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Practitioner's insight

Certificates of Exportation of Cultural Property and Foreign Acceptance of Their Value

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Abstract: There are three aspects to consider when analysing cultural property crime: (i) illegal exportation of a cultural good is a crime recognised in most legal systems; (ii) the division of countries into importers and exporters of cultural goods is no longer satisfactory; and (iii) countries cannot fight alone the trafficking of cultural items and should be working towards collaborative projects. This contribution investigates these three core aspects with a special focus on the involvement of organised crime groups in the illegal acquisitions and exportation of cultural goods and related money laundering activities.

Keywords: Hard/soft norms – organised crime – money laundering – policing – certificate of export/import

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Introduction

The offence of illegal exportation of a cultural good is a crime common to almost all the legal systems, since almost all States wish to protect their cultural heritage, even if sometimes they fail to protect that of other States. Various jurisdictions have created regional areas of protection (such as the Commonwealth and the EU). While this can be traced back to historic and political reasons, the increasing presence of transnational criminals exploiting the so-called "safe haven" countries makes this system quite inefficient. As a consequence, it becomes very difficult to counter trafficking in artefacts and cultural goods and control this criminality.

The division of countries into "importers" and "exporters" of cultural goods is no longer satisfactory from both a theoretical and an empirical perspective. Cultural goods are now considered universal values that belong to all of humankind. Their de-contextualisation damages everyone and not just the country of origin.

The international normative system

International instruments that consider cultural heritage protection via export controls can be classified into "hard law" instruments (such as the UNESCO Conventions) and "soft norms"—i.e., provisions that are neither strictly binding in nature nor completely lacking legal significance (such as the UNESCO Recommendations, UN Resolutions, and the Guidelines that will be considered in this contribution). The international legal system is built thanks to the interplay of these different tools, regardless of their nature. This means that, sometimes, soft law and hard law are intertwined and together may prove difficult to draw out clear-cutting distinctions between the two norms. Soft law instruments cannot give a right to a claim. They have, however, a practical effect due to their power of persuasion.

Many times, soft norms are forerunners of multilateral treaties. Other times, the principles upheld by soft norms become the rules of customary international law. With regard to this, the adoption of a soft law instrument is often the first step towards the establishment of a binding legal regime. Furthermore, available evidence shows that soft laws may influence domestic jurisprudence and legislation, with the consequence that non-binding standards are transformed into binding prescriptions. In fact, soft norms are to be appreciated mostly during the interpretative phase.

Hard law

Many international normative tools are focused on cultural goods exportation. Article 6 of the 1970 UNESCO Convention is the fundamental provision requiring that "the States Parties to this Convention undertake:

(i) to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorised. The certificate should accompany all items of cultural property exported in accordance with the regulations;
(ii) to prohibit the exportation of cultural property from their territory unless accompanied by the above mentioned export certificate;
(iii) to publicise this prohibition by appropriate means, particularly among persons likely to export or import cultural property".

For the 1970 UNESCO Convention, the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property. It requires the controlled movement of cultural property. The protective system should be based on:

(i) Laws and regulations designed and enacted to secure the prevention of the illicit import, export and transfer of ownership of important cultural property. The import/export operations effected contrary to the provisions adopted under the Convention should be considered illicit;
(ii) National inventory of protected property that should list important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
(iii) The recognition of each State right to classify and declare certain cultural properties as inalienable. They should *ipso facto* not be exported;
(iv) National services for the protection of the cultural heritage to ensure protection of cultural property against illicit import/export operations;
(v) The prohibition of exportation of cultural properties from their territory, unless accompanied by export certificates;
(vi) The advertising of this prohibition by appropriate means, particularly among persons likely to export/import cultural property;
(vii) A ban for museums and similar institutions within their territories from acquiring cultural property that has been illegally exported;
(viii) A duty to inform the State of origin of an offer of cultural property illegally removed from that State;
(ix) The prohibition of importation of cultural property stolen from a museum or a religious or secular public monument or similar institution, provided that such property is documented as appertaining to the inventory of that institution;
(x) Appropriate steps to recover and return cultural property imported, facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
(xi) The imposition of penalties/administrative sanctions on any person responsible for infringing some of the above mentioned prohibitions;

(xii) Concerted international efforts, including emergency import agreements and bans to be adopted when the cultural heritage of a State Party is in jeopardy from pillage of archaeological or ethnological materials;

(xiii) The restriction by education, information and vigilance of movement of cultural property illegally removed from any State representative. Antique dealers should be obliged to inform purchasers of cultural property of export prohibitions;

(xiv) Awareness in the public of the threat to cultural heritage created by illicit exports;

(xv) Ruling as illicit the export of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power;

(xvi) The prevention of transfers of cultural property ownership likely to promote illicit import/export of such property.

