



BACKGROUND PAPER

ACT FOR HERITAGE! CONFERENCE

**Promoting the
Council of Europe
Convention on
Offences relating to
Cultural Property,
within governments
and civil society
24–26/10/2019
NICOSIA, CYPRUS**

Fact, fiction and the role of the trade in protecting cultural heritage by CINOA

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Fact, fiction and the role of the trade in protecting cultural heritage



Established in 1935, CINOA is the principal international confederation of Art & Antique dealer associations representing more than 5,000 dealers. Affiliated dealers, from 30 leading dealer associations, cover a wide array of specialties from antiquities to contemporary art. CINOA's associate member, the International League of Antiquarian Booksellers (ILAB), represents an additional 22 associations. CINOA and all of its member organizations have a strict application process to ensure only accepting peer-vetted art professionals that have established reputable galleries and/or practices. CINOA affiliated dealers abide to a high standard of business practices and to codes of ethics which includes strict due diligence. Our membership does not include people involved in low grade internet sales.

Art professionals in CINOA, who have been inflamed by a passion for art, recognize the obligations and understand the laws. During the past nearly 70 years, dealers have been changing their practices to abide by bio-diversity, cultural property and heritage legislation. The CINOA Code of Conduct is updated regularly to reflect these changes. They also go to great lengths to conserve and preserve, in the hopes of turning a profit which is never guaranteed. The vast majority of CINOA's members are businesses of 4 people or less who work hard to cultivate a clientele. It can be a harrowing business, but also one with enormous intellectual satisfaction. www.cinoa.org

The Nicosia Convention

“Considering that the purpose of this Convention is to protect cultural property through the prevention of and the fight against criminal offences relating to cultural property.”

The preamble to the Nicosia Convention appears to have been written primarily with antiquities (objects from ancient eras) as its main focus. Therefore, most, but not all, of the comments and information in this paper relates to antiquities and archaeological material, so it should be read bearing in mind that antiquities (0.5% of the market of all cultural artefacts) sit within a much wider market of objects which were not found in the ground (legally or illicitly) or taken from their countries of origin one hundred years ago, but have simply been passed down from generation to generation as family heirlooms and household objects.

BACKGROUND

Conflicts over the past 30 years have placed global cultural heritage at the centre of political debate as never before. From the Taliban to Al Qaeda and ISIS, a common objective has been to expunge the pre- Islamic history of ancient civilisations in countries such as Afghanistan, Iraq and Syria. As we know, this has meant the wanton destruction of irreplaceable artefacts like the Bamiyan Buddhas, the Nabi Yunus mosque in Mosul and the ancient city of Palmyra. Archaeological sites have been devastated. The evidence for this is clear.

More complicated is the subject of looting and trafficking. Scarred landscapes showing mass digging clearly demonstrate the intent to loot, but they yield no information on what has actually been found and removed. Figures ranging from a few million dollars to \$7 billion¹ have been bandied about in relation to the value of artefacts looted from Syria in a single year. All sides in the debate now acknowledge that it is impossible to get accurate figures, while the trade and some academic researchers have argued that exaggeration may be the result of the desire to push the subject up government agendas.² Among academics, archaeologists, NGOs and politicians, a strong belief exists that trafficking of valuable ancient artefacts is widespread and wholesale – hence the motivation for initiatives like this Convention, whose preamble expresses just such concerns. However, study after study has not provided indisputable evidence of trafficking on such a large scale anywhere.

Facebook and other social media platforms have become conduits for those seeking to exploit the series of crises east of the Mediterranean as they offer artefacts for sale, but studies now show that much of what is on offer is fake.³ If it is fake, it may be criminal, but it is not cultural property.

Numerous law enforcement operations across Europe in the past few years, together with a series of research projects commissioned by the European Union and others, have failed to find any evidence of trafficking from conflict zones or the financing of terrorism through the exploitation of looted artefacts. Instead, items seized have been almost exclusively low-value objects, such as coins, pot sherds and more modern antiques and works of art, often found by the authorities in their countries of origin within Europe and in the hands of individual criminals or gangs. Of the 3,561 objects seized across 18 countries during Operation Pandora in late 2016, for instance, 1000 were from a single source in Poland and largely comprised spent bullet cartridges and rusted gun stocks from WW2 (see photo – source: Europol)



¹ See <https://nbcnews.to/2NEV7Ni>

² Brodie, Dr Neil, Thinking on policies, European Union National Institutes for Culture, 2015: “There is an opinion within the archaeological community that highlighting the financial importance to ISIL of the antiquities trade will make it an issue of national security and ensure a strong government response. The danger with this line of reasoning is that the response might be inappropriate.”

³ See <https://heritage-lost-aaa.com/2017/11/03/majority-of-antiquities-sold-online-are-looted-or-fake-ii/>

The trade agrees with the Convention that more attention should be focused on protection and preservation in situ, which would prevent the criminals who destroy, loot and attempt to pass on stolen artworks. These criminals are not part of the art market. Attitudes and standards today, including well-developed codes of conduct enforced by leading trade associations, make recently looted items undesirable in the marketplace, from a moral, reputational and commercial standpoint. Art market professionals and associations are keen to fight crime linked to art, it is not unreasonable for them to expect that measures introduced to fight such crime are proportionate and do not unduly damage legitimate activity.

