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## **Transnational crime and the interface between legal and illegal actors : the case of the illicit art and antiquities trade**

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## CHAPTER 6

### THE TRANSNATIONAL ILLICIT ART AND ANTIQUITIES TRADE: RESEARCH OUTLINE AND DATA SOURCES

#### 6.1 Introduction

The previous chapters dealt with the interface typology and the lock model. The analyses were based on the literature on transnational crime, media reports, and other written sources. This chapter and the following three chapters will focus on one particular type of transnational crime: the transnational illicit art and antiquities trade. The research outline and data sources will be discussed in this chapter. Chapter 7 will provide a general overview of the transnational illicit art and antiquities trade. Chapter 8 will focus on the illicit art trade, using data that was gathered in the empirical study discussed in this chapter. Finally, chapter 9 will focus on the illicit antiquities, also using data from the empirical study.

There are two major reasons why the transnational illicit art and antiquities trade provides an interesting and useful object of study within the context of a study of interfaces. The first reason is the assumption that this trade has many interfaces because in general stolen or smuggled art needs to be sold on the legal market to be profitable.<sup>73</sup> This implies some form of laundering along the way from the moment of theft and/or illegal export to the sale to a customer. The second reason to study the illicit art and antiquities trade is the fact that it has hardly been studied by criminologists.<sup>74</sup> Nevertheless, there are a number of interesting studies by archaeologists and other academics but they usually do not primarily focus on subjects that are relevant for criminological study (e.g. Brodie & Renfrew, 2001; Tubb, 1995). Furthermore, several lawyers have dealt extensively with the legal instruments with regard to the illicit trade like the Unidroit treaty and the UNESCO Convention (Prott, 1997; Rascher, 2000). For these reasons, a study of the illicit art and antiquities trade can be both an important addition to other empirical studies of transnational crime, as well as a fruitful area to look at the significance of the typology and the lock model.

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<sup>73</sup> This has been illustrated in some accounts of the art trade. See for example Atwood (2004), Middlemas (1975), Watson (1998) as well as several popular books written by Thomas Hoving, former director of the New York Metropolitan Museum of Art (Hoving, 1994, 1996).

<sup>74</sup> In the Netherlands, for example, no academic studies have been done into the illicit art and antiquities trade. One of the few academic studies done in the last years has been a PhD by Laurence Massy, a Belgian criminologist and art historian (Massy, 2000). The best known academic work is John Conklin's *Art Crime* (1994). This book, however, is primarily a broad overview of the range of art crimes without real new data or insights. Finally, several Australian criminologists, have focused on art crime. See e.g. Aarons (2001), Polk & Alder (2002); Aarons, Chappell & Polk (1998).

The following sections will first discuss the different data sources that were used in this study. Thereafter, the opportunities and limitations of these sources will be discussed as far as this study is concerned. It must be stressed that an eclectic approach was followed to gather data for this study. Due to the fact that law enforcement efforts in the field of the illicit art and antiquities trade are generally minimal in the Netherlands, together with the absence of other abundant sources of data, makes it necessary to simply make the best of every source available for researchers.

Finally, in an annex to this chapter, the differences between the licit and illicit trade from a legal perspective will be further discussed, as well as the activities of several police forces in the field of stolen and smuggled art. The legal perspective is treated here because in the countries discussed there are variations in the regulations of the legal status of works of art, and the import and export of them. Because of the inclusive definition used in this study, these differences do not have to be explained all the time. However, these legal complexities have a great impact on the interface between legal and illegal actors and understanding these complexities is indispensable to grasp the meaning of the next two chapters. For that reason they will be outlined sufficiently in the annex to this chapter.

## **6.2 Data sources**

In the following sub-sections, all sources used in this study will be briefly described. The main sources were official data, interviews with experts and analysis of media reports, non-academic literature, and specialized media. Besides these sources, academic literature has been used of course. However, this is not seen as a ‘source’ that has been opened specifically for this study. Having discussed all sources, a separate section will focus on the usefulness as well as limitations of these sources.

### **6.2.1 Official sources**

First, the use of official files is considered. In most countries, art-related crimes are not a priority for the police. In the appendix, a brief overview of the activities of police agencies in the Netherlands, France, Germany, the UK, and the US is presented. Because of the low priority of art crimes, it is usually difficult to work with police agencies to gather data. In the Netherlands, an art unit at the national police is no longer active and collaboration with the police in this field is therefore more or less impossible. However, I spoke with several informed police officers from the National Police Service (KLPD) about the illicit art trade, among them the former head of the art unit.

Even when it was possible to use police files or other official documents, I had to take notice of the potential problems with official data. Several of these problems surely applied to the data that will be discussed hereafter. The data are

probably selective<sup>75</sup> and often only permitted to be mentioned anonymous. However, other problems do not, or to a lesser extent, apply to this study as compared to others. Using official files did not seriously inhibit using other sources. Most of these other sources were available as will be explained hereafter. Furthermore, one very important practical point motivated me to pursue all official sources that could be approached. For this study I could not profit from many reliable and relevant studies based on official sources and by collecting data from these sources myself would therefore add a unique set of findings for my own and future research. For these reasons, I decided that I would use all the material that could reasonably be obtained from official sources. The different official sources will be described below.