Unluckily, this sort of preventive cooperation has been until today rarely initiated. It would lead to continual vigilance by the authorities of those countries that have ratified one of the many conventions in this sector, since, albeit not expressly, these conventions ultimately impose the obligation of coming forward with spontaneous information, without necessarily waiting for input from the investigative authorities of another country. The exportation country would have more information at its disposal and, what is more, the market of artistic goods would come under the required scrutiny in foreign territories. Clandestine trafficking would be discouraged and honest dealers would be rewarded and no longer exposed to unfair competition or to actions of vindication by previous private owners. If preventative cooperation were to begin, many situations, prejudicial to the cultural patrimony, would disappear. At the same time it shall contribute to limit those areas of privilege (such as free ports, auction houses, etc.) that represent places in which trading in artefacts of illicit provenance usually flourishes.

Export/import certificates are considered of the utmost importance also by the 1995 UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, whose Article 6 states the following:

> In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State.

Regional normative tools also require export/import certificates, as it happens in the EU[1] and in the Central American Integration System[2]. Member States of these two regional organizations are obliged to cooperate in order to prohibit the importation of cultural goods into their territories, the State of origin of which has not granted an export certificate. The Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property[3] contains similar provisions (Article 2).

Soft Law

The United Nations Economic and Social Council (ECOSOC) has upheld many of the above-mentioned tools. In 2009, this Council, thanks to a group of experts, created a set of recommendations for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property. These recommendations are call on Member States to better regulate "the export of cultural objects". Member States are also encouraged to promptly report "when feasible and preferably to the International Criminal Police Organization (INTERPOL) information on losses of cultural property, using, as appropriate, the Object-ID international standard to facilitate prompt circulation of information in case of crime"[4]. These ECOSOC recommendations are at the basis of the International Guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences, as approved by the United Nations Commission on Crime Prevention and Criminal Justice (23rd Session, Vienna, 12-16 May 2014; hereinafter IGs). In particular, Guideline 9 requires that "States should consider, in accordance with the relevant international instruments, introducing and implementing appropriate import and export control procedures, such as certificates for export and import of cultural property".

Many other soft norms are concerned with the illicit exportation of cultural goods. The Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, adopted on 19 November 1964 by the General Conference of UNESCO should be mentioned. This Recommendation states:

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1 See, EC Regulation 3911/92 and the Directive 93/7/EC, as amended. See also the European Convention on Offences relating to Cultural Property, Delphi, 23.04.1985 (in particular, Appendix III) and the "Final Report and Recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections" by the OMC Expert Working Group on the mobility of collections, of June 2010 (in particular, Recommendations 25, 28, and 36).

2 See, for example, the Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations, of June 1976; the Central American Convention for the Restitution and Return of Archaeological, Historical and Art Objects, of August 1995; and the Central American Convention for the Protection of Cultural Heritage, of August 1995.

3 As approved by the United Nations 8th Congress on crime and criminal justice, held in 1990.

4 Report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 24 to 26 November 2009, United Nations Office on Drugs and Crime (UNODC/CCPCJ/EG.1/2009/2).

> It is incumbent upon every State to protect the cultural property existing within its territory and which constitutes its national heritage against the dangers resulting from illicit export, import and transfer of ownership [...] It is essential for every Member State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations [...] steps should be taken to encourage the adoption of appropriate measures and to improve the climate of international solidarity without which the objectives in view would not be attained". In this respect, whenever "necessary or desirable, Member States should conclude bilateral or multilateral agreements, within the framework of regional intergovernmental organisations for instance, to resolve problems flowing from the export, import or transfer of ownership of cultural property, and more especially in order to secure the restitution of cultural property illicitly exported from the territory of a party to the agreements and located in the territory of another. Such agreements might, where appropriate, be comprised within agreements of wider scope, such as cultural agreements[5].

The UNESCO Recommendation on the International Exchange of Cultural Property, adopted on 26 November 1976, should also be recalled. It considers a specific remedy for preventing illegal exportation. According to this Recommendation,

> the circulation of cultural property, when regulated by legal, scientific and technical conditions calculated to prevent illicit trading in and damage to such property, is a powerful means of promoting mutual understanding and appreciation among nations.

