8 More than antiquities trafficking

The issue is antiquities laundering

Anna Mosna

Introduction

In May 2021 the news reported that United States media personality Kim Kardashian had to forfeit an ancient Roman sculpture that she purchased and imported into the US, as the statue had to be returned to Italy from where it was looted and illegally exported (Rea, 2021).

Looting, illicit export, and illicit import of antiquities are core elements of antiquities trafficking—a criminal phenomenon that has its beginning with looters and "tombaroli" who plunder archaeological sites and museums, that continues with middlemen and intermediaries along a path often leading through transit cities and countries with lenient customs controls or free ports as, for example, they can be found in Bangkok, Hong Kong, Switzerland, or Luxembourg (Watson & Todeschini, 2006: p. 48). From there, antiquities are transferred to market countries like Belgium, Germany, the United Kingdom, or the United States where they usually can be bought in galleries, at antiquities dealers, or at auctions (Coppola, 2014: p. 106).

When these trafficking operations are detected, this often happens, as in the case involving Kim Kardashian, at border controls: Kim Kardashian reportedly faces a civil forfeiture action for having tried to import, without the required certificates, an object that is covered by import restrictions under the Convention on Cultural Property Implementation Act (CPIA, 1983; Rea, 2021). There is, however, more to these operations than meets the eye. Whenever looted antiquities reach the official antiquities market and are offered and sold as seemingly legal goods, there is not only criminal activity in the form of illicit trafficking, but also money laundering or, as it is here called, "antiquities laundering" involved.

This chapter addresses the often-overlooked phenomenon of antiquities laundering by assessing, in a first step, the characteristics of the "traditional" money laundering dynamic. On this basis, elements specific to antiquities laundering will be discussed and parallels to cases usually defined as illicit antiquities trafficking will be drawn. The chapter argues in favour of recent criminal policy interventions, including stricter regulations for the antiquities market. It does so, first, by referring to the values endangered by antiquities laundering and that justify

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criminal policy interventions to counter this phenomenon. Second, it highlights the peculiarities of this form of laundering that suggest that these interventions have a greater chance of being effective in the antiquities market than in other markets.

Money laundering: An old process with a topical application

Money laundering is the processing of criminal proceeds—money or other goods—aimed at disguising their illegal origin and integrating them into the legal economy (Ferwerda, 2013: p. 35). By separating the proceeds from their origin, money launderers transform potential wealth into effective purchasing power and, at the same time, reduce the probability of being discovered as they avoid leaving a trail of incriminating evidence (Masciandaro, 2013: pp. 47–48). Money laundering is an ancient phenomenon. The roots of this practice date back to over 3,000 years ago, when Chinese merchants concealed the profits of their illegal activities after regional governments banned various forms of commercial trading. They would complete early forms of money laundering by hiding their wealth from the rulers, and move it to remote provinces or out of China, where they would invest it in businesses (Seagrave, 2014: chaps. 4 and 6).

These operations can be traced back to a three-step mechanism that up to this day defines a basic money laundering dynamic: Placement, layering, and integration. The placement phase consists of the removal of the direct proceeds of crime from their origin and, thereby, oftentimes from the location where the predicate crime occurred. The removal can be achieved through a transaction that "places" the proceeds into an economic cycle which, in turn, is supposed to move the assets out of a certain area, undetected by the authorities (Hunt, 2011: p. 134). Once the illegal asset has entered the trade, the next step requires the layering of the good, an operation also known as the step of "heavy soaping" as it is meant to cover up the traces of the illegal commodity (Robinson, 2009: chap. 2). This objective is usually achieved through multiple, often cross-border transactions that make it almost impossible to trace the proceeds back to their source (Hunt, 2011: pp. 134–135).

The laundering procedure is completed with the third step, the integration of the cleansed goods into a legitimate economy (Koslowski, 2016: p. 50). In many cases, integration requires not only the concealment of the proceeds' illicit origin but also an active simulation of a legal origin (van Koningsveld, 2013: pp. 437–439). To accommodate this intermediate step, the integration phase may be divided into two sub-parts: The justification phase and the investment phase (FATF, 2006a: p. 9). In the justification phase a legal origin is fabricated. Basic justification methods in this context are the falsification and fabrication of documents such as invoices, reports, contracts, agreements, and deeds as well as written or spoken statements (OECD, 2009: pp. 13–14). After that, in the investment phase, apparently legal assets are introduced into the official economy. This completes the whole laundering process (van Koningsveld, 2013: p. 441).

Despite the specific reference to money as the object of the laundering procedure, the term "money laundering" includes a wide spectrum of cleansing operations not only of money but also, and more generally, of property derived from criminal activity (Unger, 2013: p. 3). The basic scheme consisting of placement, layering, and integration is adaptable to a large variety of laundering methods, which can be combined with each other and whose only limit seems to be the imagination of the perpetrator (US House, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, 2012: p. 4).

Where antiquities obtained through offences such as theft, looting, or illicit excavation are illegally sold onward, smuggled out of their country of origin, and provided with fake documentation to be sold in official antiquities markets as apparently legal goods for the highest possible price (Passas & Bowman Proulx, 2011: pp. 62–63), we are looking at a laundering procedure that may to a certain extent overlap with trafficking activities, but that remains a fully fledged example of money laundering at its core.