It is important to highlight that the trade is vital to the benefits that the art market provides to society. The art market is not an entirely separate entity from other stakeholders. Museums and curators also intersect with the market by buying works at auction or from dealers to add to their collections and by accepting donations of works or money for their collections from collectors and dealers.

Museums rely on art market professionals to provide valuations for insurance or loans, whether antiquities or other items of cultural property. Public galleries and museums also depend on dealers and collectors for loans of art in order to stage special exhibitions. Academics write catalogues for gallery exhibitions, endorse discoveries, attributions and reattributions, and advise on provenance, among other roles. So at certain points and times they join the market.

But the symbiotic relationship between collectors, the trade, academia, discovery, research and preservation goes back much further than this. It is private and scholarly enterprise that has vastly contributed to the establishment, development and prosperity of museums, not just as repositories of artefacts, but as vibrant seats of learning. Sir Hans Sloane had collected over 71,000 objects by the time of his death in 1753. His collection was bequeathed to the British nation and it became the founding collection of the British Museum. In recent years, the outstanding bequest of the late collector Sir Arthur Gilbert has boosted the holdings of the Victoria & Albert Museum, adding significantly to our understanding of silver and micro-mosaics in particular. Other famous museums, drawing in millions of tourists, such as Tate Modern in London and the Metropolitan Museum in New York, not to mention the entire cultural capital of Florence, all started on the basis of private collections and today are firmly embedded in the public realm.⁴

Without those collectors past and present acquiring their possessions – often from dealers or auction houses – and the generous bequests that followed, where would these seats of learning be today?

In the past few years, the auction house Bonham's has sponsored pioneering research at the Cranfield Institute aimed at creating a scientific database for the assessment of ancient Chinese ceramics, which will not only assist with the rooting out of fakes but will greatly enhance academic research to the point that individual items made hundreds of years ago can be attributed to specific kilns in China. Without a healthy market in this field, funding and expertise for this project would be cut off entirely.

Another prime example of such co-operation is the UK initiative "Year of the Dealer"⁵, which is a collaboration between two universities, seven major national and regional museums, a theatre and one of the UK's leading antique dealing businesses and aims to draw attention to the relationships between the art market and public museums in order to share expertise, experience and perspectives among stakeholders and to increase public engagement with the significance of the history of the antique trade in British cultural life.

The intertwining of the private (collectors), the public (dealers and auction houses) and the academic in all fields of art, from antiquities forward, increases scholarship, increases awareness and makes all art more approachable. Art is not a forbidden fruit that few should be allowed to understand or even see, it is the expression of mankind in all its glory and, at times, in its weakness. Dealers, in particular, understand that cultural property should be preserved and protected and work to explain it as is a purpose of this Convention. Museums do the same, the relationship inevitably linked. In fulfilling our commitments to protect, preserve and conserve our cultural heritage, we must take care not to ignore one aspect of public interest entirely as we pursue another. Otherwise we risk sowing

⁴ See <http://www.sophiekalte.com/home/2016/11/14/art-and-soul>

⁵ See <https://antiquedealers.leeds.ac.uk/research/yotd/>

the seeds of future cultural negligence by cutting off the very source and lifeblood of scholarship and interest. As the leading art law counsel William Pearlstein says: "...museums cannot perform their obligations to research, conserve, and exhibit artworks without a vigorous art market."

Legislation and the art market

It has been said that the international art market is the last great unregulated market in the world.⁶ This creates a false picture of dealers, collectors and auctioneers operating on a lawless 'Wild West' frontier where anything goes. In fact, the art market is heavily regulated, not just by laws specifically designed to restrict its activities, but also by general laws addressing the sale of goods, fraud, VAT, bribery and other issues. It is also on the cusp of becoming directly regulated in one of the most important areas: anti-money laundering.

To bring some perspective to this, on its website the British Art Market Federation (BAMF) publishes a list of 150 laws⁷, conventions and codes of conduct that apply to the British trade on a domestic and international basis. This list was published in February 2015, since when additional laws directly applying to the art market have included, but are not limited to:

- The Cultural Property (Armed Conflicts) Act 2017 (UK)
- The Act on the Protection of Cultural Property 2016 (Germany)
- Regulation (EU) 2019/880 on the Import of Cultural Goods 2019 (European Union)
- Protect and Preserve International Cultural Property Act HR1493 (United States)
- Fifth Anti Money Laundering Directive 2018 (European Union)

Additional specific EU sanctions relating to cultural property from Iraq (Council Regulation (EC) No 1210/2003 (article 3)) and Syria (Council Regulation (EU) No 1332/2013 (art. 11 quarter) have been in place since 2003 and 2013 respectively.⁸

The Directive (EU) 2018/843 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, which focuses on terrorism financing and is heading towards implementation by EU Member States early in 2020, will enforce direct regulation on parts of the art market. Amendments introduced since the 4th Directive under Article 1 C i and j specifically target the art market.⁹ This means that it will no longer be possible to argue that the art market is not directly regulated. This regulation also has provisions regarding databases, provenance requirements and penalties¹⁰ which are some of the key elements of the Nicosia Convention.

All of the above is the result of the belief that the looting and trafficking of cultural property – specifically antiquities and archaeological artefacts – has been a widespread and growing problem in the European Union and the United States. However, studies commissioned to find evidence to support this supposition have singularly failed to do so. See ANNEX B for the conclusions of four case studies.

