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DESTRUCTION AND. SMUGGLING OF
CULTURAL HERITAGE BY TERRORIST
GROUPS TO FINANCE

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INTRODUCTION

To understand the menace that represents terrorism for international peace and security, it is sufficient to recall two heinous and dramatic episodes: the 9/11 attacks and the destruction carried out by ISIS in Syria and Iraq. The scale of these events can raise the question of where terrorist groups get the money to finance their attacks and organisations. Since the adoption of the 1999 Convention for the suppression of the financing of terrorism, the focus has been on tracking the flow of money from and to terrorist organisations. Terrorist groups have been proven very resourceful in finding sources of financing (state support, legal activities, popular support, illegal activities). Proof of that is how they profit from the cultural heritage, which should be protected as proof of human history, dismembering it in little pieces to sell to the highest bidder. Cultural heritage represents the identity and the history of a population. Destroying it means erasing a part of our history as humankind and cultural genocide. Everyone is called to preserve and protect this heritage for future generations as a bond to the past.

The thesis aims to analyse how extensive the phenomenon is and how the international regulatory framework addresses it. This text will explore the existing international legal instruments concerning the protection of cultural heritage and the financing of terrorism, considering its gaps and limitations. The first chapter will present the relationship between terrorism and the destruction of cultural heritage. Moreover, I will focus on how it is essential to define terrorism and cultural heritage to create effective legal instruments.

To better understand terrorism financing, I will provide an overview of the funding sources.

In 2014 a new source of financing terrorism became very lucrative for terrorist groups: the illicit trade of antiquities. A terroristic group can be involved in any of the three phases of this illegal trade: looting, smuggling and selling. The destruction and trafficking of cultural property involve different figures in the process.

A key role in the trafficking of cultural heritage is played by the people operating in the art market. As a matter of fact, the art market is vulnerable to financial crimes such as money laundering and financing of terrorism. In the case of the art market, we can talk not only about money laundering, the process of concealing the illegal origins of the funds through art, but also about art laundering, which is the concealing of the illicit origin (stolen or looted) of cultural property through forged documents.

An issue that creates concern is the shifting of the illicit trade of cultural property from physical places to virtual ones (eBay, Facebook, WhatsApp), where the power of intervention of the State is limited.

In the first part of the second chapter, I will illustrate the legal instruments concerning the protection of cultural property: Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954), UNESCO Convention on the means of prohibiting and preventing the illicit import and export and transfer of ownership of cultural property (1970), Convention concerning the protection of the world cultural and natural heritage (1972), UNIDROIT Convention on stolen or illegally exported cultural objects (1995) and the UN Security Council resolutions: 2199/2015 and 2347/2017.

The effectiveness of these legal instruments is enhanced when other tools are encouraged to detect illicit trade of cultural property, such as the Red lists by the International Council of Museums and the INTERPOL database of stolen art.

Italy, with its incommensurable cultural heritage, has always played a fundamental role in safeguarding and preserving. Indeed, in 2016, the Italy government signed a memorandum committing itself to create a task force of experts to deploy to protect cultural heritage from looting: UNESCO's blue helmets for culture.

As envisaged in the first chapter, the art market is, at the moment, the weakest link in the chain, considering it is the last line of defence against the illicit trade of cultural heritage. It is common to say that the art market is unregulated, but it is not exactly the reality. Indeed, we have domestic law concerning money laundering and financing of terrorism through the art market and soft law in the form of international guidelines written by auction houses, museums and art dealers.

When illicit trade occurs online, it is necessary to find a balance between the content policy of a platform and the security interest, which also concerns the spread of terrorist activities (recruiting and illicit trade to fund terrorist groups).

The second part of the second chapter illustrates the international legal framework concerning terrorism financing: International Convention for the Suppression of the Financing of Terrorism (1999), Security Council Resolution n.1373/2001 and Financial Action Task Force (FAFT) 40 Recommendations.

Concerning the Convention for the suppression of the financing of terrorism, I will focus on its role in the issue of the definition of terrorism.

It is possible to understand correctly what terrorism financing is if we have a clear definition of terrorism since article 2 of the International Convention for the Suppression of the financing of Terrorism establishes implicitly that the definition of terrorist financing depends on the concept of terrorism.

I will focus on the relationship between money laundering rules and the financing of terrorism.

In the third chapter, I will analyse the gaps and shortcomings concerning the legal framework for protecting cultural heritage and financing terrorism.

One of the most common weaknesses of the legal framework concerning the protection of cultural heritage is the low adherence to it.

The assessment of the weaknesses of the legal framework concerning the protection of cultural heritage in relation to the financing of terrorism is necessary to improve it.

CHAPTER 1

International terrorism and cultural heritage

1. What is the nexus between terrorism history and the destruction of cultural heritage?

The right to access and enjoy cultural heritage is a human right protected by different

legal instruments¹, but the destruction and illicit trade of parts of it continuously violate it.

In 2003, UNESCO recognized in the Declaration concerning the International Destruction of Cultural Heritage this right, stressing that "*cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights*".²

Moreover, "*parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole*".³

Thus, preserving and protecting heritage is crucial to a community's sense of importance and respect.

Moreover, some cultural heritage has represented a bridge between different cultures. Since ancient times, it was expected after a conquest or in opposition to conflicting ideology to destroy cultural property and plunder them as spoils of war as an exercise of power and to subdue the adversaries.⁴

This war technique is also incorporated into terrorist organisations to weaken a government and its population.

During modern times, the vandalization of art aimed to propagate the dominant group's ideology, as happened in the Third Reich.⁵

Terrorist organisations target cultural property, particularly those recognised by UNESCO as human heritage sites⁶, to persecute the communities for which that heritage

1. Leila A Amineddoleh, "Cultural Heritage Vandalism and Looting: The Role of Terrorist Organization, Public Institutions and Private Collectors," *Santander Art & Culture L. Rev.* 2015, no. 2 (2015): 27–62,

2. UNESCO, Declaration Concerning the Intentional Destruction of Cultural Heritage," Doc. 32 C/Res.33 (2003) § (2003).

3. UNESCO, "Summary Text Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage," November 16, 1972,

4. Leila A. Amineddoleh, "Cultural Heritage Vandalism and Looting: The Role of Terrorist Organization, Public Institutions and Private Collectors," *Santander Art and Culture Law Review (SAACLR)* 2015, no. 2 (2015): 27-62

5. Ibidem

6. Sabine von Schorlemer, "Fighting Terrorist Attacks against World Heritage and Global Cultural Heritage Governance," ed. James Cuno and Thomas G. Weiss, *Cultural Heritage and Mass Atrocities* (Los Angeles: Getty Publications, August 15, 2022),

represents an essential element of their cultural identity and distinctiveness and as an exercise of power.⁷ Usually, perpetrators portray the destruction of cultural heritage as a religious duty to punish idol worshipers.

However, the vandalization of cultural heritage represents a powerful war tool since it aims at intimidating populations and governments.

Indeed, the systematic destruction of cultural heritage is comparable to a cultural cleansing of a people, as recognised by Irina Bokova, ex-UNESCO Director General, concerning the devastation inflicted by ISIS in Iraq.⁸

Previously, the destruction of cultural heritage was considered a collateral effect of war; however, due to the positive evolution of international law, it entails different legal implications. At present destruction of cultural property entails a violation of international legal norms.⁹ It may be qualified as a war crime, crime against humanity, violation of internationally recognised human rights, or evidence of the intent to commit genocide.

According to Leila A. Amineddoleh, professor of International Art & Cultural Heritage Law at Fordham University School of Law, ISIS has used the live broadcast of the destruction of culturally significant places to recruit members.¹⁰

Moreover, terrorist groups do not limit themselves to looting archaeological sites and museums, but they illegally smuggle cultural property aiming to turn a profit from their selling.

It seems that trafficking cultural heritage is a lucrative business for terrorist groups, but estimating the scale of the illicit trade in cultural items is challenging since there is no reliable data. The factors that make it difficult to estimate this illicit trade are the following:

7. Federico Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage," *The International Spectator* 51, no. 2 (April 2, 2016): 70–85,

8. UN News and Irina Bokova, "Cultural cleansing" by terrorists is a war crime: UNESCO chief, *News.un.org*, March 24, 2017,

9. Federico Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage," *The International Spectator* 51, no. 2 (April 2, 2016): 70–85,

10. Leila A. Amineddoleh, "Cultural Heritage Vandalism and Looting: The Role of Terrorist Organization, Public Institutions and Private Collectors," *Santander Art and Culture Law Review (SAACLR)* 2015, no. 2 (2015): 27-62

1. different definitions of cultural goods,
2. low political priority of the issue,
3. lack of awareness, knowledge and expertise among law enforcement,
4. lack of central data collection point,
5. lack of transparency in the art market,
6. many counterfeit arts in the market,
7. warehousing of cultural objects¹¹

UNESCO estimate the illicit trafficking of cultural property is \$2 to \$6 billion per year.¹² Moreover, the illicit market supplies a significant proportion of the cultural artefacts traded on the 'licit' antiquities market (valued at US\$65.1 billion in 2021¹³).

The vandalization and looting of cultural property can occur under two circumstances: during a conflict, where the seizure of cultural property is considered a spoil of war, and during peacetime, it is stolen from collections or illegally unearthed and smuggled out of the country and sold on the international market.¹⁴

Most stolen art reaches the Art market in the United States, United Kingdom and Asia. According to the Art Basel & UBS Report 2022, the three largest art markets, the US, Greater China, and the UK, represent 80% of the art market sales.¹⁵

The looting and trafficking of cultural heritage is still a growing concern since the art market is still vulnerable to financial crimes such as money laundering and terrorist financing.¹⁶

11. Research and Trend Analysis Branch, United Nations Office on Drugs and Crime (UNODC), "FALSE TRADES: UNCOVERING the SCALE and SCOPE of TRAFFICKING in CULTURAL PROPERTY Knowledge Gaps and Future Directions for Research Trafficking in Cultural Property: Knowledge Gaps and Future Directions for Research," 2022,

12. Greg Borgstede, "Cultural Property, the Palermo Convention, and Transnational Organized Crime," *International Journal of Cultural Property* 21, no. 3 (August 2014): 281–90,

13. Clare Mc Andrew, "A Survey of Global Collecting in 2022" (An Art Basel & UBS, 2022),

14. Zsuzsanna Veres, "The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention," *Santa Clara Journal of International Law* 12, no. 2 (May 27, 2014): 94,

15. Greg Borgstede, "Cultural Property, the Palermo Convention, and Transnational Organized Crime," *International Journal of Cultural Property* 21, no. 3 (August 2014): 281–90,

Indeed, if a country's government cannot protect a tangible good such as an archaeological site, how can it protect people's lives?

We can resume the approach of a terroristic group to cultural heritage with Amr Al-Azm, professor of Middle East history and anthropology, words, "*they loot what they can sell, and they will destroy what they cannot*".¹⁷

2 The problem of defining terrorism and cultural heritage

Intentional destruction of cultural heritage can result from broader actions during armed conflicts or systematic terrorist campaigns.

Identifying the context in which the crime is committed is essential to understanding which legal effects will stem from it.

Whereas the definition of armed conflict is easily found, the situation is most challenging regarding terrorism.

Etymologically, terrorism originates from the Latin *terrere*, which means "to frighten or terrify someone".

Over time, the meaning of terrorism has changed due to social and historical factors. According to the professor of international law at the University of Sydney Tim Stephens, the crime of terrorism has undergone three chronological phases:

- "(i) state-instigated policies of terror applied domestically;
- (ii) domestic or internal terrorism carried out by private individuals or groups; and
- (iii) international terrorism, including state-sponsored acts of transnational violence"¹⁸.

Suppose we consider the wave system proposed by Rapoport, Professor of political science at UCLA, to explain how terrorism evolve.¹⁹

Paradoxically, we collocate the majority of destructions and selling of cultural property operated by the terrorist organisation in the religious wave (2001-today).

17. Amineddoleh, Leila A. 2015. "Cultural Heritage Vandalism and Looting: The Role of Terrorist Organizations, Public Institutions and Private Collectors." *Santander Art & Culture*, 27-62.

18. Tim Stephens, "The International Criminal Law and the Response to International Terrorism," *heinonline.org* (University of New South Wales Law Journal, 2022),

19. David C. Rapoport, "The Four Waves of Modern Terrorism.," in *Attacking Terrorism: Elements of a Grand Strategy* (Washington D.C.: Georgetown University Press, 2004).

Indeed, the people who destroy the cultural heritage of ethnic groups for religious motivations are the same, trying to profit from it.

To protect cultural heritage from destruction and illicit trafficking, we must understand who the perpetrators are.

Recently terrorist groups such as ISIS, Al-Qaeda and their affiliates have been looting archaeological sites to sell artefacts to buy weapons.

According to Interpol, the looting of cultural artefacts did not stop even during the covid pandemic but increased.²⁰

The Antiquities coalition underlined that selling many artefacts is unnecessary to finance a major attack. For instance, the selling price of known looted masterpieces (e.g. seated Buddha for 1.080.00, Head of Sargon II and Gandhara Buddha) was higher than the cost of the 2015 Paris attacks (\$ 88,160).²¹

Moreover, it is enough to consider that 1 million dollars in the black market can furnish terrorist groups approximately 11,667 Kalashnikov (AK-47s) with two and half million bullets or 1250 missile launchers and 5000 mortars.²²

Although, in recent times, terrorism has represented a global threat to security and peace, there is no universal and comprehensive definition of the term under international law. Indeed, the elements that compose the type of offence of 'terrorism' differ across national jurisdictions, making it difficult for states to cooperate and adopt countermeasures to face terrorism more effectively.

