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FALSE TRADES: UNCOVERING THE SCALE AND SCOPE OF TRAFFICKING IN CULTURAL PROPERTY

Knowledge gaps and
future directions for research



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Knowledge gaps and future directions for research

2022 could potentially offer a turning point in tackling crimes against cultural heritage.

At the end of September, some 150 countries at UNESCO's Mondiacult conference in Mexico City, noting the "acceleration of illicit trafficking of cultural property" and highlighting its impact on the "memory, identity and future of peoples", marked their commitment to fight this crime and called for an "open and inclusive international dialogue for the return and restitutions of cultural property".¹

The Declaration followed United Nations General Assembly Resolution 76/16 on "Return or restitution of cultural property to the countries of origin", adopted unanimously on 6 December 2021, which calls for comprehensive measures to step up the fight against illicit trafficking in cultural property, and includes the issue in the agenda of the Assembly's 79th session starting in 2024.

The European Commission is currently developing an action plan against trafficking in cultural goods for 2022-25, as part of the EU strategy on organized crime.² The African Union has developed a Common African Position on Restitution of Heritage Resources.³

The past year has been marked by a slew of high-profile returns of trafficked artefacts to countries of origin following law enforcement investigations. The Manhattan District Attorney's Office in the United States announced 15 returns and repatriations between January and September 2022, involving objects from Bulgaria, Egypt, Greece, Iraq, Israel, Italy, Libya, Nepal, Spain and Turkey – stelae, a sarcophagus lid, sculpture, carvings, masks, coins and other relics valued at a total of more than 78 million dollars.⁴

Many returns have stemmed from multi-national operations that have ensnared prominent art collectors and dealers accused of looting and running trafficking rings in plain sight from luxury addresses in major capitals. Investigations into cultural property trafficking, some spurred by large-scale leaks of financial documents including the FinCen files and Pandora Papers, have embroiled some of the art world elite and its foremost cultural institutions.

In December 2021, a multi-year criminal investigation led to the seizure of 180 stolen antiquities valued at 70 million dollars from one of the world's most prominent collectors of ancient art, who also received a life-long ban on acquiring antiquities.⁵ In May 2022, media,

¹ Mondiacult final declaration, 30 September 2022

https://www.unesco.org/sites/default/files/medias/fichiers/2022/10/6.MONDIACULT_EN_DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf

² Trafficking in cultural goods - EU action plan website, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13352-Trafficking-in-cultural-goods-EU-action-plan_en

³ AU Workshop on Community Engagement in the Promotion and Protection of Heritage Resources, 24 June 2022
<https://au.int/en/pressreleases/20220624/au-workshop-community-engagement-promotion-and-protection-heritage-resources>

⁴ Manhattan District Attorney's Office website, <https://www.manhattanda.org/category/news/press-release/>

⁵ D.A. Bragg: 39 Antiquities Valued at More Than \$5 Million Repatriated to the People of Israel, 22 March 2022,
<https://www.manhattanda.org/d-a-bragg-39-antiquities-valued-at-more-than-5-million-repatriated-to-the-people-of-israel>

citing the French prosecutor's office, reported that a person connected to the Louvre Museum had been charged with money laundering and complicity in fraud relating to the trafficking of Egyptian artefacts.⁶ Some of the objects returned in the past year were seized from the collection of the largest museum in the US, the Metropolitan Museum of Art.

International calls for action and news of investigations and returns aside, however, it remains challenging to assess this global illicit trade.⁷

Trafficking in cultural property, together with the destruction of cultural heritage, has been recognized as a threat to international peace and security by the UN Security Council, as well as an impediment to the enjoyment of cultural heritage as a human right guaranteed by international law,⁸ and to the achievement of the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goals 16 (peace, justice and strong institutions), 11 (target 11.4 calls for protecting and safeguarding the world's cultural and natural heritage) and 4 (education).

Cultural heritage is a non-renewable resource⁹ which is continuously at risk from natural causes of decay and deterioration, as well as human-driven changes to the landscape, including through agricultural activities and construction.¹⁰ This loss is further accelerated and exacerbated by looting and trafficking.

The illicit trade in cultural property¹¹ involves a wide range of commodities, from high value art to ancient fossils. In addition to destroying archaeological sites and depleting cultural heritage resources, this crime, as noted by the UN General Assembly and the Security Council, can provide a source of financing and money laundering for organized crime and terrorist organizations.¹²

Despite many decades of normative efforts to address this illicit trade, and an engaged academic community seeking to shed light on various criminal activities involving cultural property, too little is known about the scope and scale of cultural property trafficking across the world today. There is no international monitoring mechanism, nor a global analytic database of trafficked objects.

6 See for example, Washington Post, *Museums respond to Pandora Papers antiquities investigation*, 5 October 2021, <https://www.washingtonpost.com/business/2021/10/05/museums-response-pandora-papers-antiquities/>; Le Monde, The Louvre's ex-director charged in art trafficking case, https://www.lemonde.fr/en/culture/article/2022/05/26/the-louvre-s-ex-director-charged-in-art-trafficking-case_5984758_30.html. See also the 2017 Hobby Lobby case in the US, <https://www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported>

7 Brodie, Neil, Yates, Donna, Slot, Brigitte, Batura, Olga, Wanrooj, Niels van and Gabrielle op 't Hoog (2019) Illicit trade in cultural goods in Europe: Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade: https://op.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1_47

8 See for example OHCHR Report of the Special Rapporteur in the field of cultural rights 3 February 2016, 12: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/016/97/PDF/G1601697.pdf?OpenElement>;

9 See: Passas & Proulx (2011, 53) "Antiquities and archaeological resources, for example, are finite and irreplaceable; once they are gone, they are gone forever." Passas, N., & Proulx, B. B. (2011). Overview of Crimes and Antiquities. In S. Manacorda and D. Chappell (2011 Ed.), *Crime in the art and antiquities world : illegal trafficking in cultural property*. New York.

10 Construction, Conflict, Natural Erosion, Looting and Agriculture are all noted as significant threats to cultural heritage and documented by the University of Oxford Endangered Archaeology in the Middle East and North Africa (EAMENA) project. See threats: <https://eamena.org/agriculture>

11 Under the Second Protocol to the Hague Convention of 1954, Article 1 (g) outlines that: "illicit" means under compulsion or otherwise in violation of the applicable rules of the domestic law of the occupied territory or of international law: <https://unesdoc.unesco.org/ark:/48223/pf0000130696>

12 See: (A/RES/75/291) Resolution adopted by the General Assembly on 30 June 2021, The United Nations Global Counter-Terrorism Strategy: seventh review

To support effective action against trafficking in cultural property, more evidence is needed. In resolution 10/7 from the tenth session of the Conference of Parties of the UN Convention against Transnational Organized Crime in October 2020, State parties called for further study at the national and international levels on this issue.¹³

As a step towards this objective, this brief seeks to provide an overview of the research and responses to trafficking in cultural property to date, including through a first analysis of the world's oldest and largest national database of cultural property crime, maintained by a specialized unit of the Italian Carabinieri. Finally, the brief identifies areas for future research and implications for criminal justice responses.

What is cultural property?