The United Nations General Assembly has adopted many Resolutions on the "Return and Restitution of Cultural Property"[6]. In particular, the UN Resolution number 66/180, adopted on 19 December 2011, observes "that cultural property is increasingly being sold through markets, including in auctions, in particular over the Internet, and that such property is being unlawfully excavated and illicitly exported or imported, with the facilitation of modern and sophisticated technologies". To fight against these criminal phenomena, the UN General Assembly calls upon Member States to criminalise

> [...] activities related to all forms and aspects of trafficking in cultural property and related offences by using a broad definition that can be applied to all stolen, looted, unlawfully excavated and illicitly exported or imported cultural property, and invites them to make trafficking in cultural property, including stealing and looting at archaeological and other cultural sites, a serious crime, as defined in article 2 of the United Nations Convention against Transnational Organised Crime, with a view to fully utilising that Convention.

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5 This UNESCO 1964 Recommendation is at the basis of the UNESCO 1970 Convention.

6 Obviously, General Assembly resolutions are not binding norms. However, when adopted without opposition, these resolutions are considered evidence of customary international law or of general principles of law.

Member States should also:

> [...] take all appropriate steps and effective measures to strengthen legislative and administrative measures aimed at countering trade in stolen, looted and illicitly exported or imported cultural property, including appropriate domestic measures to maximize the transparency of activities of traders in cultural property in the market, in particular through effective regulations and supervision of dealers in antiquities, intermediaries and similar institutions.

The need for international cooperation and mutual recognition

Countries cannot fight alone the trafficking of cultural items. There is no solution in a country imposing limits or prohibitions if other countries are not cooperating, as unscrupulous dealers will simply change market and location. A multi-national cooperative effort should be realised. In fact, cultural goods from countries with stringent export regime are often illicitly imported in those with a more liberal regime, from where it is very easy to obtain the required licenses, being in force few and formal checks. Sometimes, the licensing system has also been abused. For instance, importers in the UK have recently submitted imported antiquities for Waverley judgments[7], which requires special checks for cultural goods of certain monetary thresholds, located in the UK for 50 years or more. Under Waverley criteria, licence application for an item is referred by the Export Licensing Unit to an expert adviser who assesses whether the item in question is of national importance. This Waverley judgements has more severe and time consuming controls. In those cases, criminal wanted, however, to acquire a false provenance, locating cultural items in Britain for more than 50 years, thus hiding a recent illegal acquisition.

Whereas patrimony laws are universally recognised, foreign export rules are not always enforced. The victim of a theft is protected worldwide. On the contrary, States are often reluctant to enforce the export regulation of another State. Many times, jurisprudence has been inclined to uphold that domestic courts do not apply foreign public laws—including those prohibiting the exportation of cultural properties—based on the principle of equality between sovereign States. This state of affairs should change.

The provisions of the UNESCO Convention and of the other soft norms enacted to protect cultural properties should be always abided in order to prevent the impoverishment of cultural heritage consequent to illegal exportation operations. In this way, however, they offer only a "static" protection, limited to cultural items as far as they are discovered or excavated, and when they are of outstanding importance. No "dynamic" safeguard—one considering the context of cultural goods and its scientific value—is envisaged. The following aspect should be considered and this could

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[7] So named after the Viscount Waverley, chairman of a 1950 Committee that was appointed to consider and advice on English export policies of cultural goods.

contribute to curbing the illicit trafficking: the international community has assured a twofold instrument of protection and consideration for the international public order currently well established in the cultural sector. Firstly, there are the UNESCO Conventions and all the other specific treaties, which bind the Member States and force them to take into account the cultural heritage of other nations, even if only exportation laws are infringed. Second, there are treaties in force on judicial assistance whose target is very important too. Indeed, cultural goods are to be protected not only because of their universal value but also because they are an object of criminal concern.

It is fundamental that export laws of one nation can be enforced in the courts of another country. There should be worldwide recognition of foreign exportation laws and/or the direct criminalisation of the illegal export/import operations, as it is notorious that cultural good are frequently exported abroad. These illegal operations should be sanctioned everywhere as their criminalisation might ease inquires on material illicitly traded. In fact, it is often impossible, especially for developing States and for occupied territories in the event of armed conflict, to fully police their borders and prevent the exit of cultural goods. In addition, several illicit conducts (such as clandestine excavations) may be difficult to prove. On the contrary, evidence of illegal operations of import/export may be easily collected. Therefore, it would be very constructive if the importation of a cultural good not covered by an export certificate or licence of the State of origin could be seriously punished as a concrete infringement of that public international order well settled in the cultural sector. As a consequence, the transactions of cultural goods illegally exported or imported should be considered null and void.