The danger of confirmation bias

Misinterpreted or unsubstantiated statistics have had a very significant impact on the forming of opinion, policy and even legislation in recent years and need to be addressed directly to ensure that decision-making is based on sound, primary source evidence rather than rumour and surmise. Just as the art market is held to account over provenance and its codes of conduct, NGOs, academics and law enforcement agencies should be held to account for the standards of their research and publications.

⁶ See Nairne, Sandy, Art theft and the case of the stolen Turners, 2011: <https://bit.ly/2PqughT>

⁷ See <https://tbamf.org.uk/wp-content/uploads/2014/08/ArtMarketRegulations.pdf>

⁸ See <https://english.inspectie-oe.nl/cultural-goods/legal-basis/sanction-measures>

⁹ See <http://data.consilium.europa.eu/doc/document/PE-72-2017-INIT/en/pdf>

¹⁰ Penalties is the main focus of the Nicosia Convention: Article 11 (Penalties) of the EU regulation on Import of Cultural goods states that Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. By 28 December 2020, Member States shall notify the Commission of the rules on penalties applicable to the introduction of cultural goods in breach of Article 3(1), and of the related measures. By 28 June 2025, Member States shall notify the Commission of the rules on penalties applicable to other infringements of this Regulation, in particular the making of false statements and the submission of false information, and of the related measures. The Member States shall notify the Commission without delay of any subsequent amendment affecting those rules. See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN>

THE NICOSIA CONVENTION

In order to address the needs of the Nicosia Convention from a practical standpoint, it is important to establish clear and exact terms of reference.

What is cultural property?

As the Convention states: “The Convention on Offences relating to Cultural Property aims to prevent and combat the illicit trafficking and destruction of cultural property, in the framework of the Organisation’s action to fight terrorism and organised crime.” This being the case, it is important to establish exactly what the Convention means by the term ‘Cultural Property’.

We quote article 2.2a of the Nicosia Convention: “*For the purposes of this Convention the term ‘cultural property’ shall mean: in respect of movable property, any object, situated on land or underwater or removed therefrom, which is, on religious or secular grounds, classified, defined or specifically designated by any Party to this Convention or to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property¹¹, as being of importance for archaeology, prehistory, ethnology, history, literature, art or science, and which belongs to the following categories...*”

This definition of cultural property as used by the Convention, is, according to the explanatory report (24.), mainly inspired by *UNESCO 1970, the EU Directive 2014/60* on the return of cultural objects unlawfully removed from the territory of a member State and (19.) and *Council Regulation (EC) 116/2009 on the export of cultural goods*.

The vital words for the purposes of delineating the parameters of the Nicosia Convention are “*classified, defined or specifically designated by any Party to this Convention or to the 1970 UNESCO Convention... as being of importance for archaeology, prehistory, ethnology, history, literature, art or science...*”.

What are states parties’ obligations here?

Article 5 of the UNESCO Convention directly addresses “the protection of their [states parties] cultural property against illicit import, export and transfer of ownership”, which explains why the Nicosia Convention understandably finds it appropriate to follow the UNESCO Convention. To this end, Article 5b obliges states parties to establish and keep up to date “*on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage*”.

The implication of the references to the UNESCO Convention and the EU Directive 2014/60 (which is strictly limited to “National Treasures”) definitions, is that the Nicosia Convention is concerned with important cultural property only, which renders it more practical than would otherwise be the case; objects that are important enough to be listed by a state or belong to their national treasures – and must be so listed in order to qualify as ‘cultural property’ under the terms of those conventions.

This is helpful because it narrows the focus to exceptional works, excluding the ordinary and commonplace. Applying these parameters to the findings of some of the law enforcement operations that have taken place in the past few years, for instance, shows that much of what was seized does not qualify as cultural property under the terms of the conventions. While such material may be of interest to the authorities as the proceeds of crime, it has little to do with the issue of the protection of significant objects of cultural heritage, allowing resources to be redirected to items that do.

What defines a National Treasure?

In discussions on cultural property unlawfully removed from its country of origin, it has often been argued that a state can freely determine what are its “National Treasures”. If a state considers every fragment and every mass-produced oil lamp a “national treasure”, we would have to accept that. However, it is not that simple, as Professor Frigo explains in his paper *Cultural property v. cultural heritage: A ‘battle of concepts’ in international law?*¹²

Frigo explains that within the EU, the interpretation of “National Treasure” in article 30 of the EU

¹¹ See Full text of the UNESCO Convention 1970: <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/text-of-the-convention/>

¹² See <https://bit.ly/2L3Za4h>

treaty can only be interpreted in a narrow way: *“In other words, Article 30 is a norm that derogates from the ordinary rules applicable, and therefore cannot be interpreted extensively without infringing both the normative scheme of the EC Treaty and the balance between obligations arising from the EC Treaty and prerogatives reserved for the Member States.”* A little further on, Professor Frigo states: *“It unquestionably follows that, in the light of the object and purpose of the Treaty, an extension of the national prohibitions or restrictions to categories of objects that fall within the definition of “national heritage”, but not within the more restrictive notion of “national treasures”, would not be adequately justified.”*

What about the archaeological context?

