-cash-mashberg.htm>
34. <https://www.nytimes.com/2020/07/29/arts/design/senate-report-art-market-russia-oligarchs-sanctions.html>
35. «Nouvelle géopolitique de l’art contemporain.» Aude de Kerros

of other crimes in his career, told me that he had “seldom seen a sector where so many abuses could be accumulated.”

There is without any doubt a vicious circle (few resources towards the fight, an inability to grasp the full extent of the phenomenon, few cases handled, few prosecutions, few statistics, few convictions, little public awareness, little commitment) that we need to break in order to tackle the ubiquitous threat.

#### **IV. Acting to dismantle criminal networks: a global, integrated response supported by the European Union**

1. A global issue requires a global response tailored to the threat: fighting impunity, acting against a crime essentially “demand-driven”; dismantling the few dozen intermediary networks at the crossroads of supply and demand, far less numerous than looters and the thousands of sites to be protected around the globe.

The EU, urged by France, Italy, other countries (in cooperation with UNESCO)<sup>36</sup>, as well as the EU’s Counter-Terrorism Coordinator Gilles de Kerchove, has included the matter in its broader, expanding security strategy. As mentioned in the EU Security Union Strategy published in July 2020: “Trafficking in cultural goods has also become one of the most lucrative criminal activities, a source of funding for terrorists as well as organised crime and it is on the rise. Steps should be explored to improve the online and offline traceability of cultural goods in the internal market and cooperation with third countries where cultural goods are looted as well as providing active support to law enforcement and academic communities.”<sup>37</sup>

For cultural goods, this could eventually lead to new, specific legislations and strategies overseen by a dedicated coordinator (similarly to firearms, drugs etc...). Such a development would fit the broader approach the EU seeks to implement.

Towards the end of 2020, 35 MEP from all political parties asked the Commission to shape a strategy against cultural goods trafficking, as has existed since 2016 for wildlife trafficking<sup>38</sup>. This is not the first time the European Parliament carries out such an initiative<sup>39</sup>.

36. <https://unesdoc.unesco.org/ark:/48223/pf0000266098?posInSet=1&queryId=b30bc529-c8a0-4583-9975-53dd7275f733>

37. <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:52020DC0605&from=FR>

38. [https://ec.europa.eu/environment/cites/trafficking\\_en.htm](https://ec.europa.eu/environment/cites/trafficking_en.htm)

39. The recommendation of the European Parliament to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on cutting the sources of income for jihadists – targeting the financing of terrorism [https://www.europarl.europa.eu/doceo/document/A-8-2018-0035\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2018-0035_EN.html); [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0059\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0059_EN.html) ii) the findings and recommendations of the Special Committee on Terrorism of the

Members of the civil society on both sides of the Atlantic also petitioned<sup>40</sup> to demand the end of the cultural “genocide” by the market regulations.

2. Custom agent, policeman and archeologist - the rise of specialized team networks.

INTERPOL and the World Customs Organization provide high quality training (through the PITCH program<sup>41</sup>) and enhance the capabilities of countries in Sub-Saharan Africa, the Gulf, the Balkans, Asia, or Latin America, with specialized units. They deserve more support.

On a US federal level, the Homeland Security Investigations, which returned 3800 stolen items to Iraq in 2018, as well as the FBI - to a lesser extent and rather on classical and modern art - both strengthened their capacities. The Manhattan District Attorney has even set up a specialized team headed by the “monument man” Colonel Matthew Bogdanos<sup>42</sup>. They were remarkably able to dismantle globalized networks while seizing and returning items to dozens of countries. The New-York<sup>43</sup> team sets a model for the world, and boosts the image of the US<sup>44</sup>. They demonstrate that, by fighting against this crime, we can unveil its full extent and properly address it.

Europol, which has handled a soaring number of cases since 2018<sup>45</sup>, stepped up its efforts in recent years. Countries such as the UK with Scotland Yard, Belgium<sup>46</sup> with its Ministry of Economy<sup>47</sup>, and Italy -the European leader on the matter- have all readapted their capacities since 2016.