Each State gives its definition of terrorism, from which it stems different legal consequences. For instance, a State may consider a category of persons as terrorists on a political or ideological basis, while another State can adopt other criteria.

Particularly as pointed out by Diplomat at the Permanent Mission of Croatia to the United Nations Blanka Glasenhardt: "*in situations of armed conflict, terrorism may be evoked as an instrument to discredit the opposite side – whether it is "an individual, a*

20. INTERPOL, "Cultural Property Crime Thrives throughout Pandemic Says New INTERPOL Survey," www.interpol.int, October 18, 2021,

21. Antiquities Coalition, "Conflict Antiquities: A Terrorist Financing Risk," Antiquities Coalition, August 4, 2017,

22. Deborah Lehr, "Art and Antiquities: Conduits for Money Laundering and Terrorist Financing," *ACAMS TODAY the Magazine for Career-Minded Professionals in the Anti-Money Laundering Field*, December 20, 2018,

*private organisation, an insurgent group, a movement of national liberation, a state or a group of states".*²³

This thought can be summed up in the known saying "*one man's terrorist is another man's freedom fighter*"²⁴.

Thus, if we give the word terrorism a broad definition, it can embrace many different situations leading to, for instance, delegitimizing the right of self-determination held by many minority groups²⁵ or "*including behaviour that would otherwise be regarded as ordinary criminal activity*" as pointed out by Tim Stephens.²⁶

As we can see, the existence of a definition of terrorism is not only a semantic problem. Many issues relating to the definition of international terrorism have still not been resolved:

1. whether it should include both non-state and State actors;
2. the types of acts to criminalise;
3. the nature of the international element of the offence;
4. the intention and motive elements of the crime; and
5. the categories of person and property to be protected.²⁷

Some authors, such as Marcello di Filippo, professor of international law at Pisa University, answered the first issue stressing that taking into account both categories of potential perpetrators would not be helpful for the determination of the scope of terrorism²⁸.

23. Blanka Glasenhardt, "Defining Terrorism: Stirring up a Hornet's Nest," in *Europe in Crisis: crime, Criminal Justice, and the Way Forward* (Athens: ANT. N. SAKKOULAS PUBLISHERS L.P., 2017).

24. Hamed Tofangfaz, "Terrorism or Not Terrorism? Whose Money Are We Looking For?," *Journal of Financial Crime* 22, no. 3 (July 6, 2015): 378–90,

25. Tim Stephens, "The International Criminal Law and the Response to International Terrorism," heinonline.org (University of New South Wales Law Journal, 2022),

26 Ibidem.

27. Ibidem

28. Ilias Batekas, "Chapter 7: The International Law on Terrorist Financing," in *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, 2014), 97–108,

This standpoint seems to be contradicted by many State members of the United Nations who, in 2013, enacted the Report of the Ad Hoc Committee stating that several delegations stressed the need for the draft convention on terrorism to contain a clear definition of terrorism that would distinguish between acts of terrorism and the legitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self-determination.²⁹

On the other side, as underlined by Hamed Tofangfaz³⁰, it is not possible to overcome the issue of labelling terrorist-type behaviour by specifying the targets or victims of terrorism since terrorism is a "compound offence" that needs both a mens rea concerning its underlying act and a particular intent about the terrorism itself.³¹

As a result, there are two categories of victims: the victim of the underlying act and the "true target" of the underlying act.³²

There has been an evolution in the international legislative framework concerning the types of acts to be criminalised.

As mentioned, the League of Nations first attempted to elaborate a general definition of terrorism in 1937 with the Convention for the Prevention and Punishment of Terrorism. Article 1(2) of the Convention defines "*acts of terrorism*" as "*criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public*".³³

The first Convention to ever attempt to define terrorism as an international offence was the Convention for the Suppression of the Financing of Terrorism, adopted in 1999.

The definition of terrorism can be found in the Convention's Article 2(1)(b):

29. UN. Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996, "Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996, 16th Session (8 to 12 April 2013)" (New York: United Nations, 2013).

30. Hamed Tofangfaz, "Criminalization of Terrorist Financing: From Theory to Practice," *New Criminal Law Review: An International and Interdisciplinary Journal* 21, no. 1 (2018): 57–140,

31. *Ibidem*.

32. *Ibidem*.

33. Article 1(2), League of Nations, "Convention for the Prevention and Punishment of Terrorism" (1937),

“1) Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(b) Any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.”³⁴

The United Nations' Draft Comprehensive Convention on Terrorism is the most current international attempt to define terrorism. In 1996, India proposed this Convention, which is still discussed and negotiated at the General Assembly's Sixth Committee.

The General Assembly, Resolution 54/110 on measures to eliminate International Terrorism, reaffirms that the Ad Hoc Committee established *"shall address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering the elaboration of a comprehensive convention on international terrorism, and shall address the question of convening a high-level conference under the auspices of the United Nations to formulate a jointly organised response of the international community to terrorism in all its forms and manifestations.”³⁵*

Defining the term “cultural property” is essential to elaborate a proper legal framework to face the looting and trafficking of cultural heritage. Indeed, the chosen definition can significantly impact the effectiveness of a convention and what objects are protected by it. Each Convention provides a definition of cultural heritage which reflects the economic, social and political context in which it was negotiated, and it focuses on a range of issues important to cultural heritage at that time.³⁶ For this reason, there is no

34. Article 2(1)(b), United Nations, “International Convention for the Suppression of the Financing of Terrorism” (1999),

35. UN, General Assembly (54th Sess.: 1999-2000), “Measures to Eliminate International Terrorism: Resolution /: Adopted by the General Assembly,” A/RES/54/110 digitallibrary.un.org § (2000),

36. Forrest, Craig. *International Law and the Protection of Cultural Heritage*. 1st ed. 2012. Reprint, Taylor and Francis, 2012.

definition of cultural heritage that captures the idea or notion for all purposes.³⁷ Usually, term as cultural objects, cultural goods, cultural property, cultural patrimony, art objects, artefacts, artworks and antiquities are considered synonyms.

"Cultural property" is a vague term, but broad and narrow definitions can pose problems. Overbroad definitions afford protection to a wide range of items, which can lead to difficulty in the enforcement or even classification. Narrow definitions, however, run the risk of not protecting items that should otherwise be protected. Further, all States may not support narrow definitions of cultural property because the types of cultural property valued by nations vary significantly, leading to a high risk of exclusion.³⁸

Also, due to this fact, a narrow definition would be better suited for *"regional, rather than global, agreements, in which only cultural property with a certain origin is protected"*³⁹. Finding a careful balance between broad and narrow definitions of cultural property is necessary.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was the first international treaty with a comprehensive definition of cultural property under three classes:

"(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

37. Mackenzie, Simon, Neil Brodie, Donna Yates, and Christos Tsirogiannis. *Trafficking Culture*. 1st ed. 2019. Reprint, Taylor and Francis, 2019.

38. Zsuzsanna Veres, "The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention," *Santa Clara Journal of International Law* 12, no. 2 (May 27, 2014): 94,

39. *ibidem*

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'”⁴⁰.

In Article 1, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property 1970 provides a broad definition of cultural property, which is especially relevant for the trafficking of moveable forms of cultural property. Certain types of cultural property are also specified in the Convention, and State Parties agree to acknowledge cultural property falling into those categories as part of each state's cultural legacy.⁴¹

In the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, the term used is “cultural objects” instead of “cultural property”, but the definition still remains broad.

UNESCO has adopted a comprehensive approach that includes any present or future cultural value object. States have a margin of discretion in defining what falls within their "cultural property" definition. Objects must be significant to archaeology, prehistory, history, literature, art or science on religious or secular grounds. However, an extensive definition implies that any item can be included. Adopting a broad definition leads to subjective definitions and does not provide a framework that can be consistently applied internationally⁴².

The UNIDROIT Convention uses language similar to the UNESCO Convention, including objects *"which, on religious or secular grounds, are important for archaeology, prehistory, history, literature, art or science."*⁴³ States are not free, however, to designate specific items as important. This main difference between the definitions creates a uniform classification that can be applied equally to determine if a particular cultural property item fits within the Convention.

40. Article 1, UNESCO, “Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention” (1954),

41. Article 1, UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property” (1970),

42. Zsuzsanna Veres, “The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention,” *Santa Clara Journal of International Law* 12, no. 2 (May 27, 2014): 94,

43. UNESCO (n 36)

3. Sources of terrorism financing:

Terroristic actions involve a considerable cost in human lives and a tremendous financial cost for both the perpetrators and the offended country (for terrorist countermeasures). As Assistant Professor at the Naval Postgraduate School, USA, Michael Freeman stated, *"although the costs of specific operations may be relatively inexpensive (and even more so for low-level attacks), terrorist organisations require much larger budgets to function"*⁴⁴. As we all know, terrorist attacks may be carried out by individuals or organisations, and they can have a simple or complex structure.

We can find the definition of funds in International Convention for the Suppression of the Financing of Terrorism:

*"assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers checks, money orders, shares, securities, bonds, drafts, letters of credit. Terrorist groups require funds not only to continue their operations and maintain their structures and implications, but also to provide financial assistance to their veterans, widowed warriors, and to garner public support."*⁴⁵

There is a huge variety of sources from which terroristic organisations can draw fully, which may be traced back to state entities and private actors.

Indeed, private terrorist money can come from legitimate sources (for example, legitimate businesses, cultural or religious organisations, government funding, and charitable activities) or illegal activities (for example, drug and commodities trafficking, kidnapping for ransom and government corruption).

It is fundamental to understand how terroristic organisations finance themselves to create a proper countermeasure.

It is common ground that a holistic approach is necessary to address the terroristic threat, which implies not only fighting on the battlefield and cutting their financial resources. Terrorists have a wide range of financing methods to choose from, and their

44. Michael Freeman, "The Sources of Terrorist Financing: Theory and Typology," *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75.

45. Article I, para. 1, United Nations, "International Convention for the Suppression of the Financing of Terrorism" (1999).

choice has to consider issues of volume, risk, convenience, simplicity, costs, and speed.⁴⁶ Volume represents, in this case, the ability to move a massive amount of money with each transaction facilitating the financing of terrorist groups' activities.

Unfortunately, not all methods (such as formal banking, hawala and money transfer businesses) are fit to move an equal volume of funds.

Moreover, relocating a vast amount of money would raise red flags, increasing preventive monitoring.

The different degrees of anonymity linked to each means of transmitting cash add another layer of risk. Another aspect terrorists must look out for is whether the method used is convenient to achieve their purpose and the reliability of the various techniques. Indeed, some methods of transferring funds may be more or less convenient for terrorist groups, depending on their physical location.

The usefulness of a particular way depends on geographic/topographical characteristics (such as uncontrolled borders) and demographic (cultural, ethnic, linguistic) factors.

Furthermore, terrorists prefer methods that guarantee simplicity in transferring funds, such as lesser steps and basic technology, and do not require elaborate skills.

Since every transaction involves a cost, terrorists must keep that in mind before choosing a legitimate source.

Even moving money through illegal routes has its price; for instance, payments (bribes) to border guards or customs officials.

Lastly, terrorists may opt for a method instead of another, depending on how fast they need the money.

In general, terrorist groups want to rely on safe sources to avoid the risk of being monitored, detected or caught. They will evaluate the level and kind of risks related to each fund transfer method.

Additionally, when considering various sources of financing, terroristic groups can take into consideration other criteria related to how they are perceived by others, such as legitimacy and control.⁴⁷ As pointed out by Jodi Vittori, even if a terrorist group does not treat the population under its control very well, it will always try to maintain a level

46. Michael Freeman and Moyara Ruehsen, "Terrorism Financing Methods: An Overview," *Perspectives on Terrorism* 7, no. 4 (August 2013): 5–26.

47. Michael Freeman, "The Sources of Terrorist Financing: Theory and Typology," *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75.

of legitimacy.⁴⁸

As indicated by Michael Freeman, "*Particular financing sources, as one type of a tactical decision, can also impact the legitimacy of a group in several ways. First, they can indicate legitimacy, especially if groups get large sums of money from a broad support base (e.g., diasporas, religious contributions)*"⁴⁹. Second, "*certain fundraising methods are often seen as illegitimate and might be avoided by a terrorist group or, when used, prove counterproductive*"⁵⁰. Freeman adds, "*Finally, the legitimacy of a terrorist group can be undermined if members use their fundraising methods to acquire personal wealth (e.g., Abu Sayyaf and kidnapping for ransom)*"⁵¹.

As money is universally recognised as an expression of power, influence and control, it is no surprise that human beings are motivated by the possibility of financial gains. Terrorists also take advantage of legal and regulatory differences between states, finding the seams where they can work.⁵²

Despite the best efforts of numerous intelligence and crime-fighting agencies and the implementation of the International Convention for the suppression of the financing of terrorism, as pointed out by Nimrod Raphaeli, senior analyst for the Middle East Media Research Institute, there are still some difficulties in tracing financial transactions by terrorist organisations:

1. Terrorist organisations often transact money through third parties, numbered accounts, offshore accounts, charitable organisations and disguised fronts.
2. Many transactions are cash transactions, often through money-changers who keep incomplete records, if any, and often operate outside the supervision of the central banking authorities.