Antiquities laundering: Not as rare as one might think

Antiquities laundering refers to operations that aim at cleansing antiquities that are the proceeds of offences such looting, pillaging, and theft (Carducci, 2006: p. 74) to introduce them as apparently legal goods into the official antiquities market and to allow for their sale in galleries, by antiquities dealers, or by auction houses. What sets antiquities laundering apart from the above-described general money laundering are its predicate offences, which are offences against antiquities, and its object: Antiquities themselves.

Offences against cultural heritage as the kick-off for antiquities laundering

While the concepts of theft, pillaging, and looting have a similar meaning in that they indicate a conduct consisting of the illegal taking of property from its rightful owner, they may be distinguished based on the circumstances and on the context in which they are committed.

According to the Cambridge Dictionary, "theft" is the act of "dishonestly taking something that belongs to someone else and keeping it" (Cambridge Dictionary, 2021). For the purposes of this chapter, the concept of theft includes both the dishonest taking that occurs without the knowledge of the legitimate owner of the object in question and the unlawful taking with the knowledge of the owner, who is under threat or the victim of violence. An example of this latter form of theft can be found in the case of the so-called Melfi vases: in 1994, in the course of an armed robbery, 8 2,500-year-old beautifully decorated terracotta pots were stolen from an archaeological museum in the castle of the Southern Italian town of Melfi (Watson & Todeschini, 2006: p. 1).

Pillage and looting on the other hand are often used as synonyms since they both refer to the act of stealing in the context of violence. If anything, looting

appears to have a slightly broader scope as it refers to acts committed during a violent event (Cambridge Dictionary 2021), while pillage has a more specific connotation of stealing during wartime (Cambridge Dictionary, 2021). The unlawful taking of antiquities from the Iraq Museum in the aftermath of the invasion of Baghdad can therefore be taken as an example of both pillage and looting (Bogdanos, 2011: pp. 144–152). Beyond the definition proposed by the Cambridge Dictionary and in line with the meaning conferred to looting by the literature dealing with offences against antiquities, the chapter considers also clandestine excavations of archaeological sites, as massively conducted in Italy and in those regions all over the world where advanced civilisations have developed in the past, as a form of looting (Campbell, 2013: p. 122).

As a global phenomenon, the looting, pillaging, and theft of antiquities give rise to a transnational supply network that funnels the illegally obtained assets into the official antiquities market (Felch, 2014: p. 185). This goal of reaching a legal market represents a crucial difference between antiquities trafficking and other forms of trafficking, such as drug trafficking.

While in both cases there is an essential link between trafficking and laundering activities, with drug trafficking money laundering is a subsequent procedure, which is supposed to merely maximise the profits already made. In contrast, antiquities trafficking relies on a laundering operation to make profits at all. While drugs are destined to stay in the illegal sphere and money laundering concerns the "dirty" money earned from their illegal sale, illegally sourced and trafficked antiquities must be themselves laundered to enter the antiquities market and to realise their market value (Chappell & Polk, 2011: pp. 104–105).

The laundering of illegally obtained antiquities

As a specific form of money laundering, antiquities laundering is based on the same three-step mechanism of placement, layering, and integration (see Figure 8.1).

Antiquities laundering starts in the aftermath of the predicate crime against cultural heritage. The placement of these illegally sourced antiquities can occur, according to the concrete situation and context, in different ways. Common modalities are the sale to travellers in local markets or to smugglers. While already this first transaction cuts the ties between the object and its origin as well as its illegal nature, it is the subsequent layering that disguises those traces more effectively.

Once the object is sold to travellers or passed on to smugglers, it enters a circuit which usually takes the item out of its country of origin. Effective layering methods consist of illegal export and multiple cross-border transfers. Antiquities are frequently broken into fragments to allow for easier transport and better chances to get through customs. Bribery of customs officials is a widespread ancillary offence that ensures the smuggling operation proceeds smoothly. An example of such a practice can be found in the facts that gave rise to a United States criminal case of conspiracy to transport stolen property in interstate commerce (*United States v Hollinshead*, 1974): In 1971 a Guatemalan stela that had