Archaeologists rightly argue that items removed from their find spots without a careful record being taken of the circumstances and setting of their discovery effectively become worthless from an archaeological perspective, as we can learn little or nothing new about them. That is why prevention by protection is so important.

A 2012 ruling by the highest German Financial Court (BUNDESFINANZHOF Urteil vom 11.12.2012, VII R 33, 34/11; VII R 33/11; VII R 34/11)¹³ offers more clarity on this point when it comes to ancient coins. In answer to the question *“Are (mass produced) ancient coins archaeological objects or not?”* (in the sense of EU regulation 116/2009¹⁴ about export licences), the court ruled as follows:

“Archaeological objects within the meaning of the Regulation (EC) on the export of cultural goods (Regulation (EC) No. 116/2009) are only those that have value for archaeology, i.e. man-made or processed objects that convey knowledge about past cultures, in particular about their customs, the technical and artistic state of development at that time, political and social structures, religion and the like.”

“Objects, that illustrate at best any knowledge about past cultures gained elsewhere are therefore of no importance for archaeology, are not ‘archaeological objects’ or finds. (in the meaning of Annex I Regulation No 116/2009.)”

“This is in line with the Explanatory Notes to the Harmonized System concerning heading 9705, to which the above-mentioned Annex refers, which also refers to the ‘archaeological interest’.”

“It is also true that objects which have no value for knowledge of archaeology cannot be protected by a Member State on the grounds of archaeological interest.”

“However, as stated above, Regulation No 116/2009 is intended only to enforce such protective measures by a Member State, namely to ensure that they are respected at the external borders of the Union and prevent ‘national treasures’, that have to be protected, from being exported.”

What is the distinction between cultural property and antiquities?

This is a vital distinction that is often lost in the general debate on protecting cultural heritage and cultural property crime. As Article 1 (a-k) of the UNESCO Convention stipulates, cultural property covers a very wide range of items, from rare collections and specimens of fauna and flora, pictures and drawings, postage stamps and photographic archives to furniture, musical instruments and antiquities. However, political debates on cultural property, especially in respect of crime, tend to narrow the term so that it applies only to antiquities and archaeological artefacts. This can and does influence policy unduly. It is possibly the single most significant reason that statistics relating to antiquities crime are almost always grossly exaggerated. For example, in 2013 the FBI, whilst acknowledging that art theft statistics are *“not very good”*, estimated that global crime involving cultural property was valued at between \$4 billion and \$6 billion annually. However, this figure applied to all crime, from domestic burglary and fraud to bribery, theft, vandalism and trafficking, but has been taken to refer just to antiquities.¹⁵

Conclusion: Under the terms of the Nicosia Convention, the term ‘cultural property’ only applies to exceptional items specifically listed by states parties as important and whose export would *“appreciably impoverish national cultural heritage”*. The trade welcomes the requirement of the Convention that all signatories are obliged in Article 20 under *‘Measures at domestic level’*, to (a) *“establish or develop inventories or databases of its cultural property defined under Article 2, paragraph 2 of this Convention.”* The trade wishes these databases to be accessible in order to carry out effective due diligence.

¹³ See Full judgment in translation: <https://openjur.de/u/616095.html>

¹⁴ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:cu0005>

¹⁵ Video from FBI Art Theft Program, March 18, 2013: <https://bit.ly/2ZwbD4H>

The challenge

When it comes to antiquities and archaeological artefacts, the protection of cultural property can be addressed in two ways: a) via the protection of cultural heritage sites and b) via measures to safeguard cultural property once it has been removed from those sites.

Huge complications hinder the success of option b) as anyone attending the conference in Nicosia will be well aware. The inevitable lack of documentation proving legal sale and export from the source country is just the start. Recovering stolen property after it has been trafficked is another. The logistics and cost of applying effective methods globally to tackle this issue are all but insurmountable. This is one of the reasons why resources and attention need to focus more on option a). By protecting cultural heritage sites more effectively and neutralizing the causes of looting, states parties are likely to have a far greater impact on trafficking. In prioritizing this approach, they will also be far more likely to fulfil their obligations under Article 5 (d) of the UNESCO Convention, in which they are committed to “*organizing the supervision of archaeological excavations, ensuring the preservation ‘in situ’ of certain cultural property, and protecting certain areas reserved for future archaeological research*”. This is in line with this Convention’s prime objective.

A system of laws must be designed that is workable for the law-abiding trade. For example, European legislators, without precise knowledge on the subject, want dealers to provide the old export licence as evidence that an object was imported legally. In reality, these old licences, often made for large groups of objects, bear no precise descriptions nor illustrations. This is the main reason that they have not been kept. This needs to be acknowledged and a case should be made for those dealers who follow due diligence guidelines, but for whom, not all the documentation specified can be provided. There are many reasons why ownership history is incomplete; it can be due to unsaved receipts, archives disappeared (destroyed or lost), gifted, inherited and/or traded objects, exported or imported prior to licences, records of collections not individual objects. There was never a legal requirement for documentation to remain with circulating cultural objects. Asking for these documents is a phenomenon of the modern world that did not exist when most cultural objects were created or indeed when they were exported in previous centuries.¹⁶

The key consideration for legislators is this: Would you be able to provide documents showing full provenance back to original purchase or manufacture for everything you own at home? If not, why not? And, if not, why would you impose such an unachievable standard on the art market? So a solution needs to be found for those ordinary items that have been circulating legally for decades, but do not have demonstrable evidence of licit origin sufficient to satisfy today’s standards of acquisition. Some critics of the trade argue this category of objects forms part of the illicit trade and transgresses some moral code.¹⁷ A solution must be found to this problem, as it impinges on the property rights of private citizens. This single decision would increase transparency, co-operation and trust between the trade, authorities and academics.