### **The Inspectorate of Cultural Heritage in the Netherlands**

Most of the data collection has been done at the Dutch Inspectorate of Cultural Heritage in the Hague. The inspectorate is part of the Ministry of Education, Culture and Science, and is responsible for examining state collections in independent museums.<sup>76</sup> The inspectorate is also responsible for conferring export permits for works of art that leave the EU from the Netherlands. In addition, in case other EU countries claim items under the EU regulations, the inspectorate is the responsible agency to deal with such a claim. Furthermore, the inspectorate is responsible for the protection of a list of items of Dutch cultural heritage which are protected under the Law for the Protection of Cultural Heritage (WBC).<sup>77</sup> With regard to suspected illegal import or export of cultural objects, the inspectorate works together with Dutch customs. When customs runs into items that might fall under any of the regulations, they contact the inspectorate in the Hague. One of the inspectors will then come to study the items or send an expert to do so. When it is established that the items are in fact relevant cultural objects, and the source country can be traced, the inspectorate will discuss with the public prosecutor (OM) or police whether the case can and should be further investigated. Usually this involves the question whether the objects are in fact stolen. Depending on the answer to this question the case will be either taken over by the police/OM or will go back to customs to let the objects go or deal with the fiscal aspects of the case. Because of this task assigned to the inspectorate, I started to work at the inspectorate to look at all their files on suspected illegal import or export. Since then, I have studied all files of

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<sup>75</sup> Without any comparable reliable set of data, one cannot tell whether data are selective or not. One can only assume that they are selective because of practical factors like e.g. changing policies by customs and the limited part of cross-border flows that can be monitored by customs.

<sup>76</sup> See: [http://www.minocw.nl/cu\\_insp/](http://www.minocw.nl/cu_insp/) (Visited November 5th 2005)

<sup>77</sup> This law, as well as other legislation, can be found at: [www.overheid.nl](http://www.overheid.nl) (Visited November 5th 2005)

suspected illegal import and export between 1995 and 2004. This included 105 cases of import, 17 cases of transit and 8 cases of export of works of art. In the next chapter, these cases will also be discussed from the perspective of interfaces. Despite the fact that these cases provide a rich source of information, some limitations should be mentioned here. As customs officials cannot investigate 'art crimes' systematically, due to the limited legal provisions (see appendix), they will only run into illegal imports or exports by chance. Furthermore, numerous factors influence the cases that will make it to the inspectorate. For example, the ever-changing priorities of the customs bureaucracies and the individual officers on duty can have an effect on detection and investigation.<sup>78</sup> Finally, at the inspectorate I have discussed particular issues and cases with the other members of staff who are all well acquainted with the art scene.<sup>79</sup>

### **The art squad of the National Police in France**

Through the Dutch Inspectorate of Cultural Heritage it was possible to visit the French national police art squad (OCBC).<sup>80</sup> In May of 2003, I joined the head of the inspectorate at a visit to the OCBC in Paris. I was able to engage in discussions with several officers who turned out to be very well-informed and willing to share their experiences in this field. We discussed a number of topics that are particularly relevant to this study. One of them is the traffic of stolen art from France to Belgium and the Netherlands and the way some art dealers are involved in this traffic. In 2002, a Belgian-based Dutch art dealer was convicted for his leading role in numerous art robberies in French castles. I knew of this case and a number of unrelated cases during the 1970s. In December 2003, I stayed at the OCBC for two weeks. This enabled me to look in depth at this case, which is considered the largest since the start of the OCBC in the 1970s. Furthermore, I was able to discuss other cases, as well as specific topics of the illicit art trade, with several officers at the OCBC. In the next chapter the collected data will be discussed from a perspective of interfaces.

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<sup>78</sup> A shocking example of customs policies are the so-called 100% checks of passengers at Schiphol airport on flights from notorious drug trafficking regions. Thanks to the enormous investment of resources in these checks, other flights and goods are often scarcely checked. As every regular visitor of Schiphol airport can observe, it sometimes happens that certain arrival gates are hardly checked. This means that anybody with illicit art or for example small arms can enter the Netherlands without a reasonable chance of being inspected.

<sup>79</sup> Several persons have worked at auction houses, taught at faculties of art history, and were editors for art journals. Furthermore, the lawyer of one of the most important museums in the Netherlands worked at the inspectorate for one day a week.

<sup>80</sup> The central office for the fight against the illicit trade in cultural objects (OCBC) in Paris. See annex two.

### **New Scotland Yard and the Ministry of Culture in the United Kingdom**

In September 2003, I visited the art squad of *New Scotland Yard* in London.<sup>81</sup> I discussed my research and the most important questions and topics with two inspectors at New Scotland Yard. Although I was not able to look at specific cases, I could interview them on a number of relevant topics within the illicit art and antiquities trade. They informed me on the basis of their experience in the London metropolitan area. New Scotland Yard's art squad deals with art crimes in the London metropolitan area. Besides Scotland Yard, I spoke with the head of the agency that grants export permits for works of art. This agency is part of the Ministry of Culture of the UK.