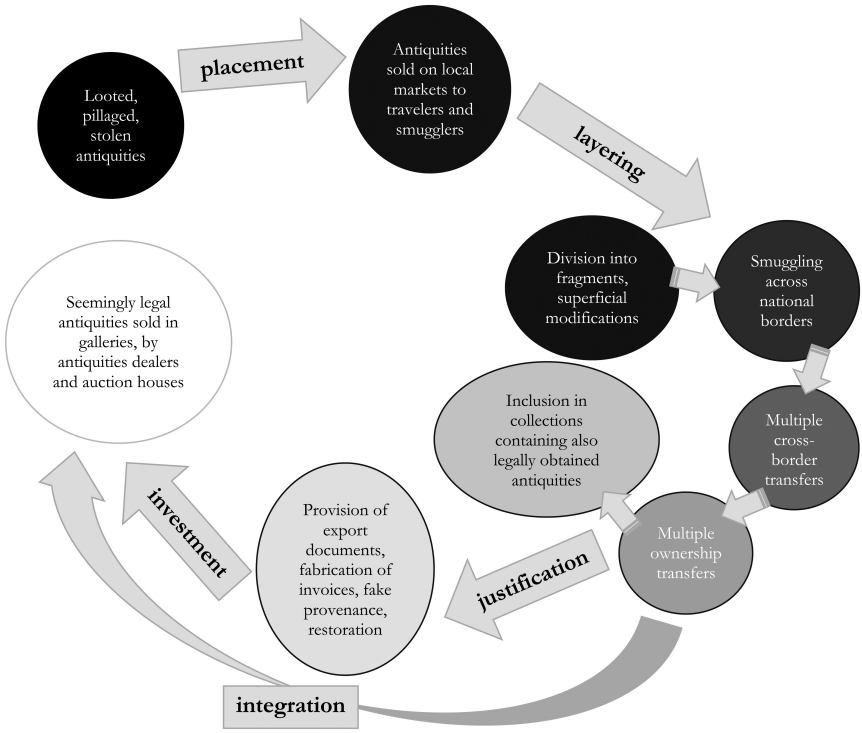

Figure 8.1 The process of laundering illegally obtained antiquities.

been thinned and cut to pieces as it was sold to a Belizean national and then to American citizens who concealed the stela in a shrimp shipment and moved it to Miami (Yates, 2015a: p. 26).

Moreover, antiquities are often made unrecognisable through "cosmetic" changes to easily pass customs controls without raising suspicion. An example can be found in the facts underlying another American criminal case of selling stolen goods in foreign commerce (*United States v Schultz*, 2003), in which antiquities disguised to look like tourist souvenirs were smuggled out of Egypt (Gerstenblith, 2009: p. 27).

Transporting artefacts across national borders makes the investigation of the original crimes more difficult (Kretschmer, 2016: p. 314). This difficulty increases even more in cases in which artefacts are obtained through clandestine excavation. As such, they have never been seen (at least in modern times), let alone catalogued and inserted into a database (Brodie, 2006: p. 53). Once removed from the excavation site and shipped abroad, it is extremely arduous to determine the exact origin of an object (Thompson, 2014: p. 395). Even by identifying the most probable historic source region, it can often be problematic to determine the state in which the item was looted, and hence the competent authority for

investigating the predicate crime, as the territories of ancient cultures and those of modern-day national states rarely coincide.

Multiple transfers from one middleman to another as well as real or merely fictional ownership transfers complicate the recognition of illegally sourced antiquities further (see Figure 8.2). Serial finds are often included in existing collections and thereby intermixed with legally sourced items, which fosters the impression of legitimacy while muddying the waters regarding the real origin (Mackenzie, 2011: p. 72).

These operations prevent the identification not only of antiquities looted from archaeological sites. They hinder the recognition of antiquities also in cases in which the objects are already known, for instance because they appeared in publications or in a museum. The reconstruction of the path and the identification of an object become more difficult with each transfer as its audit trail gets longer and more confusing.

Once their illegal origin is sufficiently concealed, antiquities enter the integration phase. At this point, a legal origin must be actively simulated to channel the artefacts into the antiquities market. To this end, illegal antiquities often pass through countries with relaxed customs controls or free ports (Kersel, 2006: p. 193). Justification is easily achieved in these countries since, on the one hand, their liberal policy on border access for antiquities allows for the uncomplicated entry of such goods and, on the other hand, their legal capacity to export these materials to the rest of the world provides for easy

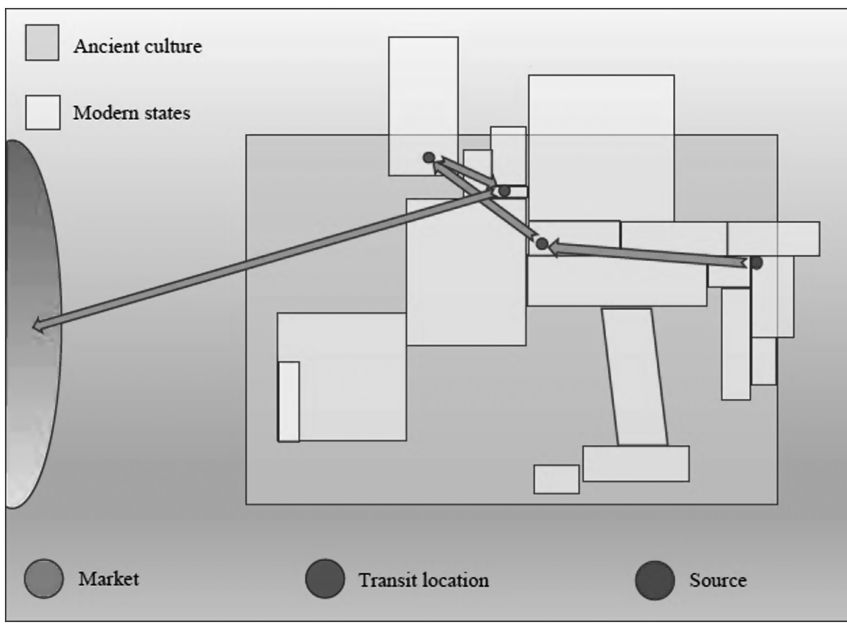

Figure 8.2 Transnational movement of artefacts broken down.

access to the necessary export documents for their further circulation (Alder & Polk, 2002: p. 39).

