

# LUISS



Cattedra

---

RELATORE

---

CORRELATORE

---

CANDIDATO

Anno Accademico

# The illicit trafficking of cultural objects in Italy and the correlation with organized crime

Analysis, legal perspective, and consideration to enhance protection.

«The true land of the Barbarians is not that one that has never known art, but that one that, full of masterpieces, does not either appreciate them or preserve them. »

- Marcel Proust

«Antimo, questa è la nostra storia, la nostra identità, questo capolavoro deve tornare a casa. È appartenuto ai nostri avi, è tuo, è mio, è del Sannio, è della Campania, è dell'Italia, è del patrimonio culturale universale e domani sarà dei figli dei nostri figli.»

- Roberto Lai

«Art is not a mirror held up to reality but a hammer with which to shape it. »

- Bertolt Brecht

**THE ILLICIT TRAFFICKING OF CULTURAL OBJECTS IN ITALY AND THE CORRELATION WITH ORGANIZED CRIME..... 1**

PREMISES ..... 4

INTRODUCTION ..... 6

1. RESEARCH FRAMEWORK AND DEFINITIONS ..... 11

    1.1. *Definition of illicit trafficking* ..... 11

    1.2. *Definition of organized crime*..... 14

    1.3. *Definition of cultural objects and heritage* ..... 16

2. ANALYSIS OF ILLICIT TRADE AND TRAFFICKING OF CULTURAL OBJECTS LEGAL RELEVANT FRAMEWORK ..... 27

    2.1. *What norms and principles to be considered to address the phenomenon?* ..... 27

    2.2. *Italian legislation* ..... 30

    2.3. *European norms and convention*..... 40

    2.4. *International norms*..... 50

3. THE “ILLICIT TRAFFICKING OF CULTURAL OBJECTS” ..... 63

    3.1. *An overview of the illicit traffic of cultural objects phenomenon* ..... 63

    3.2. *The structure of illicit ‘trafficking’ of cultural objects* ..... 68

    3.3. *The impact of illicit trade*..... 73

    3.4. *The correlation of illicit trafficking with other illicit market or activities*..... 78

4. THE CORRELATION BETWEEN ORGANIZED CRIMINAL GROUPS AND ILLICIT TRAFFICKING OF CULTURAL GOOD IN ITALY ..... 82

    4.1. *The interest of organized crime in the illicit trafficking of cultural goods* ..... 83

    4.2. *The management of illicit trafficking by organized criminal groups* ..... 92

    4.3. *The “Archeomafie”* ..... 98

5. CASE STUDIES ..... 102

    5.1. *The theft of Palermo’s Caravaggio* ..... 102

    5.2. *Giacomo Medici*..... 110

    5.3. *The men of Castelvetro: Gianfranco Becchina and Matteo Messina Denaro* 115

    5.4. *The “Artwork” Negotiations* ..... 118

    5.5. *The operation “Orso Bruno” and “Metallica”* ..... 122

CONCLUSIONS..... 125

BIBLIOGRAPHY ..... 133

## Premises

When I was younger, I always spent the week ends enjoying long walks in the center of Rome with my family. It was a sort of tradition. Once my uncle Fausto narrated me of the “*Caravaggio’s window*”, the little window of Caravaggio’s house in Divino Amore street which seems to be the responsible of his well-known light-shadow effect. This detail attracted me so much that I used to imagine for each painting the light shedding in from this tiny window situated near the Pantheon. From this detail I developed almost an obsession for Caravaggio, I got interested in his works, in which I saw a meaning that was existing beyond the canvas, not limited to the scope of painting. For this reason, at a certain point of my life, in the middle of my teenager years, after losing the opportunity to see Caravaggio’s paintings in Malta, I’ve decided to introduce in the ‘*desires*’ of my life admiring all Caravaggio’s works. Nevertheless, my young dream ended when I realized that this mission was simply impossible. The works attributed to Caravaggio are eighty-four of those seventy-nine are in different manners visible, but five of them are not. Of those five, one just disappeared, three have been destroyed during the second world war and the last one, the Nativity of the Saints Lorenzo and Francesco of Palermo, has been looted in 1969 and since then has never been found. It is impossible to reconstruct something that has been destroyed, but it is possible to recover something which has been unlawfully taken.

At least, this is what I understood back in 2008, when I visited the exhibition “*Nostoi: Capolavori Ritrovati*” at Quirinale. The exhibition was entirely dedicated to the showcase of sixty-eight cultural items, which had been looted in Italy and then trafficked abroad. The latter then ended in the hands of some of the most important museums of the world, who exhibited them until 2007, year in which thanks to the efforts of Italian authorities and the Ministry of Culture the artefacts were recovered and finally exposed in Italy. Among the recovered pieces there were some of the most prestigious archeological artefacts which have been found in Italy, as the Euphonios and the Assteas krater, but also the Trapezophoros or the Vibia Sabina. At the time of the exhibition, I was 10 years old, and although the images of the artworks appear blurred to me, I never forgot the feeling of pride for the return of these works, but also the sadness in realizing how our heritage could have been taken from us to end up displayed somewhere abroad.

However, there is something that relates the Caravaggio and the masterpieces of Nostoi and is not only the fact that both cases regard the traffic of cultural objects. Indeed, what unites the work of Caravaggio with the recovered archeological artefacts is that both cases have seen the involvement of organized criminal groups, which are responsible of their disappearance. Unfortunately, those groups are attracted by the great profit that the market of art offers, posing a continuous threat to our cultural heritage, which can never be considered totally safe from this activity. Therefore, it is necessary to write, describe and open up about this phenomenon, pointing the finger at these criminal groups that deprives

us of our history and identity. If what is a stake is the history of all of us, then we are all responsible for the contrast of this phenomenon.

This research represents my contribution and my effort to contrast it, with the hope one day of seeing returned back to home all the artefact that, alike the Nativity of Caravaggio, have been cruelly taken away by these "*criminals of culture*".

## Introduction

The illicit traffic of cultural objects, undoubtedly, represents the darkest side of the world of art and culture. This phenomenon, which consists in the unlawful acquisition exportation and importation of cultural objects, and is hence transnational by nature, is one of the major existing threats for the cultural heritage of humankind. The consequences of such activity are unmeasurable and devastating, because not only impact on the material and economic value of the objects, but especially affect the intangible attribute that cultural objects embed for their community and nation. The well-known writer Murakami, in one of his novels, once has written «*robbing people of their actual history is the same as robbing them of part of themselves. It's a crime. Our memory is made up of our individual memories and our collective memories. The two are intimately linked. And history is our collective memory. If our collective memory is taken from us - is rewritten - we lose the ability to sustain our true selves.*<sup>1</sup> ». Alike Murakami, the relevant literature dedicated to cultural heritage has always recognized the threat that illicit traffic represents for the protection and valorization of the heritage of humankind. Nonetheless, it has been less frequently debated who benefits from this unlawful activity.

The scope of this research is to answer this question. In particular, this work aims to unveil who has been benefiting from the longstanding depletion of the Italian cultural heritage, licet organized criminal group. Indeed, if at first glance illicit traffic may appear like a phenomenon fueled by '*lucky diggers*', delving deeper into its analysis reveals the complexity of the phenomenon, which more than often involves criminal organizations and encompasses a set of activities considerably more complex compared to the mere illicit circulation or acquisition. As a matter of fact, criminal organizations are increasingly involved in the illicit trafficking of cultural objects, both through the licit market, such as auction houses and internet, and in the illicit market<sup>2</sup>. The latter are attracted by the vast margin of profit that the market of art offers, and in the specific case of Italy, one of the source nation *par excellences*, by the abundant availability of archeological sites and cultural objects that can be theft and looted. Furthermore, criminal organizations are also attracted by the different purposes that the illicit trafficking of cultural property can serve, which also include money laundering and the possibility of use cultural objects as a form of guarantee for other illicit trade.

Therefore, the purpose of this work is to disclose the correlation that exist between organized criminal group and the illicit trafficking of cultural objects in Italy, with a particular focus on the mafia-type organization. As a matter of fact, those organizations are highly diffused in the Italian State and, considering the thorough control exercised by these groups over the criminal activities based in the territory, it would seem superficial to believe

---

<sup>1</sup> Murakami Haruki, *1Q84*, 2009.

<sup>2</sup> United Nations Office on Drugs and Crime, *Trafficking in cultural property*.

that they are not involved, directly or indirectly in the illicit trafficking. For this reason, this research sets out to underscore the correlation between illicit trafficking and organized criminal group, in the context of Italy, a country enriched of cultural heritage, but also of criminal organizations. Nonetheless, in order to disclose the role and the characteristics of the involvement of organized criminal groups, it is necessary to present a full overview of the phenomenon. The latter encompasses the review of the relevant legislation and its evolution in addressing the phenomenon, the attributes actors and phases that constitute it, as well as its impact on the economic, social and cultural sphere of nations, community and individuals. Once having discussed those aspects of the illicit trade and trafficking of cultural objects, it will be possible to delineate the involvement of criminal organization along the chain and examine the organizational structure and type of participation that characterizes such groups.

In order to present a complete analysis of the phenomenon, this research will follow a precise and attentive *plan of work* that will present all the relevant sources that have been selected for the understanding of the topic. The latter are formed by a multitude of different documents, such as convention and national legislations, academic literature, national and international authorities report, articles, investigation proceedings, justice collaborators auditions, available data, courts rulings and interviews, some of which have been conducted *ad hoc* for this research<sup>3</sup>. Each of these sources will contribute to the reconstruction of the phenomenon, offering us a complete analysis of the crime of illicit trafficking, the involvement of organized crime in it and the normative context in which such phenomenon occurs. Nonetheless, in order to offer the most complete and comprehensive understanding of this phenomena, it is peremptory to proceed through a defined path, presenting the mentioned sources with a carefully designed order, aimed at prudentially disclose the correlation between organized crime and the illicit trafficking of cultural objects in Italy.

Hence, the starting point of this research it has been individuated in the definition of the single components that constitute the focus of this research, namely '*illicit trafficking*', '*organized crime*' and '*cultural objects*', whose understanding is required to frame the phenomenon. In particular, the first chapter will present the definitions that international institutions, Italian legislation and the relevant academic literature have provided of such components, with a focus on understanding the different shadows that characterize each definition. Indeed, it will be examined the slightly, but substantial, difference that lies between illicit trade and illicit trafficking, whereas the former is part of the latter, but not vice versa. Furthermore, it will be examined the definition of organized crime, shedding light on the different types of organized criminal groups that have been identified by Italian legislation, licet criminal and mafia-type organizations. Finally, chapter one will review all

---

<sup>3</sup> Particular thanks are extended to the head of the Carabinieri TPC unit in Cosenza, Captain Giacomo Geloso; to the Marshal of the Carabinieri TPC unit of Rome-Trastevere, Mirko Marchetti; to madame Antonella Lampone, the last living testimony of the theft of Caravaggio's nativity and to the staff of the Oratory of San Lorenzo of Palermo.



the relevant definition of cultural object, examining the different terminology used in the relevant legislative document through the lenses of cultural nationalism and cultural internationalism<sup>4</sup>.

The following chapter II will be then dedicated to the scrutiny of the relevant legislation concerning the contrast and prevention of the illicit trade and trafficking phenomenon and the participation of organized criminal groups in it. After having examined the different possible categorization of the norms concerning such phenomenon, this research will present the Italian, International and European regulations dedicated to the phenomenon, highlighting the innovation and evolution of the regulatory framework. Firstly, it will be examined the relevant Italian legislation, as the provision of the Code of Cultural Heritage and Landscape of 2004 dedicated to the traffic of cultural property and the just reformed Title VIII-bis of the penal Code, which has introduced the penal persecution of the various offences that constitute the illicit trafficking. Then, it will be reviewed the relevant legislation at European level, which include both the Conventions of the Council of Europe, dedicated to the contrast of illicit trafficking of cultural properties, and the Regulation and Directives of the European Union, aimed at balancing the principle of free circulation and the protection of cultural goods. Lastly, it will be reported the relevant international legislation, which include a multitude of Conventions and Resolutions that contrast the phenomenon from different perspective, such as the 1970 UNESCO Convention and the 1995 UNIDROIT Convention which deal with the illicit traffic, the Palermo Convention of 2000 dedicated to the contrast of transnational organized crime and the UN Security Council resolution 2199.

Having examined the definitions and the legislative framework of this research, Chapter III will present a general overview of the trade and trafficking phenomenon. Through a review of authorities reports, academic literature and investigation proceeding, it will be first examined the dimension of both the licit and illicit market of art, with a focus on the difficulties that such measurement presents, due to the impossibility of collect precise data. Then, it will be scrutinized the structure, as identified by academic literature, namely the actors and phases that characterized the illicit traffic and trafficking of cultural properties. Further, it will be exhaustively presented the cultural, social and economic impact that the illicit trade provokes, and which affects nations, communities and individuals. Lastly, it will be introduced the correlation between the illicit traffic of cultural objects and other illicit market or activities, which share more than the mere illicit attribute.

The following chapter IV will finally examine the correlation between organized criminal groups, whether mafia-type or not, and the illicit trafficking of cultural objects in Italy. First, through an examination of the relevant investigation proceeding and authorities' data, it will be demonstrated the wide participation in the trafficking of criminal and mafia organizations, highlighting the different interests and purposes that attract these organization to participate

---

<sup>4</sup> Merryman John Henry, "*Two Ways of Thinking About Cultural Property*.", in the American Journal of International Law 80, no. 4, 831–853, 1986. <https://doi.org/10.2307/2202065>

within the trafficking of cultural properties. It will be then analyzed the management of the trafficking operated by such groups, which will be examined referring to the findings of investigation proceeds, that will unveil the strategies and organizational structure of such groups. Lastly, it will be described the concept of Archeomafie, which finds its origin in the recognition of the involvement of organized criminal groups within the trafficking of cultural objects.

Chapter V, that will conclude the analysis of this research, will present some of the most known and interesting case studies, that will strengthen the understanding of the correlation between organized crime and the illicit trafficking of cultural goods in Italy. Indeed, each case that will be presented will highlight a different aspect of such correlation. The case of the Nativity of Caravaggio, on one side will confirm the participation of mafia groups within the illicit trade and, on the other, the interest that such organization have for the huge profit given by the selling of artworks. The case of Giacomo Medici will reconstruct the persecution of the greatest Italian trafficker, that will lead to one of the most famous, and rare, condemn for both the participation in a criminal organization and illicit trafficking of cultural properties. Then, the case of Becchina and Messina Denaro will investigate the correlation between the trafficking activities of the former and the famous boss of Cosa Nostra, describing the fine line that separates organized trafficking from mafia activities. Further, the case of the *“artworks negotiations”* will reveal a marginal purpose persecuted by mafia organization, nonetheless not less relevant, which consist in the use of artefacts as a mean of negotiation. The last case, the Operation Metallica and Orso Bruno will unveil the use of cultural objects trafficking as an instrument for money laundering the proceeds of the illicit traffic of drug.