These principles are upheld by the 1970 Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties (hereinafter OGs). They were adopted by consensus on 18 May 2015 by the Meeting of States Parties to the 1970 Convention.

In particular, Guideline 58 states: "State Parties should prohibit the entering into their territory of cultural property, to which the Convention applies, that are not accompanied by such export certificate". The absence of "the export certificate should make illicit the import of that cultural property into another State Party, as the cultural property has not been exported legally from the country affected" (see also Guidelines 57, 64, and 89).

Organised crime and laundering operations through import/export

Organised crime groups are frequently involved in cultural goods' trafficking. This trading is highly specialised and in need of different abilities and expertise. Tomb robbers or thieves, intermediaries, shippers and drivers, customs officials, dealers, experts, restores and action's house employees, and other specialisations are often

involved in the illicit trafficking. These criminals work together. They divide tasks and operate in a transnational context through flexible networks rather than traditional hierarchical structures. Whether in a net or in a pyramidal approach, trans-national organised crime is an increasingly articulated phenomenon. It evolves from illegal acquisitions of cultural goods, to their illicit exportations from the country of origin, to their expertise in order to raise the price, and to laundering activities in order to give to the items a licit provenance. Through these operations, cultural goods fetch back an inflated evaluation that in turn fuels other looting activities.

On occasion, people and companies facilitate criminal organised groups because they undertake laundering activities. Laundering should occur not only in the light of monetary circumstances. It occurs also when the nature and/or the provenance of a cultural object of illicit acquisition are altered. Let me explain this. Many of the triangulations by which cultural goods are physically transferred abroad (exclusively for hiding their true provenance), should be re-examined and condemned in view of the issue under discussion. That is laundering. Such triangulations are carried out to hide the illegal provenance and relocation of the artistic object in a foreign territory, especially in those markets that offer the highest profits[8]. Cultural goods are often exported to those countries that, for example, have not ratified the UNESCO Conventions. These countries are chosen precisely because, from that location, the goods can be transported and resurface in States that instead have ratified the above-mentioned Conventions, with the obvious advantage that the cultural goods would not be subjected to controls or laws limitations in force in case of import-export between two countries which have both signed these agreements[9].

Cultural goods from countries with stringent export regime are often illicitly imported in those with a more liberal regime, from where it is very easy to obtain the required licenses, with few formal checks in place. Different penalties and administrative measures of protection can lead to "forum shopping" among criminals. They choose those States that do not consider trafficking in cultural property as a top priority. Cultural goods are also illicitly exported to another country that is less interested in such items because of their different cultural significance. In the importer country, those cultural goods often do not satisfy the artistic criteria as prescribed by its department of national heritage. The export-licensing unit will not object to the granting of a license, which would not be granted by the country of provenance. All the licenses so

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8 Customary routes for Italian cultural goods were Italy-Switzerland, Switzerland-London and London-U.S.-Russia-Japan-Australia.

9 The "red flag" theory discussed in the Michael H. Steinardt's case, before the U.S. Federal District Court for the Southern District of New York (see, the decision of the United States v. An Antique Platter of Gold 991 F. Supp. 222 of November 11, 1997). In this decision, the U.S Authorities asserted that importers of Italian artworks into the United States frequently misrepresent the country of origin on a customs entry form to be Switzerland, because it is generally understood that Italy has more stringent laws prohibiting export of artistic and archaeological property than does Switzerland. Switzerland at that time was not part to the UNESCO 1970 Convention.

obtained are used to bolster the provenance of cultural items that criminals know well to be of illegitimate exportation.

Government departments concerned with export licenses or even tax concessions should check the provenance of cultural goods that are submitted to them. They should inform the country of origin whenever appropriate. This does not occur as standard practice as should internationally be implemented. In this regard, States should consider, whenever appropriate, the absence of a valid export certificate for an imported cultural object as a criminal offence and as the basis for mandatory reporting of the cultural property as suspicious to the competent authorities in the State of origin (OGs n.60).

Practical issues

Models for export/import certificates

The international normative tools mentioned above aim at the realisation of a system that protects cultural goods from illegal exportation[10]. The introduction of an appropriate certificate, in which the exporting State would specify when the exportation of the cultural property in question was authorized and when it is prohibited is a basic and fundamental operative tool. It would be useful for certificates authorising the exportation and possibly the importation of cultural goods, to be as detailed and clear as possible in depicting and describing the item, its dimensions, characteristic, origin or provenance and its cultural/economic value.