### **The art and antiquities unit of the Carabinieri in Italy**

In January 2005, I made a three-day visit to the head office of the art and antiquities unit of the Italian Carabinieri in Rome. I was joined by an expert in Italian art and antiquities who is both allied to the University of Amsterdam and to the Dutch Inspectorate of Cultural Heritage. Through extensive discussions with five members of the head office, we were able to gather information about antiquities looting and trafficking from Italy as well as the process of laundering through several third countries. Furthermore, thanks to their database (*Leonardo*) they were able to provide statistics on thefts and recoveries. Their database is the largest of its kind worldwide, and probably the most advanced.

#### **6.2.2 Interviews with experts**

Whereas observing or contacting criminals directly seems rather difficult, it is possible to get information from all kinds of people that have come into contact with the illicit trade through their work, academic field of interest, or for other reasons. This was done by talking to a number of people working in museums, art galleries, customs, police, private security firms, an investigative journalist, and others. Sometimes this led to new information or ways to cross-validate information from other sources. However, it also showed some less illuminating features of this technique of data collection. Rather often, people primarily recycle notions taken over from others and actually without any empirical base. Examples of such notions can be found with the explanations given for large art thefts, the link between drug trafficking and art thefts, and the presence of smuggled and stolen items in the legitimate art trade. Despite the fact that numerous 'experts' share these notions, they often lack any credible proof. Some of these notions have been discussed before (Soudijn & Tjihuis, 2003; Tjihuis & Soudijn, 2004; Tjihuis & Van der Wal, 2005).

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<sup>81</sup> See: <http://www.met.police.uk/artandantiques/index.htm> (Visited November 5th 2005).

Besides the importance of the experiences with interviews for this study, it motivated me to be extra cautious with articles or books primarily based on conversations or interviews with experts. Especially when experts lack a record of substantial empirical research it will often be better to stay with open sources and empirical studies by others. The different types of people that were interviewed are briefly described below.

### **Archaeologists and museum curators**

As far as the trade in antiquities is concerned, many staff members of ethnographical museums have experiences with both the source of the trade (theft and smuggling of antiquities from source countries) and the trade itself in source and market countries. Some of them work in a museum part of the year and do field work abroad for the rest of it. Several had experienced looting of archaeological sites at which they worked. I interviewed staff members from museums in the Netherlands, Thailand, Cambodia, Laos, and Vietnam.

At a number of universities and institutes, I interviewed archaeologists, art historians and related academics. They were working at the *University of Leiden* and the *University of Amsterdam* (the Netherlands), the *Illicit Antiquities Research Centre* at the *University of Cambridge* (the United Kingdom), *Bryn Mawr College* (United States) and *Chulalongkorn University* (Thailand) as well as the *National Museums* of Cambodia, Laos and Vietnam. In total, I spoke with sixteen persons in this category.

### **Art dealers**

Art dealers are potentially one of the best sources of information. However, this depends upon their willingness to discuss their dealings with outsiders. Several conversations with dealers gave some idea of their way of working although it usually did not result in any 'hard' data. Furthermore, I was restrained in the possibilities to interview art dealers because of the work at the Inspectorate of Cultural Heritage. The reason for this was the chance to engage the same people that also figured in official files. However, I was able to speak with eight dealers from the Netherlands, France, and Thailand.

Questions relating to the provenance of items are often evaded or answered in vague terms. In each concrete case, one can only guess about the reasons for this and not automatically assume that anything illegal is involved. No dealer has to answer any questions and legitimate reasons for secrecy can be thought of – for example, the anonymity of their clients. However, as long as some dealers prefer to abstain from the degree of transparency that is required or custom in many other economic sectors, they are by themselves cause for suspicion when they are involved in parts of the trade known for their incidental or regular connection

with looting and smuggling.<sup>82</sup> This holds true, for example, for the trade in items from areas within the territories of present-day Afghanistan, Cambodia, Italy, or China.

### **Other persons**

Several other persons do not fit into the categories above. Among them was one of the investigative journalists working on the illicit antiquities trade. Furthermore, I had a number of conversations with the director of NedArt, a foundation promoting the interests of the Dutch cultural heritage as well as the different parts of the art sector. They were all rather well informed and provided me with significant information on specific topics.

### **6.2.3 Media reports, non-academic literature and specialized media**

The last method of data collection involves media reports and other open sources. At first this method seemed to have rather limited opportunities because of the lack of media coverage for most of the art thefts and illicit trade. However, it turned out that there was in fact a substantial pool of information to be found in numerous specialist media. Nevertheless, with regard to the pros and cons of different research methods, some notes should be added here. First of all, many media reports keep a number of myths alive that have no (or a rather small) empirical base.<sup>83</sup> They need to be cut out before the remaining credible information can be used. Furthermore, as with natural persons, different media tend to repeat each other's 'news'. This does not necessarily mean that anything is wrong or misleading with regard to this information, but it simply means that large quantities of information need to be scanned to get anything new or relevant. Finally, to some extent the media have the same problem of selection as the official sources. However, some specialist media discussed below are less vulnerable to this problem.

### **IFAR Journal**

Since 1977 the *International Foundation for Art Research* (IFAR) has published the *Stolen Art Alert* as part of the IFAR Journal.<sup>84</sup> In this periodical, IFAR publishes

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<sup>82</sup> This custom of secrecy clearly is not observed by all dealers. Interesting differences can be found at major events like *The European Fine Art Fair* (TEFAF) in Maastricht. Some dealers have labels with all relevant information with all or most of their items, whereas others, involved in the same kind of items, do not provide any information at all and also prefer not to do so in conversations with potential customers.