There is a lack of terminological clarity in the discussion of trafficking in cultural property. As noted by the authors of a 2019 European Union study, terms including cultural objects, cultural goods, cultural property, cultural patrimony, art objects, artefacts, artworks and antiquities, among others, may be used to mean the same thing.¹⁴

One of the earliest definitions for cultural property can be found in Article 1 of *The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, where it is principally identified as “movable or immovable property of great importance to the cultural heritage of every people”.¹⁵

The *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970* provides a comprehensive definition for cultural property in its Article 1, which is particularly relevant for the trafficking of moveable forms of cultural property.¹⁶ The 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*¹⁷ was drafted as a complementary instrument to the 1970 Convention but refers to “cultural objects” instead of “cultural property”.¹⁸

The need for greater clarity in defining cultural property and related crimes is addressed in Resolution 69/196 adopted by the General Assembly on 18 December 2014, *International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences*. The Guidelines suggest that “States should consider defining the concept of ‘cultural property’, including movable and immovable cultural property, when necessary, for the purposes of criminal law.”¹⁹

¹³ 10th session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Resolution 10/7 Combating transnational organized crime against cultural property, 16 October 2020, https://www.unodc.org/documents/treaties/UNTOC/COP/SESSION_10/Resolutions/Resolution_10_7_-_English.pdf

¹⁴ Brodie et al, 2019, 47

¹⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954, https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf

¹⁶ The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁷ UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, 24 June 1995, <https://www.unidroit.org/instruments/cultural-property/1995-convention/>

¹⁸ The UNESCO Blue Shield (2020) maps out the evolution of these terms in various international conventions and frameworks see <https://theblueshield.org/defining-cultural-heritage-and-cultural-property/>

¹⁹ See: (A/RES/69/196) Resolution adopted by the General Assembly on 18 December 2014 International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, https://www.unodc.org/documents/organized-crime/trafficking_in_cultural/RES-681-86/A_RES_69_196_E.pdf

CULTURAL PROPERTY: FROM RELICS AND FOSSILS TO COINS, BOOKS AND PAINTINGS

Cultural property, according to Article 1 of the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970*, includes:

Property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

| | |
|---|--|
|  | A) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest; |
|  | B) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; |
|  | C) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; |
|  | D) Elements of artistic or historical monuments or archaeological sites which have been dismembered; |
|  | E) Antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; |
|  | F) Objects of ethnological interest; |

| | |
|---|--|
| | <p>G) Property of artistic interest, such as:</p> <ul style="list-style-type: none"> I. pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); II. original works of statuary art and sculpture in any material; III. original engravings, prints and lithographs; IV. original artistic assemblages and montages in any material; |
| | <p>H) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;</p> |
| | <p>I) Postage, revenue and similar stamps, singly or in collections;</p> |
| | <p>J) Archives, including sound, photographic and cinematographic archives;</p> |
| | <p>K) Articles of furniture more than one hundred years old and old musical instruments.</p> |
| <p>The discussion of cultural property in this research brief is largely concerned with the illicit trade in antiquities and archaeological objects, broadly corresponding to items under a), c), d) and e) of Article 1 of the 1970 UNESCO Convention.</p> | |

Normative frameworks

The UNESCO 1970 Convention has become the reference in terms of preventive measures and regulations to prohibit and prevent illicit trafficking of cultural property. Under the Convention, parties agreed to adopt protection measures in their territories, control the international movement of cultural property through a system of export certificates, and return stolen cultural property at the request of another State Party.

UNESCO requested the International Institute for the Unification of Private Law (UNIDROIT) to look at the issue from a private law perspective, which led to the 1995 Convention and which lays out the terms for the return of cultural property in private hands, allowing compensation to the owner only if they are able to prove due diligence concerning the legality of the purchase. It also sets the time limit on restitution claims.

Governments further identified the need to tackle the involvement of organized criminal groups in the illicit cultural property trade in the 2000 *United Nations Convention against Transnational Organized Crime*, the first global, legally-binding instrument addressing transnational organized crime.

In the preamble of Resolution 55/25 adopting the Convention, the General Assembly asserts that the Convention “will constitute an effective tool and the necessary legal framework for

international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes.”²⁰

In addition, numerous General Assembly resolutions as well as Security Council resolutions have considered issues surrounding heritage protection and cultural property protection.²¹ The *International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences* invite Member States to consider strengthening criminal justice measures through enhancing preventive strategies, criminal justice policies and various types of cooperation aimed at addressing criminal offences involving cultural property.²²

Knowns and unknowns: scope and harms of cultural property crime

Given the diverse objects involved in this illicit trade, research on cultural property crime has considered several different categories of criminal activities related to these various commodities, including art theft, illicit looting and trafficking of cultural property, vandalism, and forgery and fraud involving cultural property.²³

Brodie and Yates suggest that sub-categories of cultural property are related to different crime types.²⁴ While the illicit trade in antiquities may involve financial crimes – for example tax fraud through the donation of looted objects to cultural institutions – modern art may be more frequently used for money laundering purposes.²⁵

Some forms of cultural property crime have a long history of research and law enforcement attention. Museums and law enforcement often work closely on cases of art theft from

²⁰ United Nations Convention against Transnational Organized Crime, 15 November 2000, 2 <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

²¹ Consider: General Assembly Resolution 55/25 15 November 2000, A/Res/58/17 of 3 December 2003; A/Res/61/52 of 4 December 2006; A/RES/64/78 of 7 December 2009; A/RES/66/180 of 19 December 2011 and A/RES/68/186 of 18 December 2013; A/RES/69/196 of 18 December 2014; Resolution 2199 (2015) adopted by the Security Council of the United Nations at its 7379th meeting, on 12 February 2015; A/RES/70/76 of 9 December 2015 and A/RES/73/130 of 13 December 2018; A/RES/76/16 of 8 December 2021; UNSC Resolution 2253 (2015), 17 December 2015; UNSC Resolution 2322 (2016), 12 December 2016; UNSC Resolution 2347 (2017), 24 March 2017. See also the Rome Declaration adopted at the G20 Culture Ministerial Meeting in July 2021 reiterates deepest concern for the growing looting and illicit trafficking of cultural property, including through digital and social platforms: <https://www.consilium.europa.eu/media/52730/g20-leaders-declaration-final.pdf>.

²² International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, 2014.

²³ See Kerr, John (2020) “The state of heritage and cultural property policing in England & Wales, France and Italy,” *European journal of criminology*, 17(4), pp. 441–460. See also Durney and Proulx (2011, 116): “Within art crime there is a diverse array of activities including art thefts and confiscations, art frauds, faked and forged art, iconoclasm and vandalism, and illicit excavation and export of antiquities and other archaeological resources.” Durney, Mark & Proulx, Blythe, 2011. Art crime: a brief introduction. *Crime, law, and social change*, 56(2), pp.115–132. See also Passas & Proulx (2011, 52-53) Passas, N., & Proulx, B. B. (2011). Overview of Crimes and Antiquities. In S. Manacorda and D. Chappell (2011 Ed.), *Crime in the art and antiquities world: illegal trafficking in cultural property*. New York.

²⁴ Brodie, Neil and Donna Yates, in press. Money laundering and antiquities. *Transfer – Journal of Provenance Research and the History of Collections*.

²⁵ Yates, Donna (2016), “Museums, collectors, and value manipulation: tax fraud through donation of antiquities”, *Journal of Financial Crime*, Vol. 23 Iss 1: <http://dx.doi.org/10.1108/JFC-11-2014-0051>

public institutions, and the documented nature of high-value artworks can in principle help investigations.²⁶

Forgeries and fakes are another crime type that is an important concern for auction houses, dealers and the police. Forgeries damage legitimate trade and many private sector intermediaries and law enforcement authorities have a common interest in identifying and removing these objects from circulation. Interplays between markets for fakes and antiquities have also been noted.²⁷

The trafficking and sale of antiquities is yet another category of cultural property crime which has attracted a significant amount of research attention in recent decades. Antiquities are predominantly trafficked out of archaeologically rich origin or source countries, through transit points, to buyers in destination countries.^{28,29}

As seen in other illicit trades, including trafficking in cocaine and opiates, wildlife, metals and timber, as well as trafficking in human beings, trafficked cultural objects tend to flow from lower-income areas, countries and regions to wealthier ones.³⁰

The actors involved also range on the source end from “subsistence diggers” and specialized diving outfits looting shipwrecks, to brokers and facilitators in the transit phase, to a moneyed elite in destination markets spurring demand along the chain.³¹

Archaeologists³² along with many origin and source countries, were some of the first to raise attention to site looting and archaeological site destruction. Criminologists³³ and legal scholars³⁴ have increasingly examined this form of cultural property crime.³⁵ Mackenzie outlined the main characteristics of antiquities trafficking as follows:

²⁶ Since 1925 INTERPOL has been involved in the fight against cultural property crime. See Hufnagel, S. (2019, 91) in Hufnagel, S., Chappell, D. (eds) *The Palgrave Handbook on Art Crime*. Palgrave Macmillan, London. https://ezproxy-prd.bodleian.ox.ac.uk:2102/10.1057/978-1-137-54405-6_5

²⁷ Centre for Art Law, *Infamous Piracy: How the Lucrative Market for Forgeries is Transforming the World of Fine Art*, 30 July 2014 <https://itsartlaw.org/2014/07/30/infamous-piracy-how-the-lucrative-market-for-forgeries-is-transforming-the-world-of-fine-art/>.