The legitimate art and antiques trade adheres to the law. Occasionally, there is a dispute and the courts must get involved. Adding unachievable legal requirements will not catch more fraudsters because they will always circumvent the system. It would be more effective to work in the existing framework of laws.

Summary conclusion

The above is just a snapshot of some of the issues faced not just by the art market, but also by all stakeholders, whether lobbyists for tighter regulation, law enforcement, agencies, politicians or those working in the cultural heritage sector.

Legislators in the EU as well as those involved in drawing up the Nicosia Convention publicly acknowledge the need for proportionality when introducing restrictive legislation. They recognize the need for balance between crime prevention and the interests of legitimate business. However, reacting in proportion depends on knowing the real extent of a problem, not the perceived extent.

Some people argue that the art market must accept the burden of highly restrictive legislation in

¹⁶ See <http://theada.co.uk/the-problem-with-provenance-and-what-we-can-do-about-it/>

¹⁷ See p.47 Ecorys Report: <https://publications.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-search>

order to stop what they allege to be an existing crime wave of terrorism funding, but, equally, measures to mitigate the risk of something that might or might not happen in the future – a lower risk level, in other words – should acknowledge that the balance of interests ought to favor those of the market. Having scrutinized this process over a long period of time, CINOA is ready to argue that while the premise for measures such as the EU Import Regulations may have changed (due to the dearth of evidence of links to terrorism funding), the balance of the proposals has not moved with it, leaving us with regulations that are disproportionate and will, indeed, unduly damage the market. For example, the new Import Regulations will present major problems for those buying and selling objects acquired perfectly legally, for which accompanying paperwork never existed or has been lost many decades or hundreds of years ago.

Conclusion: CINOA would like to see clearer public acknowledgement of the many and varied laws that already govern the art market. It would also like the legislators to set out their justification for the further regulation in the context of all the existing laws.

How can we improve the situation?

The market is keen to be an active part of the conversation, so that together we have a chance of discussing real solutions to this ongoing set of challenges, in particular the ultimate objective of protecting cultural property in situ so that the on-going risks associated with looted property once it has been removed can be expunged. It is the art market which has to deal with laws and regulations on a practical and daily basis. It is the art market which suffers reputational damage when things go wrong. Our role must be central to discussions and to any legislative developments. Surely our joint aim is to have a well-educated population who value cultural heritage and protect archaeological sites while embracing and protecting the cultural property circulating in private hands as a result of a long established, open and transparent antiques and antiquities trade.

The expertise that the art market gains and the incentive to keep the market legitimate are its own rewards, as it preserves cultural heritage and encourages scholarship and small business. This is the essential message of CINOA and the reason why it is important to include the trade in discussions such as this forum in Nicosia.

To conclude, much of the existing legislation previously highlighted above already offers solutions for the issues identified by the Nicosia Convention. This begs the question as to why further laws are necessary as the current legislation is working. It should be borne in mind that millions of objects are in private hands. An underlying principle of any regulation or law should include protection of private property rights enabling these objects to be lawfully traded. In the past 30 years transaction practices have changed under the influence of the UNESCO 1970 Convention and this needs to be acknowledged.

We propose possible ideas on how to enhance co-operation and the joining of efforts between governments, civil society and the business sector in protecting cultural heritage. Our suggestions place a special emphasis on working with the legitimate trade and are in line with some of the suggestions in the Ecorys Report¹⁸ commissioned by the European Commission.

Most of the attention has been focused on the return of cultural property, thus fighting the symptoms and not the causes of trafficking. Efforts should turn more to tackling the problem at the roots, in the source countries as formulated, for example, in UNESCO Convention 1970 Art 5, as noted above. This has been done to a certain extent by the educational programs in place, but this is not enough.

We have to bear in mind that many common objects themselves are not of importance for archaeology, but undisturbed find spots are. Therefore, it is crucial to protect these find spots. For example, the 30,000 archaeological sites in Iraq can never be protected by the police, we need the help of the local population.

¹⁸ See Ecorys Report: <https://publications.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-search>

Specifically for National Authorities

- Ensure INTERPOL is informed, quickly and regularly, about stolen objects to be put into their database.
- Design educational programs to teach the population in source countries to be proud of the past which will help to understand that they must protect and not 'sell' their own history.
- Involve the local populations. Many countries can benefit here from the very positive experience in the United Kingdom, during the past 20 years, with the Portable Antiquities Scheme (PAS) encourages the reporting of chance and metal detectorist finds. For example, the 2017 Annual Report¹⁹ states that "79,353 finds were recorded; a total of 1,370,671 on the PAS database to date. 93% of finds were found on cultivated land, where they are susceptible to plough damage and artificial and natural corrosion." These remarkable numbers can never be achieved without the help of the population, who we believe are happy to participate. Via the link to the PAS website you can learn more. <https://finds.org.uk>
- Reward people who report findings. In some areas, the local people find ancient objects almost every day during agricultural and building activities. Do not punish these people but reward them when they report these finds to the authorities, who can register the findings in a database. Give the honest finder a fair share of the proceeds, say 25%. This way they will be encouraged to do it again.
- Finance activities by proceeds from unimportant finds. Finds that are not important could even be exported with a licence, and the proceeds could be used to finance other activities such as excavations or preservation.
- Create a database with the content of museums and the storerooms of excavation sites. This will prevent theft, once perpetrators know that quick identification of stolen objects is possible.