<sup>83</sup> Examples were mentioned above and concern the close link between the drug trade and the trade in stolen art, the theft of works of art ordered by collectors and the growing involvement of 'organized crime' in the illicit art and antiquities trade.

<sup>84</sup> See: [http://www.ifar.org/what\\_main.htm](http://www.ifar.org/what_main.htm) (Visited November 5th 2005).

reports of thefts and recoveries, as well as articles on particular thefts. Most of the reports are on thefts or recoveries from European countries or the US. I was able to use the reports from 1982 to 2004. This provided me with data on a number of important thefts that led to the smuggling of art to other countries and subsequently to sales of these stolen items. I analyzed the recoveries of one group of items in particular to get a clearer picture of the perpetrators and the possible links with legal actors. The group consisted of paintings that were stolen in Europe from museums or large private collections (Tijhuis & Van der Wal, 2005). This group was chosen because it has the highest recovery rate and it is usually used in arguments on the perpetrators of art crime.

### **Illicit Antiquities Research Centre**

Besides the information from the IFAR, much information is published by the *Illicit Antiquities Research Centre* at Cambridge University. The Illicit Antiquities Research Centre (IARC) was established in May 1996, and commenced operations in October 1997 under the auspices of the McDonald Institute for Archaeological Research in Cambridge, England. its purpose is to monitor and report upon the detrimental effects of the international trade in illicit antiquities (i.e. antiquities which have been stolen or clandestinely excavated and illegally exported). It publishes an online newsletter and has published a number of books on the illicit art and antiquities trade (Brodie & Watson, 2000; Brodie & Renfrew, 2001).<sup>85</sup> The IARC is the only academic institution that is solely devoted to the illicit antiquities trade. As mentioned above, I visited the centre in September 2003.

### **Media reports**

In addition to the information from IFAR and IARC, I screened all major Dutch newspapers since 1993 on recoveries in art theft cases.<sup>86</sup> In addition to the newspapers from that period, I went through the archive of *the Netherlands Institute for Art History* in the Hague.<sup>87</sup> This institute keeps files on millions of art objects and is known worldwide for its expertise and archives. Besides the files on particular objects, they have an archive with newspaper reports on art thefts and related topics. Part of this archive deals with reports of thefts and recoveries going back to the early 1950s. This provided a useful addition to the more recent reports that were more easily available. Besides the Dutch newspapers, I checked

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<sup>85</sup> Their website provides much information in digital form: see: <http://www.mcdonald.cam.ac.uk/IARC/home.htm> (Visited November 5th 2005).

<sup>86</sup> The newspaper articles are online available for members of pica, an online library service. See [www.pica.nl](http://www.pica.nl) (Visited November 5th 2005).

<sup>87</sup> See: <http://www.rkd.nl> (Visited November 5th 2005).

foreign newspapers as far as they were available online and written in English, German, or French.

### **The Museum Security Network reports**

A solely web based source of information are the reports provided by the Museum Security Network. This organization publishes reports that often involve reports on art theft and the illicit trade from all around the world. I scanned all reports available in the archive of the Museum Security Network from its start in 1997 to 2004.<sup>88</sup>

### **Non-academic literature**

Finally, an additional source of information were a number of books by research journalists or other non-academic authors. They were especially useful for information about the illicit trade before the 1990s (Koldehoff & Koldehoff, 2004; Kretschmann, 1991; Leitch, 1969; McLeave, 1981; Middlemas, 1975; Roux & Paringaux, 1999).

## **6.3 Opportunities and limitation of the sources**

The empirical study should answer the question whether the interface typology provides us with a useful tool to describe the relationships between actors in the illicit art and antiquities trade. Furthermore, it should show whether the lock model can explain the way in which illicit art and antiquities are laundered or licit art and antiquities are added to the black market. To answer these questions, the empirical study should be sufficiently wide in scope and reliable as far as the data is concerned that it produces. Both the scope and the reliability depend to a large extent on the sources that are used. The section above, in which all data sources were outlined, mentioned some pros and cons of the different sources. They will be further discussed below to appraise the empirical study as a whole. The different categories of sources will be looked at together with other studies that were primarily based on particular sources.

### **Studies based on official sources**

First of all, there are studies that are solely or primarily based on official sources. They usually offer an abundance of information on one or more cases. A number of such studies on organized crime were for example done in the Netherlands since the middle of the 1990s (Huisman et al., 2004; Kleemans et al., 2002; Van Duyne, 2003). However, much of the information will usually not be available

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<sup>88</sup> See [www.museum-security.org](http://www.museum-security.org) (Visited November 5<sup>th</sup> 2005).