For a discussion of the interplay between looted antiquities and fakes, see Scott, David A. “Modern Antiquities: The Looted and the Faked.” *International Journal of Cultural Property*, vol. 20, no. 1, 2013, pp. 49–75., doi:10.1017/S0940739112000471.

²⁸ Polk, Kenneth (2005, 99) states for example: “The illicit traffic in antiquities operates as an international market where demand from the developed economies results in the transfer of material from source environments.”

²⁹ Merryman, JH (1986, 832) terms of source and market nations are used throughout the literature on the licit and illicit trade in cultural property and help to outline the movement of material in this trade. It should be noted, however, that countries such as the UK and the US fall into both categories and make absolute distinctions difficult.

³⁰ Reports available at www.unodc.org/research

³¹ Mackenzie, Simon, Brodie, Neil, Yates, Donna and Tsirogiannis, Christos. (2019). *Trafficking Culture: New Directions in Researching the Global Market in Illicit Antiquities*: 7-9

³² See Coggins, Clemency, 1969. *Illicit Traffic of Pre-Columbian Antiquities*. *Art Journal* (New York. 1960), 29(1), pp.94–114; Elia, Ricardo J., 1997. Looting, collecting, and the destruction of archaeological resources. *Nonrenewable Resources*, 6(2), pp.85–98; Brodie, N., Renfrew, C., 2005. Looting and the World’s Archaeological Heritage: The Inadequate Response. *Annual Review of Anthropology* 34, 343–361.

³³ See Mackenzie, S. (2005) *Going, going, gone : regulating the market in illicit antiquities*. Leicester; also Kerr, J., 2020. The state of heritage and cultural property policing in England & Wales, France and Italy. *European journal of criminology*, 17(4), pp.441–460; and Eber, A., 2021, *Guardians in the Antiquities Market*. In: Oosterman, N., Yates, D. (eds) *Crime and Art. Studies in Art, Heritage, Law and the Market*, vol 1. Springer. https://doi.org/10.1007/978-3-030-84856-9_13

³⁴ See for example: Ulph, Janet, 2012. *The illicit trade in art and antiquities: international recovery and criminal and civil liability*; Hart, Oxford; O’Keefe, Patrick and Lyndel V. Pratt. 1989. *Law and the Cultural Heritage. Volume 3: Movement*. London: Butterworths; and Gerstenblith, Patty, 2016. *The Legal Framework for the Prosecution of Crimes Involving Archaeological Objects*.

- A crime problem in poorer “source” countries which provides a source of income for local populations;
- Difficulty in enforcing the relevant laws in source countries due to lack of resources as well as varying levels of corruption;
- A ready market for looted objects in rich market countries providing a demand for the international transportation of looted cultural property;
- Difficulty in telling illicit objects apart from licit ones once they are mixed together in the chain of supply – compounded by a culture of privacy in the antiquities market (buyers are reluctant to ask too many searching questions about provenance);
- A conflicted law enforcement and policy response to the issue in some market countries, since market and free trade principles tend to weigh against restrictive controls on the cross-border movement of cultural property;
- An existing trade infrastructure (dealers, collectors, museums) which has a history and developed culture of dealing in cultural property without necessarily knowing about its provenance or provenience.³⁶

Similar to other commodities, such as wildlife and diamonds, it is the origin and trading history of cultural property, known as object provenance,³⁷ which differentiates licit and illicit commodities within this international trade. Transactions involving cultural property increasingly consider and request legitimate provenance, but cultural property has been traded for centuries without requirements for due diligence checks, and for much of the material in this market, object histories were never recorded or have been lost over time.

This dimension of the art and antiquities market makes it difficult for law enforcement authorities, buyers and even sellers to distinguish between licit and illicit commodities. The anonymity and reach afforded by Internet marketplaces have further complicated dynamics, also potentially skewing the market towards smaller, relatively inexpensive and more portable cultural objects such as coins.³⁸

For traffickers, this trading context presents an opportunity structure to generate profits by fabricating plausible provenance for illicit products and laundering these commodities into legitimate market streams, a trafficking chain that potentially spans continents, from remote archaeological sites to air- and ship ports, and onwards to auction houses, museums and private collections.

³⁵ Note Bowman (2018, 1; Bowman Proulx 2011) claims that looting “only relatively recently piqued the interest of criminologists, for whom the topic is typically subsumed under the broader rubric of “art crime” but that there is “a growing body of criminological research on looting and its interfacing with the trade in illicitly obtained art as well as other transnational illicit markets.”

³⁶ Mackenzie, Simon (2009), Background paper prepared to aid discussions of the Meeting of the expert group on protection against trafficking in cultural property Vienna, 24-26 November 2009. Protection against trafficking in cultural property. UNODC/CCPCJ/EG.1/2009/CRP.1 See: <https://www.unodc.org/documents/organized-crime/V0987314.pdf>, 6

³⁷ See Mackenzie (2010, pg.44) “Provenance ” refers to the history of ownership of an object, and it may also include information about an object’s “findspot,” which in the case of an archaeological object refers to the place where it was excavated, by whom, and in what circumstances.” See: Mackenzie, S. (2010). Trafficking Antiquities. In M. Natarajan (Ed.), International Crime and Justice (pp. 141-147). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511762116.024 see: <https://www.cambridge.org/core/books/international-and-transnational-crime-and-justice/trafficking-antiquities/C832A889D56AE5258A1F9E48ED5AF4F5>

³⁸ Brodie, N., Kersel, Morag M., Mackenzie, S, Sabrine, I., Smith, E., & Yates, D. (2022) Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It, *Journal of Field Archaeology*, 47:2, 117-130, DOI: [10.1080/00934690.2021.1996979](https://doi.org/10.1080/00934690.2021.1996979), 7; see also <http://atharproject.org/report2019/>

One of the most comprehensive situational assessments of cultural property crime has focused on the European Union. The 2019 study, entitled *Illicit trade in cultural goods in Europe: Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade*,³⁹ highlighted a number of challenges:

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. The little data that is being recorded is patchy as recording approaches differ from country to country and between the police and customs...The factors that impact the quality of and the lack of data are manifold and include: different definitions of cultural goods; low political priority of the issue; lack of awareness, knowledge and expertise among the law enforcement; lack of central data collection point; lack of transparency of the art market; the large amount of fakes in the market; and warehousing of cultural objects.⁴⁰

To date, much of the research in the field has drawn on qualitative research methods and this has provided a rich form of knowledge on cultural property crime, but there are still many open questions, and further investigation would benefit from mixed-method studies and more quantitative research.

According to Chappell and Hufnagel, law enforcement agencies in large part do not regard art crime either as a separate category of offence, or as one deserving of specialist attention.⁴¹ Interpol acknowledges that a major challenge when working and operating in an international setting is the numerous and different methods of recording thefts and crimes against art implemented by each country involved.⁴²

Conventional crime statistics are generally not revealing when it comes to cultural property crime, according to Mackenzie: "Recording practices for crimes against antiquities vary across jurisdictions, and often these crimes are recorded only in the category of thefts, along with all other such property violations, with some specificity in relation to the way the theft was committed (e.g. "theft by housebreaking" or "robbery") but not in respect of the type of object stolen".⁴³ The Leonardo database maintained by a specialized unit of the Italian Carabinieri is a notable exception (see rapid scan, from page 16).

A recent gap analysis of the illicit trade in cultural objects, marking fifty years since the adoption of the 1970 UNESCO Convention, concluded: "Presently, what appear to be simple questions relating to the size of the illicit trade cannot be answered".⁴⁴

³⁹ Brodie et al

⁴⁰ Brodie et al, 196

⁴¹ See: Chappell, Duncan, and Saskia Hufnagel (2014) *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives*, Taylor & Francis Group, 2014. ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/oxford/detail.action?docID=1774216>, 3.