The last chapter will present the final considerations of this research, which represent the point of arrival of this work, reflecting on the future development of the contrast and prevention of the phenomenon. In particular, the chapter will first review the main findings of the research, starting from the constatation of the involvement of organized crime in the illicit trafficking to the legislative evolution of the norms dedicated priorly to the traffic, and more recently to the trafficking, with a focus on the merit of the two most recent adopted documents, licet the review of Title VIII-bis of the penal Code and the 2017 Nicosia convention. The latter, which penally persecuted for the first time, respectively at national and international level, the criminal offences that constitute the crime of trafficking in cultural property, have left some gaps which requires some enhancement, as the introduction of a norm directly addressing the criminal groups dedicated to the trafficking of cultural property. The chapter will conclude recalling the role that non only state and international institutions, but also community and individual must play in contrasting the phenomenon.

With a focus on understanding the dynamics of the correlation between organized criminal groups and illicit trafficking of cultural goods, this research aims at proposing the most full and comprehensive study of the phenomenon, endeavoring to contribute to the ongoing

scholarly debate, to the preservation of the Italian cultural heritage and to the contrast of the criminal networks that seek to exploit it.

## 1. Research framework and definitions

For the purpose of this thesis, prior to delving into the examination of the legal aspects and the characterization of organized criminal groups involvement in the illicit traffic of cultural objects, it is imperative to refer to precise definitions and *nomen iuris* to contextualize this phenomenon. As indicated by the research title, this study aims to comprehensively explore the interplay between organized crime and the illicit trade of cultural objects in Italy, with the ultimate objective of proposing measures to bolster the safeguarding of Italian heritage. Consequently, it is essential to commence by defining key components, including but not limited to, illicit trade and trafficking, organized crime, cultural properties, and heritage.

### 1.1. Definition of illicit trafficking

As mentioned, this work focuses on the illicit trafficking of cultural objects, nonetheless, in order to offer a concrete definition of such criminal activity, it is necessary to refer to the narrower definition of illicit trade or traffic. Indeed, despite both the terms refer to an illicit set of activities and are used as synonymous in academic literature and international documents, from a substantial and legal point of view the latter is limited to the illicit circulation and transfer of goods, while the former embrace in itself a wider set of illicit activities and actors, that will carefully be explored by this thesis. Hence, referring to illicit trade is a narrow activity that can include the unlawful circulation of different goods, such as drug, weapons, cultural objects, tobacco, marine resources, and waste. On the contrary, illicit trafficking concerns the same type of goods, but not only refers to their circulation, but also embrace any other activity that is functional for enacting and gaining profit from such illicit business. Academic and non-academic literature and international and national institution and organizations have provided different definition of this phenomenon; thus, no standard definition can be identified<sup>5</sup>, but rather different framing of this illicit activity.

Referring to illicit trade, a part of the literature defines illicit traffic as a «*commercial activity for the provision of goods and services that violates the laws of exporting and importing country*»<sup>6</sup>. The World Customs Organization (WCO), in 2012, in its first report on illicit trade, referred to various type of illicit trade, including cultural goods, and identified it as a phenomenon that «*involves money, goods or value gained from illegal and otherwise unethical activity. It encompasses a variety of illegal trading activities including human trafficking, environmental crime, illegal trade in natural resources, intellectual property infringements, trade in certain substances that cause health and safety risks, smuggling of excisable goods, trade in illegal drugs and a variety of illicit financial flows*»<sup>7</sup>. In 2014, the

---

<sup>5</sup> Shelley Louise I. "Illicit Trade and Terrorism.", in Perspectives on Terrorism 14, no. 4, 7–20, 2020. p.7.

<sup>6</sup> Asif Efrat, *Governing Guns, Preventing Plunder: International Cooperation against Illicit Trade*, Oxford: Oxford University Press, 2012, p.5

<sup>7</sup> World Customs Organization, 'Illicit Trade Report 2012'; published in 2013. p. 2.

United Nations, with the security Council resolution n. 2195 identified illicit traffic as a funding source of terrorism, a part of the literature clearly considers that this definition has been drawn on the notion provided by the WCO, nevertheless the one provided by the United Nations failed to include some important elements highlighted in the concept offered by WCO<sup>8</sup>. Another relevant definition is the one provided by the Organization for Economic Cooperation and Development (OECD) in 2016, that introduced in the notion of illicit traffic considerations concerning the consequences of this phenomenon, underlying the impact of those activities on economic stability, social welfare, and public safety<sup>9</sup>.

In 2017, referring to cultural goods, the European Parliament recalled the definition offered by the European Commission, that identifies the illicit traffic of cultural goods as the «*illicit import, export and transfer of ownership of cultural property*» and includes activities that ranges from «*the theft from cultural heritage institutions or private collections, through looting of archeological sites to the displacement of artefacts due to the war*»<sup>10</sup>. This document, as the definition offered by the OECD, recalls the consideration of the European Commission over the consequences of illicit traffic, that «*fosters terrorism, money laundering, tax evasion and organized crime*»<sup>11</sup>.

Therefore, the illicit traffic of cultural property is identified by legal literature, as the importation, exportation, and transportation of goods in violation of rules that ensure:

- The property of a cultural object,
- The conservation of the integrity of the cultural good,
- The conservation of the link between the cultural good and the state or community of origin.

The illicit traffic of cultural goods involves and concerns different kind of objects, such as:

- Stolen cultural property,
- Cultural property illicitly exported,
- Cultural property not reimported back into the origin state.<sup>12</sup>

UNESCO identified illicit import, export and transfer of cultural property as «*one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property*»<sup>13</sup>. Yet, the definition of UNESCO focuses on the consequences of such illicit activities, that can affect the national identity of the owner state and the understanding

---

<sup>8</sup> Shelley L. I. "Illicit Trade and Terrorism.", 2020. p.7-8.

<sup>9</sup> Organisation for Economic Co-operation and Development, 'Governance Frameworks to Counter Illicit Trade', Paris: OECD Published in 2018.

<sup>10</sup> The European Commission's portal on the fight against trafficking of cultural goods in 'Implementation Appraisal, European Parliament, July 2017.

<sup>11</sup> European Commission, *Inception impact assessment on the import of cultural goods*, 2017.

<sup>12</sup> Frigo Manlio, *1995 UNIDROIT Convention and its implementation*, Executive Course in Art and Law, 26/10/23, organized by University of Florence, Florence

<sup>13</sup> Art. 2, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNESCO, 1970.

between Member States that ratified the 1970 convention, which is part of the UNESCO mission. In line with the definition provided by UNESCO, the 1995 UNIDROIT Convention underlined the irreparable damage which is frequently caused by the illicit trade of cultural objects. The damage the Convention refers to is a damage both to the object themselves and to the cultural heritage of national, indigenous, tribal or other communities, and finally considers the damage created by such activities on all people<sup>14</sup>.

For what concerns illicit trafficking, is even hardly possible to find a general definition, as the term trafficking is constituted by all the specific activities which characterize a specific area of trafficking. For instance, human trafficking consists in the recruitment, transportation, transfer, harboring or receipt of persons<sup>15</sup>. Similarly, the trafficking of waste includes a broader set of activities compared to the mere unlawful circulation, such as the transportation, the mixing of different type of waste, the declaration of hazardous waste as non-hazardous, the falsification of the type or origin of waste or its classification<sup>16</sup>. Another instance is the definition released by INTERPOL concerning the trafficking of illicit goods, which encompasses a set of activities, which include counterfeiting, piracy, falsification, adulteration of products, tax evasion and the smuggling of genuine products<sup>17</sup>. Likewise, the illicit trafficking of natural resources includes a wide range of activities, including the exploitation, falsification, logging, transportation, treatment, and extraction of natural resources<sup>18</sup>.

Therefore, the illicit trafficking in cultural property *«involves several acts that may ultimately result in the loss, destruction, removal or theft of irreplaceable items»* which also include illicit excavations, theft, looting, laundering, falsification of origin and provenance and transportation of cultural property<sup>19</sup>. In 2011, the European Commission, has remarked that despite it does not exist an exact definition of trafficking, the latter can be broadly defined as *«any movement, transport, import, export, keeping or commerce in cultural goods carried out in violation of the rules governing ownership or circulation of those goods or their status»*<sup>20</sup>. In 2017 the Nicosia Convention, which aims to prevent and combat the illicit trafficking and destruction of cultural property, has addressed the single criminal offences that constitute such phenomena, licet illicit importation and exportation, unlawful acquisition, laundering, falsification and manumission of documents, and illicit introduction in the market of cultural property, yet the phenomenon has not been addressed as a whole<sup>21</sup>. Similarly, referring to Italian legislation, the law n.22 of March 9, 2022, even though it has

---

<sup>14</sup> UNIDROIT, Convention on Stolen or Illegally Exported Cultural Objects, 1995.

<sup>15</sup> Protocol supplementing the United Nations Convention Against Transnational Organized Crime.

<sup>16</sup> World Customs Organization secretariat, *Illegal waste trafficking: more data is key to getting a better grip on this trade*, February 2019.

<sup>17</sup> INTERPOL, Illicit goods – the issues.

<sup>18</sup> De Jong Daniella, Stewart James G. *Illicit Exploitation of Natural Resources*. In: Jalloh CC, Clarke KM, Nmehielle VO, editors. *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges*. Cambridge: Cambridge University Press; 2019. p. 590–618.

<sup>19</sup> United Nation Office on Drugs and Crime, *Trafficking in cultural property*.

<sup>20</sup> *Study on preventing and fighting illicit trafficking in cultural goods in the European Union, 2011*.

<sup>21</sup> Council of Europe, *Convention on the offences relating to cultural property*, Nicosia, 2017.

not provided a clear definition of illicit trafficking, identified carefully and comprehensively all the crime related to cultural objects, on the model of the Nicosia Convention. In particular, the crimes which have been introduced by the law n.22 of March 9, 2022, which fall in the category of “*illicit trafficking*” as illustrated above are: theft of cultural heritage (art.518-bis), misappropriation of cultural property (art.518-ter), receiving stolen cultural property (art.519-quarter), illicit import of cultural property (Article 518-decies), illicit exit or export of cultural property (art. 518-undecies), laundering and self-laundering (art.518-sexies and 518-septies), and falsification of documents (art.518-octies).

Given this set of definition, it is important to underline some specific features. The first one concerns the activities that are comprised in the illicit acquisition when we are referring to cultural goods, scilicet theft, that is when original cultural objects are robbed from their owners, either a private or a state; and looting, that consist in the removal of ancient relics from archeological sites and old buildings. The second feature to be underlined is the use of the term illicit. From a legal perspective, this term is not always a synonymous of illegal, it rather embeds more element compared to the latter<sup>22</sup>. Indeed, the term illicit has a stronger meaning than illegal, as carries shades of immorality, a crime that is illicit is a crime that goes not only against the law, but also against social norms and values<sup>23</sup>. Effectively, as it will be showcased, the illicit traffic of cultural objects affects social values and communities, as it represents a threat to the integrity of the identity of individuals<sup>24</sup>, which explicates the use of the term illicit.

## 1.2. Definition of organized crime

As has been observed in the context of the illicit trade and trafficking, it is possible to identify multiple definitions of organized crime. However, an analysis reveals that several common characteristics of organized crime are discernible among these definitions. These shared attributes encompass the pursuit of financial gain by organized criminal groups through the commission of criminal activities.

The United Nations Office on Drugs and Crime (UNODC) has defined organized crime as follows: «*a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand. Its continuing existence is maintained through corruption of public officials and the use of intimidation, threats or force to protect its operations.*»<sup>25</sup>. Nonetheless, the UNODC has also acknowledged that a broad, all-

---

<sup>22</sup> Shelley, Louise I. “Illicit Trade and Terrorism.”, 2020. p.7–20.

<sup>23</sup> Accordingly, to the definition of the terms illicit and illegal given by the Italian Encyclopedia ‘Treccani’, the first term refers to an action that is not permitted by moral norms or by civil or religious laws, while the latter term refers to an action which is not permitted by law.

<sup>24</sup> United Nation Office on Drugs and Crime, *Trafficking in cultural property*.

<sup>25</sup> United Nation Office on Drugs and Crime, *Definition of organized crime*, module 1, published in October 2018.

encompassing definition of organized crime may impose certain limitations due to variations in organized crime activities across countries, regions, types of criminal activities, and the nature of the criminal organization itself. Nevertheless, it remains possible to identify overarching elements, though a more comprehensive understanding of the phenomenon necessitates further investigation and study.

According to the UN Convention against Transnational Organized Crime of 2001<sup>26</sup>, also known as Palermo Convention, an organized criminal group can be identified according to the following criteria, reported by article 2a:

- A structured group of three or more persons;
- The group exists for a period of time;
- It acts in concert with the aim of committing at least one serious crime;
- To obtain, directly or indirectly, a financial or material benefit.

If on one side those criteria identify some features of organized criminal groups, on the other side the definition of organized crime, even in the UN Convention of 2001, remains quite vague and broad<sup>27</sup>. The problem of identifying a precise and narrow notion of organized crime in the working phase of the UN convention, that led to the latter definition reported, are mostly related to different existing provisions in the Member States, that can be better understood with the following example. According to United States legislation, criminal belonging to an organized criminal group cannot be persecuted just for being part of the group, consequently they can be punished only when they commit an illegal act. This just cited principle differs from the one that occurs in Italy, which is the country where the studies of this thesis will be developed. According to Italian legislation, being a member of an organized criminal group, whereas mafia, is itself a crime persecuted by law<sup>28</sup>. Italy, indeed, criminalizes membership in any mafia-type organization, which is defined as one in which *“members systematically use intimidation and conditions of subjection deriving there from to commit crimes, to gain control over economic activities and to acquire unlawful advantages”*<sup>29</sup>.

Going deeper into Italian legislation, the penal Code dedicates two articles to the identification of organized criminal groups. The first is article 416, which defines criminal organization as being composed of three or more people who join together with the purpose of committing multiple crimes. This provision aims to protect public order by suppressing organizations that pose a threat due to planned criminal activities<sup>30</sup>. From this article, it emerges that the associative offense requires the coexistence of three elements:

---

<sup>26</sup> United Nations Convention against Transnational Organized Crime of 2000

<sup>27</sup> Finckenauer, James O. *Problems of definition: What is organized crime?* Trends in Organized Crime Vol. 8, 2005. p.63–83.

<sup>28</sup> Ibid.

<sup>29</sup> Di Nicola Andrea, Savona Ernesto U., *Organized Crime around the World*, Helsinki, Finland: Heuni – United Nations around the world, 177, 2003.

