

ILLICIT TRAFFICKING OF CULTURAL HERITAGE ITEMS AS AN INTERNATIONAL CRIME: CHARACTERISTICS AND RESPONSES¹

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ABSTRACT

Modern crime knows no borders, and criminal groups from one country easily connect with similar groups or organizations from other countries, so that it takes on a new dimension in the criminal world. Cross-border crime has become a key security issue for policymakers and law enforcement agencies. Their efforts have increasingly shifted from the domestic scene to the international arena and transnational crime. The term transnational crime now belongs to the everyday vocabulary of not only criminologists, but also policy makers, law enforcement officials and the public.

One popular thesis related to organized crime claims that the illegal trade in cultural heritagegoods is the third most typical form of illegal trade - right after drugs and firearms. According to ECOSOC the illicit trade in cultural heritagegoods is often carried out in the same criminal circles as the illicit trade in drugs, arms and other illegal activities. This paper will focus on the problem of illicit trafficking of cultural heritage items as an international crime, its concept, characteristics and international response to this crime.

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KEY WORDS: illicit trafficking, cultural heritage, customs legislation, INTERPOL, international treaties

INTRODUCTION

“Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration.” (UNESCO)

Cultural heritage is part of the common heritage of humanity. Such a unique and important testimony to the evolution and identity of the people and the importance of its protection is emphasized in many international documents.

The term ‘cultural property’ according to Unesco Convention from 1970: means “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to one of the following categories, for example rare collections, property relating to history (including science and technology), products of archaeological excavations. elements of artistic or historical monuments which have been dismembered; antiquities more than one hundred years old, such as inscriptions, coins and engraved seals, objects of ethnological interest, property of artistic interest, such as pictures, paintings and drawings produced entirely by hand.”(unesco.org)

“Imagine a medieval, carved wooden Madonna that has hung in the same church, in the same place for hundreds of years. Generation after generation has admired her beauty as she mysteriously gazes down upon the most important occasions in life, from christenings to funerals. Or imagine a painting in one of our major museums, a picture that has formed the attitudes of a whole nation, town or atmosphere of an era. All schoolchildren have passed some of these paintings, and they have helped to create our common identity.” (Korsell et al, 2006)

Cultural heritage in all its forms constitutes a unique and important testimony of the history and identity of different peoples and is a common asset that should be preserved in all circumstances. Cultural property has social and political value, as well as intrinsic worth. It is a basic element of local and national cultures. It stands for the ideas and achievements which

have shaped human development and so throughout recorded history it has been celebrated as a manifestation of creativity but also targeted in times of conflict as a symbol of identity to be attacked in order to demoralize, defeat and eradicate populations. Because of its intrinsic worth it has been legitimately commissioned, displayed, bought and sold as well as being stolen, looted, trafficked and forged for illicit financial gain. (Council of Europe, 2018)

Illegal trade in cultural goods leads to the loss, destruction, removal and theft of irreplaceable items. While criminals make significant illegal profits from the trade in cultural goods, humanity has been denied access to artifacts, and thus its heritage has been taken away. Where ancient artifacts have been stolen and places hidden have been destroyed by looting, archaeologists are unable to gather knowledge of the past. A significant number of cultural heritage crimes are happening in the world, and efforts to combat the trade in cultural goods are still not in line with gravity and the level of crime.

Various experts claim that the illegal trade in cultural goods is "weights" more than one and a half billion euros a year. Even Interpol itself, which is often referred to by the already mentioned experts, admits that it is simply impossible to get accurate information on the annual turnover in this market, and that the thesis about the "third or fourth most typical form" is not supported by any specific data. Moreover, Interpol claims that "it is unlikely that any precise statistics will ever exist." (Interpol.int)

Regardless, no one really doubts that the illegal trade and trafficking of cultural heritage is an extremely lucrative business in which earnings are measured in millions. Although thousands of works of art that "disappear" every year from museums, private collections or archeological sites are usually worth much less than those that are most sought after, the numbers are not negligible. Depending on the type of cultural property, the epoch from which it originates, the material of which it is made and other elements, the price of these items varies, but it is a well-known fact that there are paintings on the black market that cost hundreds of thousands of euros. Even the sale of less valuable items may afford the happy "finder" several years of comfortable life. (Vreme772, 2005)