The privacy granted by only limited oversight over transactions carried out in free ports, which often serve also as retail and wholesale venues, allows not only for further ownership transfers, but also for the uncontrolled fabrication of invoices that can contribute to the creation of false ownership trails (Campbell, 2013: p. 119). In this regard, somewhat suspect euphemisms such as "from the collection of a Swiss gentleman" are often used to provide some beginnings of provenance to tainted antiquities (Alder & Polk, 2002: p. 39). Free ports often also provide services for the restoration and conservation of antiquities (Brodie et al., 2019: p. 99). These amenities are useful not only for ensuring that antiquities are properly stored and obtain a more polished appearance. They are essential also for the reassembling of fragments after the demolition for the purposes of smuggling items out of the country of origin (Watson & Todeschini, 2006: p. 138).

Once the justification step is completed, originally illegal antiquities will both physically and "on paper" appear as legal goods. At this point, these antiquities are ready to be sold directly to collectors or to dealers in major market centres such as London or New York. This investment of seemingly legal goods into the official antiquities market concludes the laundering process.

The often-overlooked laundering aspect in cases of antiquities trafficking

Antiquities laundering is not a rare phenomenon. Illegally obtained antiquities that are traded on the official antiquities market as seemingly legal goods may have physically reached the market through antiquities trafficking. However, for these goods to enter the official market and to be traded there, their previous laundering is a prerequisite.

In this sense, details of the case concerning the illegal import into the United States of an ancient Roman sculpture, known as "Fragment of Myron's Samian Athena", dating back to the 1st or 2nd century and allegedly bought by Kim Kardashian, reveal the three-step laundering pattern discussed above. An archaeologist of the Italian Ministry of Cultural Heritage assessed that the sculpture had been looted from an Italian archaeological site. As the sculpture has never been reported as a fortuitous find, nor been subject to a request for an export license from Italy, as Italian law has required since the first decade of the 20th century, it must be assumed that it was looted, smuggled, and illegally exported out of Italy (Soave, 2021). This draws a picture of an offence against antiquities, followed by the "placement" of the looted sculpture by transferring it to smugglers and the first steps of "layering" through its illegal export from the country of origin.

Contradictions and vagueness in the sculpture's provenance suggest further transfers of the object from one country to another and from one owner to another and thereby both further layering steps and an attempt to fabricate a

false ownership history for the sake of "justification". The Belgian art dealer who apparently sold the piece to Kim Kardashian in 2016 had acquired the sculpture from a Paris-based gallery in 2012. The provenance information included in the invoice to Kim Kardashian indicates Italy as the origin of the sculpture. This is in contradiction to what the 2012 invoice to the Belgian art dealer affirmed. There, the sculpture was described as coming from an "Old German Collection, bought before 1980". As the director of the French gallery explained in an interview, the sculpture had been purchased from an auction house in Germany in 2010, after it had previously been in an "English estate" (Rea, 2021).

Further doubts about the conclusiveness and the truthfulness of the provenance information arise when one considers that the sculpture was spotted by Italy's task force for the protection of cultural heritage in the booth of the Belgian art dealer at TEFAF Maastricht in 2011, although documents supporting the provenance of the object indicate that he acquired it only in 2012 (Soave, 2021). Finally, the sculpture was meant to reach its new owner in Los Angeles as part of a large shipment containing antiques, modern furniture, and decorative objects. According to the news, which indicate Ms. Kardashian as the consignee and importer, the limestone sculpture entered the United States under the US tariff schedule for "antiques of an age exceeding 100 years" instead of "archaeological material" (Rea, 2021). This customs misrepresentation can be seen as an attempt in the context of this last transaction to corroborate other justification moves accomplished already in the past.

Similar laundering traits can be noticed also in other cases that made headlines over the last decades for being extraordinary examples of antiquities trafficking. The case surrounding the so-called "Euphronios Krater" may be among the most prominent ones. The krater derives its name from the painter Euphronios who decorated it after it was made by the potter Euxitheos in Athens ca. 515 BC. Found in excellent condition and looted from an Etruscan tomb in Cerveteri in Etruria in late 1971, this spectacular find was smuggled into Switzerland by Giacomo Medici. There are reasonable grounds to believe that while it may have been sensationally found in one piece, it was broken into fragments—deliberately and carefully (none of the fractures crossed any of the faces of the figures painted on the krater)—to make the smuggling out of Italy easier. Medici sold the krater to Robert E. Hecht, an American antiquities dealer who had it restored in Zurich. Hecht, claiming to act as an agent of the krater's real owner, Lebanese collector and dealer Dikran Sarrafian, later sold it to the Metropolitan Museum of Art in New York in 1972 attaching a false provenance taken from another, previously found Euphronios Krater that had been acquired by Sarrafian's father in 1920 in London (Watson & Todeschini, 2006: pp. ix–xiv).