<sup>30</sup> Italian Penal Code, Article 416.



- the tendency for a stable associative bond,
- an organizational structure, as there must be a minimal predisposition of means,
- an indeterminate criminal program, aimed at committing an indeterminate series of crimes<sup>31</sup>.

If we compare the definition provided by the Italian penal Code to the one provided by the United Nations, some considerations may be developed. In particular, it can be noted that the Italian definition focuses on the nature of the organization itself, while the definition offered by UN Convention emphasizes the criminal activities and objective of the group.

The second is Article 416-bis of the Penal Code, which is dedicated to mafia-type organization, including foreign ones. This article punishes individuals who are part of a mafia-type organization formed by three or more people with imprisonment for up to 15 years. Article 416-bis identifies an organization as mafia-type when its members use the intimidating force of the organization bond and the conditions of subjugation and omertà (Code of silence), to commit crimes for the direct or indirect acquisition of control over economic activities, concessions, authorizations, contracts, and public services or to gain unjust profits or advantages for themselves or others, or to prevent or obstruct the free exercise of voting or to procure votes for themselves or others during electoral consultations.

The provision also addresses armed organizations, which are identified when participants have access to weapons or explosives to pursue the objectives of the associations. The final paragraph of the article extends its provisions to cover the Camorra, 'Ndrangheta, and other locally named associations, even if foreign, that, using the intimidating force of the associative bond, pursue the same goals as mafia-type associations. For the purpose of this thesis the analysis that will be developed will focus on both criminal organizations identified as article 416-bis and article 416, with a particular focus on the former type of groups.

### 1.3. Definition of cultural objects and heritage

Defining and understanding ‘*what cultural objects and heritage*’ are is a never ending activity, as their conceptualization not only invokes objective and tangible characteristic, but also, or *especially*, develops on intangible and subjective attributes<sup>32</sup>, that are rarely present in most of the conceptualization that the legal panorama offers. When referring to cultural objects, what is being considered is not only the tangible painting or monument, or the economic value, but the historical and cultural interest, the nationalistic or traditional value that the object represents for its community. Consequently, understanding and defining cultural objects, or cultural good or heritage can be accurate and truthful as long as it embeds in this process the consideration of those sentimental attributes that are crucial to identify a cultural good. As the following section will present, legislators, researchers and scholars

---

<sup>31</sup> Villafrate Annamaria, *Criminalità organizzata*, in Studio Cataldi il diritto quotidiano, luglio 2022.

<sup>32</sup> See Giannini Massimo S., *I beni culturali*, in Rivista trimestrale di diritto pubblico, 1976.

debated and presented a unique variety of shades to define what cultural objects or goods are, which require, to be totally understood, a tangible and an intangible eye.

Proceeding chronologically, the first definition to be mentioned is the one provided by the Aia Convention from 1954<sup>33</sup>, that defines cultural property as *«movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history (...); archaeological sites; groups of buildings which, as a whole, which 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.»*<sup>34</sup>. This definition presents both the tangible and intangible aspects of cultural property cited above. In particular, deserves to be highlighted the passage where it recalls a great importance to the cultural heritage of every people, which refers to the value that this property represents for all the humankind. Nevertheless, as the American legal scholar John Henry Merryman noted, the approach that characterizes the Convention for the Protection of Cultural Property in the Event of Armed Conflict is one that sees cultural property as *«components of a common human culture, whatever their places of origin or present location, independent of property rights or national jurisdiction.»*<sup>35</sup>, which he referred to as “cultural internationalism”.

The other way of thinking about cultural property is the so-called “cultural nationalism” approach, that characterizes the first convention that occurred after the one signed in the Hague, that is the one dedicated to the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by UNESCO in 1970, anyway the intangible attribute of great importance remains. The Convention from 1970 identifies cultural property as meaning *«property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science»* and which belongs also to the following categories: *«property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; elements of artistic or historical monuments or archaeological sites which have been dismembered; antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; objects of ethnological interest; property of artistic interest»*<sup>36,37</sup>. To look deeply into this definition, what emerges is that in

---

<sup>33</sup> UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1954.

<sup>34</sup> Article 1. Ibid.

<sup>35</sup> Merryman J. H.. “*Two Ways of Thinking About Cultural Property.*,” 1986.

<sup>36</sup> Art. 1, 1970 UNESCO Convention.

<sup>37</sup> The full annex of categorized cited by the 1970 Convention refers to: (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical

this case, the intangible element, the *importance*, is specifically designed by each State, meaning, as Merryman would argue, that is a way of thinking about cultural property as part of the national cultural heritage. As it has been introduced, this convention belongs to the cultural nationalism approach<sup>38</sup>, as it promotes the return of illicitly exported or stolen objects and introduces limitation over the export of cultural objects.

The two conventions described above represents, according to the scholarly doctrine quoted above, two ways of thinking of cultural heritage, that are the two approaches that influenced the international regulatory framework of cultural property<sup>39</sup>. Merryman identified those two approaches as cultural internationalism and cultural nationalism: the first approach, which is supported by the so-called *market nation*<sup>40</sup> as United States, believes that cultural heritage belongs to all humankind, regardless from its place of origin or national legislation, the latter approach, which is supported by the so-called *source nation*<sup>41</sup> as Italy and Greece, considers cultural property as objects that are subject to property rights and national jurisdiction. Additionally, while the first way of thinking emphasizes the importance of preserving and sharing cultural heritage across national borders, prioritizing values as preservation, access and integrity and its interested in more flexible regulations, the latter way emphasizes the importance of cultural heritage as symbol of national identity, support the adoption of strict rules to maintain national treasures within the territory of the state and focus on values related to authenticity, identity and continuity<sup>42</sup>. Those two ways of thinking of cultural property have influenced the definitions that are presented in this section, which have been introduced by international and national legislation. Certainly, as it has been argued, the concepts of *cultural heritage* that will be reviewed has evolved throughout time, yet those two ways of thinking of cultural heritage, one as a representation of state sovereignty and the other as a symbol of cosmopolitanism, will remain a constant of defining the matter<sup>43</sup>.

The subsequent Convention to be cited is the 1972 UNESCO World Heritage Convention, that identifies cultural heritage as monuments, group of buildings and sites which are of outstanding universal value. The term *monuments* include architectural works, sculptures,

---

monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; (k) articles of furniture more than one hundred years old and old musical instruments

<sup>38</sup> Casini Lorenzo, “*Italian Hours*”: *The globalization of cultural property law*, International Journal of Constitutional Law, Volume 9, Issue 2, April 2011, Pages 369–393, <https://doi.org/10.1093/icon/mor040>

<sup>39</sup> Casini L., “*Italian Hours*”: *The globalization of cultural property law*, 2011.

<sup>40</sup> Defined by Merryman in the study “*Two Ways of Thinking About Cultural Property*” as the States where the demand for cultural properties is higher than the offer.

<sup>41</sup> Defined by Merryman in the study “*Two Ways of Thinking About Cultural Property*” as the States where the offer for cultural properties is higher than the demand.

<sup>42</sup> Merryman, J. H.. “*Two Ways of Thinking About Cultural Property*.” 1989.

<sup>43</sup> Lixinski Lucas, *A Third Way of Thinking about Cultural Property*, 44 Brook. J. Int'l L., 2019, 563-610.

inscriptions, the terminology *groups of buildings* refer to build structure which exhibit extraordinary architectural or contextual importance, and *sites* represent areas that have been shaped by human and natural forces, ranging from archaeological sites to those of historical, aesthetic, ethnological, or anthropological significance<sup>44</sup>. In this convention, the intangible element related to the great importance is expressed through the form *outstanding universal value*, which can be described as a cultural and natural significance which is so exceptional as to transcend national borders and to be of common importance for present and future generations of all humankind; consequently, the permanent protection of this heritage is a priority for the international community as a whole<sup>45</sup>. It can be noted that the approach that dominates in the World Heritage Convention belongs is cultural internationalism, as in the definition of *cultural heritage* what is been recalled is the outstanding universal value, meaning the exceptional importance for all the humankind, regardless from the borders of the state. Moreover, the Convention recognize the relevance of cultural diversity and the need to promote respect of the cultural heritage of all nations and people. However, if on one side this Convention emphasizes the importance of preserving cultural heritage for the benefit of all humankind and promotes international cooperation, on the other side by ratifying the Convention, each Member State pledges to conserve and protect not only the World Heritage sites in its territory, but also its national heritage.

After the 1972 UNESCO Convention, the next relevant definition to be examined is the one provided by the European Union Council in 1993 through the Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State<sup>46</sup>. This Directive referred to cultural objects as meaning objects which are «*classified, before or after its unlawful removal from the territory of a Member State, among the 'national treasures possessing artistic, historic or archaeological value under national legislation or administrative procedures'*»<sup>47</sup>. The Council of EU Directive refers to national treasures which have a certain type of interest under national legislation, delaying the definition of the intangible element of interest to national laws, and that fall under the categories identified by the annex<sup>48</sup>. Consequently, it can be argued that the Directive belongs to the cultural

---

<sup>44</sup> Art. 1, *World Heritage Convention*, UNESCO, 1972.

<sup>45</sup> *Operational Guidelines for the implementation of the World Heritage Convention*, World Heritage Conference, 19/01- 10 July 2019.

<sup>46</sup> Council Directive 93/7/EEC of 15 March 1993.

<sup>47</sup> Art.1, Council Directive 93/7/EEC of 15 March 1993.

<sup>48</sup> Categories referred to in the second indent of Article 1 (1) to which objects classified as 'national treasures' within the meaning of Article 36 of the Treaty must belong in order to qualify for return under this Directive A. 1. Archaeological objects more than 100 years old which are the products of: - land or underwater excavations and finds, - archaeological sites, - archaeological collections. 2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, more than 100 years old. 3. Pictures and paintings executed entirely by hand, on any medium and in any material (1). 4. Mosaics other than those in category 1 or category 2 and drawings executed entirely by hand, on any medium and in any material (1). 5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters (1). 6. Original sculptures or statuary and copies produced by the same process as the original (1) other than those in category 1. 7. Photographs, films and negatives thereof (1). 8. Incunabula and manuscripts, including maps and musical scores, singly or in collections (1). 9. Books more than 100 years old, singly or in collections.

nationalism approach, as it seeks to protect and promote the national treasures of State Parties, as defined by them. Yet, scholars have noted that the notion *national treasures* does not translate easily into the various languages of European Union Member States. Those definitions vary from the form *national treasures* to the notion of *cultural good of the state* through the terminology *goods of cultural significance*. Additionally, in some languages this term can also be translated into *cultural good of national importance* or *goods pertinent to the culture of one nation*, nevertheless it is clear that that kind of translation may lead to some criticism. By the fact, for example, the British Crown Jewels are considered *national* in this sense, while Elgin's marbles are not<sup>49</sup>. Ultimately, the definition of *national treasures* is determined by individual Member States, and the EU treaty does not grant the EU the authority to define them<sup>50</sup>. Consequently, if on one side we can consider this Directive as belonging to the cultural nationalism approach, as it leaves in the hand of the state the duty to define what *national treasures* are, on the other hand, however, it can be considered an European attempt to define national treasures, introducing an annex of categories and requirements to be recognized as so, leading to a limitation of the power of Member States to define what their national treasures are<sup>51</sup>. Nonetheless, the original definition of national treasures, as outlined in Directive 93/7 EEC, was found to be inconsistent with Article 35 TFEU<sup>52</sup>. This was chiefly because the classification of national treasures in this Directive primarily considered their commercial value, except for archaeological treasures and archives, it was so focusing on economic worth rather than their artistic, historical, or archaeological significance. Interestingly, it must be noted that both the EU export regulation (Regulation No. 116/2009) and the more recent import regulation (Regulation No. 2019/880) adopted a similar approach when defining cultural goods, following the methodology applied in the original Directive. Both regulations refer to an annex listing cultural objects falling under the scope of the regulation themselves. Finally, it should be underlined that while the former regulation introduced this approach with a focus on protecting national treasures, the latter emphasizes security reasons as the main rationale sustaining its introduction<sup>53</sup>.

---

10. Printed maps more than 200 years old. 11. Archives and any elements thereof, of any kind, on any medium, comprising elements more than 50 years old. 12. (a) Collections (2) and specimens from zoological, botanical, mineralogical or anatomical collections; (b) Collections (2) of historical, paleontological, ethnographic or numismatic interest. 13. Means of transport more than 75 years old. 14. Any other antique item not included in categories A 1 to A 13, more than 50 years old. The cultural objects in categories A 1 to A 14 are covered by this Directive only if their value corresponds to, or exceeds, the financial thresholds under B

<sup>49</sup> Frankiewicz-Bodynek A., Stec P., *Defining "National Treasures" in the European Union. Is the Sky Really the Limit?*, Santander Art and Culture Law Review 2/2019 (5): 77-94 DOI: 10.4467/2450050XSNR.19.014.11562

<sup>50</sup> Ibid.

<sup>51</sup> Ibidem.

<sup>52</sup> Art. 35, (ex Art. 29 TEC) is here reported: Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

<sup>53</sup> Frankiewicz-Bodynek A., Stec P., *Defining "National Treasures" in the European Union. Is the Sky Really the Limit?*, 2019.

After the adoption of the 1993 Directive from the Council of European Union, the International Institute for the Unification of Private Law (UNIDROIT) enacted another Convention, dedicated to the restitution of illegally stolen or exported property. In particular, before looking into this definition, it should be outlined that the Convention elaborated by the UNIDROIT is of particular interest as it represents the first attempt of defining cultural goods from the perspective of the private international law. By the fact, the conventions that have been considered until now belong to the branch of public international law, the UNIDROIT Convention represents the first attempt to produce an effective convention for the protection of cultural objects from the point of view of private international law. The 1995 UNIDROIT Convention of Stolen or Illegally Exported Cultural Objects identifies as cultural objects all those which «*on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science*»<sup>54</sup> which belong to the list of categories provided by the Convention itself<sup>55</sup>. For what concerns the intangible element of the interest, the 1995 Conventions refers to paleontological, artistic, ethnological, or special interest and national importance. Therefore, in this case the Convention can be related to the cultural nationalism approach<sup>56</sup>, as the scope of it is to protect the cultural heritage of nations through the implementation of legal mechanism for the return and restitution of illegally exported or stolen cultural objects to their origin countries. Moreover, the Convention emphasizes the importance of national ownership and control over cultural property and recognize the right of State Parties to introduce legislation in order to regulate the import and export of cultural objects.

Subsequently to the 1995 UNIDROIT Convention, in 2001 it was signed the UNESCO Convention on the Protection of the Underwater Cultural Heritage. The Convention referred to *underwater cultural heritage* as meaning «*all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years*»<sup>57</sup>. The 2001 Convention aligns better

---

<sup>54</sup> Art. 2, 1995 UNIDROIT Convention.