to the reader and made anonymous as far as it is available. Furthermore, there is a number of other drawbacks. The information cannot be checked by other researchers and cannot be placed within a wider context where it can be connected with results from other studies. This problem was also apparent in the empirical study of the illicit art and antiquities trade. Furthermore, working with police or other official institutions will often reduce the use of other methods like interviewing the main characters in a particular case. This only applied to part of this study. As the study was not limited to the Netherlands, data from official files could be combined with data from other sources in other countries. Finally, an important drawback is the selective nature of official files. Usually, critics of the use of official files point to the fact that these files look at specific aspects of crimes that are investigated by police, customs, or other agencies. This was not a relevant problem in this study. However, the illicit art and antiquities trade shows another type of selectivity that actually is a problem. This is the selectivity of the types of transnational crime that are investigated by police and other law enforcement agencies in general (not only in the Netherlands). Whereas drug trafficking, terrorism, smuggling and trafficking of humans are priorities in most countries, the illicit trade in art, antiquities, 'blood diamonds', and (wholesale) arms trafficking are usually given less priority. Therefore, it is more difficult to study these crimes on the basis of official files. From a perspective of interfaces, these types are exactly the ones that seem to be most interesting.<sup>89</sup> Many of the cases discussed in the previous chapters belonged to this group of transnational crimes.

### **Studies based on the social environment of criminals**

Contrary to studies based on police files, there are criminologists who try to look at the criminal activities and actors from the inside. This can for example be done by structured interviews or by casual conversations as part of an attempt to partially integrate into the social life of the criminals. An interesting example of the latter was Zaitch's study of a particular category of Colombian drug traffickers (2001) and Ko-Lin Chin's study of Chinese people smuggled into the US (2002). A classic example of this type of study was performed by McCoy and focused on the heroin trade in South-East Asia during the Vietnam war (McCoy, 1972). With such an approach, one does not rely on others to choose research subjects and one is not accountable to official institutions with regard to publications of findings. However, there are also some important drawbacks. Checking information from studies done in this way can be as hard or impossible as in the case of studies based on police files. The reader has to rely for a large part on the integrity of the researcher and his capacity to separate fact from fancy. At the

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<sup>89</sup> In the last two chapters, this topic will be further discussed. The relationship between law enforcement priorities and crimes known for their interfaces is rather complicated. However, for an adequate understanding of interfaces, it is essential to focus on this topic.

same time, the researcher will have to rely on his contacts without being able to cross-validate much of the information. Furthermore, the safety of the researcher can demand restrictions in the way he studies his research subjects or the way he publishes his findings.

In the empirical study of the illicit art and antiquities trade, there are several types of insiders that could be approached: dealers, thieves, and smugglers. In theory, it would be possible to focus on art thieves and other actors. Nevertheless, at least one important practical fact will hinder an attempt to engage in this type of research. Partly because of the lack of interest of the Dutch and other police forces, hardly any art thieves are caught. Therefore, it is impossible to come very far, for example by interviewing imprisoned thieves or other criminals. This does not mean, of course, that one cannot approach them in another way. However, in the case of the illicit art and antiquities trade, this would be very difficult. Buyers of and dealers in stolen or smuggled art are not easily recognizable or traced by observation and conversations with bystanders. Furthermore 'illicit art' is not easily separated from licit art as will be discussed in the appendix. As far as the dealers are concerned, the study of official files in the Netherlands limited the opportunities to interview them. However, some dealers were interviewed in other countries. This did not provide substantial extra data. An important difference between the illicit art and antiquities trade, as opposed to for example the drug trade, is the fact that dealers are businessmen whose reputation is one of their most important assets. This reputation can be hurt by the fact that people associate the art trade with theft, smuggling, or other crimes. For this reason they generally are not eager to shed light on the way in which they work or the way they know their colleagues work.

### **Studies based on media reports and studies by investigative journalists**

Some of the drawbacks of both methods can partly be averted by another kind of study. For some types of crime, and in some countries, media reports can be a primary source of data for a researcher. Depending on the exhaustiveness and reliability of certain media, this can sometimes be an alternative to the previous two approaches. One does not have to rely on questionable characters for information and neither on official institutions that may have better information but will not allow full coverage of it. However, at the same time this implies that one has to rely on another subject beyond one's own control: the media that are used in the study. Media reports may be one-sided or false. They may even be the victim of purposeful disinformation campaigns. Nevertheless, due to the large number of newspapers, magazines, and other media one can choose, cross-validating is sometimes possible. Furthermore, one can use media reports in addition to other sources. An example of a study based for a part on media reports is *The Turkish Mafia* by Bovenkerk and Yesilgöz (1998).

In addition to the use of media reports, books by investigative journalists and others like former police officers, can offer information that is otherwise unavailable. In fact, investigative journalists will regularly provide books on specific topics of interest that are far more informative than those written by criminologists. When these books are read with the same critical attitude as media reports are read, they can provide a crucial tool for the academic study of transnational crime. Most of the analysis in the previous three chapters would not have been possible without these kinds of books (see e.g. Henry, 2003; Morstein, 1989; Pretterebner, 1989; Trepp, 1996; Von Bülow, 2003).

As was pointed out in the previous section, this study made use of media reports as well as some specialized media. As far as the regular media are concerned, they illustrated several problems. First of all the fact that many media tend to copy each other's news, whether it consist of factually correct information or unfounded assumptions, myths or false simplifications. However, in case of crimes that are 'under-investigated' by law enforcement agencies and 'under-researched' by academics, media reports can at least have the function to point at the existence of specific crimes, criminals etc. Thereafter, other sources can be used to fill in the information or suggestion brought by a media report. Furthermore, most of the information used for this study, came from specialized media that have proven to provide mostly accurate information. Finally, as was mentioned before, books by non-academic authors fill an important gap in the study of this type of crime.