The value of the international trade in stolen or smuggled cultural property is estimated at \$ 4.5 billion to \$ 6 billion a year. UN Economic and Social Council Resolution 2004/34 warns that organized criminal groups are involved in trafficking in stolen cultural goods and that international trade in

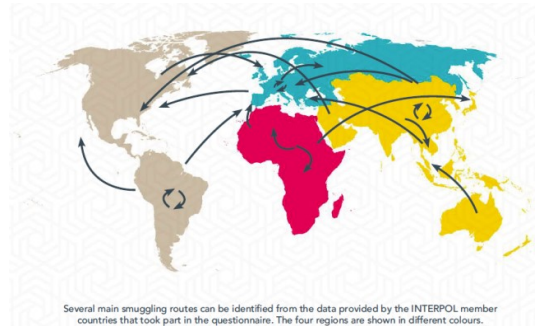
looted, stolen or smuggled cultural property is estimated at several billion dollars a year (ECOSOC, Resolution 2004 / 34). The Office for Drugs and Crime at the United Nations has found that organized criminal groups are increasingly involved in the illicit trade in cultural goods. UN Economic and Social Council Resolution 2008/23, which addresses the illegal trade in cultural goods, expressed concern about damage to cultural heritage, leading to loss, destruction, alienation, theft and trafficking, and called to end the involvement of organized criminal groups in all areas of trade in cultural goods.

INTERNATIONAL SMUGGLING ROUTES FOR CULTURAL PROPERTY

Increased interest in cultural goods belonging to other cultures has, in recent decades, caused a significant increase in demand and trade in such goods, especially in Western countries. The use of the Internet has greatly facilitated this trade among people around the world.

Illegal trade in artistic and cultural goods has become a very profitable business for the unscrupulous and a source of additional funds for people living in poverty in the country of origin of cultural goods. Political instability, corruption, and insufficient resources to control borders and secure archeological sites or museums that exist in many developing countries make them vulnerable to the loss of their cultural heritage. Here is an extreme example. It is believed that over 4,000 items were stolen from Iraqi museums during the Gulf War, and that the profit from that was used to arm the rebel troops. Even developed countries are not immune to this crime, and countries such as France, Poland, Russia, Germany and Italy are registered as the most targeted locations for stealing cultural property from individuals, churches and museums. (Poole, 2008)

This map shows the approximate routes used to illicitly traffic cultural property from one country or continent to another.



Source: Assessing crimes against cultural property, Survey of Interpol 2020

From the map above we can see that most countries in the other parts of the world have selected Europe as a destination area. Cultural artifacts from Europe are transported to North America or Eastern nations, or they circulate within the region.

Even though this terminology is common in international law, the crime of trafficking appears to refer to a phenomena rather than a specific act, behavior, or offense. Therefore, it is crucial that countries identify the conduct that constitutes "trafficking in cultural property" for the purposes of criminal law as well as the repercussions of such a definition. The act of trafficking is frequently linked to a wide range of actions including the smuggling of goods or people, whether on an international scale or just within a country's borders.

In order to facilitate international investigative and judicial cooperation in the fight against crimes involving cultural property, particularly trafficking, it is important to define "cultural property" for the purposes of criminal law. The adoption of a harmonized definition of cultural property, such as that offered in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property would also make the application of criminal law easier across jurisdictions, both domestically and internationally.

Substantial inconsistencies in the concept of "cultural property," which is a crucial component of the definition of criminal offenses, might potentially result in the denial of demands for extradition or, more generally, international cooperation in criminal issues due to a lack of dual criminality. Given that the characteristics of the protected object would be the same, an

agreed-upon definition of "cultural property" would also encourage inter-State cooperation on a wider range of cultural property-related offenses.