<sup>55</sup> The Categories cited by the annex of the 1995 UNIDROIT Convention are fully reported here:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; (k) articles of furniture more than one hundred years old and old musical instruments.

<sup>56</sup> Casini L., “*Italian Hours*”: *The globalization of cultural property law*, International Journal of Constitutional Law, Volume 9, Issue 2, April 2011, p. 369–393.

<sup>57</sup> Art. 1, Convention on Protection on the Underwater Cultural Heritage, UNESCO, 2001.

with the cultural internationalist approach<sup>58</sup>, as emphasizes the importance of safeguarding underwater cultural heritage, regardless of the national or cultural origin, for the benefit of all humanity. It promotes international cooperation and recalls for a shared responsibility for protecting underwater cultural heritage<sup>59</sup>.

After the 2002 UNESCO Convention, it is worthy to mention the definitions offered by the 2004 Italian Code of Cultural and Landscape Heritage, which identifies and defines both Cultural Heritage and Cultural Property. The former is defined as following: «*Cultural heritage consists of cultural property and of landscape assets.*<sup>60</sup> » it also consists of «*immovable and movable things which (...) display an artistic, historic, archeological, ethnological, archival, and bibliographic interest, and other things identified by law or in accordance with the law as testimonies having value for civilization are cultural property.*<sup>61</sup>»; It must be underlined in this case the interesting use of the form *having value for the civilization* to express the intangible element of the definition, meaning the importance they represent for the process of civilization. Cultural property is then identified as «*immovable and movable things which display artistic, historic, archeological or ethnological interest belonging to the State, to the Regions and to other local public entities, as well as every other entity and public institution and to private nonprofit legal persons, including ecclesiastical entities recognized under the law are cultural property.*<sup>62</sup>»<sup>63</sup>.

---

<sup>58</sup> Casini L., “*Italian Hours*”: *The globalization of cultural property law*, 2011.

<sup>59</sup> UNESCO Convention on the Protection of Underwater Cultural Heritage, 2001.

<sup>60</sup> Art. 2, comma 1, Italian Code of Cultural and Landscape Heritage, 2004.

<sup>61</sup> Ibid. Comma 2.

<sup>62</sup> Ibid. Art. 10, comma 1.

<sup>63</sup> Article 10 also included in Cultural Property: a) the collections of museums, pinacoteche, galleries and other exposition venues of the State, of the Regions, of other local public entities, as well as any other public entity and institute; b) the archives and individual documents of the State, of the Regions, of other local public entities, as well as any other public entity and institute; c) collections of books of the libraries of the State, of the Regions, of other local public entities, as well as any other public entity and institute, except for the collections that fulfill the functions of the libraries indicated in article 47, clause 2, of the d.P.R. 24 luglio 1977, n. 616. Are also Cultural Property: a) immovable and movable things which display a particularly important artistic, historic, archeological or ethnological interest, belonging to persons different from those indicated in clause 1; b) archives and individual documents, belonging to private persons, which hold a particularly important historical interest; c) collections of books, belonging to private persons, of exceptional cultural interest; d) immovable and movable things, belonging to anyone, that hold a particularly important interest thanks to their connection to the history of politics, of the military, of literature, of art, of science, of technology, of industry and of culture in general, or rather [which act as] testaments of the identity and history of public, community or religious institutions; things, belonging to anyone, which display an exceptional artistic, historic, archeological or ethnological interest for the integrity and the completeness of the cultural heritage of the Nation; e) collections or series of objects, belonging to anyone, that are not included in those indicated in clause 2 and that, because of tradition, fame, and particular environmental characteristics, or rather that, for their artistic, historic, archeological, numismatic or ethnological interest hold, as a whole, an exceptional interest. The following are also included: a) things that involve paleontology, prehistory and primitive civilizations; b) things of numismatic interest that, in relation to their era [of production], the techniques and the materials of their production, as well as to the context to which they refer, are characteristically rare and precious; c) manuscripts, autographs, correspondence, incunabula, and also books, prints, and engravings, with their relevant molds/plates, that are characteristically rare and precious d) geographic maps and musical scores characterized as rare and precious; e) photographs, with their relevant negatives and plates, cinematographic films and the audiovisual supporting materials in general, characterized as rare and precious; f) villas, parks

Undoubtedly, the Italian definition represents an interesting case of conceptualization of cultural heritage, and landscape, and of cultural property, which can be reconducted to the cultural nationalism approach<sup>64</sup>. This approach is recognizable in the enhanced protection that the Italian legislation offers to its cultural heritage, protecting and limiting the export not only of the cultural property belonging to the state, but also to private entities<sup>65</sup>.

The following definition to be mentioned is the one released in 2005 by the Council of Europe, in the Framework Convention on the Value of Cultural Heritage for Society, the so-called Faro Convention. The latter identifies cultural heritage as «*a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time*<sup>66</sup>». It must be noted that the Faro Convention refers to cultural heritage as a *resource* for people to identify with, in this case the intangible element of the definition is linked to a process of identification, rather than a recognition of interest. Remarkably, the 2005 Convention additionally includes a definition of *heritage community*, that is made of «*people who value specific aspects of cultural heritage*<sup>67</sup>» that they wish, thanks to the use of public action, to inherit to future generation. The Faro Convention embeds the attributes of the cultural internationalism approach, as identifies cultural heritage prior from its ownership and focuses on the shared beliefs of sustaining and transmit cultural heritage to future generations<sup>68</sup>.

Finally, the last definition to be mentioned is the one provided by the Council of Europe Convention on Offenses Relating to Cultural Property, signed in Nicosia in 2017. The Nicosia Convention defines movable cultural property as «*any object, situated on land or underwater or removed therefrom, which is, on religious or secular grounds, classified, defined or specifically designated by any Party to this Convention or to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, as being of importance for archaeology,*

---

and gardens, that are of artistic or of historic interest; g) public squares, roads, streets, and other open-air urban spaces of artistic or historic interest; h) mineral sites of historic or ethnological interest; i) ships and other floating [structures] having artistic, historic or ethnological interest; j) rural architecture having historical or ethnological interest as testimonies of the traditional rural economy.

<sup>64</sup> Casertano Letizia. "The Law Governing Cultural Heritage in Italy: Universal Values Versus National Cultural Identity", *Global Jurist* 17, no. 3, 2017.

<sup>65</sup> The private cultural assets that are under the Italian legislation are the ones to which is recognized an exceptional cultural or historic interest. This procedure for establishing the cultural interest of an asset is governed by Articles 12(2) and 13 of the Cultural Heritage Code.

<sup>66</sup> Art. 2, comma a, Framework Convention on the Value of Cultural Heritage for Society, Council of Europe, 2005.

<sup>67</sup> Ibid. Art. 2, comma b.

<sup>68</sup> Council of Europe, *Framework Convention on the Value of Cultural Heritage for Society*, 2005.



*prehistory, ethnology, history, literature, art or science*<sup>69</sup>»<sup>70</sup>. It is interesting to highlight that the Nicosia Convention directly recalls in its definition the 1970 UNESCO Convention, and as in the case of the latter, the former delays the designation of the archeological, prehistoric, ethnological, historical, artistic, scientific and literature importance of the cultural property to the parties of the covenant. Consequently, it can be noted that the dominant approach of the Faro convention, as in the case of the 1970 UNESCO Convention, is cultural nationalism, as it is predominant the sovereignty of the states.

Having reported most of the relevant cultural heritage or property definitions, some consideration should be given over the approaches introduced above and the attributes of the definitions reported. In particular, the notion of cultural heritage and cultural property seems to reflect the approach, the way of thinking of cultural heritage, that is beyond a definition. A part of the literature has noted that the use of the term property can be related to state sovereignty, and so to cultural nationalism, while the term heritage can be reconducted to cosmopolitanism principles, and so to the cultural internationalism approach<sup>71</sup>. Additionally, even if throughout time there has been a shift from the term property to heritage, yet the former remains resilient. Anyhow, the history of the key UNESCO treaties, and their drafts, reveals that property does not usually mean the common usage of property as it is usually used in private law category of ownership. Mostly, property is a proxy for state sovereignty, an instrument to balance the cosmopolitanism values embraces in the idea of heritage presented by the 1954 UNESCO Convention. Moreover, the shift that has occurred in legal discourse from property to heritage has enhanced the concept that the protection of heritage is not only related to the protection of the actual sites, objects, or artefacts; but it is rather the complexity of the tangible attribute of the heritage and the intangible relation that connects heritage and human being<sup>72</sup>. Actually, the use of the term heritage emphasizes the inheritance and collective interest and permits to extend the protection also to intangible cultural heritage, cultural identity and cultural diversity<sup>73</sup>. It is also interesting to note that, especially

---

<sup>69</sup> Art. 2, comma a, 2017 Council of Europe Convention on Offenses Relating to Cultural Property

<sup>70</sup> Article 2 of 2017 Nicosia Convention requires the movable cultural property to fall under one of the categories reported here: (a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; (k) articles of furniture more than one hundred years old and old musical instruments.

<sup>71</sup> Lixinski Lucas, 'A Third Way of Thinking about Cultural Property', in *Brooklyn Journal of International Law*, n.44, 2019. p.572.

<sup>72</sup> *Ibid.*

<sup>73</sup> UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2003.

in regard to the recent documents, the term *property* has been more in use in convention that were aiming at fighting illicit traffic and criminal offenses against cultural property, while the term *heritage* has been used in document having the scope of valorization and promotion.

In conclusion, defining and understanding cultural objects and heritage is an ongoing endeavor, encompassing both tangible and intangible attributes, it goes beyond conventional legal interpretations. The international conventions and national legislation, here presented, have attempted to define cultural property and heritage, maintaining as constant the lenses of cultural internationalism and cultural nationalism approaches. To end, the definitions of cultural objects and heritage reflect this ongoing dialogue between cultural internationalism and cultural nationalism, acknowledging the complex nature of cultural heritage that encompasses both tangible and intangible elements.

#### *1.4. A general vision: ‘ the illicit trafficking of cultural property and organized crime’*

Before proceeding with the next chapters of this research, is important to have a comprehensive understanding of the definitions reported above. This research, as it has been stated, will seek to describe the role played by organized criminal group, as they have been identified, in the trafficking of cultural property. The aim of this research is to show and highlight the interest that organized criminal group have in respect to the illicit trafficking of cultural objects. Therefore, the individual notions previously reported should be addressed as a *unicum*, that creates a precise phenomenon that will be here examined. Having established a firm foundation in these definitions, it is imperative to proceed with the detailed examination of the relevant legal norms addressing the illicit trade and trafficking of cultural property. Concurrently, it is necessary to recognize the intricate involvement of organized criminal groups in the illicit trafficking of art and antiquities. Hence, such analysis extends beyond the mere literature or legislative review, but invokes the examination of relevant case, data and investigations.

For what concerns the methodology of this research, it must be anticipated that the possibility to conduct a quantitative analysis in the context of illicit trade of cultural good its strongly limited by several factor, licet the impossibility of tracing all the single item introduced within the market, the scarcity of available information and the missed registration on relevant databases of illicitly found or exported artefacts. Therefore, it is easily deducible how further complicating would be to conduct a quantitative analysis of this phenomenon into the narrower context of illicit activities of organized crime. Consciously understanding this limitation, but convincingly dedicated to produce the most scientific reconstruction of this phenomenon, this research opted for a qualitative analysis, focusing on case studies, which can be helpful in reconstructing this framework. However, the available data will be mentioned to reinforce the analysis. The sources that had been taken into account to reconstruct some of the most important cases regarding the engagement of

organized crime in the illicit trade of cultural objects in Italy are descending from different levels, spacing from institutional sources to journalistic one, but also interviews, tv documentaries, court rulings and investigation proceedings. Among those, particular preeminence has been given to the principal body in charge of contrasting the phenomenon in Italy, licet the Comando Carabinieri per la Tutela del Patrimonio Culturale (TPC), the entitled authority in charge of the protection and investigation for the contrasting of illicit activities against cultural objects.

## 2. Analysis of illicit trade and trafficking of cultural objects legal relevant framework

The definition analyzed in the precedent chapter silently introduced some of the most important legal documents which represent the main reference for the contrast of the illicit traffic of cultural objects. In order to understand what illicit traffic is and to analyze the role played in it by organized crime in Italy, is necessary to understand what is the legal and ethical framework in which this phenomenon falls in. Italian legislation, European and International conventions, as well as ethical Code of conducts and guidelines, play a fundamental role in implementing measures that can contrast the illicit traffic of cultural objects, nevertheless some limits still do exist. The aim of this chapter is to first identify what normative and soft law principles can have a relevant part in fighting the illicit trade and restoring, and secondly to present a full overview of the instruments introduced and their effectiveness in contrasting the phenomenon.

### 2.1. What norms and principles to be considered to address the phenomenon?

When looking at the illicit traffic of cultural objects, there is a multitude of relevant documents to be considered, which have a fundamental importance in contrasting the phenomenon. The norms and principles that this section will present, represent an attempt of the national and international legislator, as well as other supranational organization like the International Council of Museums (ICOM), aimed at creating an effective framework for contrasting this type of offence. The latter can be seen as a process that starts with an illicit activity, licet an unauthorized excavation, a robbery or the illicit exportation of a cultural good, and ends with the illicit transfer of property, which produce a great damage for the heritage of nations, communities and humankind. Nevertheless, sometimes, by chance or intellect, those stolen cultural object reappear, in the market or in museums, and create grounds for restitution and return. Therefore, the way the relevant legal and ethical documents have been structured reflects this whole process, introducing both norms for fighting and preventing the illicit trafficking of cultural objects. Thus, the provisions that intervene to contrast this phenomenon can be categorized in different ways, depending on their legal source, their binding capacity, or their scope and time of intervention.

If what is being analyzed is the objective of the norms addressing the illicit trade of cultural objects, a nuanced distinction emerges, revealing two primary scopes: prevention and fighting. For what concerns prevention, those norms intervene prior to the illicit activity, introducing sanction, control mechanism and preventive measure to protect cultural objects from being illicitly acquired. Additionally, those norms prohibit illicit excavations, introduce export certificates or requirement for transfer of cultural property, such as the principles of good faith and due diligence. An example is visible in the UNESCO 1970 Convention that promotes preventive steps by urging Member States to prevent museums or other institutions

from illicitly acquire cultural properties, regulate the importation and exportation of cultural property, and enact domestic legislation to discourage illicit traffic<sup>74</sup>. Considering now the scope of fighting against the illicit traffic of cultural objects, those norms intervene after the illicit activity, by introducing monitoring measures and instruments that can restore the damages produce by the illicit activity, through the return or restitution of the object. An example to be cited is the European Union's Directive 2014/60/EU<sup>75</sup>, which introduces measures for the return of cultural objects unlawfully removed from a member state's territory in order to reinforce the fight against illicit traffic or the Palermo Convention, that introduces instruments to enhance the fight to organized crime, also in the cultural offences field<sup>76</sup>.