#### **6.4 Conclusions**

The above sections showed which data sources are used in this study. For both practical as well as methodological reasons, a mix of sources is used. The practical reason is the fact that no single source can be used to obtain both reliable and sufficient data about the research object. The methodological reason is the fact that each source has serious drawbacks which can be lessened by combining them with other sources. This is not to say that this study is based on an ideal set of data. Considering the restrictions of a study like the one at hand, the most promising and available sources were used while it is a fact that many others were unavailable or have not been because used of these restrictions.

On the basis of this study there are several research questions that cannot be answered. The precise quantity of certain crimes or criminals cannot be established, not even a realistic estimate. Furthermore, possibilities of the existence of certain interfaces between actors or other relevant occurrences cannot be dismissed on the basis of this study. However, it can be concluded that certain interfaces are unlikely to occur very often while other interfaces are regularly observed. Furthermore, it can be concluded that the lock model can or cannot explain the laundering of illicit art and antiquities in cases that were studied. In general it can be concluded that the main questions set out for this

study can be answered with the data sources described before. The main questions are whether the relationships in the illicit art and antiquities trade can be described with the interface typology, and whether the process of laundering of art and antiquities can be explained by the lock model.

### **Annex 1: Defining the illicit art and antiquities trade**

Some cross-border activities are looked upon as illegal almost everywhere. For that reason, we can for example speak of drug trafficking without additional qualifications. In case of art and antiquities, the qualification ‘illicit’ is added because art and antiquities by themselves are not illegal. They are only illegal when they are stolen, smuggled, or forged.

The transnational trade in stolen or illegally exported art and antiquities is the subject of a number of international and bilateral treaties, as well as national laws. These laws define to a large extent the difference between the licit and illicit art and antiquities trade and the status of an owner as a (il)legitimate possessor. In one way or another, these laws all try to contain the illicit trade and accomplish restitution of art to the original owners, or states of origin. It is very important to stress the difference between stolen art and illegally exported art. Both are illegal, but important differences exist between the way these are and can be treated by the responsible authorities and by interested parties in debates about the illegal trade. Most important are the following provisions:

- UNESCO Convention for the Protection of Cultural Property in the Event of an Armed Conflict (1954, 1999)<sup>90</sup>
- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)<sup>91</sup>
- Bilateral Treaties between the US and ten countries in South America and elsewhere, inspired by the 1970 UNESCO treaty<sup>92</sup>

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<sup>90</sup> For full text and ratifications see:  
<http://www.unesco.org/general/eng/legal/convent.shtml>.

<sup>91</sup> For full text and ratifications see:  
<http://www.unesco.org/general/eng/legal/convent.shtml>.

<sup>92</sup> The treaties are guided by art 9 of the 1970 UNESCO Convention: Article 9  
*Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.*

For further information see: <http://exchanges.state.gov/culprop>.

- Unidroit Convention on Stolen or Illegally Exported Cultural Objects (1995)<sup>93</sup>
- EU Council Directive 93/7 EEC On the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State (1993)<sup>94</sup>
- EU Council Regulation (EEC) 3911/92 On the Export of Cultural Goods
- EU Council Regulation 1210/2003 Concerning specific restrictions on the economic and financial relations with Iraq
- National laws like e.g. the Dutch ‘Wet tot Behoud van Cultuurbezit’ (Law for the Protection of Cultural Heritage)
- (Not legally binding) ICOM (International Council of Museums) ‘Red List’<sup>95</sup>
- (Not legally binding) ICOM ‘Ethical Code’

The 1954 UNESCO Convention refers to art and antiquities that are looted during occupations of states or parts of states in times of armed conflicts. It was supposed to be used for situations like the looting of antiquities in Afghanistan and Iraq recently, although its success has been marginal. One important problem is the fact that a number of important countries like the UK and the US have not ratified the Convention. To be sure, the protection of cultural heritage by the armed forces in Iraq and Afghanistan should not be dependent on particular international legal regimes. However, as could be followed in the media coverage of these wars, the protection of the unique cultural heritage in these countries did not seem to have a top priority.<sup>96</sup>

The 1970 UNESCO Convention deals with the illicit art and antiquities trade in general. A large number of countries ratified the convention including some European Union countries. In recent years, France (1997),<sup>97</sup> Finland (1999), the United Kingdom (2002), Denmark (2003), and Sweden (2003) ratified the convention. However, the convention lacks clear results and its role has primarily been symbolic. Part of this can be explained by the fact that the convention only aims at states and concrete actions are therefore dependent on diplomatic and other state channels which are not known for their impressive speed and efficiency.

The 1995 Unidroit Convention tried to solve this problem by concentrating on uniform standards of private law. Under this convention, owners of stolen or

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<sup>93</sup> For full text and ratifications see: <http://www.unidroit.org/english/conventions/c-cult.htm>.

<sup>94</sup> For full text of all EU legislation see: <http://europa.eu.int/eur-lex/en/search/searchlif.html>.