Specifically, with and for the trade:

- Improve access to the search facility of the INTERPOL database of stolen art.
- Develop an alert mechanism with the trade. If an object is stolen, let CINOA know, so that we can alert our members, which will increase the chance of recovery, as we have shown in the past.
- Consult with the trade on assessment of objects. Our members are offering their expertise to law enforcements agencies for quick assessment of objects. This helps cut down on wasted time chasing fakes.
- Allow the open and transparent sale and circulation of 'orphans'; objects without the requisite paperwork but that are legally on the market. Creating a possibility to present evidence-based claims to an object by source countries.
- Build trust between the trade and the authorities by encouraging better links between law enforcement and the art trade in each country.
- Increasingly share platforms with the trade which will encourage open debate and reasonable discourse.

We thank the conference for its consideration and interest.



¹⁹ See <https://finds.org.uk/publications/reports/2017>

CINOA Ethical Code of Conduct

<https://www.cinoa.org/cinoa/codeofethics>

The art and antique dealer profession is based on very personal choices and plays an important role in our culture. There is a risk that these professions could be jeopardised by disproportionate regulation and restrictions that hinder international cultural exchanges and trade. The present code of ethics shall apply without distinction to all objects that are negotiated on the market of fine art, antiques and cultural objects. All the member associations of CINOA agree to respect and to require that their own members, "the professionals", comply with the texts of the current laws in the country or countries in which they operate and respect the guidelines stipulated below. CINOA wishes to underscore and recommend that the practice of the profession of art and antique dealers be governed by the following principles:

- The professional in possession of an object, clearly established to have been imported illegally under applicable national law, agrees to comply with the procedures imposed by that law. In the case where the country of origin of the object is asking for its return within the legal period, the professional shall, after receiving compensation* which cannot be less than the purchase price in the case of an acquisition in good faith, permit the return to its country of origin. *The concept of compensation can only apply if permitted under applicable national law of the professional.
- The professional agrees to respect the laws and regulations applicable in his country on the protection of threatened or endangered species. He therefore agrees not to trade in objects that infringe the Convention on International Trade in Endangered Species.
- The professional shall take all measures necessary to detect stolen objects, and refer, among other resources, to the registers and the databases that are published for this effect and to use them judiciously.
- The professional should under no circumstances participate in transactions which to the best of their knowledge can be linked to money-laundering operations.
- The professional provides its customers with a guarantee of his seriousness and competence to certify the authenticity of the property sold. He must ensure that the description of the work is as precise as possible and reflects the state of his knowledge at the time of the sale. If necessary, this description must be supported by tests using relevant technology.

The CINOA Code of Conduct is complemented by individual association which have a Code of Ethics stating more specific requirements tailored to national legislation and/or specialty.

For example:

International Association of Dealers in Ancient Art: IADAA Code of ethics

<https://iadaa.org/about-us>

Antiquities Dealers' Association: The ADA code <http://theadacodeofconduct.co.uk/code-of-conduct/>

ILLICID (2015-2019)²⁰

This research project launched on the expressed assumption that profits from illegal trade in cultural goods “are an important pillar of organised crime”, despite having no evidence to show this. It set out to research the illegal trade in cultural property in Germany. At its conclusion, it had studied 356,500 items, of which it assessed that 6,133 (1.7%) were originally potentially from relevant sites in the Middle East and Eastern Mediterranean. Researchers could only be certain that 24% (around 1470) of the 6,133 objects were authentic. The 9-page report gave no information on trafficked items or terrorism financing and could not even clearly identify whether items had come from Syria or Iraq, stating only that they “potentially” did. It did identify four suspicious sales based on price differentials between Germany and other countries. However, all of these could be explained by other factors that would not be in breach of the law. It concluded: “From a scholarly point of view, potential money laundering cannot be excluded, however, neither is it inevitable.”

The authorities had hoped that ILLICID would help justify the stringent measures introduced under The Act on the Protection of Cultural Property 2016 (Germany), which have had a noticeably damaging effect on the German domestic art market, but the evidence was not forthcoming.

Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU DG TAXUD, Deloitte for the European Commission (June 2017)²¹

The Abstract states that this study “provides for an analysis of the regulation of imports of cultural goods into the EU, relevant in the fight against illicit trafficking of cultural goods from third countries into the EU.” Its purpose was to justify measures later introduced by the EU under Regulation (EU) 2019/880 on the Import of Cultural Goods 2019 (European Union). A detailed and extensive report, it nonetheless concluded that it could find no evidence of the financing of terrorist activities within the EU arising from the trafficking of cultural goods (see page 120).