⁴² Interpol 2019
https://www.interpol.int/content/download/684/file/WOA_CreatingNationalCulturalHeritageUnit_brochure_2019-01_EN-LR.pdf

⁴³ Mackenzie, S. (2010). *Trafficking Antiquities*. In M. Natarajan (Ed.), *International Crime and Justice* (pp. 141-147). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511762116.024 see: <https://www.cambridge.org/core/books/international-and-transnational-crime-and-justice/trafficking-antiquities/C832A889D56AE5258A1F9E48ED5AF4F5>, 43-44

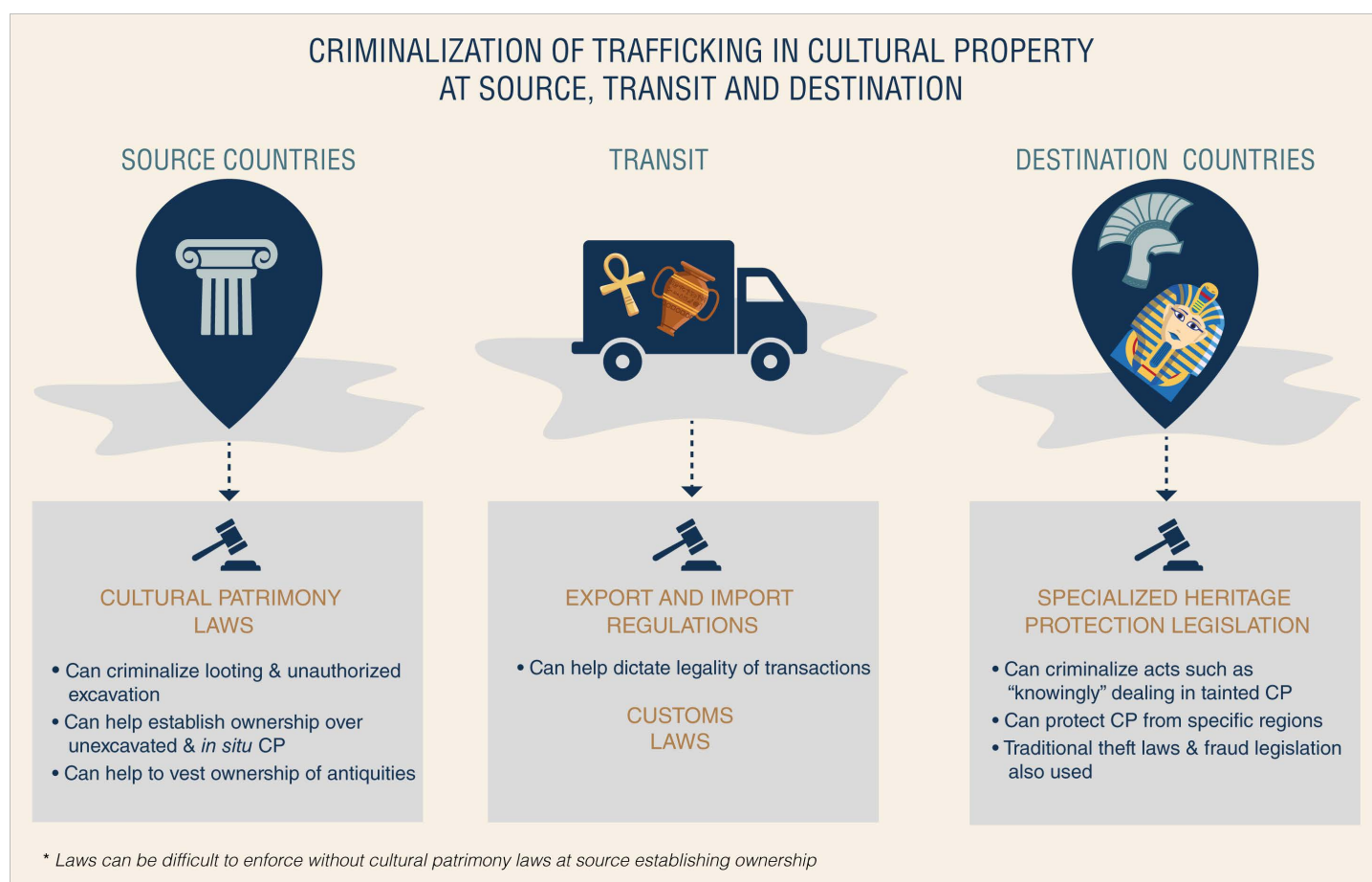
⁴⁴ Brodie et al. 2022, 5

Responses and response gaps

The General Assembly *International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences* suggest in Guideline 16 that States should consider criminalizing, as serious offences, acts such as:

- Trafficking in cultural property;
- Illicit export and illicit import of cultural property;
- Theft of cultural property (or consider elevating the offence of ordinary theft to a serious offence when it involves cultural property);
- Looting of archaeological and cultural sites and/or illicit excavation.

The UN Convention against Transnational Organized Crime defines “serious crime” to mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.⁴⁵



⁴⁵ See the United Nations Convention against Transnational Organized Crime, 2000, Article 2 (b)

Countries at source, transit and destination points of the illicit trade have undertaken various and varied criminalization efforts.⁴⁶

At the origin/source of the illicit trade in cultural property, namely antiquities, many archaeologically rich countries have implemented cultural patrimony laws which vest the ownership of antiquities and cultural property in the state and criminalize the looting and excavation of cultural sites.⁴⁷ Cultural property laws may establish ownership over unexcavated and *in situ* cultural property, which helps to criminalize acts of extraction without state or owner permission.

Internationally, the clarity and specific provisions of cultural patrimony laws in source countries can affect which cultural property cases can be prosecuted in destination nations. Cultural patrimony laws are not retroactive and do not apply to cultural objects that were exported before their date of implementation.

Countries also apply export and import regulations to address trafficking. Cultural property such as antiquities and archaeological finds are typically moved out of source countries through transit points, and into destination countries. Export and import laws, therefore, can help dictate the legality of these transactions.

Finally, at the market end of the trade there are also various efforts in place to criminalize the illicit sale and trade of cultural property. However, applying these specialist forms of legislation and investigating cases in practice can present challenges.

First, legal and prosecutorial teams do not always have the knowledge or expertise necessary to progress cultural property cases, or to resolve cases in this complex, non-traditional crime type.⁴⁸ Second, it can be difficult to investigate and secure evidence across jurisdictions, as well as to meet the evidentiary threshold necessary to prove the material and mental components of criminality under the different legal frameworks.⁴⁹ Third, many cultural property cases require a significant amount of expert testimony and evidence to support cases.

⁴⁶ See the UNESCO List of National Cultural Heritage Laws available at: <https://en.unesco.org/cultnatlaws/list>

⁴⁷ UNESCO maintains a database of national cultural heritage laws worldwide: <https://en.unesco.org/cultnatlaws/list>. See also the UNODC Sherloc knowledge management portal, <https://sherloc.unodc.org/cld/en/st/home.html>

⁴⁸ For a case to be built in destination countries often the laws of source countries over their cultural patrimony need to be established. Police and prosecution teams in destination nations therefor frequently need to understand cultural patrimony laws of source countries in order to build criminal cases at market. Further, Ulph 2011, 43: notes that “Unfortunately, not all countries have domestic legislation which provides clear legal principles relating to ownership of buried objects. Where such legislation exists, vesting ownership in the State, it is often referred to as a ‘patrimonial law’. If a source country does not have such laws, but only export controls, accessories are unlikely to be charged with handling stolen goods because it may not be clear to whom the objects belong.” See also: Ulph, J. (2011). The impact of the criminal law and money laundering measures upon the illicit trade in art and antiquities. *Art Antiquity and Law*, 16(1), 39-52.

⁴⁹ Interpol, *Assessing Crimes against Cultural Property*, 2021, 16: “The detection and seizure of these items are particularly challenging to law enforcement agencies around the world. The removal of numismatic, archaeological or paleontological items from their original sites decontextualizes them, making it more complicated for experts and police officers to demonstrate the provenance, origin and connection of the items to their area.” <https://www.interpol.int/en/content/download/16751/file/2020%20Assessing%20Crimes%20Against%20Cultural%20Property.pdf>.