Certificates of exportation should be recognised through commercial and customs agreements with nations. Photographs of the object should always accompany forms of entrance for cultural goods. Notations should be made in specific registers of the countries of export and of destination. The date of the export certificate, a description of the cultural good, and the name of the responsible officer who has issued the certificate should also be noted. This record should be at the disposal of customs officers in another country, especially when they are verifying the validity of export certificates. A copy of the full export certificate should also be sent to the foreign customs office whenever agreements are established as a form of exchange of information (OGs n.9).

Consideration should be given to using the model of export certificates or similar existing certificates as adopted in EU countries. Due to its importance in fighting trafficking, the UNESCO and the WCO have jointly developed a model export certificate. This model has been specially adapted to the growing phenomenon of cross-border movements of cultural items. It can be useful to law enforcement agencies, enabling them to check effectively against transnational, illicit dealings[11].

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[10] Please note that the UNESCO Handbook also takes export certificates into account.

[11] For categories of cultural objects at risk, ICOM has created a Red List that classifies works of art in the most vulnerable areas of the world in order to avoid their trafficking. These lists describe

An important step forward could be undertaken by States in their fight against cultural goods trafficking if they were to demand standard documentation before the acquisition of a cultural object by relevant heritage institutions and other stakeholders such as curators, collectors and dealers. The certificate of export from the country of origin and/or provenance and certificate of import into the State of destination should be established as standard documentation.

Stakeholders should consider these certificates as evidence of the legality of the circulation of the good. This documentation should be also retained for an adequate period after the cultural good's acquisition. Clearly, the appropriate body to issue or deny an export certificate should be the national heritage service. If other offices should be involved, then the national authority should be informed to avoid different discretional approaches, which encourage cunning dealers to address those offices that are less stringent in discharging their duty or less informed on the cultural value of a specific category of cultural goods[12]. At times, it will be necessary to verify the procedures for export certificate release. Customs officials are often in great difficulty when performing such checks. This is a time-consuming task that requires almost universal expertise. Howbeit, States need to take into account the necessary resources required to do this function properly.

Some States are ready to seize a cultural item suspected of being illegally exported. However, their cooperative efforts are limited due to time constraints (they have from three to six months), after which the foreign legal system considers the delay an undue interference with the affairs of their citizens. Therefore, it is imperative to reply quickly to any enquiry as this will legitimise import/export operations. In this regard, national heritage services should publicize their export control list for cultural goods and communicate it to other States in order to enhance their cooperation[13].

Special attention should also be given to official inventories produced through "types of cultural objects [...] categorized by region and epoch or any other suitable [...] reference", whose lists "should be made readily available for the customs authorities of other States Parties and other relevant authorities and entities", as it is suggested by Guidelines 20, 34, 35, 37, 63 and 108 of the OGs. In brief, these OGs suggest applying the ICOM Red Lists protective initiatives. These inventories realized through "types of cultural objects" can be useful in case the national legislation, prohibiting import of illegally exported cultural objects of foreign States, requires that

types and categories of objects under special protection. Red Lists should assist customs, dealers, curators of museums and other stakeholders to identify cultural items of probable illicit origin. Unless the objects in red list have an exportation certificate by the origin country, buyers should refrain from any purchase. Customs officials and other competent authorities should fully investigate the provenance and take ad interim measures with regard to items in red list of suspect origin.

12 Criminals try also to deceive the officials of the export-licensing unit. Investigations made by the Prosecution Office of Rome ascertained that two paintings of a famous Maestro had been covered with a yellowish patina in order to hide their artistic relevance and to obtain an export certificate.

13 In this regard, Guideline 39 of the IGs exhorts States at "cooperating in identifying, tracing, seizing and confiscating trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property". On international cooperation, see also Guideline 46.

such objects should be classified in an accessible inventory by the country of exportation[14].

Customs officers training

The training of customs personnel and the preparation of adequate economic instruments also appear to be necessary. Customs officers often lack professional training in art history and are unable to identify a cultural good. They also find themselves in great difficulty when checking time limits of artefacts and when applying foreign legislation on import-export. Especially for customs units of transit and market countries, the knowledge of foreign exportation laws of the origin country is very important and must be emphasised. Training should be focused on crimes of import/export perpetrated against the cultural patrimony. Customs officials should be trained in export controls and their specific issues. In particular, it is necessary to provide basic information on case analysis, including information on the offenders involved, modus operandi, routes, means of transport, methods of concealment used, and their links to other criminal activities and networks.