48 Jodi Vittori, *Terrorist Financing and Resourcing* (Springer, 2011), 135–56.

49. Michael Freeman, "The Sources of Terrorist Financing: Theory and Typology," *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75.

50. Ibidem

51. Ibidem

52. Michael Freeman and Moyara Ruehsen, "Terrorism Financing Methods: An Overview," *Perspectives on Terrorism* 7, no. 4 (August 2013): 5–26.

3. Transactions may be conducted through Islamic banks, which, until recently, have escaped close scrutiny.
4. A considerable number of banks operating offshore are also not subject to scrutiny.
5. Some countries invoke banking secrecy, often to conceal illegal activities.
6. Many organisations suspected of terrorist or terrorist-related activities use multiple aliases.⁵³

According to Michael Freeman, the sources of financing terrorism can be divided into State-sponsorship, illegal activities, legal activities and popular support.⁵⁴

3.1. State-sponsorship

During the Cold War, state sponsorship was a prevalent technique for supporting terrorist organisations. State-sponsorship of terrorism is typically defined as "*providing designated terrorist groups with assistance*"⁵⁵, which may consist of "*money, arms, and logistics; diplomatic backing; assistance with initially organising the group; ideological direction; and sanctuary*".⁵⁶

The Security Council, which had a fundamental role in creating a legal framework to face terrorism financing after the twin towers attack, adopts a comprehensive view of public finance, including methods other than direct funding.

The practical relevance of this observation pertains to the law of state responsibility derived from the 1999 International Convention for the Suppression of Terrorist Financing and customary law, both of which recognise these operations as globally prohibited conduct.

53. Nimrod Raphaeli, "FINANCING of TERRORISM: SOURCES, METHODS, and CHANNELS," *Terrorism and Political Violence* 15, no. 4 (October 2003): 59–82,

54. Michael Freeman, "The Sources of Terrorist Financing: Theory and Typology," *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75,

55. Daniel Byman, "Understanding, and Misunderstanding, State Sponsorship of Terrorism," *Studies in Conflict & Terrorism* 45, no. 12 (March 11, 2020): 1–19,

56. Daniel Byman, *Deadly Connections* (Cambridge University Press, 2005),

As a result, the duties derived from both sources and Security Council resolutions on the same issue might be widely construed to include funding techniques that do not involve the direct transfer of money but benefit the organisation and execution of terrorist attacks.⁵⁷

Moreover, a State can adopt an active or passive demeanour to support a terroristic group. According to Daniel Byman, the most significant contribution a state can make to a terrorist's cause is by not acting⁵⁸.

The following describes passive support:

- the regime in question does not directly assist the terrorist group but knowingly permits other actors in the nation to do so;
- the regime can stop this assistance or has chosen not to develop this capability; and
- frequently, passive support is given by political parties, wealthy business people, or other actors in society who are not formally affiliated with the government⁵⁹.

Further distinguishing within the active practices, a State can directly or indirectly support, foster, and finance a terroristic group and host on its territory cells of this organisation for its agenda. Indeed, many countries sponsor terrorist organisations to destabilise the government of other nations.

From the standpoint of terrorist groups, state sponsorship represents a convenient source since it provides high returns for little effort.⁶⁰ At the same time, state support has some drawbacks for terrorist groups regarding control and dependability.

Terrorists do not want to be bound to external supporters since these sponsors (states and individual donors) frequently utilise their financing to influence the scope of the terrorist campaign.

57. Ilias Batekas, "Chapter 7: The International Law on Terrorist Financing," in *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, 2014), 97–108.

58. Daniel Byman, "Passive Sponsors of Terrorism," *Survival* 47, no. 4 (June 2005): 117–44,

59. *ibidem*

60. Michael Freeman, "The Sources of Terrorist Financing: Theory and Typology," *Studies in Conflict & Terrorism* 34, no.

The sponsor may encourage the terrorist organisation to perform acts that it would not otherwise commit or may dissuade them from committing acts that it would otherwise commit.⁶¹

Another worry for terrorist organisations is the possibility of losing a lack of command and control inside the organisation itself, mainly if tiny units or local commanders are in charge of their funding. In this scenario, financing decentralisation may imply that the central leadership has less influence over subsidiary divisions.

Relating the contrast of state sponsorship, the Security Council enacted resolution 2462/2019 reaffirming "*its resolution 1373 (2001) and in particular its decisions that all States shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.*"⁶²

3.2. Illegal activities

Since terrorist groups can not rely entirely on state sponsorship, they attempt to fund themselves through unlawful means. Indeed, they can draw from a wide range of sources, including both minor and major offences. Illegal activities include revolutionary taxes, smuggling commodities (drugs, diamonds, cigarettes, cash, artefacts), petty crimes, and human and animal trafficking.

According to Michael Freeman, financing through illegal activity provides the following advantages:

1. It is a reliable source of revenue, and it provides money quickly and repeatedly.
2. A terrorist group can gain more legitimacy to the detriment of the legitimacy of the State.
3. Illegal activities also often require minimal skill levels to be carried out successfully.⁶³

61. Ibidem

62. United Nations Security Council, "Resolution 2462 (2019)," S/RES/2462(2019) § (2019),

63. Michael Freeman, "The Sources of Terrorist Financing: Theory and Typology," *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75.

On the other side, engaging in illegal activities also has some disadvantages for terrorist groups:

1. For terrorist groups concerned with legitimacy, being involved in illegal activities such as kidnappings, extortion, or drug smuggling can make the group lose the loyalty and support of the population.
2. In terms of security, illegal activities are risky because they expose the group to more control of the police
3. If a terrorist group engages in illegal activities can decide to give up on terrorism⁶⁴

When a group is profitably engaged in criminal activity, it may grow more interested in pursuing profits than attacking the State.

3.3. Legal activities

Terrorist groups may be financed with significant support and revenue from and through legal sources. FATF experts have pointed to specific legal sources of terrorist financing, and these include the "*collection of membership dues and subscriptions; sale of publications; speaking tours, cultural and social events; door-to-door solicitation within the community; appeals to wealthy members of the community; and donations of a portion of their personal earnings.*"⁶⁵ Engaging in legal activities to secure funds is beneficial for terrorist groups in terms of security since a state cannot easily target the activity or those involved in it. However, there may be some disadvantages, such as calling undesired attention from the authorities when the aim of a terrorist group is trying to remain secret or clandestine while still in the planning stages.

When a terrorist group decides to start a legal activity, it has to fulfil some transparency requirements (for example, keeping records of transactions), allowing authorities to see how the terrorist network or organisation works. In some cases, they manage to trace back the movement of money into the "dark" side of the organisation. Moreover, to keep a business lucrative, terrorist groups must have good business skills, which makes it more attractive to illegal businesses for those who lack those abilities. Relating to

64 Ibidem

65. Ilias Batekas, "Chapter 7: The International Law on Terrorist Financing," in *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, 2014), 97–108,

other sources, legal activities are less profitable than other funding sources since it has to compete with other legal activities. Illegal operations, on the other hand, may provide higher profits, in part due to the risk associated with them.⁶⁶

3.4. Popular support

Many terrorist organisations depend on the support of a sympathetic population for financing since it is an easy method. Thus a terrorist organisation aspires to earn the population's loyalty and implicitly the legitimacy to operate as para-state entities.

According to Michael Freeman⁶⁷, a population can show its financing support to a terrorist group in the following ways:

1. in the form of charitable donations
2. Financial support from their diaspora communities (The difference between this support and charitable donations is that support from the diaspora is based more on ethnic or racial connections and less on religious ones).
3. membership dues or donations by members directly to the organisation.

Demonstrating that people support the terrorist's cause by financing it is beneficial for the organisation and a blow to the State. In exchange for loyalty, some terror groups use the donations they receive to undertake social welfare activities, undermining the legitimacy of the State and attracting adherents for their cause. In terms of simplicity, popular support is an easy way to acquire funds.

Popular support has the disadvantage that it can influence the behaviour of the terroristic organisation. As mentioned by Michael Freeman, *“it could lead terrorists to moderate their behaviour if they fear that their actions could undermine their popular support. Conversely, popular support could force them to escalate their behaviour if their constituent population is more “hawkish” than they are. It could also cause them to escalate their operations if they are in a competitive environment for funding.”*⁶⁸

66. Michael Freeman, “The Sources of Terrorist Financing: Theory and Typology,” *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75.

67. *ibidem*

68. Michael Freeman, “The Sources of Terrorist Financing: Theory and Typology,” *Studies in Conflict & Terrorism* 34, no. 6 (June 2011): 461–75,

4. the illicit trafficking of cultural heritage

The practice of selling stolen artefacts on the black-market dates back to antiquities. Napoleon and Hitler were two of history's most renowned art robbers. The first oversaw the stealing of tens of thousands of works, but the second supervised the plundering of hundreds of thousands. Napoleon conceived looting as a way of preservation of artistic treasures, whereas Hitler wanted to collect all art representative of Aryan ideals and destroy all art considered "degenerate".⁶⁹

In some cases, Nazi officers seized the artworks for their economic value. Like the Nazis before them, today, Islamic Fundamentalist terrorist groups sell looted antiquities to fund their activities and destroy art that outrages their values, with the excuse that they are protecting people from the art's corrosive influence.⁷⁰

To understand the scale of the phenomenon, it is enough to think that, for instance, in Yemen, 12.000 items have been looted from Dhamar Museum, 16.000 from the military museum in Sana'a, 120.00 from National Museum in Sana'a, whereas in Syria, tens of thousands of items have been looted from archaeological sites, and at least 40,635 items have stolen from museums.⁷¹

Differently from other illicit trade, the trafficking in cultural heritage is a no renewable source that cannot be cultivated or manufactured as such drug trade (opium, cocaine etc). Moreover, its value increase from source to the market, for instance the looters and artifacts must be laundered in order to appear legitimate.⁷² Probably all this stolen cultural property will be sold in the black market or legal art market after being cleaned., from its illicit provenance.

According to Campbell, the illicit supply chain involves four stages with four different roles: 'looter, early-stage middleman or intermediary, late-stage intermediary, and

⁶⁹Leila A Amineddoleh, "Cultural Heritage Vandalism and Looting: The Role of Terrorist Organization, Public Institutions and Private Collectors," *Santander Art & Culture L. Rev.* 2015, no. 2 (2015): 27–62,

⁷⁰ *Ibidem*

⁷¹Clooney foundation for justice, "Conflict Antiquities the Need for Prosecuting Participants in Illegal Antiquities Trade for Complicity in International Crimes and Terrorism Financing," <https://cfj.org/the-docket-projects/looted-antiquities/>, June 8, 2022,

⁷². Peter B. Campbell, "The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage," *International Journal of Cultural Property* 20, no. 02 (June 19, 2013): 113–53,

collector'. He observes that individuals may be involved in more than one stage of the process, but each role implies different skills:⁷³

1. looters are usually people who know the place and physically extract antiquities from their context within archaeological sites. Then looters sell the looted artefact to a regional or national broker/middlemen.
2. Middlemen take care of the transportation, forgery of documents, and bribe the authorities and border posts.
3. In the last phase, we find specialists at laundering who must allay the fears of collectors that the artefacts are not 'illicit'.⁷⁴

Moreover, the trafficking of looters and middlemen can continue thanks to corruption and negligence of "the facilitator", a person who has the duty to control and protect the archaeological site, for example, archaeological site guards, civil servants, and police.⁷⁵

The fact that ISIS sell looted artifacts makes thing that before destroying an archaeological site with bulldozers, it study which are the most valuable pieces.

Usually, a terrorist organisation does not have the knowledge and specialised skills to individuate what artefacts select for the black market; for this reason, they use the expertise of archaeologists. Indeed, a terrorist group has to pay attention when trading in antique goods not to be tricked by faked antiquities.

Terrorist organisations are involved directly or indirectly with the illicit trafficking of cultural heritage. For example, ISIS had elaborated administrative mechanisms in place to supervise looting activities and the value and availability of receipts connected to the "taxation" of plundered artefacts. The ISIS regulatory body is supposedly situated in Manjij, Syria; IS's Department for Natural Resources issued licenses to local

73. Peter B. Campbell, "The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage," *International Journal of Cultural Property* 20, no. 02 (June 19, 2013): 113–53,

74. Neil Boister, "An Introduction to Transnational Criminal Law (2nd Edition)," in *An Introduction to Transnational Criminal Law* (OUP Oxford, 2018).

75. Mackenzie, Simon, Neil Brodie, Donna Yates, and Christos Tsirogiannis. *Trafficking Culture*. 1st ed. 2019. Reprint, Taylor and Francis, 2019.

inhabitants to excavations and levies them a 20% to 50% tax on their gains.⁷⁶ According to the Financial Action Task Force (FATF), the terrorist group profits also by levying taxes on all cash and goods transiting across territory under its control, including antiquities.⁷⁷

Even if much cultural heritage is not easily movable items, it is still possible for a terrorist group to sell small parts of it and shipped through Singapore and Thailand before reach destination⁷⁸. I

Indeed, the economic value of artefacts lies in their rarity more than their size.

As mentioned before, Michael Freeman proposed some criteria which help us to prove that the illicit trafficking of cultural heritage may be the best choice of revenue for a terrorist organisation.

First, a terrorist group does not encounter any risk during the looting since usually archaeological sites are abandoned when the conflict becomes more violent, or they choose unknown archaeological areas.

However, smuggling antiquities can be difficult since Customs authorities could become aware of those goods and confiscate them.

The risk of being discovered in the smuggling process is low because even if customs authorities can rely on the Interpol stolen art database, which includes 52,000 works of art, it is not completed⁷⁹.