If instead what is being considered is the type of legal foundation of the document, licet whether its provisions are binding or not, it is possible to distinguish between hard law and soft law principles. The former include international treaties, national legislation and Constitutional norms, which are juridically binding and provide strong sanctions for non-compliance. On the contrary, the latter include declarations, Code of ethics and conducts, guidelines and informal agreements, which are non-binding and provide none or soft sanctioning measures for non-compliance<sup>77</sup>. The 2001 UNESCO Convention is an example of the first category, as it urges Member States to adopt a common legally binding framework for the protection of underwater cultural heritage. Specifically, the 2001 Convention obliges States Parties to: prevent the import, export, trade of possession of underwater heritage within their territory, prohibit the use of their territory for looters, introduce sanctions and seize such object in their territory in the case it has been recovered in contravention of the Conventional provisions<sup>78</sup>. Oppositely, the 1999 UNESCO Guidelines for art dealer, which belongs to the soft law instruments, it is composed by eight articles that aims at providing general principles and guidelines to be followed by art dealer in commercializing cultural objects. In particular, the guidelines invite art dealer to not transfer, import and export cultural objects, whereas there is the reasonable possibility of an illicit provenance or origin<sup>79</sup>.

Finally, if what is being taken into account is the legal source, it is possible to distinguish, for what concerns the illicit trade and trafficking of cultural objects in Italy, three main different sources of legislation, namely:

- a. National level: Italian legislation is one of the most exhaustive in the field of protection of cultural heritage, the main references in this case are the provisions of

---

<sup>74</sup> Article 7, 1970 UNESCO Convention.

<sup>75</sup> Directive 2014/60 of 15 May 2014 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State

<sup>76</sup> Preamble of the UN Convention on the Fight of Transnational Organized Crime, 2000.

<sup>77</sup> Cominetti Marta, Seele Peter. *Hard soft law or soft hard law? A content analysis of CSR guidelines typologized along hybrid legal status*. *Uwf* 24, 2016. p.127–140.

<sup>78</sup> UNESCO, Convention on the Protection of Underwater Cultural Heritage, 2001.

<sup>79</sup> Art. 1, *Code of Ethics for Art Dealer*, UNESCO, 1999.

the Italian Code of Cultural Heritage and Landscape of 2004 and the penal Code title VIII-bis from 2022. It is also opportune to mention some bilateral agreements, which include: the bilateral agreement between the Egyptian and the Italian Government regarding the protection and restitution of cultural objects from 2008, the bilateral agreement between the United States of America and the Italian Government for the imposition of import restrictions on archeological material representing pre-classical, classical and imperial roman periods of Italy from 2001<sup>80</sup> and the bilateral agreements between the Federal Council of Switzerland and the Italian government regarding the importation and the return of cultural heritage from 2008.

- b. European level: On the European level are distinguishable both the acts of the European Union and of the Council of Europe. The main acts from the former can be individuated in the regulation 116/2009 on the export of cultural good<sup>81</sup>, the above cited Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State<sup>82</sup>, the regulation 2019/880 on the Introduction and the Import of Cultural Goods and the recent EU Commission action plan for combatting the traffic in cultural goods from 2022. For what concerns the Council of Europe, it must be cited the Convention on the Protection of the Archaeological Heritage from 1969, the Convention on Offences relating to Cultural Property, which never entered into force, and the 2017 Convention on Offences relating to Cultural Property, that was adopted in order to supersede and replace the earlier document<sup>83</sup>.
- c. International level: On the international level several bodies, first of all UNESCO, dedicated conventions to the protection of cultural heritage, including norms related to the fight of illicit traffic. In particular, some relevant UNESCO convention can be cited, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; or the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970; the International Code of Ethics for art dealers of UNESCO from 1999, the Convention on the Protection of the Underwater Cultural Heritage of 2001 and the Declaration concerning the Intentional Destruction of Cultural Heritage of 2003. Additionally, it must be mentioned the Convention on Stolen or Illegally Exported Cultural Objects of 1995 elaborated and adopted by the International Institute for the Unification of Private Law following the request of UNESCO<sup>84</sup>. Apart from

---

<sup>80</sup> Reviewed in 2006 and 2011.

<sup>81</sup> Which repealed and replaced Regulation 3911/92 of 31 December 1992.

<sup>82</sup> Directive 2014/60 of 15 May 2014 *on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State* repealed and replaced Directive 93/7 of 27 March 1993.

<sup>83</sup> Chechi Alessandro, *Fighting and preventing offences relating to cultural property: existing rules and proposals for functioning regulatory systems, 'act for heritage!' conference Promoting the Council of Europe Convention on Offences relating to Cultural Property, within governments and civil society 24–26/10/2019 Nicosia, Cyprus*.

<sup>84</sup> *Ibid.*

UNESCO and UNIDROIT it is worth to mention the Resolution 1483 (2003), 2199 (2015) and 2347 (2017) adopted by the UN Security Council; the Resolution 66/180 and 69/281 adopted by UN General Assembly; the 2000 UN Convention against transnational organized crime and the UNODC International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and other Related Offences and the Code of Ethics for museums elaborated by the International Council of Museums in 2004.

Given this set of possible categorizations of the relevant norms and principles for contrasting the trafficking phenomenon, it is necessary to further analyze the relevant legislation and codification introduced above. The next paragraphs will present the main instruments and measures introduced by national, European and international legislation in order to prevent and fight the illicit traffic of cultural objects.

## 2.2. Italian legislation

«*Italian Republic protects landscape and national artistic and historical heritage*»<sup>85</sup> states the fundamental right included in Italian Constitution, recognizing the fundamental value that cultural and landscape heritage have for the Nation. The main reference and instruments for this protection, that is a fundamental right, is represented nowadays, as it has been noted, by the 2004 Code of Cultural Heritage and Landscape, also known as Code Urbani. The latter consist of an updated rearrangement of regulation regarding cultural assets issued on the basis of article 10 of law 6 July 2002, n. 137, with which the government has been delegated to proceed with a reassessment and codification of the norms in cultural and landscape heritage, theatre, sport and intellectual property and copyright field<sup>86</sup>. The aim of the Code is to provide an effective instrument for the protection and valorization of cultural heritage. For what concerns the prevention and the contrast of criminal offenses against cultural property, including the one regarding the illicit traffic, the Code provisions intervene both to prevent and contrast the phenomenon, through the use of different instruments and obligations, as the limitation of free circulation, the use of certificates, the creation of catalogues and other relevant tool that will be explored.

Nevertheless, before proceeding with the relevant legislation, it is opportune to understand that the norms introduced by the Code are subjected to the verification of the cultural interest. First and foremost, it must be specified that certain cultural properties are designated as cultural by law itself, as outlined in art. 10 paragraph 1 and 2, while others are identifies based on the law, where the legal criteria delineate the parameters for the competent administrative authority to conduct the necessary assessment. These criteria are not solely tied to the nature of being a “*testament of culture*”, which is an essential prerequisite, but also encompass the ownership entity, the nature of the entity, and the scope of the cultural

---

<sup>85</sup> Art. 9, Italian Constitution.

<sup>86</sup> Frigo Angelo, *Il codice Urbani*, The Journal of Cultural Heritage Crime, 2017.

interest involved<sup>87</sup>. The recognition of the cultural interest over a cultural property is governed by art. 12 and ex art. 13 of the Code. The procedure under article 12 is dedicated to public cultural heritage, as individuated by art.10, paragraph 1 and 2, and prescribes that the initiative to request the verification of the interest is in the hand of the owner entity, namely the Ministry. If the cultural interest is found to be consistent with the requirement of art.12, paragraph 7, the cultural property becomes subject to the provisions of the Code. Before describing the procedure ex art.13, it is relevant to highlight the innovation introduced by art.12, which is differentiated from the previous approach outlined by art. 5 of the Consolidated Text 490/1999, that used to subject the recognition of the interest to a list establishing a certain state of affairs<sup>88</sup>. Consequently, the recognition under the precedent procedure occurred irrespectively of a formal process aimed at clarifying the historical-artistic value of the public asset. However, with the Code Urbani a substantive change can be observed. This shift arises from the requirement for cataloging the heritage, intending to confirm the effective presence of an interest to be protected, which is the intrinsic quality that designates it as a cultural asset<sup>89</sup>. Looking then at the procedure ex art. 13 of the Code, this is dedicated to the categories individuated by art. 10, paragraph 3, including the cultural heritage owned by private, and it's aimed at the recognition, in this case, of a particularly important or exceptional interest. The procedure is started as a matter of course or on request of the region or other territorial entities to the superintendence, which transmits a communication to the owner of the cultural good. This communication, which can be impugned within not less than 30 days, produce the effects of the application, as preventive measure, of the Code provisions related to alienation, transfer, protection and vigilance of cultural heritage, until the declaration of interest made by the Ministry. It must be underlined, in accordance with the relevant doctrine and jurisprudence, that the interest described above is not constituted by the administrative act, which scope is only limited to the recognition of the interest. Consequently, the act possesses a declaration nature, not a constitutive one<sup>90</sup>.

For what concern preventive and protection provisions, the second part of the Code is dedicated to Cultural property. Article 20 illustrates the forbidden actions against cultural property, licet the destruction, damage, or adaptation to a use not compatible or prejudicial to its conservation; the subsequent art. 21 explicates the intervention which are admitted prior to authorization. Nonetheless, in order to use the cultural property, art. 20-21 do not prescribe any duty of notification or information of the Ministry of Culture to the owner of the property, who is in charge of evaluating the compatibility of the chosen form of use<sup>91</sup>. Chapter IV of the Code is dedicated to the circulation of cultural property within national territory and has introduced some innovation, as the principle of general inalienability has

---

<sup>87</sup> Sandulli Maria A., *Codice dei Beni Culturali e del Paesaggio*, Giuffrè, III Edizione, 2019. p.135-136.

<sup>88</sup> Frigo A., *Il codice Urbani*, The Journal of Cultural Heritage Crime, 2017.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Brocca Marco, *La Disciplina di uso dei Beni Culturali*, in Aedon – Rivista di arti e diritto online, n.2, 2006. Issn1127-1345.



been substituted by a three-level system<sup>92</sup>. The latter individuates the properties which cannot be alienated in any case, including collection of galleries, museums, pinacothecas and libraries; the properties that can be alienated prior conditional authorization subject to obligation of protection, public enjoyment, and compatible use: and last the properties that can be alienated through a simple authorization<sup>93</sup>. Art. 59 introduces a declaration of transfer, which shall be made within 30 days since the transfer<sup>94</sup>. Moreover, art. 63 introduces obligations to report commercial activity and keep a register of it, which shall include also a description of the objects<sup>95</sup> and also introduces periodical inspections to verify the fulfillment with the requirement of the article<sup>96</sup>. Art.64 introduces the obligation of providing a certificate of authenticity and provenance, and when not possible, a declaration containing all the information available related to the provenance and authenticity of the object.

Chapter V, which is dedicated to the circulation within the international territory, distinguish two different situations: the definitive exit of cultural heritage from national territory and the temporary exit under some circumstances described by law<sup>97</sup>. Article 65 establishes that the exit from the national territory is prohibited for movable cultural property as indicated in article 10, paragraph 1, 2 and 3<sup>98</sup>, and for movable property<sup>99</sup> which is the work of a deceased author and whose execution dates back more than 50 years, until the verification of cultural interest and for the assets<sup>100</sup> whom the Ministry has previously identified and excluded from exit for a certain period, as it may be harmful to cultural heritage. Art. 65 also includes some circumstances under which the exit can be subject to an authorization, which requires to be obtained a certificate of free circulation, which is released by the exportation office, when found in accordance with the law<sup>101</sup>. Art. 72 introduces the possibility to request a certification by the export office in order to licit import an object<sup>102</sup> from a European or third country. Nevertheless, it has been observed, that as this import certification is propaedeutic to avoid that the cultural object is subjected to the constraints weighting on national cultural

---

<sup>92</sup> Cammelli Marco, *Il Codice dei Beni Culturali e del Paesaggio: dall'analisi all'applicazione*, in Aedon – Rivista di arti e diritto online, n.2, 2004. Issn1127-1345.

<sup>93</sup> Art. 54-56, Italian Code of Cultural and Landscape heritage 2004.

<sup>94</sup> The declaration shall be made within 30 days: a) by the alienor or the transferor of possession of the property, in the case of alienation made for a money consideration or not for value, or of transferral of possession; b) by the purchaser, in the case of transferral occurring in procedures of forced or bankruptcy sale or by force of an adjudication which produces the effect of a transfer contract which is not concluded; c) by the heir or the legatee, in the case of succession because of death.

<sup>95</sup> Art.63, comma 2, Italian Code of Cultural and Landscape heritage 2004.

<sup>96</sup> Ibid. comma 3.

<sup>97</sup> Frigo A., *Il codice Urbani*, The Journal of Cultural Heritage Crime, 2017.

<sup>98</sup> See *supranote* 63.

<sup>99</sup> As identified by art. 10 paragraph 1.

<sup>100</sup> Falling under art.10, paragraph 3.

<sup>101</sup> Art. 68, Italian Code of Cultural and Landscape heritage 2004.

<sup>102</sup> Which fall in the categories reported by art.65, paragraph 3, here reported: a) things, to whomsoever they may belong, which present cultural interest and which are the work of no longer living artists and whose production goes back more than fifty years; b) archives and single documents, belonging to private individuals, which present cultural interest; c) properties included in the categories indicated in article 11, paragraph 1, letters f), g) and h), to whomsoever they may belong.

heritage, this fact encourages the fraudulent practice of requesting the certification for objects which originate from national territory<sup>103</sup>. Section II is dedicated to the exportation from European Union territory, art. 74 states that the «*exportation outside European Union territory of the cultural properties*<sup>104</sup> is governed by the EEC Regulation<sup>105</sup>». In a similar way, art. 87, from section IV, establishes that the restitution of cultural properties indicated by the 1995 UNIDROIT Convention<sup>106</sup> is regulated by the provisions of the Convention and the relevant laws of ratification and enforcement.