Although almost immediately doubts as to the legitimacy of the origin of the Euphronios Krater acquired by the Metropolitan Museum were raised, the documents corroborating the provenance of the krater appeared to be solid enough to withstand those allegations. It was not until the early 2000s that Italian investigations against Medici and Hecht for illegal antiquities trade led to a raid of Hecht's apartment in Paris, where a handwritten memoir was found that confirmed the

laundering scheme: That he bought the vase from Medici after it had been illegally excavated in 1971 and that he provided the vase with a false provenance to sell it to the Metropolitan Museum (Brodie, 2012).

Following the trial against Medici and Hecht, the Metropolitan Museum and the Italian Government reached an agreement about the return of some 20 objects including the Euphronios Krater to Italy, in exchange for long-term loans of other comparable objects (Povoledo, 2008). Like the expected return of the Fragment of Myron's Samian Athena, the repatriation of the Euphronios Krater marks an important event in the endeavour to counter offences against antiquities—antiquities laundering being one of them. It is, however, mainly of symbolic value as in countless other instances proof of the illicit origin (and hence, laundering) of the antiquities in question is not reached and even where it is—as in the case of the Victorious Youth by Lysippos that is still at the J. Paul Getty Museum in Malibu (Lapin, 2018)—they are not always returned.

Countering antiquities laundering to protect cultural heritage

Antiquities laundering is a phenomenon that cannot be left out from criminal policy reflections on how to contribute to the effective protection of antiquities and of cultural heritage in general. Antiquities laundering allows looted antiquities to meet the market demand presenting them as seemingly legal goods. The prospect of financial gain represented by the demand and made obtainable by the laundering incentivises offences such as the looting, pillaging, and theft of antiquities (Kretschmer, 2016: p. 309).

The endeavour to counter antiquities laundering reflects a so-called "market reduction approach" by which crimes against antiquities are tackled primarily by intervening in the antiquities market in an attempt to make it a less attractive destination for proceeds of crime (Mackenzie, 2011: pp. 81, 83). Focusing on the market-end of the laundering trail is, moreover, necessary given that antiquities protection at source alone is not enough (Bull, 2009: p. 36). Beside the concrete difficulties that law enforcement encounters when trying to fight widespread activities like antiquities looting, it must be considered that a large part of illegal antiquities that float into the market originate from countries where the social, political, and economic situation suggests that policing and other resources are tight and the protection of antiquities, especially in rural sites, might not be an immediate priority (Yates, 2014: p. 446). Even in source countries with stronger economies and a stable political structure that enables them to establish a special police force to enforce cultural heritage protection laws, as for example in Italy, the extensive protection system will be unable to ensure adequate cultural heritage protection, as long as the demand for antiquities even of dubious origin remains high (Alder & Polk, 2002: pp. 43–44, 52–53). Thus, while it is important to continue countering predicate offences against cultural heritage at the source, the focus of a realistic criminal policy should lie on reducing indiscriminate demand for antiquities (Thompson, 2014: p. 389).

More accountability in the antiquities market

The antiquities market is often defined as a grey market (Pryor, 2016: p. 20) in which legal and illegal goods intermingle and flow through the same channels (Brodie, 2006: p. 53). This intermixing of elements is facilitated by the fact that the antiquities market is generally considered to be only loosely regulated, or even to be "the last unregulated market" (Shea, 2018: p. 695). Until recently, the absence of standard recordkeeping practices in this sector has nurtured the traditional culture of secrecy and confidentiality around the transmission of provenance details during a sale and purchase (Tsirogiannis, 2016: pp. 220–221). The sales of the Euphronios Krater and of the Fragment of Myron's Samian Athena show how transactions on the basis of an incomplete or false provenance were common practice, enabled by such light regulations and by a certain degree of indifference and acceptance that antiquities without (proper) provenance can normally be sold (Bull, 2009: pp. 30, 36).

In an interlinked global market that has become increasingly fluid and intangible (it suffices to think of online platforms as trading places for antiquities), the lack of consistent regulation, oversight, and a common approach to due diligence has facilitated laundering operations through legal actors such as antiquities dealers, galleries, and auction houses and the funnelling of illegal items to the final buyer, sometimes even without antiquities market actors being fully aware of their tainted nature (Tijhuis, 2006: pp. 197–198). Against this backdrop, regulation of the antiquities market, introducing stricter rules on transparency, recordkeeping, and customer due diligence duties and an obligation to assess and verify laundering risks is necessary to prevent antiquities laundering activities. Where antiquities laundering is nonetheless committed, an obligation for antiquities market actors to make the necessary background checks allows the attitude of turning a blind eye and allegations of ignorance as to the illicit origin of the antiquities in question to be disregarded. This facilitates the assessment of the mental element of the laundering offence and, overall, a more effective application of money laundering statutes in respect of antiquities laundering operations. Over the past few years, lawmakers on both sides of the Atlantic have adopted legal instruments extending anti-money laundering (AML) and counter-terrorist financing (CTF) regulations to the antiquities market.