Moreover, Customs authorities need the aid of specialised professionals to find out if an artefact is fake or not, which is not always possible.

The only possibility that a terrorist group has to be caught is when the artefacts arrive from the black market to the art market, for example, a museum or an auction house, but it was proven that on many occasions⁸⁰, the people involved in the art market do not pay

76. Mark V. Vlasic and Helga Turku, “Blood Antiquities,” *Journal of International Criminal Justice* 14, no. 5 (October 2, 2016): 1175–97,

77. Alessandra Russo and Serena Giusti, “The Securitisation of Cultural Heritage,” *International Journal of Cultural Policy* 25, no. 7 (October 3, 2018): 843–57,

78. Daniel Kees, “ISIS the Art Dealer | the Regulatory Review,” www.theregreview.org (The Regulatory Review, April 13, 2020),

79 INTERPOL, “Stolen Works of Art Database,” www.interpol.int, December 2017,

80 The most known the Hobby Lobby case:

attention to the guidelines of transparency necessary to verify the identity of the owner of the artefacts or the documents are forged.

On the other hand, criminals can lessen their chances of getting caught by keeping or forging flawless records that can plausibly explain all of their transactions.

The trafficking of cultural heritage represents a convenient source of financing since the art market is always greedy for new artefacts. However, an economic risk to consider is the potential loss that could be suffered when reselling antiquities. For this reason, ISIS sometimes holds these items for years before selling them to increase the price.

4.1 The vulnerabilities of the art market to financial crimes such as money laundering and financing terrorism

Usually, if the stolen or looted art is not destined directly for a private buyer, it will reach the art market that is composed of three crucial figures: art dealers, museums and auction houses.

The antiquities industry is ideal for both money laundering and terrorism financing. Money laundering through art means investing dirty money (obtained through criminal activities) to clean them. Terrorism financing through art implies the sale of stolen or looted artefacts directly or indirectly by terrorists to get an income. In the art trafficking, it is laundered not the profits of the illegal trafficking but the cultural item itself. This is called art launder⁸¹.

Differently from other illicit trade where money laundering is a subsequent process employed to maximise the illegal profits, the trafficked art is intended for a legal market to realise its full market value.⁸²

After all, the art market is suitable for both financial crimes because a lack of transparency, massive transaction volumes, and a lack of regulatory restrictions

In December 2010, Hobby Lobby purchased \$1.6 million worth of Sumerian artifacts from art dealers in the United Arab Emirates without the documents to prove the provenance. These items were destined to the museum of Bible which did not control if the items have been stolen or looted. In 2017 Hobby Lobby accepted to return the artifacts to the Iraqi government and to pay a fine of \$3 million.

81 Anna Mosna, "Give Art Market Regulation a Chance," *Maastricht Journal of European and Comparative Law* 29, no. 3 (February 23, 2022): 304–27,

82 *ibidem*

distinguish it⁸³. In particular, cultural good is suitable for money laundering since it is small in size, mobile, easily storable, high in value and subjected to inconsistent and speculative pricing mechanisms.⁸⁴

The antiquities industry is unregulated, and anti-money laundering and anti-terrorism funding regulations do not apply in many circumstances.

As a result, antiquities merchants are not always forced to identify their counterparts, making it advantageous for criminals who wish to conceal their identity.

Furthermore, the antiquities market is distinguished by high revenues. Antiques may be sold for enormous sums of money without raising suspicion.

Moreover, objectively estimating an art object's economic value is complicated.

Finally, the price paid results from agreements of the parts based on personal preferences and estimation of the cultural good.

In addition, artefacts are a desirable source of revenue for terrorists since it allows them to avoid depending on external supporters.

Because the antiquities market is based principally on liquid money(many auction house require payment in cash or cheque), selling stolen artefacts is a great way for them to make money.

It is an excellent platform for placing illegal assets because of its lack of oversight and the ability to manipulate pricing and make cash payments.

Thanks to the success of social media, the selling of stolen artefacts is starting to shift from auction houses to online art sales.

Unfortunately, it is impossible to estimate its size and organisation online due to the volatile nature of the internet. For instance, an facebook group created to sell cultural artefacts can disappear after 5 minutes of its creation.

Online selling of cultural property gives both the seller and the buyer anonymity, allows the parties to conduct transactions without intermediaries and connect sellers more quickly with more potential buyers.

⁸³ Saskia Hufnagel and Colin King, "Anti-Money Laundering Regulation and the Art Market," *Legal Studies* 40, no. 1 (November 4, 2019): 131–50,

⁸⁴ Anna Mosna, "Give Art Market Regulation a Chance," *Maastricht Journal of European and Comparative Law* 29, no. 3 (February 23, 2022): 304–27,

Moreover, selling through internet reaches a broader range of social economic backgrounds whereas Auction houses and galleries have a more selected buyer. According to Rand, unlike other illicit trades such as drugs and weapons, there is no trace of the selling of antiquities on the deep web.⁸⁵

The first online platform where it was possible to buy cultural artefacts was eBay which is similar to an online auction but with a bigger pool of potential buyers.

In 2014 Ebay removed the sale listings of 125 Egyptian artifacts that were identified by Egypt's Ministry of Antiquities as looted items. On eBay, most of the objects are sold without documents concerning the provenance or the place of find.

Facebook is the most popular internet social platform where it is possible to find groups (open to everyone or closed) advertising the buying and selling of recently discovered cultural goods. The popularity of Facebook is due to its lax moderation of shared content and its reluctance to delete or ban groups involved in criminal activities.⁸⁶

Terrorist groups on Facebook, in addition to pictures concerning items for sale, share videos of the destruction of archaeological sites because like other social platforms, Facebook allows making an income by having many views on videos or posts.

Other instruments used to organize the selling of the stolen artifacts are WhatsApp and telegram since the exchange of data is encrypted.⁸⁷

As the art market, the online sale of cultural property is a grey area where illicit and licit trade merge without rules. In summary, the protection of cultural heritage from looting and smuggling is undermined by an unregulated art market vulnerable to financial crimes, especially financing terrorism which may require significant regulation.

In addition, there is also a need for online platforms to monitor the illicit trade of cultural property, guaranteeing transparency in the transactions.

In order to face the financing of terrorism, it is necessary to find a broader consensus on the definition of terrorism.

85. Matthew Sargent et al., *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data*, *Www.rand.org* (Santa Monica, California: RAND Corporation, 2020),

86 Maxwell Votey, "ILLCIT ANTIQUITIES and the INTERNET: THE TRAFFICKING of HERITAGE on DIGITAL PLATFORMS," n.d.,

87Matthew Sargent et al., *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data*, *Www.rand.org* (Santa Monica, California: RAND Corporation, 2020),

Chapter 2 –International legal framework against the illicit traffic of cultural property and the international legal instruments concerning terrorism financing

1. The international legal instrument to protect cultural heritage

The aim of the first part of this chapter is to present an overview of the state of the legal framework concerning the protection of cultural heritage.

Moreover, I will introduce other instruments that can be useful to face the looting and the trafficking of cultural heritage along with the enforcement of the Conventions.

The remedies concerning the protection of cultural heritage from destruction can have a legal nature (conventions, UN resolutions, ICC cases) or a hybrid nature (Blue Helmets of Culture, INTERPOL and ICOMs).

It is important to underline that international conventions are effective in protecting art and cultural property if enough countries ratify and follow the agreements.

The legal framework concerning the protection of cultural heritage is composed of the following conventions:

1. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954)
2. UNESCO Convention on the means of prohibiting and preventing the illicit import and export and transfer of ownership of cultural property (1970)
3. Convention concerning the protection of the world cultural and natural heritage (1972)
4. UNIDROIT Convention on stolen or illegally exported cultural objects (1995)

The 1954 convention deals with protecting cultural property during an armed conflict. In contrast, the 1970 UNESCO Convention and the 1995 UNIDROIT Convention aim to prevent the illegal movement of cultural property in peacetime and facilitate its return.

Together, these treaties form a regime that concentrates on international cooperation for the return and restitution of stolen and illegally exported cultural items and the prevention of illicit trafficking through internal measures.

The 1972 Convention establishes that State parties have to ensure effective and active measures are for the protection, conservation and presentation of the cultural and natural heritage situated on their territory.

2.1. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954)

In 1954, following the destruction and pillage of artwork during World War II, under the auspice of UNESCO, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted to conserve cultural property during times of armed conflict and military occupation.

This Convention was the first multilateral international agreement aimed at protecting cultural property.

Its preamble states that “*damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind*”⁸⁸ because “*each people makes its contribution to the culture of the world*”⁸⁹.

This Convention seeks to protect cultural property from destruction or theft during armed conflict (both domestic and international) and foreign occupation. It applies to peacetime international trafficking in cultural property looted during an armed conflict. This Convention establishes that the High Contracting Parties must adopt prevention measures during peacetime to safeguard cultural property within their territory against the foreseeable effects of an armed conflict.⁹⁰

The preventive measures required are, for instance, the preparation of inventories, planning emergency measures to protect property against the risk of fire or the collapse of buildings, and preparing the removal of cultural property to places of safety.⁹¹

88 Preamble, UNESCO, “Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention” (1954),

89. Preamble, UNESCO, “Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention” (1954),

90. Article 3, UNESCO, “Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention” (1954),

91. Article 5, UNESCO, “Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict” (1999),

The High Contracting Parties must prohibit, prevent and, when necessary, put a stop to any form of theft, pillage or misappropriation of, and vandalism directed against, cultural property.⁹²

Moreover, article 4 of the Convention provides a derogation to the obligation of abstaining from exposing a cultural property to damage when there are cases of military necessity.⁹³

It was necessary to include this exception due to the security interests of State Parties. Under article 8, a State can register, obtaining special protection and immunity, an immovable cultural property on their territory as a cultural property of very high importance on the International Register of Cultural Property under Special Protection.⁹⁴

To avoid direct attacks on cultural property under special protection, a State has to mark certain important buildings and monuments with a distinctive emblem of the Convention.⁹⁵

State parties must provide a place for eventual refuge to shelter movable cultural property and establish special units within the military forces responsible for protecting cultural property.⁹⁶

The Convention needs a stronger enforcement mechanism since it does not establish specific sanctions for breach of the treaty.

However, it requires the High Contracting Parties *"to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons of whatever nationality who commit or order to be committed a breach of the present Convention."*⁹⁷

This implies that the intensity and the degree of the punishments will vary based on each Party's domestic laws.

92. Article 4 (3), UNESCO, "Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention" (1954),

93. Article 4, UNESCO, "Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention" (1954),

94. Article 8, UNESCO, "Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention" (1954),

95 Article 16, UNESCO, "Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention" (1954),

96 UNESCO, "Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention" (1954)

97 Article 28, UNESCO, "Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention" (1954),

2.2. UNESCO Convention on the means of prohibiting and preventing the illicit import and export and transfer of ownership of cultural property (1970)

The 1970 UNESCO Convention aims to create a diplomatic framework encouraging international cooperation for the return of stolen and illegally exported cultural property. The impulse to create an international treaty to combat the illicit trafficking of cultural property was given by the young nations concerning the growth of the black market of art and, in particular, the destruction and looting of monuments, ancient sites and museums to meet the demand.⁹⁸

According to article 3, of the 1970 UNESCO convention, illicit trafficking means import, export or transfer of ownership of cultural property.⁹⁹

The 1970 UNESCO Convention seeks to strike a balance between the duties of market states to prevent the illicit importation and sale of cultural property and the responsibility of countries of origin to protect their cultural property within their borders and to prevent its looting, theft, and illegal export.¹⁰⁰

As a counterbalance, the main duties imposed on importing States include preventing museums and similar institutions from acquiring items exported illegally from another State Party after the entry into force of the Convention and, where possible, informing other States of any offers of such property.

State Parties must also prohibit the importation of inventoried cultural property stolen from a museum or similar institution after the Convention enters into force (on the request of another State Party).

They have to take appropriate steps to recover and return such cultural property stolen, and provide the necessary documentation and evidence to establish a claim for its recovery.

Further duties on receiving States include admitting legal actions for the recovery of lost or stolen items of cultural property, recognising the right of each State Party to declare

98. Zsuzsanna Veres, "The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention," *Santa Clara Journal of International Law* 12, no. 2 (May 27, 2014): 94,

99 Article 3, UNESCO, "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property." (1970)

100 Janet Blake, "Trafficking in Cultural Property Where Cultural Heritage Law and the International Fight against Transnational Organized Crime Coincide," *Intersections in International Cultural Heritage Law*, May 14, 2020, 157–80,

specific cultural property inalienable and not subject to exportation, and preventing transfers of ownership likely to promote its illicit import or export.

This last provision implies a further obligation on importing States to control the internal market for such items.

Article 5 of the Convention establishes that States Parties, to protect cultural heritage, should:¹⁰¹

1. Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of the important cultural property;
2. Establishing and keeping up to date, based on a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
3. Promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops) required to ensure the preservation and presentation of cultural property;
4. Organising the supervision of archaeological excavations, ensuring the preservation in situ of specific cultural property, and protecting certain areas reserved for future archaeological research;
5. Establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;
6. Taking educational measures to stimulate and develop respect for the cultural heritage of all States and spreading knowledge of the provisions of this Convention;
7. Seeing that appropriate publicity is given to the disappearance of any items of cultural property.

The control of the movement of cultural property is established from articles 6 to 9 of the Convention.