Custom officials should have frequent coordination meetings so that they well understand services' processes and have updating sessions to ensure that they will properly perform their duties concerning the identification of cultural heritage, viewing at its proper control as a major priority. It would definitely be an advantage if they have close contacts with the Ministry of Culture and with the specialized Police units (where they exist). This in order to enable more efficient performance of the myriad functions and to use continuously and with greater facility the contribution of officials and technicians of the Ministry and of the Police, whose competencies and professional capacities can immeasurably support the activities carried out. For customs personnel, it would be necessary to make prompt provision also to upgrade the normative and economic instruments. It will be advisable for them to be properly staffed.

Special attention should be given to recruiting the appropriate professional personnel. Personnel should be selected on a voluntary basis from those who have at least four or five years' experience in cross-border controls, as this skill is relevant. Factors of motivation of the individual officer to perform this specific type of work should be properly analysed. Calibrated selection interviews should be conducted. As soon as the staffing components have been formed, the individual members should participate in training activities on an on-going basis. These training activities should be targeted at:

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[14] For instance, Sections 6 and 10 of the German Act implementing the UNESCO Convention of 14 November 1970, published in Bonn on 23 May 2007, requires that cultural objects must be individually classified in an accessible inventory by the country of origin one year prior to removal. However, archaeological objects (considered a special category) can be classified in the inventory within one year of the time when the country of origin gains knowledge of the excavation.

i. Increasing their juridical and technical-professional preparation;
ii. Providing information on the variegated cultural panorama; and
iii. Illustrating the detailed background necessary for them to become properly oriented in this particular sector. It would be also important to develop online or self-directed training modules so that training would always be available to incoming officers. Emphasis should be also on follow-up after these activities occur.

In order to ensure the continuity of the staff and to guarantee that their specialisation will be effectively utilised, it would be advisable that individual personnel should be given a certain period of service in order to develop their skills It would be advisable to allow them to engage with the appropriate direct contacts and professional peers who are increasingly of great importance in facilitating their job and in overcoming possible bureaucratic obstacles, particularly at short notice. All this will facilitate controlling the import and export of cultural objects in a more effective and efficient manner.

The online market

In order to avoid forgery, the original export certificate should be recorded in a specific register of the country of export and should be sent to or at disposal of customs officers in another country, whenever they are verifying the validity of export certificates. Since 1972, Harvard University has suggested that "certification is no guarantee; if the stakes are high enough, certificates can be bought or forged, even more easily than art can be faked". A serious faker knows perfectly well that authenticity is an issue for works of art and a forged export certificate can underpin that authenticity. Therefore, a forger will consider faking licenses as well as creating works of art. It has also been ascertained that criminals import into another country a fake work of art they want to pass as genuine in the subsequent exportation process. In these cases criminals are relying on the inexperience of the people whose job it is to check, as their field of expertise is often only on national works of art.

All the licenses either forged or obtained through import-export fraudulent operations are used to bolster the authenticity and the provenance of items that criminals know well to be profit of criminal activities. The issue of fake works in the art world is a recurring problem, especially for the international market. The illicit activities in the antiquities trafficking increase the appetites not only of those who traffic in authentic works of art, but also of those criminals, who, because of the elevated demand, produce ever-more abundant and more perfect fakes. The use of the Internet has greatly facilitated the illicit trade of fake artwork. There are also many reports of falsified cultural goods marketing through action houses.

Criminals are also involved in the forgery of archaeological objects. The investigations undertaken so far demonstrate that this activity is in expansion, since it

is remunerative and not very risky. Not always, the experts' analyses, either scientific or stylistic[15], are reliable and conclusive.

During an investigation undertaken by the Prosecution Office of Rome, it was ascertained that criminals used to put counterfeited archaeological vases into a hyperbaric camera to obtain positive results to thermo-luminescence dating analysis of non-metal artefacts. At times, expert witnesses can be biased because of their interest to rule out a work of art from the range of the authentic works. For instance, when experts are also curators or owners of works of art of a given artist, they know perfectly well that the less the works of a master are recognized as authentic, the more the other ones have value on the market.

The Internet is an increasing problem for cultural goods protection. UNESCO has created a set of recommendations for the prevention of crimes that infringe on the cultural heritage of countries via e-commerce. The Internet is a channel for the sale of cultural property, which has eased the illicit trade between persons around the world. The Internet has created a new antiquities market, as dealers have an unlimited client base. The transactions take place rapidly, in an almost uncontrolled and anonymous environment, and do not require travel. Criminals do not run any risk and on-line sales often do not require intermediaries. Items are located in unknown places, often in another country.