Illicit trade in cultural goods in Europe (2017-2019) Ecorys for the European Commission²²

- After the Deloitte report failed to provide evidence of the trafficking of cultural goods funding terrorism within the EU, the European Commission then ordered this report to look further into the matter. It was finally published in July 2019, long after the EU had adopted the new law it was designed to comment on. This time, the report failed to find:
 - Any evidence leading to a reliable assessment of the size, scope and nature of illicit trade in antiquities (See page 46)
 - Any evidence of trafficking that had funded terrorism. (See page 15)
 - Any reliable statistics pointing to trafficking patterns. (See page 16)
 - Any reliable evidence revealing trafficking routes. (62 and 63)
 - Any evidence of trafficked items being warehoused for future exploitation (page 16), but did acknowledge that the belief that this is happening “should be treated with caution”. (see page 81-82).

It concluded: “Measuring or estimating the size of the illicit trade in cultural goods proves to be a challenging task as no reliable statistics exist that can be used to provide a comprehensive picture.” (Page 15) Further, it noted: “The scale of looting, trafficking, and the amount of money generated from these activities as well as exact nature of involvement of terrorist groups in the illicit trade in cultural goods remain unclear.”

²⁰ ILLICID Report: <https://bit.ly/30JB1p0>

²¹ Deloitte Report: <https://bit.ly/2GHRQiU>

²² Ecorys Report: <https://publications.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-search>

At least this report did tackle the issue of zombie statistics, stating: “The origins of the outlandish billion dollar figures are now obscure, but are usually traced back to Interpol.”²³

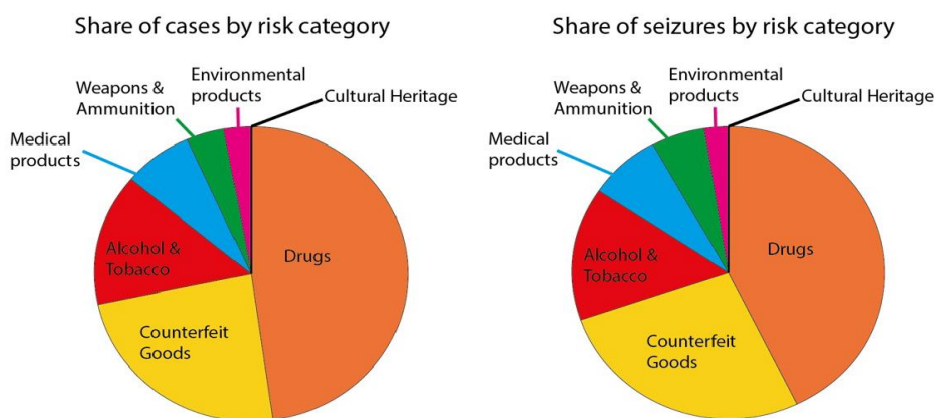
WCO Illicit Trade Report 2017 ²⁴

As the Ecorys report notes on page 83, when it comes to the trafficking of cultural goods, according to the WCO statistics in its reports “should not be taken as representative, comprehensive or fully reliable because they represent only a small sample”. However, the WCO can’t have it both ways. Either its figures are accurate or they are not. If not, publishing them in its official report, while giving them undue prominence at the beginning of the report bearing in mind how miniscule the figures are compared to other crime sectors, is surely misleading at best. If the figures are so unreliable, it would be better not to publish them until the WCO has established a more reliable line of reporting.

Even taking into account the fact that the WCO is unable to give a complete picture on cultural goods crime, the figures compared to the other crime sectors are miniscule by whatever of the four measures one takes: number of cases; number of seizures; volume of goods seized; and value of goods seized. In all, the WCO reported that 133 countries took part, with 140 cases of trafficking involving cultural heritage occurring across 25 countries. This led to 167 seizures involving 14,754 items, ranging from antiquities to paintings, jewellery, engravings, film archives and even household items. In other words, antiquities comprised a fractional part of the total and then they were mostly small antiquities, such as inscriptions, coins and seals. In total the WCO reported that these came to around 9,000 of the 14,754 pieces seized, although it did not report an exact figure.

Even allowing for a significant potential shortfall in cultural property trafficking figures here owing to poor reporting, the relative size of other crime sectors is so great that it is hard to see how cultural heritage could even begin to approach any of them as a comparative problem. The whole of the cultural heritage sector – not just antiquities – accounted for just 0.2% of reported seizures, for instance, compared with nearly 43% for drugs, 27% for counterfeit goods and 14.6% for alcohol and tobacco. (See pie charts below)²⁵

Page 74 of the Ecorys report states: “These numbers [regarding the seizure of cultural goods] from the WCO corroborate the findings from the interviews that small antiquities and especially coins make up the bulk of the trade.” If so, under the terms of the UNESCO and Nicosia Conventions, these would not qualify as ‘cultural property’.



Conclusion: Many more reports and studies have taken place and come to the same conclusions. Just as the new regulations, such as the EU import licensing law, hold the art market to a high standard of proof when it comes to provenance, so legislators should hold campaigners, academics, law enforcement and politicians to an equally high standard of proof when making

²³ See under para 3.3.1 on page 78

²⁴ WCO Report: <https://bit.ly/2QgalCO>

²⁵ Sources for the data mentioned here may be found on the following pages of the WCO Illicit Trade Report 2017 (published November 2018) as follows: Cultural Heritage: 7, 9, 16; Drugs: 33, 34, 36, 88, 89; Environmental Products: 92, 93; Counterfeit Goods: 117; Medical Products: 117; Alcohol and Tobacco: 147; Weapons and Ammunition: 181.

claims about the extent of illicit trade and trafficking before pressing ahead with new laws to tackle a perceived but unproven problem.