“Every day, cultural objects are subjected to smuggling and illicit trading. As these objects disappear, so do the entire chapters of humanity’s history.”
(The International Council of Museums (ICOM))

The establishment and development of international relations in the customs field is one of the key elements in consolidating the process of customs administrations capacity building all over the world, in order to meet the challenges and opportunities of the XXI century. (Vasileska, Miloshoska, 2012)

Customs crime consists of a large number of acts contrary to the established rules of the customs system, and is expressed by the transfer of goods across the customs line by avoiding customs supervision, or the transfer of goods of greater value by evading customs control, or organizing a gang, group or other association.

Many factors have contributed to the spread of illegal trade in works of art in the Balkans: wealth of archeological sites, museums, churches and private collections, inconsistent application of legislation, lack of specialized police units, untrained customs services, unstable political situation, and general corruption. Nevertheless, in the Interpol list of countries most affected by this type of organized crime, the countries of Southeast Europe do not occupy leading positions. Namely, in order for theft or smuggling to be officially recorded at all, it is necessary to provide all the data on the missing item. Thanks to numerous circumstances, primarily the fact that unregistered archeological sites are mostly destroyed in the Balkans, such data on most of the missing works simply do not exist. It seems that this is actually the biggest problem - to look for something for which one does not know what it is, what it is like, whose it is and where it is from, is absurd. Tens of thousands of ancient objects excavated in the Balkans ended up in the collections of Western European, American and Japanese collectors and have been lost forever. What still exists, however, are smugglers, illegal diggers, corrupt inspectors, frivolous judges and war profiteers who have worked or are still working in this area. An investigation into the origin of their property could be a good start to the systemic fight against the illegal trade in works of art and archeological objects. Otherwise, the search for the "Balkan treasure" will continue until that treasure disappears forever. (Vreme772, 2005)

It is simply impossible to get accurate information on the annual turnover in this market in the Republic of Macedonia. The characteristic of this crime in Macedonia is particularly a largely dark figure. According to the Macedonian Customs Administration, in one of their annual reports from 2021, Macedonian custom officers detected only one case of crime against the cultural heritage and natural rarities: "At the international airport "Skopje", at a regular customs control check of travelers bags in a flight to Zurich, they found 14 gold and 18 silver coins, of which the epoch is unknown. Also, just for comparison, in 2017 only one case was reported of disclosure or export abroad of goods under temporary protection of cultural heritage or natural rarities. The next article shows the real figure of this crime.

In an article by Konstantin Testorides entitled "Macedonia's antiquities are an easy target", published in the Los Angeles Times from April 22, 2007, and starts with the sentence: "'Watch your step, goes a joke by archeologists in Macedonia, or you might crack an ancient pot."

Macedonia has determined to stop unlawful excavations at the numerous archaeological sites found around the country, many of which have already been looted by smugglers who are skilled at digging up valuable artifacts. Pasko Kuzman, the former head of the national Directorate for Protection of Cultural Heritage, in the interview said that during excavations at Isar-Marvinci from 1995 to 2003, an estimated 2,500 artifacts were stolen. "No one knows how many important national treasures have been smuggled out of the country, but it's clear the police don't yet have the means to stop it," Police officials are hesitant to estimate whether archaeological thefts have increased in recent years, but they do claim that such "criminal enterprise can bring several million dollars annually." A vast network is thought to be organized by regional crime groups, with customers easily identified in Greece, Austria, and Germany.

An employee from the special department in charge of archaeological crime told AFP that "the criminals are always a step ahead, they track our actions, and they know exactly when to move away." Irena Kolistrkoska Nasteva, a prominent archaeologist in Macedonia, noted: "Macedonian bronze is trendy. It is world-famous because of the style, and it can fetch very high prices on the black market ... Even the smallest piece can be sold for 1,000 euros.." (Mironski, 2009)

Easily smuggled works are sometimes seized and the culprits caught, although a large majority of illicit items are believed to be sold in Western Europe where they are never recovered, nor are the criminals who sold them held accountable. The reasons for this situation are the non-existence or small number of specialized police units, unorganized customs services, and poor implementation of existing laws.