Antiquities market regulation in the European Union

In May 2018, Directive (EU) 2018/843, the EU's Fifth Anti-Money Laundering Directive (Fifth AML Directive), extended AML and CTF rules to persons trading or acting as intermediaries in the trade, among others, in antiquities, including when this is carried out by galleries, auction houses, and free ports (Article 1 para. 1(c) *Directive (EU) 2018/843*, 2018). Member States had to implement the new provisions by January 10, 2020 (Article 4 *Directive (EU) 2018/843*, 2018). The specific mention of free ports picks up on concerns according to which the privacy provided by such premises may be misused for criminal purposes related

to the illicit antiquities trade or, more specifically, to activities resulting in the laundering of illegally sourced antiquities, such as the above-described "justification" measures from the restoration of damaged antiquities, to multiple uncontrolled ownership transfers, to the fabrication of invoices and of a provenance altogether (Report from the Commission, 2019: pp. 5–6).

Whenever transactions have a value of 10,000 EUR or more, persons and entities trading in antiquities are now obliged to conduct a risk assessment regarding money laundering and terrorist financing. Thereby, they must take into account factors relating to their customers, countries or their geographic areas, products, services, transactions, or delivery channels (Article 8 para. 1 *Consolidated Version Fourth and Fifth AML Directives*, 2018). This risk assessment, which must be documented, kept up-to-date, and made available to the competent authorities and self-regulatory bodies (Article 8 para. 2 *Consolidated Version Fourth and Fifth AML Directives*, 2018), is the basis for internal policies, controls, and procedures to prevent the identified risks (Article 8 para. 3 *Consolidated Version Fourth and Fifth AML Directives*, 2018).

The EU lawmakers recognised the sensitivity of the antiquities trade and raised a red flag in light of a potentially higher risk of money laundering or terrorist financing for the trade in products such as cultural artefacts and other items of archaeological, historical, cultural, and religious importance, or of rare scientific value—a higher risk that requires enhanced customer due diligence (Article 18 para. 3 and Annex III *Consolidated Version Fourth and Fifth AML Directives*, 2018). Enhanced customer due diligence to manage and mitigate higher money laundering and terrorist financing risks imposes particular thoroughness in the identification of the customer as well as of the beneficial owner and in the verification of their identity and of the intended nature of the business relationship (Articles 13 and 18 *Consolidated Version Fourth and Fifth AML Directives*, 2018). Customer due diligence applies not only to new customers, but also to existing ones whenever necessary considering changes in the relevant circumstances of the customer (Article 14 para. 5 *Consolidated Version Fourth and Fifth AML Directives*, 2018).

Moreover, antiquities market actors must respect these obligations with regard to all persons with whom they engage in a business relationship, including both vendors and final purchasers (Heckel et al., 2019: p. 218). Obliged entities must keep documents of these identity checks and records of business transactions for at least five years after the end of the business relationship or after the date of an occasional transaction (Article 40 para. 1a-b *Consolidated Version Fourth and Fifth AML Directives*, 2018).

Where antiquities dealers and other obliged entities are not able to fulfil the required compliance measures, the new rules require them to refuse to carry out the transaction and to terminate the business relationship (Article 14 para. 4 and Article 35 para. 1 *Consolidated Version Fourth and Fifth AML Directives*, 2018). Moreover, if antiquities dealers and other professionals included under the provisions of the Fifth AML Directive have grounds to believe that money laundering or terrorism financing has been committed, they must file a suspicious transaction

report to the national Financial Intelligence Unit (Article 14 para. 4 and Article 33 para. 1 *Consolidated Version Fourth and Fifth AML Directives*, 2018).

Antiquities market regulation in the United States

On January 1, 2021, the United States Senate overrode President Trump's veto, and enacted a bill that includes a new law bringing also the antiquities market within the scope of application of the Bank Secrecy Act (*BSA*, 1970): Section 6110(a) Anti-Money Laundering Act of 2020 (*AMLA of 2020*, 2021), passed as part of the National Defense Authorization Act for Fiscal Year 2021, includes persons "engaged in the trade of antiquities" in the notion of "financial institutions" and thereby extends compliance obligations as set out in the BSA also to antiquities dealers (Kinsella, 2021). The Financial Crimes Enforcement Network (FinCEN), which is part of the United States Department of the Treasury and whose mission includes countering financial crimes such as international money laundering and terrorist financing, is required to propose rules to implement Section 6110(a) of the AMLA of 2020 before the end of the year, thereby clarifying the exact scope of the rulemaking and of possible exemptions thereto.

On September 23, 2021, FinCEN launched a regulatory process for the new antiquities regulations issuing an Advance Notice of Proposed Rulemaking (ANPRM). Thereby, FinCEN encouraged members of the antiquities industry, law enforcement, civil society groups, and the broader public to submit, by October 25, 2021, written comments on possible rules implementing Section 6110(a) of the AMLA of 2020. These comments will assist FinCEN in developing the rules in question.

Once implemented, the new rules are likely to apply to antiquities dealers and intermediaries such as advisors or consultants and to subject these persons to obligations that are similar to those introduced by the Fifth AML Directive for their EU counterparts. In its Notice of March 9, 2021, FinCEN acknowledges that crimes relating to antiquities may include looting or theft, the illicit excavation of archaeological items, smuggling, the sale of stolen objects, and money laundering - activities that have also been linked to transnational criminal networks and international terrorism (Financial Crimes Enforcement Network, 2021: pp. 1–2). Mindful of these indications, obliged entities will have to conduct money laundering risk assessments to evaluate their vulnerabilities and perform customer due diligence including identification and registration of the "ultimate beneficial owner" (Hagel, 2021).