It is focused on a system of export certificates which should prevent museums from buying objects exported from another State part without an export certificate.¹⁰²

¹⁰¹Article 5, UNESCO, "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property." (1970)

¹⁰²Article 6, Article 3, UNESCO, "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property." (1970)

States are encouraged to take measures consistent with national legislation to prevent museums and similar institutions within their territories from acquiring cultural property exported illegally in the States concerned.¹⁰³

Moreover, oblige States parties to prohibit the import of objects stolen from museums, religious institutions or public monuments.¹⁰⁴

Any person who infringes the obligations imposed by articles 6 and 7 is subjected to penal and administrative sanctions.¹⁰⁵

The most interesting article of the Convention is the 9th, which states that: “*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.*”¹⁰⁶

2.3. Convention concerning the protection of the world cultural and natural heritage (1972)

Another essential tool to protect cultural heritage is the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage.

This Convention is the most comprehensive and widely ratified among UNESCO treaties protecting cultural and natural heritage.

103 Article 7, Article 3, UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.” (1970)

104 Ibidem.

105 Article 8, UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.” (1970)

106 Article 9, Article 3, UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.” (1970)

Article 4 of the Convention establishes that *“the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage belongs primarily to that State”*.¹⁰⁷

On the other side, article 7 considers that *“international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international cooperation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.”*¹⁰⁸

Thus the 1972 UNESCO Convention for the protection of the World Cultural and Natural Heritage provides three instruments to protect the world’s cultural and Natural heritage internationally.

First, the ‘World Heritage Committee’ is an International Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value.

Art 11 establishes that each member state submits an inventory of cultural and natural heritage within its borders to the World Heritage Committee.

The World Heritage Committee has to put these properties on its ‘World Heritage List’. Moreover, the World Heritage Committee has to establish a specific list of world heritage in danger, including the costs of the conservation operations.

For example, Iraq and Syria have ten registered sites with UNESCO, of which nine are in danger of being destroyed or have already been destroyed and/or vandalised.

2.4. UNIDROIT Convention on stolen or illegally exported cultural objects (1995)

The UNIDROIT Convention of 1995 intends to create standard, basic legal procedures for the restitution and return of cultural items between contracting states with the goal of increasing preservation and protection of the cultural heritage.

Furthermore, it attempts to overcome the challenges connected with litigation for the repatriation of cultural heritage, as well as handle the private law components of cultural property preservation more effectively.

¹⁰⁷ Article 4, UNESCO, “Convention Concerning the Protection of the World Cultural and Natural Heritage” (1972),

¹⁰⁸ Article 7, UNESCO, “Convention Concerning the Protection of the World Cultural and Natural Heritage” (1972),

The 1970 UNESCO Convention and the 1995 UNIDROIT Convention are, at the same time, both compatible and complementary.¹⁰⁹

Indeed, it recognises pre-existing public and private international law rules, including trade law rules, making it an extremely difficult and complex set of requirements to negotiate.

Thanks to UNIDROIT Convention, the regulation of international trade of cultural objects would act not only in the sphere of public law but also in private international law.¹¹⁰

The 1995 UNIDROIT Convention was created to establish a text acceptable to both¹¹¹ source and market nations since the 1970 UNESCO Convention has traditionally been considered to favour countries of origin.

Differently from the 1970 UNESCO Convention, the 1995 UNIDROIT Convention has only fifty-four States Parties.

Unfortunately, this convention has not been ratified either by Syria and Iraq where the majority of the looting is happening.

Under article 5 of the Convention, State Parties to the UNIDROIT Convention can request the court of another State party to the Convention to order the return of a cultural object illegally exported from the territory of the requesting nation.

The burden of proof is placed on the claimant state. The claimant state must prove a violation of its laws "regulating the export of cultural objects for the purpose of protecting its cultural heritage" and then prove that the removal of the object significantly impairs one or more of the listed State interests or is of significant cultural importance.

The UNIDROIT convention, however, is not limited to States in instances of theft but rather to any claimant, including private parties.

109 Janet Blake, "Trafficking in Cultural Property Where Cultural Heritage Law and the International Fight against Transnational Organized Crime Coincide," *Intersections in International Cultural Heritage Law*, May 14, 2020, 157–80,

110 Janet Blake, "Trafficking in Cultural Property Where Cultural Heritage Law and the International Fight against Transnational Organized Crime Coincide," *Intersections in International Cultural Heritage Law*, May 14, 2020, 157–80,

111 Article 5, UNIDROIT, "UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects" (1995).

The claims must be brought "within a period of three years from the time the claimant knew of the location of the cultural object and the identity of the possessor, and in any case within a period of fifty years."¹¹²

According to the Convention, it is up to the possessor of a stolen cultural item the obligation to return it to the source nation.¹¹³

A bona fide purchaser, however, is entitled to fair and reasonable compensation if it can be proven that they had no knowledge of the object's stolen status and were thus truly a bona fide purchaser.

The convention, in this way, is trying to find a reasonable compromise between the interests of the market and 'source' States.

The Convention does not act retroactively and only applies to cultural items stolen after the Convention entered into force, provided that the objects were stolen from, or located in "a Contracting State after entry into force" of the Convention.

2.5 UN Security Council resolutions: 2199/2015 and 2347/2017

In 2015, after the heinous crimes committed by ISIS and their affiliates in Syria and Iraq the Security Council, as had happened after the tragedy of 9/11, enacted resolutions 2199/2015.

The above mentioned concerns the obligations of Member States to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages, and from receiving donations.

Resolution 2199/2015 recognizes that some terrorist groups generate revenue by directly or indirectly looting and smuggling cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is used to support recruitment efforts and strengthen operational capability to organise and carry out terrorist attacks.¹¹⁴

¹¹² Article 5(5)UNIDROIT, "UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects" (1995).

¹¹⁴ Paragraph 17, UN SECURITY COUNCIL, "Resolution 2199 (2015)" (2015), Resolution 2199 (2015).

In order to deal, with this issue it decides that all Member States shall take appropriate steps to prevent the illicit trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally, Member States have to take steps to allow the eventual safe return of cultural items to the Iraqi and Syrian people.

Furthermore, it requests the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph.

Moreover, it reaffirms the obligation of Member States *“to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.”*¹¹⁵

In 2017, by impulse of the France and Italy the resolution 2347/2017 was adopted unanimously. This Resolution is the first to focus exclusively on the protection of cultural heritage and its necessity for peace and security and it is considered a milestone.

It was adopted as a reinforcement of Resolution 2199 concerning the fight against international terrorism financing and prohibiting the illicit trafficking of cultural goods from Iraq and Syria as a source of financing.

Differently from other resolutions, including Res. 2199/2015, which recognize that terrorism in all forms and manifestations constitutes as one of the most serious threats to international peace and security, the Resolution 2347/2017 recognizes the destruction of cultural heritage itself as a threat to peace and security.¹¹⁶

Indeed, in the preamble it emphasizes that *“the unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed*

¹¹⁵ Preamble, UN SECURITY COUNCIL, “Resolution 2199 (2015)” (2015), Resolution 2199 (2015).

¹¹⁶ *“Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed”*

*conflicts, notably by terrorist groups, and the attempt to deny historical roots and cultural diversity in this context can fuel and exacerbate conflict and hamper post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected States*¹¹⁷

Recognizing that the destruction of cultural heritage represents a threat to peace and security, the Security Council may resort to mandatory measures contained in chapter VII (39-41) of the United Nations Charter.

It is also recognized the role played by the International Criminal Court in prosecuting the culprits of destruction of cultural heritage.¹¹⁸

Indeed, the prosecution of Abou Tourab was the first case brought before the ICC concerning the "destruction of buildings dedicated to religion and historical monuments"

Under article 8 of the Rome Statute of the International Criminal Court "*the intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives*"¹¹⁹ is considered a war crimes during in international armed conflict and armed conflict not of an international character.

2.6 Red lists by the International Council of Museums, the INTERPOL database of stolen art as an instrument to help the art market to detect illicit trade of cultural property

Museums, as public institutions, are critical in combating cultural property theft.

Since 2000, the International Council of Museums (ICOM) has released 17 Red Lists of cultural assets at risk across the world in collaboration with UNESCO.

¹¹⁷ Preamble, Resolution 2347 (2017) Adopted by the Security Council at its 7907th meeting, on 24 March 2017

¹¹⁸ "Noting the recent decision by the International Criminal Court, which for the first time convicted a defendant for the war crimes of intentionally directing attacks against religious buildings and historic monuments and buildings"

¹¹⁹ Article 8, Rome Statute of the International Criminal Court

ICOM hopes that publishing these Red Lists, will aid the work of police, customs authorities, and all other professionals involved with the preservation of cultural property across the world.

The lists describe the cultural property categories that are most vulnerable to illicit acquisition, transaction, and export.

The Red Lists do not contain stolen objects, but the cultural assets displayed on the lists are inventoried objects from recognised institutions' collections.

ICOM Secretariat collaborates with art historians and archaeologists from a certain nation or region to identify artefacts and define categories. Their job is to make sure that the things on the Lists represent both current and potential future trends in the art market. The Lists are both flexible and non-exhaustive, but they all have one thing in common: all of the indicated categories must be protected by national legislation or bilateral agreements.

Differently from the Red Lists is the list of stolen art created by the INTERPOL.

The INTERPOL database of stolen works of art combines descriptions and pictures of more than 52,000 items.

It is the only database at the international level with certified police information on stolen and missing objects of art.

In order to register a cultural item as stolen, States must provide the information through authorised authorities (INTERPOL National Central Bureaus and specific international partner organisations, such as UNESCO, ICOM and ICCROM).

The items must be fully identifiable objects to be inserted in the list.

Recently, INTERPOL launched the ID-Art mobile app with the intention of identifying stolen cultural property, reducing illicit trafficking, and increasing the chances of recovering stolen items.

The app widens the audience of private and public institutions, including museum curators, auction house representatives, private collectors, artists or members of the public, that can report an item as stolen.

2.7 The task force of experts to protect cultural heritage from looting: Unesco's blue helmets for culture

The idea that military force can be used for the protection of cultural heritage is something new.

During World War II, in order to protect artworks from destruction and pillage, it was created the monuments men a special team of the army with knowledge in archaeology and the art field.

The 1954 Convention establishes that States parties have “*to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples*”¹²⁰ and establish special units within the military forces responsible for protecting cultural property.

However, the only States to have created a military team specialised in cultural property protection are few (Italy, France and the United States).

Following the positive experience of MINUSMA where for the first time, thanks to the French initiative, a cultural component was introduced in the mandate of a UN peacekeeping operation to “protect the cultural and historical sites”, it was clear the necessity of task forces of experts to protect cultural heritage.

UNESCO approved a resolution in 2015 that pledges each member country to establishing a national task force, Unite4Heritage, to defend world cultural heritage and invites the UN to examine the possibility of a cultural component in peacekeeping operations.

In 2017 The UN Security Council approved Resolution 2437/2017, which provides for the engagement of a cultural element in UN peacekeeping missions if requested.

In 2016 the Italian government and UNESCO signed a Memorandum of Understanding (MoU) in Rome on 16 February 2016 to establish the Italian Unite4Heritage Task Force, to be deployed to protect cultural heritage at risk.

According to the Memorandum of Understanding, Italy undertakes “*to establish - under the coordination of the Italian Ministry of Culture and Tourism (MIBACT), and with the*

¹²⁰ Article 7, UNESCO, “Convention for the Protection of Cultural Property in the Event the of Armed Conflict with Regulations for the Execution of the Convention” (1954),

participation of the Ministry of Foreign Affairs and International Cooperation, the Ministry of Defense and the Ministry of Education, University and Research - the Italian Task Force, as well as a mechanism for its rapid mobilization, composed of highly qualified experts, identified through adequate selection processes, in all areas pertaining to the safeguarding, rehabilitation and protection of cultural and natural heritage, and of specialized officers belonging to the Department of the Italian Carabinieri for the Protection of Cultural Heritage (Comando Carabinieri Tutela Patrimonio Culturale). ”¹²¹

The Department of Italian Carabinieri for the Protection for Cultural Heritage has been found in 1969, one year before the entry into force of the Unesco Convention, and its a specialized unit of the army of Carabinieri which combines military, policing and cultural expertise and has been deployed in Kosovo and Iraq.

The task force has been designed to be rapidly mobilised in response to a request from a UNESCO member state to assess the risks and/or quantify the damage to cultural heritage in crisis areas, devise action plans, perform technical supervision, provide training courses for local staff, assist with the transport of movable objects to safe shelters and strengthen the fight against looting and the illegal traffic in cultural artefacts.

The deployment in non-permissive environments or combat scenarios, such as active engagement to free archaeological sites of iconoclastic adversaries, is excluded and beyond any possible mandate,

2.8. the enforcement of AML in the art market, in particular in the auction house.

Historically, auction houses, artwork buyers and dealers, and museums have played an essential role in the industry surrounding the trade of illicit cultural properties.

Without international legislation governing the art market, it is an entirely self-regulated market that promotes inherently broad governing principles with natural grey

121Memorandum of Understanding between the Government of the Italian Republic (hereafter referred to as the “Government”) and the United Nations Educational, Scientific and Cultural Organization (hereafter referred to as “UNESCO”) hereafter jointly referred to as the “Parties
https://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1455616287505_2._Memorandum_of_Understanding__11_II_2016_DRAFT_Finale_UNESCO_versione_Italia.pdf

areas. Indeed, creating rules concerning the trade of artworks is delegated to museums and auction houses, and they are not legally binding.