In the Republic of Macedonia customs crimes represent the most serious violation of the Customs Law of RM, so sanctions for this type of customs offenses are the most severe. The criminal offense of smuggling, such as concealment and falsification of documents, with certain modifications, has been included in the Criminal Code of Republic of Macedonia, and the aim of its regulation is to protect the customs system and markets where the illegal importation of goods can lead to disturbances.

Special emphasis was placed on the criminal offense of smuggling, which is provided for in Article 278 of the Criminal Code of the Republic of Macedonia. The criminal offense of smuggling is any attempt to transfer goods of greater and more significant value across the customs line with the intention of avoiding customs control. In order for this crime to exist, it is necessary to cumulatively meet two important elements, namely:

that the suspect is engaged in the transfer of goods across the customs line, while avoiding customs control; to transfer goods of greater or significant value, with the intention of avoiding customs control. (Criminal Code of RM, 2017) This illegal trade in cultural heritage has different but closely related components, which can be classified as follows:

1. Illegal excavation of cultural property, which is subsequently exported;
2. Illegal export of artistic goods, where there are laws intended for the preservation of national cultural heritage with a ban on the export of these goods;
3. Theft of cultural heritage from museums, historically important places, galleries (Justice Program, Cultural property program, 2011)

INTERNATIONAL RESPONSE TO ILLICIT TRAFFICKING OF CULTURAL HERITAGE

The current legal frameworks, which are supported by the existing conventions on offenses against cultural property, should generally be seen as complementary and succeeding one another rather than superseding it.

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Sale of Cultural Property (1970) places its emphasis on prevention and international co-operation. The convention usefully begins with a broad listing of items to be regarded as cultural property, now widely adopted. It goes on to state its opposition to the illicit import, export and transfer of ownership of such property since this impoverishes the cultural heritage of the countries of origin and international co-operation is required to make such conduct illicit: States Parties should establish services to protect cultural heritage, supported by laws and regulations preventing illicit activities, including the development of national inventories of protected property, the supervision of archaeological excavations, the establishment of rules of conduct for curators, collectors and antique dealers (who should be obliged to maintain a register of origin of cultural property with details of suppliers and description and price of each item sold), and taking educational measures to stimulate respect for the cultural heritage of all States. Additionally, States are also required to take steps to recover and return it to its rightful owner with compensation paid to an innocent purchaser or one who has valid title to the property.

Mindful of the private law omissions in the 1970 convention, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was drafted at the request of UNESCO to develop rules inter alia on time limitations and good-faith acquisition. Using the same categories of property as UNESCO, the convention is concerned with private law, placing greater emphasis than UNESCO on the process of restitution, stating clearly that “the possessor of a cultural object which has been stolen shall return it” (“stolen” being defined as including unlawful excavation or lawfully excavated but unlawfully retained). The convention seeks to establish common, minimal legal rules for the restitution and return of cultural objects between States, providing for contracting States to request the court or competent authority of another contracting State to order the return of an illegally exported cultural object within specified time limits, varying according to circumstance and with compensation payable if the object was acquired in good faith and due diligence exercised (the need for which has had a growing influence on art and heritage professionals).

According to INTERPOL's 2020 Assessing Crimes against Cultural Property report, cultural property crime has remained unabated throughout the global COVID-19 pandemic and in some cases has even increased to new levels. The report, the first of its kind to be created since the pandemic began and the first to be made public, uses data on cultural property crimes, arrests, and

trafficking routes for 2020 provided by 72 INTERPOL member nations. The combined intelligence enables INTERPOL to assess and contrast global developing trends. 854,742 cultural property items in total, including numismatic goods (coins, money, or medals), paintings, sculptures, archaeological finds, and library books, were seized globally in 2020. More than half of these artifacts, or 567,465 objects, were confiscated in Europe, highlighting the importance of law enforcement agencies who focus on fighting crimes involving cultural property, which are common in most of the countries in the region.(interpol.int)

This is a list of main international treaties and declarations on cultural heritage protection

• 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention
• 1954 First Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
• 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
• 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage
• 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
• 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict
• 1999 International Convention for Suppression of Financing Terrorism
• 2000 United Nations Convention against Transnational Organized Crime
• 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage
• 2001 Universal Declaration on Cultural Diversity and the Action plan for its implementation, Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its thirty-first session
• 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage
• 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
• 2003 UN Convention against Corruption
• 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