In France, the Central Office for the Fight against Trafficking in Cultural Goods (OCBC) of the Ministry of the

Interior has, since 2016, focused part of its work on the fight against trafficking in archaeological looting in war zones. This is now one of the priorities of this service; the investigations are starting to bear fruit. Between the years 1980 and 2000, France suffered a regular looting of its heritage (between 8,000 and 15,000 thefts per year). The synergy of several actions has made it possible to reduce these figures to around 1,500 flights per year. It is this method that has to be brought to the international level

Amidst enhanced cooperation between INTERPOL, EUROPOL, and the World Customs Organization, international police and custom operations are increasingly coordinated. Operations like “Pandora” and “Athena” led to the recovery of 41,000 items in 2018<sup>48</sup>. Cooperation with third countries is also developing (in the Balkans or in Iraq<sup>49</sup>), including within the EU Security and Common Defense Policy missions<sup>50</sup>.

### Eyes-and-ears of “law enforcement”

A collaborative approach involving worldwide police and customs officers, archeologists, experts, philologists, and private sector representatives maximises the operational efficiency, including on the web<sup>51</sup>. Through the “NETCHER”<sup>52</sup> project financed by the Horizon 2020 program, the EU created a transdisciplinary global network of experts. Institutions, such as the University of Poitiers and Institut National d’Histoire de l’Art are training a new generation of “archo-investigators”; or may we call it an army of students, PhD philologists, archeologists, curators, and jurists. As a result, various investigations on terrorism financing through antiquities, such as in the “Bagot Case”<sup>53</sup>, were launched. This case was brought about in 2018 in Spain and France thanks to a young French archeologist who raised suspicions about online flows of Libyan items.

It is also worth mentioning that the following global organizations intensified their efforts: UNESCO, which published an online toolkit<sup>54</sup> to train specialized teams, the International Council of Museums ICOM (which promotes

European Parliament (November 2018) [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0512\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0512_EN.html), iii) the resolution adopted by the European Parliament of 17 January 2019 on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0037\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0037_EN.html)

40. [https://www.change.org/p/to-the-leaders-of-the-eu-institutions-stop-cultural-genocide?recruited\\_by\\_id=dc7ac520-2dc6-11eb-b456-fb46afd67336](https://www.change.org/p/to-the-leaders-of-the-eu-institutions-stop-cultural-genocide?recruited_by_id=dc7ac520-2dc6-11eb-b456-fb46afd67336)

<https://actnow.io/socialmedia>

41. <http://www.wcoomd.org/fr/media/newsroom/2018/novembre/wco-publicshes-new-tool-in-the-prevention-of-illicit-trafficking-of-cultural-heritage.aspx>. “The Handbook is our tangible contribution to implementing UN SC Resolution 2347/2017, as well as the WCO Council Resolution of 2016, and we hope that it will be used to improve the operational reality of our Member Customs administrations”

42. Author of the book “Thieves of Baghdad”

43. <https://news.artnet.com/art-world/manhattan-antiquities-trafficking-unit-1182896>

44. <https://www.thedailybeast.com/the-marine-turned-prosecutor-busting-antiquities-thieves>. <https://www.theartnewspaper.com/news/return-persian-antiquity-to-iran-new-york-district-attorney-says>

45. <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/illicit-trafficking-in-cultural-goods-including-antiquities-and-works-of-art> ; <https://ec.europa.eu/culture/cultural-heritage/cultural-heritage-eu-policies/protection-against-illicit-trafficking>

46. <https://parismatch.be/actualites/societe/433350/%E2%80%89fut-un-choc-terrible-je-ressentais-une-douleur-comparable-a-celle-que-lon-ressent-lorsquon-perd-un-etre-cher%E2%80%89>

47. <https://art-crime.blogspot.com/2021/01/restitution-belgian-authorities-hand.html>

48. <http://www.wcoomd.org/fr/media/newsroom/2018/february/over-41-000-artefacts-seized-in-global-operation-targeting-trafficking-of-cultural-goods.aspx>

49. [https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations\\_en/71130/The%20Casket%20of%20our%20History%20%E2%80%93%20EUAM%20Iraq%20of%20illicit%20trade%20in%20cultural%20goods](https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations_en/71130/The%20Casket%20of%20our%20History%20%E2%80%93%20EUAM%20Iraq%20of%20illicit%20trade%20in%20cultural%20goods)

50. <https://www.iai.it/en/pubblicazioni/eu-csdp-missions-and-protection-cultural-heritage>

51. <https://www.europol.europa.eu/newsroom/news/over-18-000-items-seized-and-59-arrests-made-in-operation-targeting-cultural-goods>

52. <https://netcher.eu/tag/illicit-trafficking/>

53. <https://www.revistavanitayfair.es/la-revista/articulos/a-la-sombra-daesh-jaume-bagot-arte-financiar-daesh/32480> ; <https://art-crime.blogspot.com/search/label/Jaume%20Bagot> ; <http://artworldlaw.com/en/blood-antiquities-connection-between-trafficking-of-cultural-goods-and-terrorism/> ; <https://www.countertextremism.com/blog/illicit-art-and-antiquities-could-be-financing-terrorist-activities>