See also: Eber, Anya (2023 forthcoming) University of Oxford Thesis. *Policing the Illicit Antiquities Trade: Understanding the Role of Law Enforcement in Cultural Heritage Protection*. Ulph (2011, 44-45) notes: “There have been relatively few successful prosecutions of dealers in the United States or in the United Kingdom. There are formidable obstacles in the way. Apart from satisfying the standard of proof required in relation to the dealer’s knowledge (which may well be impossible to discharge if the transactions which take place are unsupported by written evidence), it must be shown that the antiquities in issue were originally taken from within a particular country’s borders and that its laws clearly vest ownership of antiquities in the State. Countries’ patrimonial laws vary widely and not all satisfy these requirements.

Moreover, without cultural patrimony laws in place at source, legislation in destination countries as well as some export and import regulations can be difficult to enforce.⁵⁰

From a law enforcement perspective, what is notable is that in some destination countries, law enforcement agents and prosecution teams have turned to traditional theft laws as well as fraud legislation rather than specialized heritage protection legislation to pursue cases involving cultural property.⁵¹

Unlike crime types like narcotics where it is clear that a product such as heroin or cocaine is illicit, cultural property cases can be challenging to identify and build evidence on.⁵² Some cases, such as those involving cultural property recorded *in situ* before its theft or looting, can be more straightforward as the origin and probable date of removal of material can be identified and proven. However, in cases involving previously unrecorded or unexcavated material, sometimes the only groups that have evidence of the illicit origins of cultural property are the looters and traffickers that traded the objects in the first place.⁵³

Pricing the market

Estimates of the size of the global illicit cultural property market vary considerably. A European Commission factsheet from 2017,⁵⁴ suggests that the total financial value of the global illegal antiquities and art trade is larger than any other area of international crime except arms trafficking and narcotics – a claim that has circulated widely but has since been discredited.⁵⁵

Meanwhile, the NETwork and digital platform for Cultural Heritage Enhancing and Rebuilding project offers a wide-ranging estimate of 3 to 15 billion dollars.⁵⁶ Others, notably industry groups, have sought to debunk estimates as well as claims of links between trafficking in cultural property and other forms of organized crime and terrorist financing.⁵⁷

⁵⁰ Ulph, J. (2011). The impact of the criminal law and money laundering measures upon the illicit trade in art and antiquities. *Art Antiquity and Law*, 16(1), 39-52.

⁵¹ See: Eber, Anya (2023 forthcoming) University of Oxford Thesis. Policing the Illicit Antiquities Trade: Understanding the Role of Law Enforcement in Cultural Heritage Protection forthcoming. See also Ulph (2011, PG) who points out that in the UK, for example, “A successful prosecution for a money laundering offence does not depend upon establishing that an object was stolen. Consequently, the prosecution is not obliged to point to the existence of patrimonial legislation vesting ownership in the State. Nevertheless, the domestic law of the country from where the cultural object originated will be important. This is because it will be necessary to show that a serious offence has been committed (a ‘predicate offence’), so that the cultural object can be said to represent the proceeds of a crime”.

⁵² On policing challenges related to Cultural property crime more broadly see Kerr, J. (2020). The state of heritage and cultural property policing in England & Wales, France and Italy. *European Journal of Criminology*, 17(4), 441–460. <https://ezproxy-prd.bodleian.ox.ac.uk:2102/10.1177/1477370818803047>. See also Mazurek, Sara K. (2019) “The Invisible Crime: Exploring How Perceptions of Victimhood and the Art Market May Influence Art Fraud Reporting,” *International Journal of cultural property*, 26(4), pp. 413–436.

⁵³ See Mackenzie, Simon (2011) “Dealing in cultural objects: a new criminal law for the UK,” *Amicus curiae* (Bicester, England), 2007(71), pp. *Amicus curiae* (Bicester, England), 2011, Vol.2007 (71), 11: “The sites from which antiquities are stolen are often isolated, their contents are known only to the finders, and they cross national borders without being recognised or recorded. In these circumstances, it is very difficult indeed to establish proof of the date of theft of an object which has appeared on the market without accurate accompanying information relating to its date of finding”.

⁵⁴ European Commission, Questions and Answers on the illegal import of cultural goods used to finance terrorism, 13 July 2017, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_1954

⁵⁵ Yates, Donna and Brodie, Neil, in press. The illicit trade in cultural goods is not the world’s third largest illicit trade: a critical evaluation of a factoid. *Antiquity*.

⁵⁶ NETcher, Illegal trafficking of cultural goods in countries in conflict, 7 October 2020, <https://netcher.eu/project-news/illegal-trafficking-of-cultural-goods-in-countries-in-conflict/>

⁵⁷ see CINOA, Fact, fiction and the role of the trade in protecting cultural heritage by CINOA, 24 October 2019, <https://rm.coe.int/fact-fiction-and-the-role-of-the-trade-in-protecting-cultural-heritage/1680980d19>; IADAA, Summary Of The

The hidden nature of this crime type – and the difficulties inherent in even estimating what proportion of the total crime is coming to the attention of the authorities – complicates attempts to quantify the global illicit cultural property market.

The lack of reliable statistics and comparable data has arguably made it easier for advocates on all sides of the debate – those emphasizing the urgency of tackling trafficking in cultural property, and others who are concerned with the negative effects of regulation on legitimate trade – to highlight the numbers that suit their positions best, and made it more challenging for governments and law enforcement to formulate effective joint responses.

Quantifying harms

The principle of proportionality in criminal law holds that the punishment of a crime should be commensurate with the seriousness of the crime itself and the harms that it causes. However, estimating the value of the illicit cultural property trade, even in the billions of dollars, arguably falls short of capturing the extent of the damage; loss of cultural heritage is something that can hardly be monetized. Moreover, as indicated, estimates of the size of the global market diverge and remain disputed.

In the case of forgeries, while a crime is committed such violations do not deplete a finite resource, nor is knowledge lost. Crimes against cultural heritage and antiquities, in contrast, often target an irreplaceable resource.

One of the core harms associated with trafficking in cultural objects is that this trade can damage archaeological sites, buildings and monuments as well as the cultural property within these sites.⁵⁸ Sculptures that are ripped from buildings or antiquities that are dug out of sites frequently sustain damage through their removal and trafficking. In some cases, cultural property is even purposefully damaged and disfigured by traffickers to disguise the illicit origin of material and make it less recognizable as a stolen object.⁵⁹

During the process of unauthorized excavation, non-renewable archaeological information is often destroyed and lost. Such destruction impairs study of the past. Archaeologists record and preserve this information, known as object context,⁶⁰ which is necessary for interpreting and understanding sites.^{61,62}

As with wildlife crime, the damage can extend far beyond the victims or objects being trafficked. For example, trafficked parrots, when sourced from the wild, are often removed from the nest as infants, with an estimated average mortality rate of 30 percent to 40

Findings On Cultural Property In The World Customs Organisation's Illicit Trade Report 2019, September 2020, <https://iadaa.org/wp-content/uploads/2020/09/IADAA-analysis-of-WCO-Annual-report-2019-dated-September-2020.pdf>

⁵⁸ See Gerstenblith, Patty (2007, 171-172) "Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past," Chicago Journal of International Law: Vol. 8: No. 1, Article 10. Available at: <https://chicagounbound.uchicago.edu/cjil/vol8/iss1/10>

⁵⁹ See Trafficking Culture, 2015 case study of art dealer Giacomo Medici, <https://traffickingculture.org/encyclopedia/case-studies/giacomo-medici/>

⁶⁰ Sease, Catherine (1997) "Conservation and the Antiquities Trade," Journal of the American Institute for Conservation, 36(1), pp. 49–58.

⁶¹ See also Gerstenblith, Patty (2007, 171-172) "Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past," Chicago Journal of International Law: Vol. 8: No. 1, Article 10. Available at: <https://chicagounbound.uchicago.edu/cjil/vol8/iss1/10>

⁶² It is worth noting that many archaeological excavations are destructive to some extent and while archaeologists record as much information as possible with available technology, there is always some effects of the process of excavation.

percent.⁶³ In the case of cultural heritage, looters in pursuit of valuable objects even discard and destroy smaller or less commercially valuable artefacts embedded within sites, which could have been studied to gain important information about human history.⁶⁴ The removal of unknown or un-inventoried cultural property in particular represents an incalculable loss.