Section III of chapter V is dedicated to restitution of cultural properties illegally taken out of the territory of a Member State of the European Union. In particular, art. 75 states that «*Cultural properties illegally taken out of the territory of a European Union Member State after 31 December 1992 shall be returned*», where cultural property refers to the object which, according to the nation of origin law is recognized as belonging to the national cultural heritage<sup>107</sup>. Additionally, the article states that the exit of cultural property shall be considered illegal if it violates either European Union Regulation or the legislation of the requesting State concerning the protection of the national cultural heritage, it is also deemed illegal if the property is not returned upon the expiration of the temporary exit or export term<sup>108</sup>. Art. 76 introduces provision related to the cooperation and collaboration between European Union Member States in order to facilitate the discovery and restitution of cultural property belonging to an EU state. Art. 77 create ground to bring an action for restitution before the ordinary courts of law, in accordance with art.75, nevertheless, such action should be prompted to a judge within the time limit of one year since the acknowledgement of the founding of the illicitly taken cultural property<sup>109</sup>. Finally, article 85 establishes a databank of stolen cultural property, according to the modalities individuated by the Ministry of Culture.

The following chapter IV, dedicated to finding and discoveries, reserves the archeological searches and activities aimed at finding things, as indicated in art. 10, to the Ministry of Culture, which has the faculty to guarantee concessions to public and private bodies, in any case non-authorized research and excavation are forbidden<sup>110</sup>. The term “*activities aimed at finding things*” is not limited to underground areas, but it includes any sort of ‘*container*’ in which artefacts can be found. Consequently, the concession of permission it not only regards the excavation of the soil, but any activities which is aimed at finding somewhere a cultural

---

<sup>103</sup> Visconti Arianna, *La Repressione Del Traffico Illecito Di Beni Culturali Nell'ordinamento Italiano. Rapporti Con Le Fonti Internazionali, Problematiche Applicative E Prospettive Di Riforma*, 2021.

<sup>104</sup> Indicated in Annex A of 2004 Code of Cultural Heritage and Landscape.

<sup>105</sup> Council Regulation (EEC) no. 3911/92 of 9 December 1992, as modified by Council Regulation (EC) no. 2469/96 of 16 December 1996 and by Council Regulation (EC) no. 974/01 of 14 March 2001.

<sup>106</sup> 1995 UNIDROIT Convention.

<sup>107</sup> In accordance with article 30 of the Treaty Establishing the European Economic Community, substituted by article 6 of the Treaty of Amsterdam, and by the relative laws and regulations of ratification and execution.

<sup>108</sup> The authorized temporary exit or export of properties will be considered illegal if it violates the regulations outlined in Article 71, Paragraph 2

<sup>109</sup> Art. 78, Italian Code of Cultural and Landscape heritage 2004.

<sup>110</sup> Ibid. Art. 88 - 89

objects<sup>111</sup>. Art. 90 governs fortuitous discoveries, which shall be reported within 24 hours from the discovery by whosoever made it, additionally, the author of the discovery must keep the objects found in accordance with the provisions for conservation and custody of the Code. Art.91, which concerns the ownership of the thing found, states that all the cultural objects found under the soil or under the sea are property of the State, expanding the concept of found item compared to previous legislation, which now includes all the undiscovered cultural heritage<sup>112</sup>. Referring to this provision, it is important to consider that analogue norms concerning state property of archeological findings have been existing in the Italian legislation since the so-called Rosadi law from 1909<sup>113</sup>, developing throughout time a jurisprudence which configures a presumption, although relative, of public property – and therefore of illicit appropriation – in relation to archaeological assets of which the owner is not capable of proving legitimate origin<sup>114</sup>. Additionally, for all properties belonging to the State, the cultural interest is presumed, until a negative verification, if objective characteristics of possible cultural relevance are present<sup>115</sup>. Lastly, section II implements 2001 UNESCO Convention, which governs the safeguard of archeological and historical objects discovered in the seabed within twelve marine miles from the outer limit of national waters<sup>116</sup>.

The provisions cited above are completed by sanctions, distinguished into administrative and penal, which are described in the fourth part of the Code. In the framework of title I, dedicated to the former type, alongside with sanctions in the strict sense, which are characterized by an additional and autonomous punitive purpose compared to the reparation of the harmed interest, the Code provides for some repressive measures, such as art. 160 and 161, which possess a reintegrative nature<sup>117</sup>. The latter, indeed, introduces the order for the transgressor of the obligation exposed in the second part of the Code to restore the property to its original state, provision which are also extended to the categories identified by art. 91. Therefore, if in contravention of the provisions related to the alienation and transfer of cultural property a cultural good is not anymore traceable or results to be outside from national territory, whomever is the transgressor has the duty to correspond to the state an amount equal to the value of the property, which shall be determined by the Ministry<sup>118</sup>. On this provision, there exist a debate whether the nature of the compensation is reparatory or repristinating but it seems that the doctrine favors the former interpretation, which nonetheless limits the value and scope of the financial fee<sup>119</sup>. Additionally, alienation, convention and juridical act which have been produced in contravention of the Code's

---

<sup>111</sup> Mannu Luisa, *Brevi note sul ritrovamento di beni culturali sopra e sotto il suolo*, in Aedon – Rivista di arti e diritto online, n.1, 2006. Issn1127-1345.

<sup>112</sup> Ibid.

<sup>113</sup> Law 20.6.1909, n. 364.

<sup>114</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell'ordinamento Italiano*, 2021.

<sup>115</sup> Art. 12, Italian Code of Cultural and Landscape heritage 2004.

<sup>116</sup> Ibid. Art. 94.

<sup>117</sup> Sandulli M. A., *Codice dei Beni Culturali e del Paesaggio*, Giuffrè, III Edizione, 2019. p.1417.

<sup>118</sup> Art. 163, Italian Code of Cultural and Landscape heritage 2004.

<sup>119</sup> Sandulli M. A., *Codice dei Beni Culturali e del Paesaggio*, 2019. p.1220.

provisions are declared null and void<sup>120</sup>. Also in this case the doctrine as debated the nature of such nullity, on one side it has been considered a simple relative ineffectiveness of the transaction carried out by private individuals, not inherently flawed but not enforceable against public entities; on the other side, the prominent approach retains that it is not an absolute nullity, but rather a relative one<sup>121</sup>. Therefore, whoever unlawfully transfers cultural goods or assets abroad, contravening the regulations on international circulation as indicated by the Code, can be punished with an administrative penalty. As well, those exporting a cultural property outside the European Union without submitting the required exportation documents is punished with an administrative penalty<sup>122</sup>. Before proceeding with the penal sanction, it must be underlined why the Code provides both administrative fine penalties and restoring measures. This occurs due to the special attributes of the object, which is being protected by the law, for which the choice of the administrative measure to repress offences prefers the use of restoring measures rather than administrative fines<sup>123</sup>.

For what concern the penal sanctions, the most relevant for the scope of this research, those are introduced through Title II. Article 173 punishes with maximum one year of reclusion and a criminal fine whoever, without the necessary authorization, alienates a cultural property or fails to transmit the required documents. Furthermore, the unlawful exit or exportation is punished with up to 4 year of imprisonment or with a fine, the same applies to whosoever fails to return upon the expiry of time cultural property for which temporary exit had been authorized<sup>124</sup>. As well, the unlawful excavation and archeological research are punished with imprisonment, the same applies to whosoever acquires the property as identified by art.91<sup>125</sup>. The latter provision, also known as ‘*archaeological theft*’, fixes the penalty at up to three years of imprisonment, interestingly, as some authors<sup>126</sup> have noted, the penalty seems to be incongruous with respect to the normal theft, as it appears less severe. Nevertheless, the structure of this offence does not configure a theft: indeed, the requisition of the property from the owner is not required, no either the aim of profit, given the direct link of the acquisition with research and excavation activities, which implies first that there can be no predecessor owner, and second, that the holder of the property is who conducted the activity.<sup>127</sup>

---

<sup>120</sup> Art. 164, Italian Code of Cultural and Landscape heritage 2004.

<sup>121</sup> Famiglietti Gianluca, Pignatelli Nicola, *Codice dei Beni Culturali e del Paesaggio*, Nel Diritto Editore, I edizione, 2015. p.1023-1024.

<sup>122</sup> Art. 165 – 166, Italian Code of Cultural and Landscape heritage 2004.

<sup>123</sup> Demuro Gian Paolo, *I Delitti Contro Il Patrimonio Culturale Nel Codice Penale: Prime Riflessioni Sul Nuovo Titolo VIII-bis*, Sistema Penale, 2022.

<sup>124</sup> Art. 174, Italian Code of Cultural and Landscape heritage 2004.

<sup>125</sup> Ibid. Art. 175 – 176.

<sup>126</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento Italiano*, 2021.

<sup>127</sup> Cfr. in particolare G.P. Demuro, *Beni culturali*, cit., 136; Id., sub Art. 176 D.lgs. 22.1.2004 n. 42, in LP 2004, 24, 3, 463 s.; P.G. Ferri, *Uscita o esportazione illecite*, cit., 240; P. Cipolla, *Rapporti tra impossessamento di beni culturali e ricerche archeologiche clandestine, nella tematica del concorso di norme*, in CP 2008, 10, 3795-3812; V. Manes, *La circolazione illecita*, cit., 99; G. Mari, sub Art. 176, cit., 1504 in Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento Italiano. Rapporti Con Le Fonti Internazionali, Problematiche Applicative E Prospettive Di Riforma*, 2021

The Code of Cultural Heritage and Landscape, on one side, governs and represents the most consistent and comprehensive framework for the protection of cultural heritage, on the other side, even if in a less consistent manner, the penal Code complements the framework of the Code. In particular, before the reform of the Title VIII-bis, the penal Code contained two crimes and a contravention, which all constitute cases of damage<sup>128</sup>, having the scope to protect the integrity of 'real' cultural heritage, for which the verification of the cultural interest is not required<sup>129</sup>. In alternative terms, for the effectiveness of those penal provision is not necessary the declaration of interest, as it is for the provision of the Code. Consequently, this implies, according to the prevalent opinion in the legal doctrine, that those provisions may also apply to contemporary art, usually excluded<sup>130</sup>.

The first provision to be cited, of the one preceding the recent reform, are the one contained in art. 733, existing in the penal Code since 1930, which navigates around a double profile of offence: on one side constituted by the damage of a monument or other thing of which the relevant interest is known to the active subject of the action, on the other side by the objective condition for the punishment, which derives from the injury to the archeological, historical or artistic national heritage<sup>131</sup>. Art. 733, in fact, punishes whosoever destroys, damages or deters things of their own that are national archaeological historical and artistic heritage with imprisonment up to one year and fines from 2065 euros. It must be underlined, as some authors have noted<sup>132</sup>, that compared to other legal provisions, this type of offence requires a qualified relationship between the property and the active subject of the illicit. However, there had been a debate whether this relationship must necessarily be the ownership of the property, or if it can also be qualified as mere possession or custody of the property<sup>133</sup>. The other two pre-reform provisions, which regard common offenses, have been introduced by the law n.352 of 1997, which introduced a specific but indirect protection for things of historical or artistic interest. This law introduced, under art. 635 and art. 639, two specific aggravating circumstances<sup>134</sup>. In particular, the former provision is dedicated to the punishment of whomsoever destroys, deteriorates, disperses and makes unusable, with the use of violence, immovable property<sup>135</sup>; the latter, refers also to movable property, punishing whomsoever deface it<sup>136</sup>. It can be argued that the role played by the just described norms

---

<sup>128</sup> Art. 635 co. 2 n. 1, now integral an independent type of damage; art. 639 co. 2, aggravated hypothesis of defacement or soiling of another's property; art. 733, damage to property, archaeological, historical or national artistic.

<sup>129</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell'ordinamento Italiano*. 2021.

<sup>130</sup> Visconti A., *Diritto Penale e Beni Culturali*, su *Treccani Diritto*

<sup>131</sup> Mantovani, F., *Lineamenti della tutela penale del patrimonio artistico*, in *Riv. it. dir. proc. pen.*, 1976

<sup>132</sup> See A. Visconti, *La Repressione Del Traffico Illecito Di Beni Culturali Nell'ordinamento Italiano*, G.P. Demuro, *Beni culturali*.

<sup>133</sup> Cass. pen., June 15, 1998, no. 7129

<sup>134</sup> Visconti A., *Beni culturali e diritto penale*, su *Treccani Diritto*.

<sup>135</sup> Art. 635, paragraph 2, n.1, the punishment is established to 6 months up to 3 years of imprisonment. Art. 13, Law No. 352/97 had specified the scope of protection (later confirmed by Legislative Decree No. 7/2016): «things of historical or artistic interest wherever they are located, including immovable property within the perimeter of historic centers». In order to strengthen protection, the same reference was added in the second paragraph of Article 639. See Demuro G.P.

<sup>136</sup> Art. 639, paragraph 2, the punishment is established to 3 months up to 2 years of imprisonment.

has been residual, as it was not coordinated, as precedent, with the fundamental right introduced by art.9 of the Constitution, nevertheless, even if in an inhomogeneous way, those permitted to contrast the illicit of destruction and dispersion of cultural property.<sup>137</sup>

For this reason, quite recently, the legislator decided to proceed with a reform of the penal Code, introducing into it the most significant provision of the 2004 Code and reviewing the norm related to theft and damage<sup>138</sup>. The new title VIII-bis represents the product of this reform and it is composed by eighteen articles, unified under the title '*Illicit offences against cultural heritage*', which for the first time have directly criminalized the offences related to the illicit trafficking of cultural property in the Italian legislative regime. Among the most significant provisions to be cited, surely there are the one concerning the theft of cultural heritage<sup>139</sup>, that punishes, with up to six years of imprisonment, whosoever acquires a movable cultural property for the purpose of gaining profit. The term movable cultural property both refers to private and state-owned property, including also the objects found under the soil or sea. Compared to the precedent regime, finally with the reform, there is anymore the necessity for a circumstantial reference, due to the introduction of the specific attribute, licet movable cultural heritage, to the type of offence<sup>140</sup>. This provision expressly requires the attribute of the fraud, which is given by the will of subtraction and acquirement and by the consciousness of the cultural attribute of the item; hence it is a specific fraud related to the archeological theft<sup>141</sup>. Additionally, the new provision is placed side by side with art. 176 of the 2004 Code, the so-called archeological theft, and works jointly with the norms of art. 91 of the same codification<sup>142</sup>.

Therefore, it is worth to mention that the title also introduces punishment for the type of offence of misappropriation and the receiving of stolen good, with respectively up to four and ten years of imprisonment<sup>143</sup>. Nonetheless, it must be noted that compared to art.518-bis, those provisions do not specify the nature of the cultural item, which is implicitly retained to be a movable cultural asset, as the type of offence requires mandatory the movable attribute of the item<sup>144</sup>. Highly relevant, in connection both with the trafficking of cultural property and a potential involvement of organized crime, are the provisions introduced by art. 518-quinquies concerning the use of cultural assets originating from crime, which prescribe higher penalties, which are established to up to thirteen years of

---

<sup>137</sup> Demuro G. P., *I Delitti Contro Il Patrimonio Culturale Nel Codice Penale: Prime Riflessioni Sul Nuovo Titolo VIII-bis*, 2022.