54. <https://unesdoc.unesco.org/ark:/48223/pf0000266098?posInSet=1&queryId=b30bc529-c8a0-4583-9975-53dd7275f733>

and develops international standards of description and documentation such as the Object «standard object ID»<sup>55</sup>, as well as the essential «Red Lists»<sup>56</sup>, that is to say typologies of cultural objects, country by country, to enable services law enforcement agencies to recognize potentially illicit objects as well as, more recently, the International Observatory for Illicit Trafficking in Cultural Property<sup>57</sup>, the Red Cross International Committee, the Aliph foundation<sup>58</sup>, NGOs, and universities across Europe (ARCA, Poitiers, Maastricht)<sup>59</sup> and the US (Antiquities Coalition, Athar, University of Pennsylvania, etc)<sup>60</sup>.

Contrary to a common misconception, we can identify looted (and therefore unreferenced) items with utmost precision, reconstitute them, and dismantle involved networks<sup>61</sup>. This was proven since 2018 by the intense cooperation between authorities in New-York, Paris and Cairo around a stolen golden Egyptian sarcophagus, later bought and exposed by the Metropolitan Museum. Indeed, looters often film themselves on the excavation site with the items in order to prove their authenticity to the buyer<sup>62</sup>. As per communication, buyers and looters are sometimes in direct contact over social media<sup>63</sup> on public groups, before switching to encrypted messaging<sup>64</sup>.

New Technologies open the floor to new perspectives for investigators:

- Nanotechnologies for marking items<sup>65</sup> ;
- Improvement of digital archiving, including on site archiving with smartphones, as a lot of looted items were recently excavated but not referenced yet ;
- Global digitalization of items “in circulation” (in collections, on the market, without considering their legality) to better estimate the available stock. This is already done by the British Museum for Egyptian and Sudanese antiques “in circulation” worldwide as part of the project Circ Arts<sup>66</sup>.

Such an overview helps detect anomalies and suspicious flows ;

- Mobile apps that detect stolen items by matching their pictures to INTERPOL’s stolen items database in real time. Other apps such as “ITPC”, which is available to the general public on smartphones and uses the Carabinieri database as a reference, are linked to national services databases. Also worth mentioning is the innovative 2020 German Fraunhofer institute’s AI system “KIKU”<sup>67</sup>, which recognizes and compares cultural images. Similar European techniques were developed within the “PREVISION”<sup>68</sup> research project ;
- The digital interface of INTERPOL’s lost and found database<sup>69</sup> considerably improved thanks to European financing.

For world customs to detect stolen items, a real-time consolidated global analysis of suspicious flows would be another useful tool. Customs’ role in the fight against trafficking is indeed underestimated, even though recently looted items will eventually have to cross one or more borders.

Online platforms, where trafficking activities have grown out of control, can still better cooperate. Facebook just recently proscribed the sale of cultural goods<sup>70</sup>, but much has yet to be done to effectively implement this restriction<sup>71</sup>, retain evidences, and enhance the work with governments.

However, limiting our range to cooperative police, legal or administrative operations is insufficient.

Likewise, and despite the importance of these elements, it would be illusory to expect too much from the only (non-binding) ethical principles or from the codes of ethics of museums, art dealers or individual collectors without an independent body in charge of their respect or endowed with sanctioning powers. Changing professional practice from within is certainly essential and these codes are gradually contributing to this, as are recent initiatives to raise awareness of the market on compliance issues. An essential key, however, lies in the legislation.

## V. A global legislation for a global problem.

55. <https://icom.museum/en/resources/standards-guidelines/objectid/>

56. <https://icom.museum/en/resources/red-lists/>

57. <https://www.obs-traffic.museum/fr>

58. <https://www.aliph-foundation.org/>

59. <https://art-crime.blogspot.com/> ARCA, «Associations for research into crimes against art» led by Lynda Albertson, interviewed here: <https://www.architecturaldigest.com/story/new-documentary-spotlights-detective-work-behind-infamous-art-theft> ; <https://twitter.com/ActGec> Geneva collective against cultural trafficking

60. <https://theantiquitiescoalition.org/> ; <https://atharproject.org/>

; <https://web.sas.upenn.edu/ihsp-program/>

61. <https://www.theartnewspaper.com/news/french-dealer-sues-over-seized-egyptian-stele>

62. <https://www.daserste.de/information/wirtschaft-boerse/plusminus/sendung/terrorfinanzierung-durch-antikenhandel-100.html>

63. <https://atharproject.org/> ; <https://www.theatlantic.com/technology/archive/2020/07/archaeologists-defied-isis-then-they-took-facebook/614674/>

64. In such circumstances, it’s all the more striking to notice that origin and authenticity are closely linked. As a matter of fact, authenticity certificates given to potential collectors indicate that they cannot ignore the origin of the said cultural goods.