Knowledge, however, is not the only thing that can be depleted by this trade, which can also damage regional, social, economic and political infrastructure.⁶⁵ Cultural heritage sites can promote communal identity and societal cohesion through developing social capital and enabling common understandings of the past. They can also generate income through tourism and associated activities,⁶⁷ contributing to the achievement of sustainable development.

In terms of harm, the international community has also recognized that the trafficking in cultural property poses a larger threat to peace and security, in particular due to concerns that this form of trafficking is linked with other organized crime activities and used to fund terrorist operations.⁶⁸ Documented cases on the linkages between illicit trafficking of cultural property and terrorism financing remain isolated, however.

The May 2015 US raid against ISIL leader Abu Sayyaf in Syria recovered documents taken as evidence that ISIL generated revenue from the extraction and sale of antiquities.⁶⁹ Forfeiture Complaint of Antiquities Associated with the Islamic State of Iraq and the Levant (ISIL), Section 27, asserts:

Abu Sayyaf's antiquities trafficking directly financed ISIL. In a document written on ISIL letterhead and signed by Abu Sayyaf as the President of the Antiquities Department, Abu Sayyaf asked another ISIL member to transfer an archaeological object to him. See Attachment I. Abu Sayyaf indicated that he wanted to sell the archaeological object and would transfer the proceeds derived from the sale of the object to the Treasury. See Attachment I. As stated above, the Treasury is the centralized depository of finances belonging to ISIL, from which ISIL funds its terrorist activities.

⁶³ UNODC World Wildlife Crime Report 2016, 76, https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf

⁶⁴ Sease (1997, 51) notes: "When artifacts are pulled out of the ground without proper excavation and documentation, their context is irretrievably lost without ever being known. Unlike archaeologists, looters are not interested in the context of artifacts, nor are they concerned with all artifacts from a site."

⁶⁵ Luke, Christina, 2012 "U.S. Policy, Cultural Heritage, and U.S. Borders." *International Journal of Cultural Property* 19.2: 175-96. Web. doi:10.1017/S094073911200015X

⁶⁶ See Gerstenblith (2016, 16) <https://www.justice.gov/usao/file/834826/download>

⁶⁷ See for example, World Bank, Culture in the COVID-19 recovery: Good for your wallet, good for resilience, and good for you, 20 August 2020, <https://blogs.worldbank.org/sustainablecities/culture-covid-19-recovery-good-your-wallet-good-resilience-and-good-you>.

⁶⁸ See Security Council resolutions 2199, 2253, 2322, 2347; see also United States Files Complaint Seeking Forfeiture of Antiquities Associated with the Islamic State of Iraq and the Levant (ISIL) US forfeiture complaint Case 1:16-cv-02442: <https://www.justice.gov/usao-dc/press-release/file/918536/download> and the US Department of Justice press release: <https://www.justice.gov/usao-dc/press-release/file/918536/download>; see also: FATF Report 2015 page 17 available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf>

⁶⁹ See the United States Files Complaint Seeking Forfeiture of Antiquities Associated with the Islamic State of Iraq and the Levant (ISIL) US forfeiture complaint Case 1:16-cv-02442: <https://www.justice.gov/usao-dc/press-release/file/918536/download>. Section 8 notes: "Specifically, these documents reveal that ISIL generates a significant portion of its revenue from its control of territory and has established formal governance structures for extracting wealth from territory under ISIL control. One of the departments ISIL established to extract wealth from its territory is the Ministry of Natural Resources, Department of Antiquities ("Antiquities Department"). In multiple documents written on ISIL letterhead, Abu Sayyaf referred to himself as the President of this Department."

Interviews conducted for the 2019 EU report did not produce any new evidence to substantiate the connection between terrorist groups and the illicit trade in cultural goods.⁷⁰

Individual cases of illicit trafficking of cultural property have highlighted linkages with other forms of organized crime.⁷¹ Mackenzie, Brodie, Yates and Tsirogiannis have noted “overlapping and intertwined illicit economies” in their fieldwork, with antiquities trafficking intersecting with illicit flows of timber, wildlife and gemstones, as well as with illicit trades in drugs and sexual exploitation. Moreover, they report that at the impoverished source end of the trafficking chain, “subsistence diggers” may engage in other illicit activities.⁷²

Links to financial crimes have also been a source of concern. A March 2021 report by the US Congressional Research Service warned that “certain characteristics of the arts and antiquities industries — such as confidentiality, challenges in documenting the provenance (ownership history) of certain items, the use of intermediaries, and inconsistent due diligence practices — may contribute to the illegal trade and enable traffickers to gain access to the U.S. financial system”,⁷³ and FinCEN issued a notice informing financial institutions of new measures under the US 2020 Anti-Money Laundering Act on the trade of antiquities.⁷⁴

However, evidence on the relationships between cultural property trafficking and other crimes remains limited to a few countries and few contexts, and more research is needed.

National rapid scan: The Italian Leonardo database

In order to understand the nature of the clandestine trade in cultural property, some source of quantifiable data is essential. Case studies can provide rich detail on the sorts of actors involved and the types of transactions in which they engage, but they cannot give a sense of trends or the relative importance of the different art markets to the illicit trade.

The most accessible source of quantitative data on this clandestine market derives from the agencies tasked with detecting it. This typically comes in the form of either reported crime data or seizure data collected by the police or customs agents. These data can only describe the crime that comes to the attention of the authorities, and furthermore, differentiating which material is licit and illicit represents a key problem facing investigators. Nonetheless, seizure and report crime data can offer valuable information on patterns of criminal activity.

One challenge in quantifying cultural property trafficking is the lack of a standard unit. While a kilogram of cocaine has an understood significance in the illicit drug market, the same cannot be said of a kilogram of cultural property. This difficulty is particularly evident with numismatic collections, as each coin is generally counted as an object and thousands can be taken in a single seizure. The same is true with historical documents stolen from libraries or

⁷⁰ Brodie et al. 2019, 114-115

⁷¹ For links with other forms of organized crime see for example, OCCRP, In Drug Trafficking Raid, Spanish Police Find Antiquities Instead, 26 July 2022, <https://www.occrp.org/en/daily/16606-in-drug-trafficking-raid-spanish-police-find-antiquities-instead>, <https://www.guardiacivil.es/es/prensa/noticias/8270.html>

⁷² Mackenzie et al. 2019, 28-29

⁷³ Congressional Research Service, Transnational Crime Issues: Arts and Antiquities Trafficking, 1 March 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11776>

⁷⁴ FinCEN, FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art, 9 March 2021, https://www.fincen.gov/sites/default/files/2021-03/FinCEN%20Notice%20on%20Antiquities%20and%20Art_508C.pdf

archives, as each document is counted as an item. A single seizure of coins or cache of documents can impact trends based on counting the number of objects detected.

As an alternative, the number of “incidents” involving a particular type of item could be counted, but this approach also fails to capture the significance of each seizure, since relatively insignificant items are more commonly encountered than masterpieces. Furthermore, not all reported cases and investigations of cultural property lead to seizures, and relying on this data may fail to capture the many cases that specialized units investigate which never reach a point of seizure and are instead resolved by other means.⁷⁵

Finally, there is the fundamental question of value. Valuation is another possible way of quantifying detections of trafficked property, but valuations are often highly subjective. They tend to focus only on the market value rather than on cultural value. They are also subject to outliers that can affect trends – individual paintings have sold for over 100 million dollars.⁷⁶ Nonetheless, valuation does offer one useful means of quantifying the relative significance of individual seizures and thus capturing the most significant trends in the market.⁷⁷

There is presently no global analytic database of cultural property theft reports, investigations, or seizures. The closest is Interpol’s Stolen Works of Art database.⁷⁸ This repository is not designed for analytic purposes but rather to enable participating agencies to determine whether a specific work of art has been reported stolen in another country, similar to the Interpol database on stolen vehicles. To better understand the market, Interpol has conducted surveys of its members and reported on these data.⁷⁹

There are, however, significant national databases that can yield insights into the nature of the market. The oldest and largest database of trafficked cultural property globally is maintained by a specialized unit of the Italian Carabinieri, the Command for the Protection of Cultural Heritage (Comando Carabinieri Tutela Patrimonio Culturale, or Carabinieri TPC), which has been in operation since 1969.