Investigations on trafficking in cultural goods, when perpetrated via the Internet, are frequently urgent and difficult to carry out. Doubts on the authenticity and the fact that the cultural item is often a serial good adds to the problems of the investigations. There are also many other difficulties in locating the web sites and the providers. The lack of international treaties and a common regulation framework relating to cybercrime as well as a lack of homogeneous procedures on search and seizures orders in the international cooperation panorama, contribute to increase the confusion in this sector.

The exponential growth of this channel causes serious concern to many countries. Some States are not sufficiently organized and do not have sufficient resources to check continually sale offers via e-commerce. The above-mentioned Operational Guidelines takes seriously these issues and calls for a "watch" team of volunteers in order to control Internet offers (OGs n.68-70). These volunteers should inform the administration when it appears that an object of national or foreign heritage not previously known is being offered on a website. An expert and the cultural administration should immediately verify the nature and importance of the items.

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[15] Stylistic expert analysis may not be conclusive. An expert might manifest doubts especially when works of art are innovative compared to the style of other items known as original. This comparative analysis allows determining either the proper context of the item and its inconsistencies. This comparison might indicate a forgery. Obviously, cunning criminals do not create innovative works of art. They make the object with material, tools and ability known by the artists at their time. The style resembles that of an original artwork.

Where the object appears to be of illegal provenance, a report should be submitted to the prosecution service of that country.

It is important to develop appropriate counter-strategies. In particular, States should formulate standardised procedures for criminal answers to this alarming phenomenon. They should establish common and homogeneous penal sanctioning systems and models for search and seizure orders to be immediately executed. States should also consider taking all appropriate measures to encourage Internet providers and web-based auctioneers to adopt codes of conduct. In particular, Internet providers should allow on their platforms only the offers of works of art accompanied by documents delivered by competent domestic or foreign authorities and proving their legal exportation and provenance. The respect of this principle should be strictly controlled. Obviously, an export certificate attesting the licit exportation of a cultural good generally grants its authenticity, legal provenance, and circulation. Controls on export license by Internet providers will mark a partial shifting of responsibility to the platforms, which in the past camped on the position that they only provided the technical means for the buyer and the seller to conclude their transaction. Performing this task, Internet providers should be, obviously, supported by competent officials and technicians of the State on which ultimately rest the responsibility to check the validity of the documentation, certificate of exportation included.

In brief, the above-mentioned measures appear to be of vital importance. Criminals acting through the Internet take advantage of the weak links in the various systems. They locate cultural objects in those countries where protection is ineffective and not congruous. The process of illegal exportation and of laundering is facilitated by the use of the Internet.

Databases and statistic

Databases and national statistics focusing on the international circulation of cultural goods might certainly improve law enforcement body's responses and the effectiveness of the recovery of illegally exported cultural items. Therefore, the competent national services should adopt a reporting mechanism on a national or international level and give publicity through mass media communication. Adverse publicity has the consequence that a stolen and/or illegally exported cultural object is without a market. Its holder will probably return it without requiring compensation. In this regard, Guidelines 1 and 41 of the IGs are concerned with the development of databases and on "the exchange of information on trafficking in cultural property and related offences by sharing or interconnecting inventories of cultural property and databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones".

There are many weaknesses on the use of databases. Many legal systems have not enacted clear provisions obliging dealers and other stakeholders to check them when dealing in cultural goods. In addition, databases are mainly used for the

inventorying process of stolen properties. Databases for illegally exported cultural items do not exist or are not completely developed. On the contrary, illegally exported items should be immediately inserted into national and international databases and clearly identifiable through their photographic documentation. When there are no photos and the object was never inventoried (as often it happens in case of archaeological items illegally excavated and exported), any information ("identikit" of the object, sketch etc.) should be gathered and inserted in the database.

Statistics on the trafficking of cultural goods have not reached a valuable level. The IGs require that "States should consider: (a) Introducing or improving statistics on import and export of cultural property; (b) Introducing or improving statistics, where practical, on administrative and criminal offences against cultural property; [...] (e) Contributing to international data collection on trafficking in cultural property and related offences [...]" (IGs n. 3). Establishing "risk analysis with customs to prevent the illicit import and export of cultural property as well as exchange of information and best practices among each other" (OGs n.79) is another measure that should be considered. A systematic data collection on exported and imported cultural goods, their country of origin/provenance, transit and market, their characteristics and the dealers involved can provide valuable information on the destination of cultural goods and market trends. This data could enhance international cooperation and assist in proactive investigations by law enforcement agencies. In brief, the collected data could improve the knowledge of the complex phenomenon, which is trafficking in cultural goods.