• 2015 Bonn Declaration on World Heritage, 39 th UNESCO World Heritage Committee
• 2015 Declaration on Culture as an Instrument of Dialogue among Peoples, EXPO, Milano, International Conference of the Ministers of Culture
• 2015, Statement of the 3rd Meeting of States Parties to the UNESCO 1970 Convention, “Stop Illicit Trafficking of Cultural Property”
• 2017, Council of Europe Convention on Offences relating to Cultural Property
• 2018, European Commission Fifth Anti-money laundering and counter terrorist financing Directive
• 2019, European Parliament Regulation on the Introduction and the Import of Cultural Goods
• 2020, Council of the European Union Conclusions on EU External Action on Preventing and Countering Terrorism and Violent Extremism
• 2020, 10th session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime - Revised draft Resolution: Combating transnational organized crime against cultural property (CTOC/ COP/2020/L.10/Rev.1).

For effective law enforcement and customs inspection, information is a crucial requirement. The Object ID standard created by the Getty Information Institute, which is now housed by UNESCO and widely used in creating a fundamental record of objects, is advised for use by both Interpol and UNESCO. It is crucial to quickly record the fundamental "core" data that can enable identification because databases are essential for rapid information-sharing and the dissemination of information. When creating databases, precautions should be taken to include protocols and mechanisms dictating levels of access so that private information can stay with the host organization rather than being shared. Sharing is hampered by the need for confidentiality and the idea that the host organization owns its own information.

Around the world, customs administrations have also recognized the need to collaborate with one another and with the business community to achieve common economic, security and social goals. (Vasileska, Miloshoska, 2012)

In order to more effectively combat illicit trade, which is inherently marked by secrecy and obfuscation, we still need a better understanding of how it operates and what impact it has on the world. Attacking the issue from all angles is important, including the source, transit, and final destination. It is

in the best interests of the legitimate art market, whose reputation is harmed by other people's illegal activity, to take part in all substantive discussions about combating trafficking, encouraging adherence to codes of practice, educating the general public about proper procedures, and actively supporting efforts to make illegal activity illegal. There is now more than ever a need to comply with international treaties, conventions, guidelines, and evolving national laws in all jurisdictions.

CONCLUSION

“The history of mankind is at stake in this fight against the illicit traffic and forgery of works of art worldwide. Every country can and should contribute.” (Council of Europe, Committee on Culture, Science, Education and Media)

Illegal trafficking has been related to terrorism and organized crime. After drugs and weapons, it has been stated that cultural property is the third most profitable source of income for illicit operations, and recent examples in South-East Europe have shown a relationship between individuals involved in drug or weapon trafficking. However, data are inherently elusive, unverifiable, and contested in the assessment of a long-standing illicit activity whose success is inextricably linked to the lack of openness. Evidence reveals that the trade in plundered goods from conflict zones follows pre-known paths created by networks of handlers, which can then be used to fund terrorists. Western markets have seen a significant increase in the number of plundered and stolen artifacts in recent years. The fight against trafficking of cultural heritage has evolved in recent years as the black market has shifted away from traditional trading methods and toward social media and the Deep Web.

Data also shows that the majority of the activities are carried out by small groups rather than mafia-like organizations. This is an international transaction that crosses borders, creates enormous profits, and has little hazards. It is a challenging commerce to monitor or manage because the places of origin may be unclear, and imports and exports may then pass via numerous nations and authorities - identified by the International Council of Museums (ICOM) as source countries, transit countries, and market countries.

Adoption, implementation, and strengthening of domestic criminal law responses to combat trafficking in cultural property and associated offenses must adhere to the principle of legality, which is the most important principle in criminal law. To protect this principle, states should consider implementing the following measures: Domestic criminal law responses should be adopted, implemented, and strengthened in accordance with a given State's general legislative processes. Domestic criminal law answers should be adopted, implemented, and strengthened in accordance with the principle of *lex stricta*, and as such, the legal text must be precise and concise. (UNODC, 2016)

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