The Leonardo database of “illegally removed cultural artefacts”, established in 1980, now contains nearly 1.3 million stolen objects, with more than two-thirds of the entries accompanied by photographic evidence to aid investigation. The database includes information on more than eight million objects registered by the TPC; if during the course of investigation the TPC establishes evidence that an item was illegally excavated or has been identified as a fake or forgery, this information is added to the entry in the database.

To better understand what can be learned from national law enforcement databases, UNODC submitted a series of queries to the Carabinieri TPC for exploration in the Leonardo

⁷⁵ Eber, Anya (2023 forthcoming) University of Oxford Thesis. Policing the Illicit Antiquities Trade: Understanding the Role of Law Enforcement in Cultural Heritage Protection

⁷⁶ For example, Claude Monet’s *Meules* sold for US\$110,700,000, at Sotheby’s on 14 May 2019, <https://www.sothebys.com/en/articles/monets-meules-sells-for-astonishing-110-7-million-a-new-artist-record>.

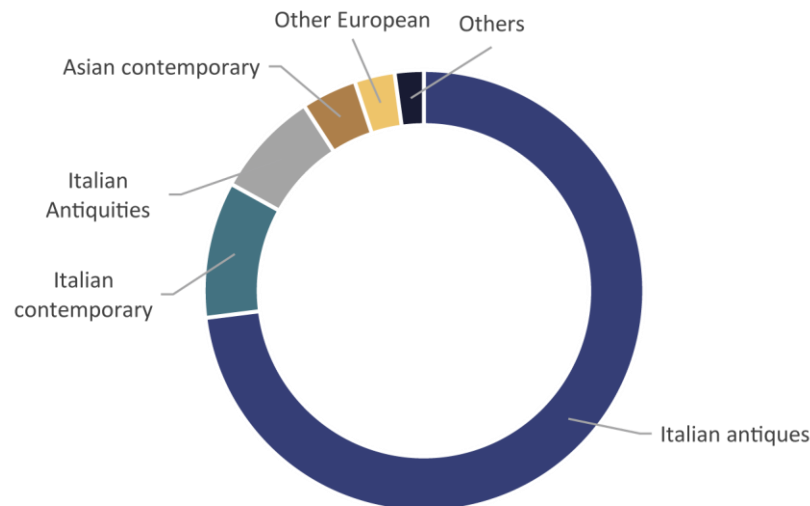
⁷⁷ Wildlife markets suffer from a similar problem, since it is difficult to compare or combine seizures of, for example, butterflies and elephant tusks. UNODC has adopted the valuation approach to understand the market as a whole, while simultaneously monitoring each species product in its own right. See UNODC, *World Wildlife Crime Report*. Vienna: UNODC, 2016.

⁷⁸ Interpol Stolen Works of Art Database, <https://www.interpol.int/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>

⁷⁹ Interpol, *Assessing crimes against cultural property 2020: Survey of Interpol Member Countries*. Lyon: Interpol, 2021, <https://www.interpol.int/en/content/download/16751/file/2020%20Assessing%20Crimes%20Against%20Cultural%20Property.pdf>

database. The responses show a database heavily skewed towards Italian antique⁸⁰ items, but with significant numbers of objects from other parts of the world. While always predominantly Italian, the composition of the pool of objects varies substantially from year to year. For example, in a single year (2015), over 50,000 contemporary paintings or chalcographic/serigraphic prints from a wide range of countries in Asia were registered.

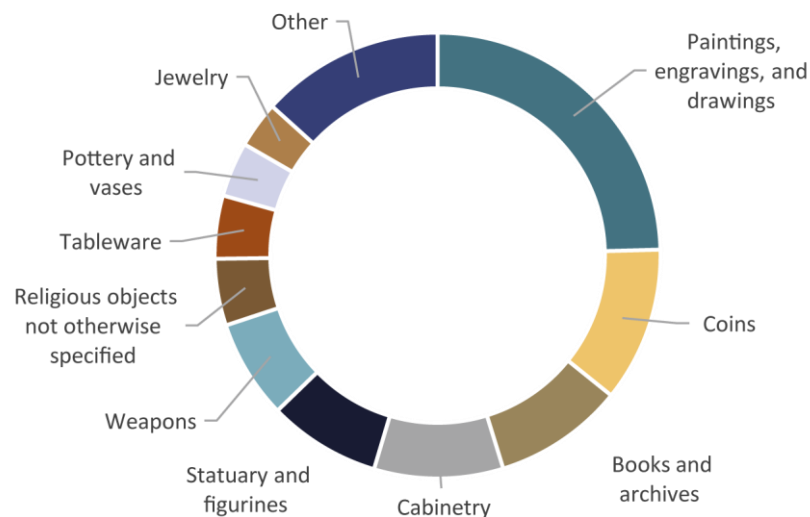
FIGURE 1: Items represented in the Leonardo database by region and period, 1980-2021



Source: Leonardo database

The single largest category of objects is paintings, etchings, or drawings. As discussed, coins and documents are counted individually, so their numbers may be disproportionate to their significance. Overall, it would appear that Italian antique graphic artworks are the largest single category, but a large number of books and archival material have also been recovered.

FIGURE 2: Types of objects in the Leonardo database, 1980-2021

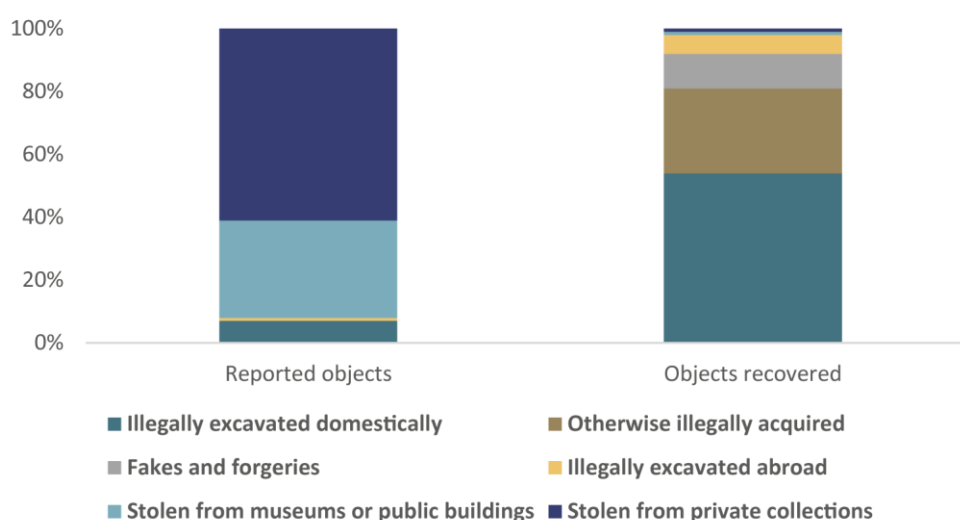


Source: Leonardo database

⁸⁰ The Leonardo database defines “antiquities” as objects originating from 4000 BCE to the 10th Century CE; “antiques” as objects from the 11th to the 19th Centuries, and “Contemporary” from the start of the 20th Century to today.

The data highlight a limitation of databases based on reported stolen objects. There is a difference in profile between objects reported stolen and those recovered by the Carabinieri. In Leonardo, an annual average of 92 percent of the objects reported stolen were taken from private hands or museums, which probably follows from the owners of valuable objects being more likely to report them stolen. Some 1,748 objects recovered between 2015 and 2021 were detected as fakes or forgeries. Notably, about 60 percent of the objects recovered annually, on average, were illegally excavated, in Italy or abroad. The database records suggest that illegal excavation is a prime driver of the illicit market, although this may also reflect the priority of the Carabinieri activities.

FIGURE 3: Objects reported and objects recovered by illicit source of object, average share of the annual total 2015-2021



Source: Leonardo database

Nearly all the objects retrieved (93 percent) were recovered from private homes, as opposed to other locations where they were publicly exposed, such as at the border, from auction houses, at a public museum, at a free port, or at a private museum. According to the Carabinieri TPC, they do not maintain a presence at the borders, and customs officials may not be well trained on cultural heritage protection. Private collectors, rather than public institutions, appear to be responsible for the largest share of objects confiscated.