The most notable guidelines are:

1. the Basel Art Trade Guidelines, issued in 2012 by the Basel Institute of governance. It was the result of agreements between crucial market players. These Guidelines do not seek to replace existing initiatives but rely on art market operators' full compliance with applicable national legislation, international conventions and relevant Codes of Ethics such as the IADAA, ICOM CINOA, CAA-Codes and others. It aims to create best practices based on the identification of the seller and buyer, the due diligence before the sale, the source of funds and after-sale responsibility.
2. The responsible Art market guidelines on combatting Money Laundering and Terrorist Financing. These guidelines are founded on a risk-based approach, which means adopting AML procedures and compliance controls based on the type and level of risk associated with your business. The risk-based approach includes the following areas of enquiry: risk profile of the art business, client due diligence (know your client), artwork due diligence (research the artwork, its ownership and provenance) and transaction due diligence (know the background and purpose of the transaction).

One common denominator between the different self-regulations of the Art market is the concept of the provenance of cultural property. It is necessary to research the provenance of a cultural item to prove the ownership where the legal title is contested. The absence of data concerning the provenance or presence of a suspicious name in a provenance record may imply that the antiquity was stolen or misappropriated, warranting a diligent inquiry. For source nations, assessing provenance history for antiquity is critical to claim back works that are thought to have been exported in violation of export laws or patrimony. The process of a provenance search is further complicated in the case of looted antiquities. For looted antiquities, principally for excavating from unknown archaeological sites, provenance research is complicated because forgers create false documents to intentionally confuse the historical records or avoid applying the conventions on importing and exporting cultural property.

Before 1980, art dealers and collectors were not obliged to document the provenance and the site of finding the object.

The Auctioneers are obliged to check the provenance of the object brought to them, and they can rely on the INTERPOL database of stolen art, the Art Loss Register and the Red Lists by ICOMs.

2.9. Better control of the traffic of cultural heritage on the Internet

UNESCO concerning the online sales of cultural objects ascertained that :*“worrysome trends, such as the proliferation of pillage and clandestine excavations of archaeological and paleontological sites and related sales on the Internet, are posing further challenges to the protection of cultural heritage”*.¹²²

For the past decades, there has been a shift from auction houses to auction and sales-hosting websites like eBay, Invaluable, Etsy, and Live Auctioneers, as well as their own websites to purchase and sell antiquities.

Recently antiquities transactions have been discovered to occur outside of typical internet marketplaces on social media sites such as Facebook and Instagram.

The issue was so big that the Security Council, in resolution 2347/2017, was concerned by *“the continuing use in a globalized society, by terrorists and their supporters, of new information and communications technologies, in particular the Internet, to facilitate terrorist acts, and condemning their use to fund terrorist acts through the illicit trade in cultural property”*.

UNESCO, INTERPOL, and ICOM issued an unified warning on internet commerce in 2006. They compelled websites selling antiques to contain the following disclaimer: *“With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; ii) request evidence of the seller’s legal title. In*

¹²² UNESCO, online sale of cultural objects, subsidiary Committee of the Meeting of States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 4th, Paris, 2016 [

case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM.”¹²³

According to Neil Brodie, a known archeologist, the invitation to put the disclaimer, mentioned above, has been not met by internet dealers.

Statista research department LUISS has observed that online sales in the art and antiques market worldwide rose by seven per cent in 2021 over the previous year, after an incredible increase in 2020 due to the closing of auction houses and difficulty in doing business in presence.

According to the Antiquities Trafficking and Heritage Anthropology Research (ATHAR) Project, the illicit traffic of stolen cultural property on a social platform is increased during the pandemic, particularly in the Middle East and North Africa. The investigative study by this UNESCO partner led Facebook to ban the trade of historical and cultural objects on its online platform and to remove dozens of groups from its site.

Since the ban and elimination of groups are based on voluntary user warnings, Facebook is in the process of developing algorithmic systems that will identify black market content through images and keywords.

On June 23rd 2020, Facebook held a bimonthly Facebook’s Public Policy Forum where it was discussed the online sale of antiquities and it was issued minutes entitled “Recommendation: sale of historical artifacts”.¹²⁴

Stakeholders participated to the forum too and was called to give their feedback on the solutions proposed to fight the online illicit trade of antiquities.

The report outlined three potential responses:

1) keeping the status quo which implies the removal the sale of historical artifacts where it is proved that the artifacts have been looted;

¹²³Basic Actions concerning Cultural Objects being offered for Sale over the Internet https://fr.unesco.org/sites/default/files/basic-actions-cultural-objects-for-sale_en.pdf
¹²⁴ FACEBOOK PRODUCT POLICY FORUM, RECOMMENDATION: SALE OF HISTORICAL ARTIFACTS (2020), <https://perma.cc/89P6-5DBS>.

2) enforcing a ban on “an escalations-only basis” which means removing content depicting the sale, exchange, or attempt to purchase historical artifacts and Content encouraging contact to facilitate the sale, exchange, or purchase of historical artifacts ;or

3) enforcing a ban “via scaled re- view.” on content depicting the sale, exchange, or attempt to purchase historical artifacts and content encouraging contact to facilitate the sale, exchange, or purchase of historical artifacts.

Although the report favored the third option, Facebook, under its Coordinating Harm & Promoting Crime policy, applied the first proposal prohibiting and removing the sale of historical artifacts when it is clear that such items have been looted.

However, Facebook Regulated Goods policy does not prohibit organic content that attempts to sell, gift, exchange, or transfer historical artifacts.

2.10 Legal instruments against the financing of terrorism

As mentioned in the first chapter, looting and trafficking of cultural heritage is becoming a new source of revenue for terrorist groups.

Thus, in this chapter's second part, I will illustrate the current legal framework concerning financing terrorism.

Moreover, since the art market can be susceptible to money laundering, I will briefly overview the money laundering regulation at the international and regional levels (European Union).

2.11. Current Legal Framework

Since 70' the ONU has enacted 19 conventions and additional universal protocols to counteract specific modalities of terrorism. Despite this massive legal framework, it has still failed to give a complete definition of terrorism. These conventions only establish which conducts the contracting parties must punish under domestic law without mentioning the subjective elements (the purpose of the terroristic act and the reasons behind it). Other treaties, instead, take into consideration either the objective aspects of terrorism and its aims.¹²⁵

125 Antonio Cassese, *The Multifaceted Criminal Notion of Terrorism in International Law*, *Journal of International Criminal Justice* 4 (2006), pp. 933-958

Terrorism activities can occur either in peacetime or in wartime.

In both situations, terroristic actions aim to intimidate and terrorise the population and force a government or an international organisation to do or not to do a determinate act. According to Antonio Cassese, Professor of international law at the University of Florence, there is a consensus on a definition of terrorism in time of peace based on the following elements:

“broadly speaking, terrorism consists of (i) acts normally criminalised under any national penal system, or assistance in the commission of such acts whenever they are performed in the time of peace; those acts must be (ii) intended to provoke a state of terror in the population or to coerce a state or an international organisation to take some sort of action, and finally (iii) are politically or ideologically motivated, i.e. are not based on the pursuit of private ends.”¹²⁶

Acts of terrorism performed during an international or internal armed conflict fall into humanitarian law and international criminal law.

International humanitarian law does not define terrorism but explicitly forbids “all measures of terrorism”¹²⁷ and “acts of terrorism”¹²⁸ against civilians and persons not or no longer engaged in hostilities.

The humanitarian law aims to prohibit as a war weapon the spreading of terror among the civilian population by parties to an armed conflict in hostilities conduct.¹²⁹

The ICC supported the leaning which criminalises terrorist acts during an armed conflict.

From the point of view of Tim Stephens, although the United Nations counter-terrorism conventions and protocols have reached an international consensus and have been ratified extensively, there are two weaknesses in the framework they created.

First of all, the absence of general offence of terrorism and second, the consequences of the implementation of the bipartite *aut dedere aut punire* (judicare) obligation¹³⁰

126 Antonio Cassese, *The Multifaceted Criminal Notion of Terrorism in International Law*, *Journal of International Criminal Justice* 4 (2006), pp. 933-958

127 IV Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, article 33

128 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), article 4 (d)

129 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), article 13 clause 2

130 *International Criminal Law and the response to international terrorism*

Concerning the issue of financing terrorism it has been elaborated the following legal framework:

- 1) the International Convention for the suppression of the financing of terrorism, adopted in 1999
- 2) Financial Action Task Force (FATF) 40 Recommendations
- 3) Resolution n.1373/2001
- 4) European Union legislation

2.12. International Convention for the Suppression of the Financing of Terrorism (1999)

During the Halifax Summit in 1995, the G7/8 State and Government strongly reaffirmed the intention “*to work together in the international community, with international organizations, institutions and other fora to fight terrorism*”¹³¹. Moreover, they agreed “*to peruse measures aimed at depriving terrorists of their sources of finance*”.¹³² As a result of the G8’s statement in December 1996, the U.N. General Assembly adopted Resolution 51/210, establishing an ad hoc committee to “*address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.*”¹³³

The Resolution also called on all States to undertake measures to prevent and counteract terrorist financing and terrorist organisations.

Moreover, where appropriate, it led to “adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds”¹³⁴.

In 1998, France proposed at a G8 summit a draft of a convention on the suppression of the financing of terrorism. Then the draft was submitted for evaluation first by an ad hoc committee and then by a Working Group of the Sixth Committee.

The Sixth Committee recommended the adoption of the proposed convention to the

131 G7, Ottawa Ministerial Declaration on Countering Terrorism (Dec. 12, 1995), <http://www.g8.utoronto.ca/terrorism/terror96.htm>.

132 G7, Ottawa Ministerial Declaration on Countering Terrorism (Dec. 12, 1995), <http://www.g8.utoronto.ca/terrorism/terror96.htm>.

133 G.A. Res. 51/210

134 International Convention for the Suppression of the Financing of Terrorism, Preamble

General Assembly. On 9 December 1999, the General Assembly of the United Nations adopted the International Convention for the Suppression of the Financing of Terrorism. As pointed out by the Major General of Financial Police Michele Carbone, contrary to the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances, the approach adopted in the International Convention for the Suppression of the Financing of Terrorism is focused on the criminalisation of the illicit destination of the funds instead of the illicit origins.¹³⁵

The Convention aims to intercept and block the flow of terrorist funds without disrupting the circulation of capital and the continuation of business across global markets.

According to Hamed Tofangfaz, this approach is unsuccessful since “terrorism is not a crime committed for the purpose of making money. It is a ‘politically motivated act of violence’” with two distinctive financial characteristics: (1) terrorists need less money to act than those criminals who seek to maximize their financial gains; (2) terrorist funds are derived from legal and illegal sources.”¹³⁶

Currently, 189 states are parties to the convention and at the beginning “it would have made little impact in international relations had it not been for the terrorist attacks of 9/11”.¹³⁷ The Convention of 1999 is part of the international legal framework to face terrorism composed of sectoral conventions enacted to condemn and suppress terrorist acts, which consider certain categories of offences implicitly regarded as “terrorist”. Unlike the sectoral conventions, in the Terrorist Financing Convention, it was not possible to determine the new offence referring to a particular type of act without giving a definition of terrorism first, the financing of which was going to be criminalised.¹³⁸

In addition to a mini-definition of terrorism whose aim is to cover all the offences not considered by sectoral conventions, the Convention provides a list of acts within the

135 Carbone, Michele., Pasquale. Bianchi, and Valerio. Vallefucio. Le nuove regole antiriciclaggio. Milano: Wolters Kluwer, 2019. pag 337.

136 Tofangfaz, Hamed. 'criminalization of Terrorist Financing: From Theory to Practice', *New Criminal Law Review*, vol. 21/no. 1, (2018), pp. 57-140.

137 I. Bantekas, 'The International Law of Terrorist Financing', (2003) 97 *AJIL* 315 at 324.

138 Tofangfaz, Hamed. 'criminalization of Terrorist Financing: From Theory to Practice', *New Criminal Law Review*, vol. 21/no. 1, (2018), pp. 57-140.

scope of the sectoral conventions and of any further acts whose financing is prohibited.

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According to article 2 of the Convention for the suppression of financing terrorism, the objective element of the offence is the direct or indirect unlawful collection or provision of funds (assets or commodities of every kind), whereas the mens rea is the wilful provision or collection of funds knowing that the funds will be used to commit terroristic actions.¹⁴⁰

Hamed Tofangsaz explained how the ad hoc Committee discussing the draft Convention got to determine the nature of financing terrorism.

Three approaches concerning the crime of terrorist financing were proposed and discussed: (1) to treat terrorist financing as an ancillary form of participation in the offence of terrorism; (2) to criminalise only the acts of financing of terrorist groups; and (3) to consider terrorist financing as an independent crime.¹⁴¹

Some believed, given its gravity, “financing of terrorism” should be considered an independent crime. In contrast, others argued that it has an ancillary nature since financing any of the activities described by the sectoral agreements would constitute participation or complicity in those offences. The provisions in the sectoral treaties on accomplices were sufficient to encompass such financing.

A minority of delegations attempted to limit the scope of the financing crime only to terrorist organisations. They argued that financing as a preparatory act could not be criminalised as an independent offence unless it is of a “particularly dangerous nature,” that is, the financing of terrorist organisations.

Unfortunately, the convention does not define an organisation since the meaning depends on the context considered.