Conclusion

In order to give effective implementation to the export restrictions of a State where cultural objects are often illegally trafficked, there should be the obligation to declare at customs any cultural object, especially when an agreement with the country of exportation for the protection of cultural objects has been ratified. The absence of a valid export certificate accompanying an imported cultural object should be considered as a serious criminal offence and the basis for the mandatory reporting of the cultural property to the competent authorities of the State of origin. Any object that has been illegally exported should be seized by the importing country and promptly returned to the State of provenance. Consequently, dealers and other stakeholders should refrain from acquiring cultural goods of foreign provenance when an export certificate is missing[16]. These problematic aspects are fully considered by Guideline 71 of the OGs, which encourages States to introduce national legislation, where appropriate, "[...] to ensure that the cultural properties involved has been licitly imported, as documented by a legally issued export certificate, to inform the

[16] A category of certificate that is recommended by the experts in order to control the illicit dealing of cultural goods is also that indicating there is certified documentation for an object prior to 1970.

State of origin of the properties of any doubts in this regard, and to put in place the appropriate interim measures [...]".

Several legal systems are currently sanctioning activities related to the illicit exportation and transfer of cultural property. These legal systems have, however, a different level of sanctioning. They include also a considerable variety of punishment, imposing criminal, administrative and/or civil in nature sanctions. On the contrary, States should view the illegal export operations of cultural properties in a homogenous way. In particular, they should:

(i) Establish standard punishment;
(ii) Afford the widest measure of mutual legal assistance in investigations[17], prosecution and judicial/administrative proceedings; and
(iii) Set up homogeneous recovery procedures of penal nature such as search, seizure and confiscation orders, in this way easing the return of cultural goods illegally exported. Up until now, only a few countries[18] have a specific offence concerning the importation into their territory of a cultural good illegally exported from the origin country. In those States, it may be possible to prosecute for the illegally imported object.

Often, people and companies participating in an organized criminal group perpetrate illicit export/import operations of cultural goods. They aim at laundering and hiding the item's illegal provenance, introducing it into the market. "Therefore, the introduction of apposite offences for these conducts, with an adequate sanctioning, could greatly improve both prevention and repression of trafficking in cultural property and related offences". The sanctions for such offences should be "proportionate, effective and dissuasive". If the adopted sanction is either a custodial or a pecuniary one, States should take particular care of ensuring the proportionality of the pecuniary sanction "also to the value of the cultural property involved and to the economic capacity of the offender. States should consider the use of disqualifications as criminal sanctions for illicit export of cultural property whenever proportionate and feasible"[19].Cooperation in identifying, tracing, seizing and confiscating illicitly exported/imported cultural goods is

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17 For instance, States should allow the use of special investigative techniques, such as joint investigation teams, electronic or other forms of remote surveillance. They should also uphold undercover operations on standard basis of previously agreed models.

18 This situation will change with the IGs implementation. In fact, Guideline 16 requires that "States should consider criminalizing, as serious offences, acts, inter alia, such as: [...] Illicit export and illicit import of cultural property [...]". When a common area for criminal intervention in cultural sector will be established, the requested authority will be forced to answer positively to requests for international assistance all the times crimes under investigations in the requesting country are the offences listed in the above-mentioned IGs.

19 See, the Draft Guidelines of 24 April 2012 as produced pursuant to the Economic and Social Council resolution 2011/42 entitled "Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking".

particularly relevant in order to take "ill-gotten gains" away from criminals and to reintegrate the national cultural heritage. This can be realized through:

(i) Preventive international cooperation;
(ii) Answering to requests for judicial assistance; or
(iii) Penal/civil procedures. Therefore, "State should also consider to swiftly executing searches and seizures, or freezing, of the same cultural property, and to swiftly submit a request for confiscation of such cultural property to its national competent authority for the purpose of obtaining an order of confiscation and, if granted, give immediate effect to it".

In addition, the transactions of cultural goods illegally exported or imported should be considered null and void. While granting them to be returned, States should "provide for imposing no customs duties or other charges upon cultural property returned to the requesting State"[20].

[20] See the Draft Guidelines of 24 April 2012 mentioned in the previous note.