65. [https://emf.fr/wp-content/uploads/2020/09/2020\\_JE\\_Trafic\\_progrweb.pdf](https://emf.fr/wp-content/uploads/2020/09/2020_JE_Trafic_progrweb.pdf)

66. <https://www.britishmuseum.org/our-work/departments/egypt-and-sudan/circulating-artefacts>

67. <https://technology.inquirer.net/107100/the-app-that-could-help-crack-down-on-the-trafficking-of-cultural-artifacts>

68. [http://www.prevision-h2020.eu/?page\\_id=1085](http://www.prevision-h2020.eu/?page_id=1085) «Prediction and visual intelligence for security information»

69. <https://www.interpol.int/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>

70. <https://www.nytimes.com/2020/06/23/arts/design/facebook-looting-artifacts-ban.html> ; <https://www.fredzone.org/trafic-dantiquites-facebook-aide-rait-les-trafiquants-dart-a-echapper-a-la-justice-123>

71. <https://ahotcupofjoe.net/2021/01/facebook-hypocrisy-the-antiquities-marketplace/> «Facebook Hypocrisy: the Antiquities Marketplace»

1. At the heart of the trafficking issue<sup>72</sup> lies the resale and exportation of a stolen item to a country where the law is more favorable. A buyer there, not interested by the origin, would be considered a bona fide purchaser. For instance, a majority of illegally-sold antiquities in the US would have previously transited in Europe<sup>73</sup>, its surroundings, and Asian countries. Israel Police, alongside the Manhattan District Attorney<sup>74</sup>, publicly point out “safe haven”, “looting friendly” countries<sup>75</sup>.

The law plays an essential role in preventing the theft of our own relics, as shown in France by a law adopted in 2016.<sup>76</sup>

2. The June 24th 1995 UNIDROIT Convention stems from the newly realized need for a unified global law. Around 50 countries signed it, including France. Supported by UNESCO, UNIDROIT rightfully completes the former’s conventions and rebalances the burden of proof. It discards the concept of good faith for that of “due diligence”, precisely because good-faith is less demanding for buyers. On the other hand, the 2017 EU Council Nicosie Convention<sup>77</sup> helps countries harmonize their laws to deal with trafficking actors for what they are: criminals.

3. Despite setbacks, the global regulation of “the world’s largest unregulated market” is underway in the EU, US<sup>78</sup> and elsewhere. The objective remains to fill the lasting gaps that prevent the existing system from being fully efficient. The EU has already partially regulated exports and imports through a 2018 European regulation that will be completed by an IT system. The US, on the other hand, has reached bilateral agreements with source countries<sup>79</sup>. In 2018 and 2021, Brussels and Washington have respectively extended the reporting requirement for transactions above €10,000 to the art sector<sup>80</sup> (5th anti-launde-

ring directive - the “Bank Secrecy Act” to the art market<sup>81</sup>).

Further paths for the EU, its member states, and the US could include:

- Requiring objects traceability (the «key» word par excellence) within their domestic markets, for example by requiring art dealers to keep records (as is the case in France with the police booklet which sets an example) with photos and descriptions to ICOM standards ;
- Enhancing the due diligence in cultural items commercial transactions ;
- Rebalancing the burden of proof (cf. above), the question of possessing stolen goods (the New York legislation and its «once stolen, always stolen» principle is in this respect interesting) ;
- Further criminalising trafficking<sup>82</sup>; knowingly buying stolen statues in war-torn countries can fuel armed conflict ;
- Strengthening the risk analysis before issuing of export certificates ;
- Harmonizing administrative documents for the benefit of both the market (less bureaucratic burden) and investigators ;
- Determining & setting appropriate value thresholds<sup>83</sup> above which each object would have to be considered for the export/import of cultural goods. Such an approach, like those mentioned below, may nonetheless oppose the commercial aspect to the fight against trafficking.