<sup>95</sup> For ICOM see: [www.icom.org](http://www.icom.org).

<sup>96</sup> A range of articles on this topic can be read online at: <http://www.savingantiquities.org> (Visited August 9<sup>th</sup> 2005).

<sup>97</sup> However, France still needs to implement the convention into its national law.

illegally exported cultural objects can directly address courts in both their own state and the state where the object is located. In a way, this convention provides far better tools to bring back stolen items. However, there are also some major disadvantages. One of them is the small number of ratifications, although this number is increasing. Besides some source countries, a number of European countries are party to Unidroit: Croatia, Finland, Hungary, Italy, Norway, Portugal, and Spain. Lacking are the big market countries France, Japan, the UK, and the US. Besides the limited number of ratifications, there is another important technical disadvantage. The Convention allows the claimant of stolen art a certain degree of 'forum shopping'. Not only the courts in the state where an object is located, but also the courts in the state of residence of the claimant have jurisdiction over these claims. This leads to a situation where source countries like China and Italy, both known for their huge losses of cultural heritage as well as for their sometimes radical policies, can deal with claims in their own courts and subsequently ask for execution of the verdicts in the state where an object is located.

All the conventions share a number of problems that hinder their effectiveness. First of all, many cultural objects are not registered and therefore hard to trace and claim in case of theft. This is especially problematic with illicit excavations where registration is impossible by definition. Some countries try to evade this problem with national laws that declare everything which comes from their soil as their property.<sup>98</sup> However, this is not as simple as it seems. As civilizations and cultures of the past did not run along present state-boundaries, it can be extremely difficult to prove beyond doubt that something comes for example from Thailand (instead of Cambodia), Italy (instead of Greece) or Greece (instead of Turkey). Secondly, there is the problem of corruption. In many source countries, customs officials or other relevant officials are willing to turn a blind eye, if they are paid the right price. In many cases, they are even involved in the illicit trade themselves, as for example in China.<sup>99</sup> Thirdly, as long as art, like money, can easily be 'laundered' in places like Switzerland, South Africa, or Hong Kong, every treaty or law will be of limited effect.

The EU Directive and Regulation have created a more or less uniform system of export permits for objects that leave the EU, and a system of rules for restitution of objects between EU countries. Export permits are demanded for fourteen different categories of items and are granted by the country from which an object leaves the EU. Penalties on the violation of this system of export permits can be quite harsh. For exporting without a permit, one can be fined twice the value of the object in addition to seizure of the object itself.

Besides the system of export permits, there are rules for restitution of objects between EU countries. EU countries are held to assist each other in the

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<sup>98</sup> A well-known example is Italy.

<sup>99</sup> Melvin Soudijn and I mentioned some typical examples in our article in *Art, Antiquity and Law* (2003).

restitution of items which have been stolen or illegally exported. Illegal export refers to a violation of the national law for the export of cultural items. This is something different from the illegal export of cultural items out of the EU, to be sure. Since the adoption of the EU Directive and Regulation in 1992/93, there have been a number of cases where EU countries have demanded items from other EU countries. This topic will be further discussed below.

EU Council Regulation 1210/2003 Concerning specific restrictions on the economic and financial relations with Iraq, aims at the protection of Iraq's cultural heritage. The import of art and antiquities from Iraq has been forbidden from August 1990 onwards. This regulation enables authorities in European countries to fight the illicit trade in Iraq art and antiquities, without having to rely on the UNESCO or Unidroit conventions.

The Red List of the International Council of Museums lists categories of items which are regarded as particularly vulnerable. Dealing in these items is seen as 'not done', irrespective of the legal or illegal character of these dealings in a particular jurisdiction. Examples of items which have been on a Red List for some time are Nok statues.

The ICOM also has an Ethical Code for its members, a large group of museums all over the world. This ethical code demands from its member's compliance with the rules set by the UNESCO Convention. Both the Ethical Code and the Red List are not legally binding for the members of ICOM.

Finally, I would like to make some specific remarks on the Dutch situation. The Netherlands is not party to any of the treaties against the illegal trade in cultural objects. This means in principle that any legally protected object that is smuggled out of or into the Netherlands cannot be claimed by the Netherlands (in the case of Dutch items) or the foreign country (in the case of items from that country). The exception to this rule is provided by the EU Directive and Regulation. In case works of art are within the EU, they are protected and can be brought back to the Netherlands. Furthermore, through the EU law, the WBC extends its reach over the territory of the EU. At the time of writing (November 2005), the Dutch government has announced plans to ratify the UNESCO 1970 Convention and to implement this convention, as well as the already ratified UNESCO 1954 Convention, into Dutch national law.<sup>100</sup> However, it remains to be seen whether and when these plans will materialize.

A different situation exists for stolen items that enter the Netherlands. When customs find an item which they suspect has been stolen, they can hold it to investigate the case. However, before it can be identified as stolen it first has to be traced back to its source country, or it needs to be registered as stolen at Interpol. Usually, this is quite complicated if not impossible. One of the main problems is the fact that many antiquities are looted from unexcavated sites.

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<sup>100</sup> For a commentary on the proposed legislation see Ott, Tjhuis & Van der Wal (2005).