The number of suspects reported to the public prosecutor greatly exceeds the number of arrests. Between 2015 and 2021, an average of 1,100 people per year were reported to the prosecutor, compared to just 23 arrests.

Highlighting the need to increase penalties for illicit activities relating to the cultural heritage of the country, the Italian parliament passed a new law passed in March 2022 establishing additional offences against cultural heritage, with more serious sentences, in the Italian penal code.⁸¹

⁸¹ Library of Congress, Italy: New Law on Crimes against Cultural Heritage Implemented, 23 March 2022, <https://www.loc.gov/item/global-legal-monitor/2022-05-05/italy-new-law-on-crimes-against-the-cultural-heritage-implemented/>

Implications and areas for further research

The insights gleaned from this initial analysis of the Carabinieri TCP Leonardo database, and a brief overview of research and responses to date, have implications for monitoring the market going forward.

The 2022 gap analysis by Brodie, Kersel, Mackenzie, Sabine, Smith and Yates notably highlighted some of the challenges in addressing the illicit cultural property trade, among them poor information sharing, limited and short-term project funding, and a policy and research focus on source and supply rather than on destination markets and demand, as well as the dangers of formulating responses without improving or updating the knowledge base:

We still lack the basic understandings needed to craft an effective policy response. To some extent, new public policy that is being developed and implemented may be focused on the wrong problem (due to an anachronistic understanding of the trade) and applying the incorrect solution (due to a poor understanding of regulatory options)...It is high time we started thinking about something new and more effective for tackling the illicit trade in cultural objects.⁸²

Sharing and comparing data globally: Despite the extensive international networking of the Carabinieri TPC, the massive Leonardo database remains largely Italian in its composition. Other national databases are likely to be similarly inward-looking, and so a mechanism to support international data collection and sharing is essential to get a picture of the global market in illicit antiquities.

Furthermore, how national law enforcement agencies record data on referrals, investigations, seizures, and repatriations relating to cultural property should also be analysed and assessed, with a view to improving data collection for research purposes and for law enforcement work. In addition to helping to strengthen the evidence base, an assessment could also help to inform technical assistance on evidence gathering and information sharing on transnational cultural property cases.

A global database should include information from several sources, in addition to police-reported offences, and can include seizures and other detection incidents, such as identified illegal excavations.

As cases do not necessarily move through seizures or prosecutions and can be resolved informally, information on initial police investigations, reports (even those that do not progress) and informal returns should also be considered. Where possible, the object descriptions in these detections should include an estimated valuation, which could provide a more reliable gauge of significance than simply a count of the objects.

Delineating and defining the types of cultural property involved in various criminal activities could help strengthen legal frameworks and develop more effective responses to these crimes. Moreover, greater global efforts to collate relevant laws and to identify where there are gaps in legal frameworks could help provide an important future resource for law enforcement agents and prosecution teams.⁸³

⁸² Brodie et al. 2022, 16

⁸³ See the UNESCO List of National Cultural Heritage Laws available at: <https://en.unesco.org/cultnatlaws/list>

Examining the role of private sector intermediaries: This research brief has focused on normative and criminal justice responses but as the General Assembly *International Guidelines* suggest,⁸⁴ cultural institutions and the private sector, and the ways in which they acquire, handle, and trade cultural property, can play a key role in heritage protection efforts. Importantly, the way that these sectors report cases of suspected trafficking can be crucial for how trafficking chains can be disrupted. Law enforcement units in destination countries may not be provided with sufficient resources to proactively search out illicit cultural property in the market and as a result must rely on reactive policing strategies.⁸⁵

In line with the Guidelines and recognizing the access and expertise that the private sector has when it comes to cultural property, a forthcoming UNODC knowledge product⁸⁶ will examine the capacity and incentive of seven private sector intermediaries – namely museums, auction houses, dealers, academics, conservators, internet providers, and shipping companies – to help combat this illicit trade. The publication will further consider how funds from asset recoveries could be used to help support heritage protection.

Targeting illegally excavated and un-inventoried cultural property: UNODC’s analysis of the Leonardo database found that some 60 percent of the objects recovered annually, on average, were illegally excavated. In its 2020 survey, Interpol confirms that illicitly excavated numismatic, archaeological and paleontological items accounted for a higher share of seized objects in every region, consistent with data gathered since 2017, highlighting that:

One main reason for this could be the fact that archaeological and paleontological sites are, given their nature, less protected and more exposed to illicit excavation. Criminals have been supplying this type of object to the market as the demand has notably increased in recent years. The detection and seizure of these items are particularly challenging to law enforcement agencies around the world.⁸⁷

Databases of stolen cultural objects represent a crucial resource for combatting trafficking in cultural property, but they can only provide a partial picture of the overall trade. Both Leonardo and Interpol indicate the predominance of illegally excavated cultural property, and an over-reliance on stolen art data may not lead to appropriately tailored responses.

Further research is needed to inform efforts to disrupt this market. The use of satellite imagery can help curb illegal excavations through improved recording, identification and information sharing.⁸⁸ Criminal justice responses could potentially draw upon the provisions of the UN Convention against Transnational Organized Crime to complement the 1970 Convention, which has been interpreted as protecting objects from known collections,⁸⁹ and the 1995 Convention, which at the time of writing had 54 contracting states.⁹⁰

⁸⁴ (A/RES/69/196) Resolution adopted by the General Assembly on 18 December 2014 *International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences*, https://www.unodc.org/documents/organized-crime/trafficking_in_cultural/RES-681-86/A_RES_69_196_E.pdf

⁸⁵ Eber, A., 2021, *Guardians in the Antiquities Market*. In: Oosterman, N., Yates, D. (eds) *Crime and Art. Studies in Art, Heritage, Law and the Market*, vol 1. Springer. https://doi.org/10.1007/978-3-030-84856-9_13

⁸⁶ UNODC Knowledge Product 2022

⁸⁷ Interpol 2021, 16

⁸⁸ See projects such as: EAMENA, <https://eamena.org/>, the UNESCO-UNITAR-UNOSAT initiative, <https://www.unesco.org/en/articles/using-new-technology-document-endangered-world-heritage>, and Global Heritage Fund, <https://globalheritagefund.org/2022/08/18/global-heritage-fund-leveraging-planet-skysat-protect-cultural-fabric-ukraine/>

⁸⁹ Mackenzie 2009, 9

⁹⁰ States Parties, UNODC Convention, accessed 12 October 2022, <https://www.unidroit.org/instruments/cultural-property/1995-convention/status/>

Investigating a crime-corruption-terrorism nexus: The potential links between trafficking in cultural property, other forms of organized crime, corruption and terrorism financing have long been a source of concern but this area remains contested and understudied. A rigorous comprehensive analysis is also needed to compare trafficking in cultural property with other illicit trades, and explore potential connections between these flows. Further research could also look at how trade rules such as CITES for endangered plants and animals or the Kimberley Process for conflict diamonds have fared in curbing other illicit markets.⁹¹

A central insight informing the UN Convention against Transnational Organized Crime as well as the UN Convention against Corruption is the need to “follow the money” to investigate and disrupt illicit markets. Financial investigation remains one of the most powerful tools in the criminal justice arsenal against organized crime, and a focus on the financial dynamics of the illicit trade in cultural property could improve responses.

A global study into trafficking in cultural property should seek to map the illicit trade chain, its participants and its push- and pull-factors, and how cultural objects cross borders and interface with illicit and licit actors along the way. To better understand the scope of the problem and address response gaps, it is also essential to examine whether and how law enforcement agents are able to investigate and share information on trafficking cases and cultural property as they move through the illicit trade chain.

Illicit markets shift and evolve, and determined efforts are needed to track the interplays between enforcement and potential displacement to less regulated destination countries and trading spheres, emerging markets and the role of the Internet, among other developments. Undertaking such monitoring and analysis of the global illicit trade in cultural property would require political will and a willingness to back stated commitments with sustainable funding. Greater insight is needed to inform new pathways and partnerships to protect our past, and with it our future.

⁹¹ Mackenzie et al. 2019, 40



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