Where they suspect that their business has encountered illicit activities related to antiquities, they will have to file Suspicious Activity Reports that shall include any available details that could be useful for the identification of the objects of the suspicious transaction: Specific description of antiquities, possibly including photographs; other transactions possibly involving tainted antiquities; the persons participating in the transaction, like purchasers, sellers, intermediaries, agents, and any beneficial owner of involved entities (Financial Crimes Enforcement Network, 2021: p. 2).

Market regulation and antiquities laundering

Neither the EU nor the US lawmakers conceived the extension of AML and CTF rules to the antiquities market as a tool to counter antiquities laundering. In both cases the concerns that led to the enactment of a stricter regulation of this market can be linked to two separately considered criminal phenomena: First, money laundering through antiquities which is the laundering of ill-gotten gains, e.g. "dirty" money from a drug deal, through the purchase of antiquities (that may themselves even be perfectly legal goods) and, second, terrorist financing through antiquities trafficking (Sun, 2021). This latter phenomenon is increasingly recognised as one of the income sources of terrorist groups, through which operations are funded, recruits supported, and weapons acquired (Campbell, 2013: p. 130). Although the exact volume of this revenue is unclear and was until recently harshly debated due to the lack of reliable evidence (Brodie et al., 2019: pp. 112–115), it is today commonly recognised that the systematic looting of archaeological sites, illicit trafficking, and sale of these antiquities in the official antiquities market, is a possible source of financing for terrorist groups (United Nations Office on Drugs and Crime, 2016).

However, as explained at the outset of this chapter, although often overlooked and not directly addressed by existing national and supranational legislation, antiquities laundering occurs every single time illegally sourced antiquities enter the legal antiquities market and are sold as seemingly legal goods. This applies to cases of antiquities trafficking for the purposes of terrorist financing and, beyond that, also to cases like those of the Euphronios Krater and the Fragment of Myron's Samian Athena, in which the illegal trade in antiquities and their laundering aim at unlawful gain by criminal organisations or even individuals. As the compliance obligations introduced by the Fifth AML Directive and by the AMLA of 2020 are intended to ensure more transparency, less anonymity, and a recorded trail of transactions in the antiquities market, they are equally useful for countering antiquities laundering. They have the prerequisites not only to prevent such offences, but also to contribute to a more effective application of the nationally enacted money laundering statutes.

That being said, the two legal instruments in question do not seem to refer to specific duties to inspect an antiquity's provenance beyond the identity of the seller and, where applicable, of the beneficial owner of the selling entity. Similarly, antiquities whose provenance contains generic references such as "from the collection of a Swiss gentleman" are not specifically red-flagged as items of potentially illegal origin. The newly introduced due diligence duties should however guarantee that for the future ownership histories can—and must—be precise and that such generic indications are not admissible anymore. Practice will show if these customer due diligence and recordkeeping obligations suffice to ensure the effective prevention of antiquities laundering or if additional rules in this field will be necessary to guarantee a compliance framework that considers the specific dynamic and risks of this offence.

Why criticism of yet another extension of AML provisions is ill-founded this time

The extension of AML and CTF regulation to the antiquities market has attracted criticism both in Europe and in the United States. This criticism is mainly based on two arguments. First, given that the business relationships usually entertained in the antiquities market are based on trust, discretion and confidentiality, AML and CTF regulations conceived for financial markets are not suited for this market (Small, 2021). Moreover, money laundering in the antiquities market is not considered to be proven prevalent enough to justify this regulatory intervention that, especially for smaller businesses, represents a considerable burden (Fitz Gibbon, 2021).

Second, critical voices doubt that stricter market regulation will effectively contribute to reducing the money laundering phenomenon, suggesting that rather than preventing unlawful behaviour, regulation will merely cause money laundering activities to migrate to other, less regulated types of market (Alldridge, 2008: p. 459) or to antiquities markets in more permissive jurisdictions (Pryor, 2016: p. 145)—possibly also taking a good part of legitimate business along (Fitz Gibbon, 2020).

This chapter argues that both these arguments are ill-founded, as they do not consider the extent to which antiquities laundering is being committed, how it makes offences that affect peoples' fundamental rights profitable, and how these new rules have the potential to effectively limit the criminal phenomenon in question.

The values at stake: Not money but history and identity

Upon careful consideration of the dynamic of business relationships established in the antiquities market, laundering operations cannot be considered a rare or marginal phenomenon. Wherever millions of dollars are paid for one single item—the Euphronios Krater sold for over one million dollars being again an ideal example—there is an inherent money laundering risk which makes the lack of an adequate kind of oversight and regulation for such transactions appear irresponsible, regardless of the available evidence of money laundering. Moreover, the criticism in question seems to overlook that beyond "traditional" forms of money laundering, i.e. investment of "dirty" money in antiquities, the antiquities market is fraught with another problem: Antiquities laundering, proof of which is consistently found in galleries and antiques shops that offer looted antiquities for sale as seemingly legal goods (Mackenzie, 2005: pp. 253–255).