Finally, experts’ role in the art market and illicit trafficking is a matter of concern. Their job is generally not regulated in market countries. International investigations suggest that some of them are not aware of their obligations and the legal risk of breaking the law. They could nevertheless play a central role in the fight against blood antiquities trafficking. Auction houses could use them to obtain a «blank check» on the origin of objects held for sale, thereby clearing themselves from any error or failing in case of dispute.

4. In France, article 322-3-2 of the Penal Code, which is part of the legal response to the 2015 attacks, crimi-

72. Pierre Lalive, «La Convention d’UNIDROIT sur les biens culturels volés ou illicitement exportés ( du 24 juin 1995)»

73. <https://www.forbes.com/sites/jasonwiseman/2021/12/28/a-picture-is-worth-a-thousand-loopholes-pt-1/?sh=34e798325896> «nearly 100% of the illicit antiquities appearing on the US market have transited through EU territory to get there.»

74. <http://www.artcrimeresearch.org/wp-content/uploads/2018/07/Wace-Motion-for-Turnover.pdf>

75. <https://mag.wcoomd.org/magazine/wco-news-88/israels-response-to-the-threats-facing-cultural-heritage/> ; <https://www.artcrimeresearch.org/wp-content/uploads/2018/07/Wace-Motion-for-Turnover.pdf> «New York’s application for the turnover of a Persian relief» pp 1: 59-60

76. <https://www.ouest-france.fr/sciences/archeologie/comment-la-loi-protège-les-vestiges-du-passe-face-aux-trafics-et-pillages-7134143>

77. <https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/221> This convention is the “ only international treaty specifically dealing with the criminalisation of the illicit trafficking of cultural property, establishes a number of criminal offences, including theft; unlawful excavation, importation and exportation; and illegal acquisition and placing on the market. It also criminalises the falsification of documents and the destruction or damage of cultural property when committed intentionally”

78. <https://www.forbes.com/sites/jasonwiseman/2021/12/28/a-picture-is-worth-a-thousand-loopholes-pt-1/>

79. <https://www.state.gov/wp-content/uploads/2019/05/2017-Digest-Chap-ter-14.pdf>

80. regulation EC 116/2009 of 18 December 2008 on the export of cultural goods ; regulation EC 1210/2003 of 7 July 2003 concerning certain specific restric-

tions on economic and financial relations with Iraq and repealing regulation EC No 2465/96 ; Directive EU 2014/60 of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State a and amending Regulation EU 1024/2012 ; Regulation EU 2019/880 of 17 April 2019 on the introduction and the import of cultural goods ; Directive EU 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

81. <https://www.nytimes.com/2021/01/01/arts/design/antiquities-market-regulation.html>

82. <https://www.keystonelaw.com/keynotes/how-anti-money-laundering-regulation-could-save-the-art-market>

83. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042748770> « 1. B. Objets archéologiques ayant plus de cent ans d’âge et monnaies antérieures à 1500, ne provenant pas directement de fouilles, découvertes ou sites archéologiques : 3 000.»

nalizes since 2016 the trafficking of cultural goods from land where terrorists operate. This new offense is all the more interesting as it reverses the burden of proof, which now lies with the owner of such goods rather than with the investigator. We would benefit from further detailing, expanding and introducing this new offense in new countries.

All in all, as far as their foreign policy is concerned<sup>84</sup>, market and transit countries would benefit from a global, adapted, and pragmatic regulation that accounts for new challenges such as the COVID-19 pandemic and the Brexit, as the importance of stolen items restitution goes beyond its economic value for source countries. In addition, such regulation would help restore the confidence and reputation of the art market and its professionals, who now cooperate more actively (and commendably) with investigators. Buyers, who must be protected and warned against the proliferation of fakes and the risk of financing organised crime and terrorism, could also benefit. All in the interest of our physical but also economic security, since it would hamper money laundering.

Terrorist, criminal, or white-collar, crimes against art - or generating/laundersing money through art - are but victimless crimes<sup>85</sup>. It takes all of us. We are the victims. Humanity is the victim. The solution also lies within our hands. Our common interest is in fine saving global civilization and preserving good relations with the people which it comes from. Those who do not learn History are doomed to repeat it.<sup>86</sup>

84. <https://www.foreignaffairs.com/articles/united-states/2021-01-14/regulating-art-market-good-foreign-policy>

85. <https://www.rfi.fr/fr/podcasts/grand-reportage/20210202-le-traffic-d-anti-quit%C3%A9s-l-affaire-de-tous>

86. This paper solely reflects the author's opinions and shall not represent nor express any official position.