<sup>138</sup> Ibid.

<sup>139</sup> Art. 518-bis of Italian penal code.

<sup>140</sup> Until the reform, the main reference for the theft of movable cultural property was art. 624 of the Penal Code, which, nevertheless, was not specifying the object protected. The new element introduced by the reform, consequently, is the specification of the object protected.

<sup>141</sup> Visconti A., *Problemi e Prospettive della tutela penale del patrimonio Culturale*, Giappichelli, 2023.

<sup>142</sup> Demuro G. P., *I Delitti Contro Il Patrimonio Culturale Nel Codice Penale: Prime Riflessioni Sul Nuovo Titolo VIII-bis*, 2022.

<sup>143</sup> Art. 518-ter and 518-quarter, Italian penal code.

<sup>144</sup> Ramacci Luca, *Primo rapido sguardo d'insieme sulla legge 9 marzo 2022 n.22 in tema di reati contro il patrimonio culturale*, Lexambiente, 2022.

imprisonment. All the supra-mentioned norms apply also when the offender is not criminally liable or punishable or when a condition of prosecution, concerning this crime, is missing. In other words, in order for the conduct to constitute a crime, the context in which the reuse of a cultural item occurs can be legal or illegal<sup>145</sup>: if any individual purchases a stolen cultural asset and uses it for personal purposes or resell it to third parties without authorization, also this conduct, even if not organized, would constitute as a traffic offence. Hence, the law can punish both the professional trafficker and the individual who is in different manner involved in the illegal reuse of the cultural item<sup>146</sup>.

In connection with organized crime, it must also be cited the provisions introduced, by the reform, concerning the penalties related to activities of laundering and self-laundering of cultural heritage, namely activities aimed at obstructing the identification of the illicit acquisition of cultural assets<sup>147</sup>. The basis of the latter offences lies in the prohibition of deceptive conducts aimed at making the proceeds of such crime untraceable and hence persecutes the scope of avoiding that the legal market of cultural property from being infected by illicit proceeds<sup>148</sup>. Therefore, to constitute the offence of money laundering there must be the consciousness of the criminal origin of the asset and the presence of any conduct aimed at obstructing the identification of such criminal origin of the received asset<sup>149</sup>. These provisions are particularly relevant for the contrast of organized criminal groups, especially considering that those groups invest in art assets in order to launder money, as art pieces constitute a safe instrument due to the little chance of loss of value and their universal value<sup>150</sup>. The reform also introduced, in line with the precepts of article 164 and 173 of 2004 Code, the provisions concerning the alienation and the intake in the market of cultural assets, punishing whosoever alienates a cultural property without the required certification or whoever misses to meet the requirements of reporting the transfer or the alienator of a object subjected to preemption<sup>151</sup>.

Strictly related to the illicit traffic of cultural objects are the provisions of articles 518-decies and 518-undecies. The former, introduces penalties for whosoever imports cultural assets resulting from a crime or found within unauthorized research or exported in contravention of the law concerning the protection of cultural heritage of another state. The latter provisions concern the exportation of cultural heritage and it's aimed at punishing, with up to eight years of imprisonment, whosoever exports, without the required certificate, items of cultural, artistic, historical, archeological, ethnological, bibliographic, documentary or archival interest. Nevertheless, the lecture of this article must occur jointly with the provisions of the Code, which identify the objects that are subject to the certification and the

---

<sup>145</sup> Cass. Sez. II, n. 9026, 05/11/2013.

<sup>146</sup> Cass. Sez. II, n. 37678, 17/06/2017.

<sup>147</sup> Art. 518-sexies and art. 518-septies, Italian penal code.

<sup>148</sup> Cass. Sez. 2, n. 30399, 07/06/2018.

<sup>149</sup> Cass. Sez. 2, n. 42052, 19/06/2019.

<sup>150</sup> Giraldi Angelo, Sorbello Pietro, *L'arte del terrore: degradare la cultura per finanziare la guerra*, in *Il traffico illecito di beni culturali*, in *Diritto Penale Contemporaneo*, 03/2022. p.195-216.

<sup>151</sup> Art. 518-nonies. Italian penal code.

one that can or cannot be exported in any case<sup>152</sup>. On this matter, it must be underlined, that the doctrine developed two different approaches concerning the exportation of cultural goods, one based on the freedom of initiative of the owner, namely “*permitted with reserve of ban*”; the other prefers the “*forbidden with reserve of permission*” formula<sup>153</sup>. The same provisions apply to whosoever fails to return, within the required time, the items described above and to anyone providing false statements to the export office to prove the non-requirement, for those items, of an authorization to exit from national territory. Article 518-duodecies increases the penalties, introduced by article 733, for the crime of damage, destruction, dispersion and defacement of cultural heritage, from one to five years. Therefore, also the devastation and plunder of cultural heritage is punished, as introduced by the reform, with up to sixteen years of imprisonment<sup>154</sup>.

Finally, considering the impact of organized crime in illicit trafficking, the legislator introduced some aggravating circumstances for all the type of offence of the title, included the particularly relevant aggravating given by the commission of the criminal offence within the framework of organized criminal group, as identified by art. 416 of the penal Code<sup>155</sup>. This provision, it must be noted, in the original draft, was directly addressing the criminalization of whosoever, with the scope of gaining unlawful profit, engages in activities of trafficking of cultural heritage through an organized criminal group, without remanding to art. 416, whose reference, instead, was included in the subsequent art. 518-septiesdecies as aggravating circumstance<sup>156</sup>. The intent pursued by the legislator in the draft legislation, that considered the ‘*double illicity*’ attributes of the phenomenon, raised some doubts concerning the necessity of this norm in part of the literature, that criticized the adoption of this provision within the parallel increase of all the sanctionatory framework and the introduction of an additional type of offence, licet ‘*illicit management*’, in the importation offence<sup>157</sup>. Therefore, during Parliamentary audition on the matter<sup>158</sup>, it has emerged how this norm strongly recalls the provision adopted to contrast the illicit trafficking of waste<sup>159</sup>. Nonetheless, the latter find its *raison d’etre* in the scope of intervening to fix a legislative gap for which art. 416 could not intervene for such type of offence, whereas committed in form of organized criminal group, due to the contraventional character of most of the provision on the matter. However, this problem is not a relevant concern for the norms concerning cultural objects, which find direct application of art. 416<sup>160</sup>. For this reason, and

---

<sup>152</sup> Art. 65 Italian Cultural and landscape heritage code 2004.

<sup>153</sup> MUBGNUG R., *Europäischer und nationaler Kulturgüter-Schutz*, in AA.VV., *Aktuelle Fragen des Kulturgüterschutzes*, a cura di R. Mußnug e G. Roellecke, Heidelberg 1998, 11 ss in Demuro G.P., *I Delitti Contro Il Patrimonio Culturale Nel Codice Penale: Prime Riflessioni Sul Nuovo Titolo VIII-bis*, 2022.

<sup>154</sup> Art. 518-terdecies, Italian penal code.

<sup>155</sup> Ibid. Art. 518-sexiesdecies.

<sup>156</sup> See the draft: D.d.L. 882; CR4220.

<sup>157</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento Italiano*, 2021.

<sup>158</sup> See the intervent of S. Manacorda, 4.5.2017 from II Commissione (Giustizia) of Camera dei Deputati, XVII Legislatura.

<sup>159</sup> Art. 452 quaterdecies, Italian penal code.

<sup>160</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento Italiano*, 2021.



for the additional consideration of the existing lack, within the international legislative framework, of norms specifically addressing this type of offence, the legislator decided to only include the remand to art. 416.

The framework created by title VIII-bis appears surely enhanced respect its predecessor regime, especially considering that all the provision introduced by the reform also applies when the crime is committed outside the Italian territory, namely abroad, if it is committed against national cultural heritage<sup>161</sup>. Additionally, the reform establishes the definitive abandonment of the indirect penal protection system, proceeding with a specification of the passive subject of the type of offence contained in the penal Code, increasing consequently both the gravity of the offences and of the penalties, which then result in a direct penal persecution of the offenders. To conclude, the true positive effect of the reform lies in its attempt to rationalize the protection of cultural asset and recognize the fundamental importance of cultural heritage as a separately protected asset in the penal Code<sup>162</sup>.

### 2.3. European norms and convention

European legislation, as it has emerged, works alongside with Italian legislation, performing relevant functions for the prevention and contrast of the illicit trafficking of cultural heritage. Hence, the European legislative framework, formed both by the acts of European Union and the Council of Europe, represents an important complementary framework for the prevention and counteraction of the phenomenon. Additionally, European conventions and regulations represent an interesting model of approach to the matter of protection of cultural heritage, which is influenced not only by the precedent legislation, but also by the dynamics of European integration. Indeed, it is recognizable that the provision regarding the free circulation of goods, one of the bases of European Union, requires compromises with rules aimed at protecting cultural heritage through the introduction of circulation certificates and limitations on exportable or transferrable cultural assets. It is then fundamental for the scope of this research to analyze this legislative background.

Delving into the specific realm of European norms concerning the illicit trade of cultural heritage, it is essential to examine the role played by the EU legislation in strengthening the instruments for the safeguard of Italian cultural assets. The EU framework comprises both regulation and Directives, some of which have been reviewed throughout time in order to adapt to the new challenges of the phenomenon. Proceeding chronologically, the first document to be cited is the 1992 Regulation, now replaced by regulation 116/2009 of 2014, also known as Regulation on the Export of Cultural Good, both aimed at preventing the unlawful exportation of cultural goods. The 1992 document introduced an export license in order to export cultural objects outside the territory of the Community, which should be

---

<sup>161</sup> Art. 518-novesdecies, Italian penal code.

<sup>162</sup> Demuro G.P., *I Delitti Contro Il Patrimonio Culturale Nel Codice Penale: Prime Riflessioni Sul Nuovo Titolo VIII-bis*, 2022.

presented jointly with a declaration of export. The regulation also states that « *Member States may refuse to accept an export license when the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the Member State concerned.*<sup>163</sup> ». The provisions of 1992 have been amended throughout time<sup>164</sup>, for these reasons in 2008 the European Council decided to codify into a new document all the amendments. The result is the 2009 Regulation, which reaffirmed the principle of the export certificate, which is required in order to export a cultural object to third countries from an EU Member State other than state of origin of the object, this certificate must be issued by the country of origin of the assets. Such certificate is uniformed all over European customs and has effect in all the European countries, hence if a certificate has already been accorded to a cultural item, Italy is forced to reiterating it<sup>165</sup>. Remains however applicable the provision related to national treasures<sup>166</sup>, licet the possibility of refusing an export license if the object in question is covered by legislation aimed at protecting national treasures<sup>167</sup>. Lastly, the Regulation defers the establishment of penalties for the infringement of those provisions to Member States<sup>168</sup>.

The subsequent document to be cited, and particularly relevant for the contrast of the illicit traffic phenomenon, is the Directive for the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of 1993, repealed and replaced in 2014<sup>169</sup>. The Directive was introduced in order to secure the return to their origin Member State of objects which have been removed from their belonging territory in branch of 1992 Regulation or national legislation<sup>170</sup>. The Directive also calls for the establishment of cooperation among members state in regard of their national treasures, which should also include the recording within a list of all the objects that have been stolen, lost or illegally removed belonging to the category. For what concerns the unlawful removal, this includes both objects illicitly removed and objects which have not been returned within the expiring time<sup>171</sup>. The Directive also provides that Member States appoint the central authorities that will carry out the tasks introduced, including cooperating and promoting the consultations with the other appointed authorities. Among the task attributed to this authority it is worth to cite that they should seek for cultural objects illicitly removed, identifying its possessor or holder; they should also notify the origin Member State when an object is found and there is possibility of an unlawful removal and ensure a series of measures for granting the preservation of the

---

<sup>163</sup> Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods.

<sup>164</sup> See Regulation (EC) No 2469/96 of 27.12.1996, Regulation (EC) No 974/2001 of 8.6.2001 and Regulation (EC) No 806/2003 of 5.6.2003.

<sup>165</sup> Lafarge Francois, *La circolazione internazionale dei beni culturali, dopo le modifiche del codice*, in Aedon – Rivista di arti e diritto online, n.1, 2009. Issn1127-1345.

<sup>166</sup> As indicated by Article 36 of the Treaty on the Functioning of the European Union and belonging to one of the categories (type of object, age and financial threshold) listed in Annex I to the Regulation.

<sup>167</sup> Art. 2 and 3 Regulation 1992.

<sup>168</sup> Art. 9 Regulation 2009.

<sup>169</sup> Directive 2014/60 of 15 May 2014.

<sup>170</sup> Art. 2 Directive 1993, art. 3 2014 Directive

<sup>171</sup> Art. 1, paragraph 2 Directive 1993, art. 2, paragraph 2 Directive 2014

integrity of the objects and its return procedure<sup>172</sup>. Nonetheless, the 1993 Directive has showcased some limits, as the inadequacy and consequent scarce use of such instrument, due to the excessively restricted criteria of application and the expiry terms of processual proceeding<sup>173</sup>. With the aim of facilitating the cooperation and consultation among the competent authorities, the 2014 Directive introduced a module of the Internal Market Information specifically customized for cultural objects<sup>174</sup>. Considering the returning procedure, the requesting Member State may initiate it before the competent court, if it accompanied by a document describing the object and a declaration, produced by the competent authority, confirming that the object was unlawfully removed from the territory of the requesting state<sup>175</sup>. Nevertheless, the returning procedure must be brought to a court within 3 years since the acknowledgement of the location of the object and maximum within 30 years, in some cases 75 years, since the unlawful removal<sup>176</sup>. In any case, the extension of the term to initiate the procedure for recovering the cultural asset, which has been designed on the model provided by the 1995 UNIDROIT convention, in the rationality of the provision should facilitate the restitution and discourage the unlawful removal of cultural heritage assets<sup>177</sup>. The Directive also establishes a compensation to be owed to the possessor or holder of the object, whereas he demonstrates to have exercised the necessary attention and due care, in case the object is returned to the requesting state, which is in charge of the compensation<sup>178</sup>. The requirement of due diligence represents one of the greatest innovations of 2014 regulation respect its predecessors<sup>179</sup>. However, the duty to demonstrate the due diligence principle is in the hand of the possessor. In addition to the time constraints, the Directive also limits its scope of interventions, as the provisions just mentioned can only apply to cultural objects unlawfully removed from a Member State after 1993<sup>180</sup>. Nonetheless, considering the limits of this last provisions, the review of the Directive included a provision that tried to balance this gap, stating that Member State may apply the principles included in the Directive also to objects not mentioned by the Directive or removed before 1993<sup>181</sup>.