Action to limit this type of offence is needed since whenever looted, stolen, and trafficked antiquities are laundered into the official antiquities market, it is not only material damage that occurs. Antiquities have a dichotomous nature that comprises both a "property aspect" to which corresponds a monetary value and a "cultural aspect" relating to an immaterial value that antiquities have as an expression of peoples' cultural heritage (Mastalir, 1992: p. 1037). This cultural aspect

consists of the significance of antiquities for a group or nation. This significance is shaped by the context, which is the "primary existence, total existence" of these objects (Coggins, 2001: p. 323) and consists of their original location amidst other antiquities and near the people affiliated with them (Brodie, 2006: p. 52). As antiquities and their setting reflect peoples' collective history and are an anchor for their culture, their sense of community, and their identity, any disturbance of this link can be seen as violation of people's fundamental right to freely engage with cultural heritage, a cultural right that is essential to human dignity (Ziegler, 2007: pp. 1–2). Beyond that, only the preservation of antiquities in their context allows for scientific analysis by archaeologists and historians that helps in acquiring information and knowledge on specific chapters of the history of mankind—an interest that transcends the group of people that identify with the antiquities in question and is relevant for virtually everybody (Yates, 2015b: p. 73).

Antiquities and their setting represent a fragile and irreplaceable whole in need of adequate protection. Considering the immense value that this whole represents for the understanding of human history, for the sense of community and identity of a society, and in light of the constant threat represented by uncontrolled market demand, an extension of AML and CTF regulations to the antiquities market is not only entirely appropriate, but arguably even more necessary here than in other markets. Given the values at stake and that both the European and the American lawmakers have introduced compliance obligations that may vary in accordance with the nature and size of obliged businesses (Section 6110(b)(2) *AMLA of 2020*, 2021; Article 8 para. 1 *Consolidated Version Fourth and Fifth AML Directives*, 2018), it seems reasonable to assume that smaller businesses have less exposure and therefore less stringent standards to observe. This makes it difficult to argue that the new rules represent an unjustified burden even for smaller businesses.

Antiquities laundering is not flexible enough for displacement

This chapter further argues that the displacement argument is not convincing where it suggests that illegal activities might migrate to a different market or where it indicates a risk for their mere geographical displacement towards more liberal jurisdictions. While recognising that stricter antiquities market regulation might result in a partial relocation of laundering activities to other markets, a distinction must be made between traditional forms of money laundering in the antiquities market and antiquities laundering operations in their relation to their predicate offences.

Criminal activities that aim to launder dirty money tend, indeed, to shift from one financial or economic area to another according to the degree of control and the risk of detection (FATF, 2006b: p. 1). It is likely that antiquities market regulation will result in the migration of "traditional" money laundering activities like those intending to cleanse money deriving from corruption or illicit drug trafficking towards less regulated markets. Antiquities laundering, on the other hand, is not as versatile. It is linked to a specific range of predicate offences and to a specific market, since antiquities can only be laundered in the antiquities market.

Hence, this form of laundering lacks the flexibility that characterises "traditional" money laundering operations.

As a displacement of this kind of criminal activity towards other types of market is not to be expected, the extension of compliance obligations to the antiquities market will impose more selectivity in the demand for antiquities, which is likely overall to reduce chances and opportunities to launder illicitly sourced objects of this kind. By impacting the market demand, AML and CTF rules making antiquities laundering riskier and more difficult are moreover likely to adversely impact antiquities looting, theft, and trafficking operations. Finally, while the geographical displacement of antiquities laundering activities cannot be excluded (Pryor, 2016: p. 145), this does not appear to be a valid argument against stricter antiquities market regulation. Rather, this observation indicates how crucial a common effort for a global response to this truly global issue of antiquities laundering is (Charney, 2016: p. 106).

Concluding remarks

This contribution has highlighted antiquities laundering as a hinge between offences against cultural heritage, on the one hand, and the antiquities market, on the other. While the fight against these offences must be pursued throughout source and market regions, it is action on this very hinge that promises to be most effective to protect cultural heritage and the fundamental rights to which it is connected. According to the market reduction approach, incentives to commit offences, such as antiquities looting, are reduced when chances for successful antiquities laundering decrease. Antiquities laundering becomes more difficult and is increasingly disturbed the more market dynamics are made transparent. The failure of attempts to provide effective self-regulation of the antiquities market has highlighted the importance of an intervention by national and supranational lawmakers.

Both the United States and the European Union have responded to this need by extending anti-money laundering and counter-terrorism financing rules to the antiquities market. This choice has encountered criticism doubting the usefulness of the new regulation and suggesting a disproportionate intervention that, while not contributing to the solution of the antiquities laundering issue, is likely to damage through its burdensome impositions also those parts of the local art market that are actually sound. This paper has shown that the new regulations have a better chance of succeeding than a first look would suggest, and that while some fine-tuning might be needed in the future, stricter regulation of the antiquities market and more transparency are an important step for more effective action against antiquities laundering and for cultural heritage protection overall.

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