Zombie statistics

As the Ecorys report notes on page 78 under section the heading 3.3.1 Measuring illicit trade: impossible at worst, difficult at best, “The origins of the outlandish billion dollar figures are now obscure, but are usually traced back to Interpol. In 1998, for example, a US government official writing about the illicit trade in cultural goods stated that ‘according to Interpol, it now ranks with drugs and arms as one of the three most serious illicit international trading activities, valued at approximately \$4.5 billion annually’ (Kouroupas 1998). The figures’ origins have been traced back even further, to an unnamed ‘European official’ claiming at a conference in the 1980s that the trade in looted antiquities was a \$6 billion business (Adam 2016).”

In fact, numerous sources exist for these figures, most of which can be filtered back to primary sources in media articles that are more than 25 years old. As noted above in reference to the FBI, part of the problem for the exaggeration results from the failure to distinguish between ‘cultural property’ and ‘antiquities’.

However, we can identify the two specific sources that influenced the European Commission in its decision to press ahead with the *Regulation (EU) 2019/880 on the Import of Cultural Goods 2019 (European Union)*. This is because on July 13, 2017 the Commission published a *Fact Sheet* giving the sources.²⁶ One question reads: What is the value of the cultural goods that are imported illegally to the EU?

The answer gives Interpol and UNESCO as sources. Firstly, it quotes the Interpol website, stating: “According to Interpol... the black market in works of art is becoming as lucrative as those for drugs, weapons and counterfeit goods,” and it provides a link to this. As we now know, Interpol had conflicting information sourced from the same page on its website that made it clear that it had no idea whether this was true, had never had any information to support the supposition nor ever expected to find any. It has since deleted the claim from its website. The WCO figures quoted above also point to this supposition having no foundation in fact.

The UNESCO source quoted by the European Commission is the 2011 report *The Fight against the Illicit Trafficking of Cultural Objects...*²⁷ In turn, the UNESCO report quotes a 2000 report titled *Stealing History*, by Brodie, Doole and Watson.²⁸ (Dr Brodie is, coincidentally. One of the authors of the Ecorys report.) On page 23, *Stealing History* quotes a figure of \$2 billion as the value of the annual global trade in illicit antiquities, attributing the figure to a newspaper report from November 24, 1990 by Geraldine Norman.²⁹ That article mentions no figure at all. It is also clear that in quoting UNESCO, the European Commission did not check the primary source of the claims made therein, and nor did UNESCO in quoting *Stealing History*. We can surmise this from the fact that in quoting the Norman article, UNESCO made the same mistake as Brodie, Doole and Watson in listing its title as Great Sale of the Century instead of the Great Sale of the Centuries. Errors aside, this also tells us that major EU regulations introduced in 2019 are based on inaccurate information from a source that is now nearly 30 years old.

CINOA was able to bring these inaccuracies to the attention of MEPs debating the new EU import licensing proposals at the anti-trafficking conference in the European Parliament on May 23, 2018. Despite this, however, both the inaccurate claims from Interpol and the \$6 billion figure, referring to the annual value of trade in illicit antiquities, were used again by MEPs in the Strasbourg chamber during the final debate on the proposals on October 24, 2018. The Interpol claim was even used by Alessia Mosca, one of the two rapporteurs guiding the proposals through the European Parliament, while the \$6 billion claim was made by Jasenko Selimovic.³⁰

²⁶ See <https://bit.ly/2zk1bCl>

²⁷ UNESCO Report: The fight against the trafficking of cultural objects. The 1970 Convention: Past and Future, March 15-16, 2011: <https://bit.ly/2MJT8I3>

²⁸ Neil Brodie, Jenny Doole and Peter Watson, *Stealing History: The Illicit Trade in Cultural Material*, 2000: <https://bit.ly/2twvYNE>

²⁹ Norman, Geraldine, *Great Sale of the Centuries*, *The Independent*, November 24, 1990: <https://bit.ly/2Xihsmk>

³⁰ European Parliament Debates: Wednesday, October 24, 2018: 19. Import of cultural goods (debate): <https://bit.ly/2ZwvSiv>

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<https://mailchi.mp/c531ab59b201/iadaa-newsletter-february-1403953?e=5e1025c6e8>

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IADAA investigates operation Pandora results (with pictures) 28-03-2017

<http://goo.gl/145oH7>

Caliphate in Decline: An Estimate of Islamic State's Financial Fortunes – The International Centre for the Study of Radicalisation and Political Violence, 2017

<http://goo.gl/VidSZj>

Report That Antiquities Sales Is Major ISIS Funding Source Disputed By Authorities – Homeland Security Today 07-01-2017

<http://goo.gl/UwIEn9>

SPECIAL ANALYSIS: Antiquities Sales Supporting ISIS Fails The Test Of Robustness – Homeland Security Today 27-02-2017

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Destruction, plunder and trafficking of cultural property and heritage by Islamic State in Syria and Iraq – a war crimes perspective.

A report commissioned by the Dutch National Police, Central Investigation Unit, War Crimes Unit

<http://goo.gl/rNhQqb>