Therefore, they cannot be identified by definition by the source country. This makes it almost impossible to prove theft. Due to the rather minimal legal provisions, customs officers are not allowed to search systematically for works of art that enter the Netherlands. Only objects which are found by chance may be seized and investigated. This is an important fact to consider when one looks at the numbers of items which are seized by customs and subsequently end up in the files of the inspectorate (see paragraph on official agencies).

## **Annex II: Specialized police agencies dealing with art crimes**

The attention to crimes related to art differs quite substantially between individual source and market countries. Even within countries, important differences are found. For the empirical study of the illicit trade and the interfaces between legal and illegal actors, it is important to understand these differences. Different approaches by police, customs and other authorities influence both the illicit trade as well as the interfaces with legal actors. These different approaches are linked with, or guided by, different legal provisions against the illicit trade. As was described above, there are several international regulations that are important here in addition to national laws.

In the Netherlands, the legal provisions that art criminals have to take into account are rather limited. They will be further discussed in the paragraph on the seizures of cultural objects by Dutch customs. The focus here will be on the government agencies which have a role in this area. As far as stolen art is concerned, the police is the natural institution to look at. In the Netherlands, there used to be an art unit at the National Police and National Intelligence Service in Zoetermeer (Korps Landelijke Politiediensten/Centrale Recherche Inlichtingen).<sup>101</sup> Since January 1<sup>st</sup> 2002, this art unit has been abolished. Ironically, the period from 2001 until now has seen a series of serious art thefts from museums.<sup>102</sup> Furthermore, the local police departments do not have art units or police officers specialized in this field. Even the city of Amsterdam, with an unprecedented share in Holland's cultural heritage, lacks an art unit within its police department. With regard to the illegal import or export of antiquities, Dutch customs and the Inspectorate of Cultural Heritage in the Hague are the responsible authorities. They were discussed in the paragraph on the inspectorate.

In many other European countries, the situation with regard to art related crimes can probably be compared with the Netherlands. In Belgium, a

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<sup>101</sup> For the KLPD see: <http://www.politie.nl/KLPD/> (Visited November 5<sup>th</sup> 2005).

<sup>102</sup> There were thefts in the Van Gogh Museum (Amsterdam), the Rijksmuseum (Amsterdam), the Nieuwe Kerk (Amsterdam), the Frans Hals Museum (Haarlem), the Museum (The Hague), and a number of museums in the country side. None of them have been solved up till now. During the 1980s and 1990s there have been more high-profile thefts. However, the thefts during those years were regularly followed by successful recoveries.

specialized art squad exists with the federal police in Brussels. They claim to be very active in several fields of art crime, like thefts, forgeries, and money laundering in the art trade.<sup>103</sup> However, it seems that Belgium does hardly anything about the traffic of antiquities, especially from Africa. Furthermore, the interest in the trade in stolen items from France or art crimes outside Brussels is limited.

In Germany, the attention of the police for art crimes seems to depend heavily on the state within the federal republic. Some states seem to be quite active, while others do not pay any perceptible level of attention to this topic. The National Police Service, Bundeskriminalamt (BKA)<sup>104</sup> in Wiesbaden, seems to be comparable to its Dutch counterpart as far as art is concerned, although in general the BKA is known to be quite competent. On the BKA website, the listing of stolen art works runs from 1997 through 2001. Since 2001 no new information has been added!

In the US, another federal state, the situation is partially comparable with Germany. Some cities (like New York and Los Angeles) have special art units or detectives within their police departments while others do not seem to place any special emphasis on this topic. However, since the art trade is concentrated primarily in New York and just a few other cities, it is hardly surprising that there is not widespread attention to art theft and trafficking issues. In addition to the local police departments, the FBI has an art unit.<sup>105</sup> When it comes to illegal imports and exports, the US is relatively active. Bilateral treaties were signed with a group of ten countries, most of which are located in South America. With this, the US differs from many countries which are party to multilateral treaties. However, the bilateral treaties have seen concrete results whereas measures like the UNESCO treaty have not many known successes since its adoption over thirty years ago.

In France, an active and central bureau for art crimes exists in Paris, the central office for the fight against the illicit trade in cultural objects: the *Office central de lutte contre le trafic des biens culturels* (OCBC).<sup>106</sup> Staffed with about 35 persons, this is probably one of the most effective art squads in Europe at the moment in terms of arrests and returns of stolen objects, although it is not the largest organization. In Italy, an art unit of more than 150 persons exists as part of the *Carabinieri*, or military police. They claim to be most effective in tracing stolen art, both in absolute as well as relative numbers.

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<sup>103</sup> See: [http://www.fedpol.be/police/fedpol/pol/3/pol3\\_kua1.htm](http://www.fedpol.be/police/fedpol/pol/3/pol3_kua1.htm) (Visited November 5th 2005).

<sup>104</sup> See: <http://www.bka.de/> (Visited November 5th 2005).

<sup>105</sup> See: <http://www.fbi.gov/hq/cid/arttheft/aboutus.htm> (Visited November 5th 2005).

<sup>106</sup> See: [http://www.interieur.gouv.fr/rubriques/c/c3\\_police\\_nationale](http://www.interieur.gouv.fr/rubriques/c/c3_police_nationale) (Visited November 5th 2005).