Thus the majority of the delegations considered terrorism as an independent offence of terrorist financing based on the assumption that the intensity and spread of terrorist attacks depend on how much funds they obtain.

139 Tofangsaz, Hamed, *New Criminal Law Review: An International and Interdisciplinary Journal*, Winter 2018,, Vol. 21, No. 1, transitional criminal law, pp. 57-140

140 Boister, Neil. *An introduction to transnational criminal law*, 2 edition. Part II Crimes, 7 Terrorism, p. 7

141 Tofangsaz, Hamed. 'criminalization of Terrorist Financing: From Theory to Practice', *New Criminal Law Review*, vol. 21/no. 1, (2018), pp. 57-140.

The convention on financing terrorism decided that those who finance terrorists should face the same punishment as those who perpetrate terrorism.¹⁴²

This Convention establishes a treaty framework for several of the obligations imposed upon UN members by Security Council Resolution 1373.¹⁴³

2.13. Resolution n.1373/2001

Although The United Nations Security Council has refrained from defining terrorism over the years, it enacted many resolutions condemning specific terrorist attacks.

Resolution 1373/2001 represented a turning point since, for the first time, the Security Council exercised a legislative power establishing general obligations for all States. Indeed, resolution 1373 recognising that “*any act of terrorism constitutes a threat to international peace and security*”

Moreover, the Resolution recalling in paragraph 1 (b) the text of art 2 of the Terrorism Financing Convention applies to non-state parties of the convention obligation already undertaken by parties to the Terrorism Financing.¹⁴⁴

The resolution 1373 recognising that *acts of terrorism constitute “a threat to international peace and security”*¹⁴⁵ recalled chapter VII of UN Charter and as result imposed binding obligations on all United Nations members.

Resolution 1373 requires all Member States to take actions to suppress terrorism, regardless of their participation in the United Nations counter-terrorism agreements.

Resolution 1373 can be divided into three parts; the first part contains a set of binding measures against terrorism financing. The second decides which actions States have to adopt to fight against terrorism. The third section includes another set of general counter-terrorist measures, but states are just ‘called upon’ to adopt them.

Resolution 1373, following the previous resolution 1267/1999, obliged states to freeze all funds or financial assets of persons who commit or attempt to commit terrorist acts and entities that are directly or indirectly involved in terrorism or that are owned and controlled by persons engaged in, or associated with it; it obliged states to prevent their nationals from making such funds available for a terrorist purpose.

142 Tofangsaz, Hamed, *New Criminal Law Review: An International and Interdisciplinary Journal*, winter 2018, Vol. 21, No. 1, Transitional criminal law, pp. 57-140

143 Stephens, T. (2004). *International criminal law and the response to international terrorism*. University of New South Wales Law Journal, 27(2), 454-481.

144 Boister, Neil. *An introduction to transnational criminal law*, 2 edition. Part II Crimes, Terrorism, p. 7

145 Security Council resolution 1373/2001

Moreover, it obliges states to refrain from supporting terrorist acts actively or passively.

It encourages states to share information concerning criminal investigations or criminal proceedings relating to the financing or support of terrorist acts and prosecute whoever takes part in terrorist acts or supports them.

Under resolution 1373, the Counter-Terrorism Committee ('CTC') was established to monitor the implementation of obligations contained in it.

States are obliged to submit a report to the CTC concerning the steps they have taken to enforce the resolution.

According to Tim Stephens, the CTC monitoring the resolution's enforcement process and supporting states in creating appropriate domestic legislative and judicial mechanisms boosts the idea that terrorist suspects are likely to be prosecuted in all member states according to international standards. Moreover, the work of the CTC in assessing the effectiveness of the international counter-terrorism legal framework will allow the Security Council to take specific action to deal with States reluctant to prosecute terrorists, strengthening the primary obligations of states in facing international terrorism.¹⁴⁶

2.14 Financial Action Task Force (FATF) 40 Recommendations

After trying to define terrorism financing, the next step is to understand how to deal with it. There are two tendencies: the first considers the link between terrorism and organised crime as the possibility to apply the already existing measures to prevent money laundering and other financial crime concerning organised activities. Indeed terrorist organisations can resort to criminal activities typical of a terrorist organisation, and for this reason, they can feel the need to launder dirty money.

On the other hand, some considered terrorism financing a distinct crime category. For this reason, money laundering and particularly FATF recommendations are not seen as apt to deal with the financing terrorism issue. The two offences share some similarities, such as taking advantage of the same flaws in the financial system, but there are some differences related to the sources and the destination of the funds.

146 Stephens, Tim. "International Criminal Law and the Response to International Terrorism." University of New South Wales Law Journal, vol. 27, no. 2, 2004, p. 454-481.

Concerning the former, terrorism financing can resort to legitimate and illegitimate funds, whereas money laundering involves money obtained illicitly.

Relating to the latter, financing terrorism aims to distribute funds, whereas money laundering aims to conceal the illegal origin of the funds.

In July 1989, on the initiative of the members of the G7, gathered at a summit in Paris, an intergovernmental organisation called Financial Action Task Force(FATF) was established to develop measures to combat money laundering.

In April 1990, the FATF produced a report providing a set of Forty Recommendations designed to represent a comprehensive plan of action to combat money laundering.

After the Adoption of the Convention for the suppression of financing terrorism, the 9/11 attack and the adoption of the Security Council Resolution 1373/2001, the FATF, in addition to the 40 Recommendations, expanded its scope, including 9 Special Recommendations concerning terrorist financing.

The inter-governmental body sets international standards to prevent money laundering and terrorist financing.

Since money laundering and terroristic financing imply the use of illicit sources, many scholars deem it possible to apply an anti-money laundering policy for the suppression of financing terrorism.

In February 2012, the FATF revised its Recommendations, fully integrating the 9 Special Recommendations on terrorist financing with the measures against money laundering, making a more specific set.

These standards are not binding, but state parties are encouraged to implement them in their legal system.

Moreover, the FAFT has developed a system of mutual evaluations, where members from different countries assess another country to monitor the implementation and effectiveness of measures to combat money laundering and the financing of terrorism.

The FAFT periodically monitors States incapable of providing an effective legal system for preventing and combating money laundering and terrorist financing.

After the procedure of evaluation, states are divided into two categories “risk

jurisdictions subject to a call for action”(grey list) and “jurisdictions under increased monitoring”(black list).¹⁴⁷

States are not obliged to comply with FAFT measures and guidelines, but if they are put on the grey list or black list, they can be economically sanctioned by the International Monetary Fund and other international economic organisations, they can face difficulties in obtaining financial aid, their trade can decline etc.

There are three Recommendations concerning exclusively terrorist financing:

Recommendation 5 states countries should make punishable terrorist financing as intended in the Convention for the suppression of the financing of terrorism.

In addition, they should also criminalise financing of terrorist groups and individual terrorists in the absence of a concrete link to specific terrorist activities.¹⁴⁸

The FATF justifies this expansion of criminalisation by claiming that the majority of the funds are not used to carry out specific attacks but rather for broad organisational support (recruiting, training, travel etc).¹⁴⁹

In the last part of recommendation 5, FATF refers to terrorism financing as a predicate offence of money laundering, that is, when a terroristic organisation needs to launder the funds obtained illegally to enter the financial system.

According to some scholars, this assumption is not convincing for the following reasons:

first of all, the aim of financing terrorism is to distribute funds to a terrorist cell instead of laundering and accumulating a large amount of money as occurs in money laundering¹⁵⁰

147 Carbone, Michele., Pasquale. Bianchi, and Valerio. Vallefucio.

Le nuove regole antiriciclaggio. Milano: Wolters Kluwer, 2021. pag 136.

148 FATF (2012-2021), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation 5 :*“countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.”*

149 Guidance on Criminalising Terrorist Financing, Recommendation 5, October 2016

150 Tofangsz Hamed, Rethinking terrorism financing; where does all this lead, Journal of Money Laundering Control, Vol. 18 No1, 2015

Second of all, in the money laundering the objective is to hide the illegal source of the money whereas in the financing terrorism the aim is to hide the destination of the funds.¹⁵¹

Thirdly, money laundering needs as a predicate offence the unlawful collection and provision of money (for example, drug trafficking) whereas financing of a terrorist group can happen by legitimate sources.¹⁵²

Recommendation 6 deals with financial sanctions related to terrorism financing and it requires that: *“Countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 1373 (2001).”*

The purpose of recommendation 8 is to prevent that non-profit organisations are used as a source of financing of terrorism, and it concerns how States should verify the legitimacy and the Non-profit organisations.¹⁵³

2.15. Regional instruments

151 Compin, Frederic (2018), "Terrorism financing and money laundering: two sides of the same coin?", *Journal of Financial Crime*, Vol. 25 No. 4, pp. 962-968.

152 Tofangsaz Hamed, Rethinking terrorism financing; where does all this lead, *Journal of Money Laundering Control*, Vol. 18 No1, 2015

153 Recommendation 8, FATF (2012-2022), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France,

“Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including: (a) by terrorist organisations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”

According to European Union legislation in order to prevent money laundering and financing terrorism, an essential role is played by banks and other obliged entities, which have to guarantee the traceability of their financial information.

Under art 83 of the TFUE, the European Union can, by directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning terrorism and money laundering.¹⁵⁴

Until now, the European Union enacted 6 directives and this because it has to update its norms on the basis of the FAFT Recommendations and changes concerning new models of money laundering and financing of terrorism.

The incorporation of the contents of FAFT legal system, which is not binding law, into European Union Directives makes them hard law instead of soft law for the European Union members.

The first anti-money laundering Directive 91/308/CEE was adopted on 10 June 1991 to prevent the misuse of the financial system for the purpose of money laundering.

The directive emphasizes how important the cooperation of the credit and financial institutions is to control and prevent money laundering.¹⁵⁵

It provides that obliged entities shall apply customer due diligence requirements when entering into a business relationship (i.e. identify and verify the identity of clients, monitor transactions, report suspicious transactions and preservation of documentation).

In 2001 the, Directive 97/EC (2nd anti-money laundering directive) was enacted, and it introduced a wider definition of money laundering, including all possible predicate offences.¹⁵⁶

Moreover, it widened the receiver of the directive including currency exchange offices and money remittance offices.¹⁵⁷

154 Art 83 Treaty on the functioning of European Union

155 Considerations 15 and 18 of the Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

156 Recommendation 7,8,10 Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration

157 Recommendation 5 Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration

The tragic event of 9/11 inspired counter-terrorist financing to combine the laws concerning money laundering and terrorism financing.

The directive 2005/60/EC is the first directive concerning the financing of terrorism, defining it as *the “provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism”* and emphasising how dirty money and terrorism can ruin the stability and reputation of the European Union internal market.¹⁵⁸

This directive refers to the definition of financing of terrorism given in the International Convention on suppression of financing terrorism.

On 2015 two instruments to face money laundering and financing of terrorism were published:

Directive 849/EU on preventing the use of the financial system for money laundering or terrorist financing (4th anti-money laundering Directive) and Regulation (EU) 2015/847 on information on the payer accompanying transfers of funds.

The Fourth AML Directive extended and replaced the Third EU Anti-Money Laundering Directive, increasing the emphasis on the risk-based approach and providing an evaluation of the risk on a national level and a supranational level coordinated by the European Commission.¹⁵⁹

Moreover, it increased the transparency of information relating to the beneficial ownership of companies and trusts, confirmed the regime of absolute confidentiality of data relating to suspicious transactions and outline specific sanctioning criteria for violation of obligations regarding the prevention of money laundering and terrorist financing.

The Regulation (EU) 2015/847 includes obligations on payment service providers to make fund transfers more transparent.

158 Recommendation 1 Directive 2005/60/EC

159 Article 6, Directive 2015/849/EU

According to it, Member States are encouraged to establish the rules on administrative sanctions and measures applicable to breaches of the provisions of this Regulation and shall guarantee that they are implemented.

Both instruments incorporate the Financial Action Task Force (FATF) recommendations from 2012 and go further in a number of areas to promote the highest standards for anti-money laundering and counter-terrorism funding and go further on a number of issues to promote the highest standards for anti-money laundering and to counter the financing of terrorism.¹⁶⁰

In 2018 the 5th anti-money laundering Directive (Directive (EU) 2018/843) amending the 4th anti-money laundering Directive was enacted.

These amendments took into consideration the new tendency of terrorist organisations to resort to virtual currency and pre-paid cards limiting the anonymity related to them.

The 5th anti-money laundering Directive enhanced transparency on financial transactions by setting up publicly available registers for companies, trusts and other legal arrangements.

The directive carried on the work started by the precedent directive giving EU Financial Intelligence Units more powers and providing them with access to broad information for the carrying out of their tasks.

In accordance with article 18 bis, a European Union Member State in a business relationship with a high-risk third country has to follow some due diligence measures to assess high-risk third countries and protect financial transactions to and from such countries.

It has to set up central bank account registries or retrieval systems in all Member States, improve cooperation and enhance of information between anti-money laundering supervisors between them and between them and prudential supervisors and the European Central Bank.

¹⁶⁰ Recommendation 4, Directive 2015/849/EU

Chapter 3 -The limitations concerning the fight against the illicit trade of cultural property and the terrorism financing

3.1. Gaps and shortcomings in the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954)

The 1954 Hague Convention presents two problems: first of all its application is limited in applicability based on the type of conflict and second of all it is also limited to certain types of property.¹⁶¹

Indeed, article 18 of the Convention establishes that *“apart from the provisions which shall take effect in the time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them.”*

Article 19 states that this Convention applies to “conflicts not of an international character” but there is no definition of this kind of conflict neither in the Hague Convention nor in its Second Protocol.¹⁶²

In a hypothetical case similar to what happened in Syria, determining whether the Convention applies to ISIS presents a challenging problem. (Arts 18-19)

Article 22(5) of the Second Protocol eliminates the ability of other ratifying countries to intervene in an internal conflict in the name of cultural property.

This provision contradicts the preamble of the Convention that embraces an internationalist approach to the cultural property since it prioritises the autonomy of member states.

According to the internationalist approach, cultural property is owned by the entire world.

This provision was necessary to secure ratification from countries concerned about

¹⁶² Beyond Resolution 2347 (2017): The Search for Protection of Cultural Heritage from Armed Non-State Groups

foreign meddling in sovereign affairs. Still, it prevented the creation of a legal system to preserve the cultural property in a non-party territory.¹⁶³

Another problem concerns the military necessity exception, as provided in article 4, paragraph 2. Indeed, the military necessity exception allows states to waive the obligation to abstain by exposing the cultural property to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.

This loophole, for instance, in Syria, allowed a significant amount of destruction to ancient sites located in strategic military positions.

This provision allows State parties to invoke the military necessity exception when prosecuted for their destruction of cultural heritage.

As a result, a court will need to determine whether such actions were necessary and proportional to that necessity.

Moreover, article 28 requires States within the framework of their ordinary criminal jurisdiction to prosecute and impose penal or disciplinary sanctions who commit or order to be committed a breach of the present Convention, making it almost impossible to prosecute and punish violations of the Conventions in conflicts such as the one in Syria.

3.2. The gaps and shortcomings of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

The 1970 Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property represent a milestone in contrast to the illicit trade of cultural property.

Despite this, the Convention reveals some gaps that make it unsuitable for its purpose.

First of all, the 1970 UNESCO Convention has no retroactive effect, implying that it does not apply to cultural stolen before its entry into force.

¹⁶³ An issue of monumental proportion

This fact represents a loophole for the art dealers willing to sell looted artefacts since they backdate the find or the ownership of the art property before 1970.

The 1970 UNESCO Convention focuses more on the preventive measures source States have to take to combat the illicit sale of goods and to inhibit the exportation of these looted cultural goods.

For instance, the exporting states (source state) is bound to prohibit the export of cultural objects not accompanied by an export certificate whereas the importing state (market state) is not required to prohibit the import of cultural items without such certificate.

At the end of the day, source states, which usually do not have the funds to protect their cultural heritage adequately, are the main responsible for preventing the sale of looted good on their territory.

Thirdly, the cultural property which falls under the convention's scope is the one "*stolen from a museum or a religious or secular public monument or similar institution*", and these items must be "*documented as appertaining to the inventory of that institution*".

This narrow approach leads to excluding any undiscovered or unexcavated items (which are the most susceptible to looting) and does not shield nearly enough cultural property from illegal trafficking.¹⁶⁴

Moreover, it does cover cases of private individuals or entities who are victims of theft¹⁶⁵

Fourthly, article 7 establishes that "*the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices.*" and "*all expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party*".

¹⁶⁴ Zsuzsanna Veres, The Fight Against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention, 12 Santa Clara J. Int'l L. 91 (2014). Available at: <http://digitalcommons.law.scu.edu/scujil/vol12/iss2/4>
¹⁶⁵ Scovazzi, Tullio, and Paolo Giorgio Ferri. "Recent Developments in the Fight against the Illicit Export of Archaeological Objects: The Operational Guidelines to the 1970 UNESCO Convention." Art Antiquity and Law, vol. 20, no. 3, October 2015, pp. 195-228. HeinOnline.

While this clause provides protection for bona fide purchasers, at the same time, it could cause problems for the State of origin, especially if it were financially limited and could not afford to pay the cost of a cultural item previously illegally exported.

Furthermore, the obligation to compensate an innocent purchaser or who has a valid title to that property can be questionable since “Why should the successor of a thief or of someone who was guilty of illicit conduct entitled to receive compensation from someone other from the person who transferred the property to him?”¹⁶⁶

Moreover, the 1970 UNESCO Convention is not self-executing, and states have to amend their domestic law in accordance with its requirements which to a margin of appreciation concerning the interpretation.

Unfortunately, although most countries in the world have adopted it, many of these countries have not adopted the whole, or even the most important provisions, of the Convention.

Its effectiveness in preventing illicit movement and transfer of ownership of cultural property and facilitating its return is compromised since it is based on a diplomatic approach.

3.3. The shortcomings of Unidroit Convention on stolen or illegally exported cultural objects (1995)

The 1995 UNIDROIT Convention has been adopted to resolve all the limitations presented in the 1970 Convention.

First of all, the Convention does not explain the terms used in the text allowing the national courts broad discretion in interpreting them, but it leads to a discrepancy in the interpretation of it.

Moreover, article 10 states that the provisions contained in the Conventions apply in respect of a cultural object that is stolen and exported after this Convention entered into force.

¹⁶⁶Scovazzi, Tullio, and Paolo Giorgio Ferri. "Recent Developments in the Fight against the Illicit Export of Archaeological Objects: The Operational Guidelines to the 1970 UNESCO Convention." *Art Antiquity and Law*, vol. 20, no. 3, October 2015, pp. 195-228. HeinOnline.

This implies that it is not retroactive even if article 10(3) clarifies that the Convention does not in any way legitimise any illegal transaction of whatever nature that occurred before it entered into force.

Moreover, it does not limit any right of a State or other person to claim remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.

Considering that the 1995 Convention is almost perfect, it represents a weak point that only 54 countries have ratified the convention, and very significant market States such as the United States and the United Kingdom are not among them.

3.4.UN Security Council Resolution 2347/2017

The UNSC Resolution 2347/2017 has been received as a milestone in the fight against illicit trade since it is the first time the Security Council has dedicated an entire resolution to the subject.

Although its important role in the protection of cultural heritage in an armed conflict, this Resolution presents some weaknesses.

The purpose of the Resolution to deal with the destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts, carried out by terrorist groups seem to have been reduced by the fact that it does not refer to terrorist groups in general, but to Al-Qaida and Da'esh in particular.

Resolution 2347 recalls UNESCO Convention, a treaty specifically dedicated to trafficking in cultural objects, but does not encourage States to ratify it.

Moreover, it does not mention the UNIDROIT *Convention* on Stolen or Illegally Exported Cultural Objects (1995).

Resolution 2347 only 'encourages' States to ratify 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.

Most of the provisions of the Resolution are generic and States are generally asked to "take appropriate steps", "take preventive measures", and "introduce effective national measures" to safeguard their cultural heritage.

The paragraph 17 is the only one to provide a list of concrete actions States should undertake such as: introduction or improving of inventories list of the cultural heritage and properties, adoption of adequate and effective regulations on export and import, including certification of provenance, use and contribution to the INTERPOL Database of Stolen Works of Art, UNESCO Database of National Cultural Heritage Laws, and WCO ARCHEO Platform etc.

Many of the measures contained in paragraph 17 are present in the Conventions concerning the protection of cultural heritage.

Another weak point of the Convention is in Paragraph 17 where it requires States to inventory and provide certificate of provenance for antiquities looted from the ground that by definition cannot be documented.

The majority of the provisions are not binding and this can be deduced by the fact that the Convention, uses terms such as “encourages”, “invites” and “urges” and there is no reference to Chapter VII of the UN Charter, even though the Resolution states multiple times that it is dealing with a threat to international peace and security.

3.5. Limitations of the International Convention for the Suppression of Financing terrorism

The Convention for the suppression of the financing of terrorism sets an important goal: enhancing international cooperation among States to adopt effective measures for the prevention of the funding of terrorism and the prosecution and punishment of its perpetrators.

However, as with all legal instruments, it can have some limitations which weaken its purpose and effective implementation.

According to Hamed Tofangfaz, the definition of the offence is far too vague and, in many respects, inconsistent with the traditional principles of criminal law under the following aspects.¹⁶⁷

First, the Convention does not help achieve a better understanding of terrorism, the financing of which it obliges States to criminalise. Its definition of terrorism does not

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make easy reaching an international consensus on a convention on terrorism since it fails to give a clear distinction between terrorism and other forms of armed conflict and a definition of “terrorist group.”

The Convention defines funds as assets of every kind, including every known or unknown source of financing terrorism. Still, at the national level, the term funds vary considerably from one Member State to another.

Another point that creates uncertainty is the relation between acts of collection and acts of provision: they are two subsequent offences or independent.

Moreover, it seems that different from the other sectoral convention (e.g. for example the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) where the offence is addressed without the need to define or even apply the term terrorism, the financing of terrorism is dependent by the definition of terrorism. Thus, in the case where there is no commission or attempt to commit terrorist acts, the Convention has not clarified what a financier needs to know or intends to be criminally liable.

The convention does not specify whether the use of violence must be directed solely at people to be considered terrorism, as the generic definition suggests, or whether an act against property can be regarded as terroristic, as implied by the convention's reference to sectoral conventions, some of which criminalise acts against property.¹⁶⁸

¹⁶⁸ Journal of Financial Crime vol. 22 iss. 3] Tofangfaz, Hamed - Terrorism or not terrorism_ Whose money are we looking for_ (2015) Hamed Tofangfaz, New Criminal Law Review: An International and Interdisciplinary Journal , WINTER 2018, Vol. 21, No. 1, TRANSITIONAL CRIMINAL LAW (WINTER 2018), pp. 57-140

CONCLUSION

Terrorism financing is a complicated subject since it consists of a wide range of constantly evolving methods and mechanisms for raising funds and resources and their movement. Terrorism organisations need money to carry on their terroristic attacks and maintain the organisational infrastructure (pay salaries, recruit new members, run training camps, and provide for the family of a dead member). Indeed, terrorists adapt the methods of collecting and providing funds to the circumstances where they find themselves. An example of this was the capability of ISIS and its affiliates to profit from the great cultural heritage in Syria and Iraq. Moreover, Cultural property represents for them not only a source of financing but also as an instrument of propaganda since they try to manipulate history in their favour showing the cultural heritage as a symbol of idolaters. The terrorists are also indirectly responsible for destroying cultural sites when they authorise inexperienced people to excavate.

This thesis aimed to investigate how extensive the destruction and smuggling of cultural property by terrorist groups was and how the legal framework concerning financing terrorism and the protection of cultural heritage is addressing the issue.

In the first chapter, as a preliminary act, the notion of terrorism and cultural heritage has been analysed. Concerning the former, there is still no consensus about its definition, which makes it difficult to define the offence of financing terrorism. In relation to the latter, it concluded that no definition of Cultural Heritage would cover all purposes since the notion of cultural heritage results from the evolution of the economic, social and political context.

After a brief overview of the primary sources of terrorist financing, the thesis analyzed the illicit trade of cultural property, resorting to the following criteria (volume, risk,

convenience, simplicity, costs and speed) used by Michael Freeman, Assistant Professor at the Naval Postgraduate School, USA. These criteria have demonstrated that the illicit trade of cultural property can be a fruitful resource for groups located in countries (source states) with a priceless cultural heritage.

This research showed how it is crucial to regulate the art market, encompassing all its entities (Museums, Auction Houses, Online Trade), to protect it from the risk of money laundering and terrorist financing. Currently, the art market is underregulated since there are only non-binding instruments such as guidelines.

Through my thesis I analyzed the UNESCO Conventions and the UNIDROIT Convention about the protection of cultural heritage from the illicit trade. I examined the international instruments concerning the financing of terrorism in particular the International Convention for the Suppression of the financing of terrorism.

The legal framework of both the subjects it is massive legal framework, but there are still some gaps in safeguarding of the cultural property.

First, the 1970 Convention is not retroactive, so it does not apply to the artefact items looted or stolen before it enters into force. Moreover, there are some discrepancies in the implementation of the Convention since it allows States to choose the provisions they want to be bound.

Its effectiveness is diminished by the fact that the majority of the obligations are upon the source states that usually need more funds to implement the measures required and by the fact that it works on a diplomatic basis.

The 1995 Convention was adopted to solve the gaps presented in 1970, but it has been adopted by a few States, and the significant market States are not among them.

The UN Security Council Resolution 2347/2017, the first resolution focused entirely on the protection of cultural heritage, had the potential to enhance the safeguarding of cultural property but it contains principally generic provisions and is not binding.

The FATF with its precise Recommendations, it has proven to adapt to face terrorism financing also in relation to money laundering despite as a soft law it has not binding nature, whereas the definition of financing terrorism is too vague and makes difficult the implementation of it.

A novelty has been the creation of the Blue Helmets for Cultural Heritage task force, which is part of peacekeeping forces (UNSC Resolution 2347/2017) tasked with protecting cultural heritage sites (in the present or potentially) from attack.

In conclusion, the illegal trade of cultural property for terrorism financing is a complex issue that requires a multifaceted approach. As terrorists constantly adapt their funding methods to their circumstances, counterterrorism measures must be tailored to the specific funding sources. Moreover, protecting cultural heritage from destruction and smuggling requires international cooperation among States and International organizations (UNESCO;INTERPOL; ICOMs) and the creation of a strong legal framework.

Therefore, it is crucial for international organizations and states to work together to improve the legal framework for preventing the smuggling of cultural heritage by terrorists and to regulate the art market effectively. By doing so, we can preserve our cultural heritage for future generations and prevent terrorist groups from exploiting it for their nefarious purposes.