---

<sup>172</sup> Art. 3 and 4 Directive 1993, art. 4 and 5 Directive 2014.

<sup>173</sup> Buonomo Roberta, *La restituzione dei beni culturali usciti illecitamente dal territorio di uno stato membro alla luce della direttiva 2014/60 UE*, in Aedon – Rivista di arti e diritto online, n.3, 2014. Issn1127-1345.

<sup>174</sup> «The Internal Market Information System (IMI) is a secure, multilingual online tool that facilitates the Exchange of information between public authorities involved in the practical implementation of EU law. IMI helps authorities to fulfil their cross-border administrative cooperation obligations in multiple Single Market policy areas.» European Commission, [https://ec.europa.eu/internal\\_market/imi-net/about/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/about/index_en.htm)

<sup>175</sup> Art. 5 Directive 1993, art. 6 Directive 2014.

<sup>176</sup> Art. 7 Directive 1993, art. 8 Directive 2014.

<sup>177</sup> Buonomo R., *La restituzione dei beni culturali usciti illecitamente dal territorio di uno stato membro alla luce della direttiva 2014/60 UE*, 2014.

<sup>178</sup> Art. 9 Directive 1993, art. 10 Directive 2014.

<sup>179</sup> Buonomo R., *La restituzione dei beni culturali usciti illecitamente dal territorio di uno stato membro alla luce della direttiva 2014/60 UE*, 2014. Issn117-1345.

<sup>180</sup> Art. 13 Directive 1993, art. 14 Directive 2014.

<sup>181</sup> Art. 15 Directive 2014.

The subsequent document to be cited is the Regulation of 2019 concerning the Introduction and Import of Cultural Goods<sup>182</sup>. This latter document was adopted, as stated in the preamble, in the light of the Council Conclusions of 2016 on the fight against the financing of terrorism and the communication of the Commission on an Action Plan for strengthening the fight against terrorist financing<sup>183</sup>. The Regulation is aimed at setting the conditions and procedure for the introduction and importation of cultural goods with the scope of safeguarding humanity's cultural heritage and preventing the illicit trade in cultural objects, especially considering that illicit trafficking can contribute to terrorist financing<sup>184</sup>. Therefore, the introduction of cultural good, which were illicitly removed from their territory or were found in breach of national legislation is prohibited, and some cultural good, as identified by the annex, may be imported if an import license and/or statement is presented<sup>185</sup>. Lastly, the Regulation calls for cooperation, both between the competent authorities of the EU, which have the duty to inform the other when an import license is refused and also between EU states and third countries, in order to fulfil the task introduced by the regulation<sup>186</sup>. Despite the great provisions introduced, there is a great limit of application, as those are only valid for cultural objects which were created or found outside the territories of the European Union<sup>187</sup>. Additionally, it has been argued that the categories individuated by the annex and their thresholds seems to make a distinction between important and less important cultural heritage<sup>188</sup>. Thus, the Regulation ignores that part of trade, which is consistent, in goods of small value and which can provoke substantial damage to cultural heritage and be used as source of income for terroristic organizations<sup>189</sup>.

Lastly, it is worth to cite the recent document adopted by the EU Commission in 2022, the so-called *EU action plan against trafficking in cultural goods*. The scope of this action plan is to effectively deter criminals, while addressing the evolving security threats, in order to protect cultural heritage inside and outside the borders of the European Union. The document also seeks to strength the law enforcement, booster the international cooperation and improve the prevention of the phenomenon<sup>190</sup>. For what concerns the prevention and detection of the trafficking, the Commission encourages Member States to strengthen the cooperation and the share of information between the competent authorities; to take

---

<sup>182</sup> Regulation 2019/880 of 17 April 2019.

<sup>183</sup> Venezia, Lorenzo, *Il regolamento UE 2019/880 sull'importazione dei beni culturali, culturali*, in *Diritto Consenso*, 2022.

<sup>184</sup> Art. 1 Regulation 2019.

<sup>185</sup> Art. 3, Regulation 2019. Article 4, which introduce the import license, is referred to the object listed in annex B; article 5, which introduce the import statement, is referred to the object listed in annex C of the regulation. Annex B and C provide a list of items, which are classified depending on their cultural category and a minimum age and financial threshold, which is required.

<sup>186</sup> Art. 4 and 12 Regulation 2019.

<sup>187</sup> *Ibid.* Art. 1.

<sup>188</sup> Brodie Neil, '*Heart of Confusion? EU Regulation 2019/880 on the Import of Cultural Goods and the Fight against Terrorism*', in *Market of Mass Destruction*, 17 January 2020.

<sup>189</sup> Szabados Tamas, '*The EU Regulation on the Import of Cultural Goods: A Paradigm Shift in EU Cultural Property Legislation?*', 2022.

<sup>190</sup> European Commission, *Cultural Heritage in EU policies: Protection against illicit trafficking*.

measures to ensure that property is duly registered by private and public owners of collections; to identify and assess the risk of cultural goods trafficking, money laundering and terrorism financing within their national framework; to raise awareness in the private sector and promote the UNESCO international Code of Ethics for Dealers in Cultural Property and the ICOM Code of Ethics for Museums. Considering the law enforcement and the judicial capability, the Commission encourages the EU state to set up and duly managed database of stolen cultural objects, report stolen cultural good and share information on such cases; provide adequate capacity building on national legislation and judicial authorities; support the reinforcement of the network EU CULTNET<sup>191</sup> and sign, ratify and implement the Council of Europe 2017 Convention<sup>192</sup>. In order to evaluate the implementation of this action plan, which is introduced within the framework of the EU security strategy and the EU strategy to tackle organized crime 2020-2025, the EU has introduced a monitoring plan<sup>193</sup>.

The Regulations and Directive of EU are not the only relevant provisions for the protection of cultural heritage within Europe. Indeed, as it has been noted, also the Council of Europe plays an important role in strengthening the instruments for the fight against illicit trade of cultural objects. In this framework, the first document to be cited is the Convention on the Protection of the Archeological Heritage, from 1969 and amended in 1992, which was adopted in order to promote the use of scientific methods to archeological research and to end the illegal excavation of archeological objects. The 1992 Convention, highly focused on a specific type of cultural property, licet archeological artefacts, has had the great merit of having recognized the finite and non-renewable attributes of archeological artefacts. This merit has been concretized through the introduction of specific preventing and contrasting measures aimed at reinforcing the protection of such heritage<sup>194</sup>. Article 1 recalls the scope of the convention, that is «*protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study*». To prosecute the scope, Member States undertake to establish a legal system and physical structure of protection and to preserve archeological heritage, through the application of authorization and supervision procedures for excavations and other archeological activities, the delegation for excavations only to qualified staff and the use of specific authorization prior to the use of metal detectors in archeological investigation<sup>195</sup>. The Convention also provides the creation of inventories, maps of archeological sites and data surveys and require the facilitation of national and international exchange of information on archeological

---

<sup>191</sup> EU CULTNET is an informal network of law enforcement authorities and experts competent in the field of cultural goods, set up by the Council in October 2012 for the purpose of preventing and combating crime against cultural goods. [www.eumonitor.eu](http://www.eumonitor.eu)

<sup>192</sup> Communication from the commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions on the EU action plan against trafficking in cultural goods. COM/2022/800 final

<sup>193</sup> European Commission, *Cultural Heritage in EU policies: Protection against illicit trafficking*.

<sup>194</sup> Gardini Silia, *La verifica preventiva dell'interesse archeologico*, in Aedon – Rivista di arti e diritto online, n.2, 2023. Issn 1127-1345.

<sup>195</sup> Art. 2, 3 and 4, *Convention on the. on the Protection of the Archeological Heritage*, Council of Europe, 1992.

heritage<sup>196</sup>. For what concerns the prevention of the illicit circulation of archeological heritage, State Parties undertake to facilitate the exchange of information on illicit excavations, to notify to the competent authorities suspected articles offer from illicit excavations, and to take measures to prevent public museums from acquiring illicitly acquired archeological objects. Thus, Member States are urged to create awareness among private museums through educational measures and cooperation<sup>197</sup>. Article 11 clarifies that the provision of the Convention does not have any impact on the existing or future bilateral or multilateral treaties related to the illicit circulation or restitution of archeological cultural heritage.<sup>198</sup>

The subsequent relevant document from the Council of Europe is the Convention on offences relating to cultural property<sup>199</sup>, which represents a failed attempt, as in never entered into force. Nevertheless, it remains an interesting document which provided the basis for the recent adopted Nicosia Convention. Delfi Convention was elaborated with the scope of strengthening the union among its members, in order to safeguard European cultural property, through the creation of international standards for the protection of cultural heritage. Article 2 of the convention identifies, via a reference to the annex, the cultural property to which the provisions shall apply, nevertheless, it also provides that state party can include in the protected cultural property also goods which are not included in the annex I and II, but present artistic, historical, archaeological, scientific or other cultural interest. In a similar manner article 3 refers to the annex III in order to identify the offences against cultural property, recognizing also as offence against cultural property any type of crime, not present in the annex, that damages cultural heritage. The Convention also invites Member States to take appropriate measures to enhance the protection and prevention and to cooperate in order to grant the restitution of cultural property<sup>200</sup>. It is duty of Member States also to punish with adequate sanctions the contravention to the provisions of the Convention<sup>201</sup> and to establish judicial competence to prosecute the offences, as individuated by part V of the document. Nonetheless, as it has been noted, the Convention was never ratified, and the provision never entered into force, until the adoption of the Nicosia Convention.

Surely, the Convention on Offences relating to Cultural Property from 2017 is the most consistent and effective document introduced by the Council of Europe in order to protect European cultural heritage. The Nicosia Convention was adopted with the aim of preventing and combating the illicit trafficking and destruction of cultural property, within the framework of Council of Europe's action to fight terrorism and organized crime. Hence, the

---

<sup>196</sup> Ibid. Art. 7 and 8.

<sup>197</sup> Ibid. Art. 10.

<sup>198</sup> Cleere Henry, *European Convention on the protection of Archeological Heritage*, in Encyclopedia of global archeology, 1992. p.2619-2623.

<sup>199</sup> Signed in Delfi in 1985.

<sup>200</sup> Art. 4, 5 and 6, *Convention on Offences relating to Cultural Property*, Council of Europe, 1985.

<sup>201</sup> Ibid. Art. 12.

first merit of the Convention lies exactly in the fact that for the first time it has been addressed the phenomenon of the trafficking of cultural good, recognized as constituted by a series of fragmented and complex action, which differs from the mere illicit traffic, that only considers the illicit acquisition and circulation<sup>202</sup>. Indeed, the Convention is the first, and only, international treaty specifically addressing the criminalization of the illicit trafficking of cultural property, establishing a series of criminal offences, which include theft, unlawful excavations, illicit importation or exportation and illegal acquisition or placement on the market, but also other activities as the falsification of document or the laundering of the unlawful origin<sup>203</sup>. The second merit lies in the innovation of the Convention of being open for signature for any country of the world, with the scope of fostering international cooperation to contrast these crimes. Given the peculiarity and relevance of the document, some more attention is required.

Chapter one is dedicated to the identification of the purpose, scope and use of terms of the document. The purpose of the Convention is to « *prevent and combat the destruction of, damage to, and trafficking of cultural property by providing for the criminalization of certain acts; strengthen crime prevention and the criminal justice response to all criminal offences relating to cultural property; promote national and international co-operation in combating criminal offences relating to cultural property; and thereby protect cultural property.*<sup>204</sup> ». Article 2, which has already been cited, states that the convention applies both to movable and immovable cultural property, for the identification of which the article provides a list of categories of objects that are important for archaeology, prehistory, ethnology, history, literature, art or science. The latter was specifically designed on the model of the definition provided from the 1970 UNESCO Convention and by the EU Directive 2014/60<sup>205</sup>. The following chapter, denominated substantive criminal law, obliges State Parties to ensure the applicability of national norm that sanction the theft and the other form of unlawful acquirement also to movable cultural property<sup>206</sup>. This provision may seem too obvious, but as reaffirmed in the illustrative relation of the Council, this specification is required in order to activate the international cooperation infrastructure and for the provisions concerning the return of cultural goods<sup>207</sup>. Article 4 of the Convention identifies three different conducts related to unlawful excavation and removal which must constitute a criminal offence under national law, if committed intentionally. The provision has been designed in order to stigmatize the illicit excavation activities committed by the so-called treasure hunters, as this seemed to be a secondary type of offence in most of the importing countries, the article also provide signatories states the possibility to sanction such offences with other non-penal

---

<sup>202</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, session 128 of the Ministry of Council of Europe Committee, b. Action of the Council of Europe, paragraph 9.

<sup>203</sup> Ibid.

<sup>204</sup> Art. 1, *Convention on Offences relating to Cultural Property*, Council of Europe 2017

<sup>205</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, II Commentary on the preamble and the provisions of the Convention, paragraph 24.

<sup>206</sup> Art. 3 *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>207</sup> D'Agostino Luca, *I traffici illeciti nel mediterraneo*, In *diritto penale contemporaneo*, 2018.

penalties<sup>208</sup>. This latter provision is also present in article 5, which obliges State Parties to constitute as criminal offence, under national law, the illicit importation of cultural property which has been stolen in another state, excavated in contravention of art.4 or exported in violation of the law of the state which has identified such property as belonging to the categories of art. 2, when the act is committed intentionally and the offender knew the object was stolen, excavated or exported in violation of the law of another state. For what concerns illegal exportation, it shall constitute a criminal offence when the exportation is prohibited or carried out without authorization as prescribed in national law and its committed intentionally<sup>209</sup>. The Convention also states that any acquirement of cultural property occurred in contravention of the provisions above shall constitute a criminal offence when the offender knew the unlawful provenance of the object, it also constitutes a criminal offence when the offender could have known of the unlawful provenance if he or she had exercise due care and attention in acquiring the cultural property<sup>210</sup>. Such acquisition includes the mere buying, but also the exchange, the donations and any other type of selling and can occur in different type markets, including auction houses, antiquarian shops, secondhand shops, online and on social networks<sup>211</sup>. The same condition of respect of due care and attention is also present in art. 8, which establish as criminal offence the placing on the market of a movable cultural property obtained in contravention of the provisions above, when the offender knew the unlawful provenance. The Convention also recognizes as criminal offence the intentional falsification of documents aimed at creating the impression that the cultural property was lawfully acquired and the intentionally destruction, damage, and removal of any part of a movable or immovable cultural property with the scope of importing, exporting or placing them on the market<sup>212</sup>. For all the provisions above, except for sub-paragraph a art. 4 and art. 8, it also constitutes a criminal offence the mere aiding or abetting in one of such unlawful activities<sup>213</sup>. Chapter II concludes with some general dispositions concerning the jurisdiction, prosecution and sanctions of criminal offences<sup>214</sup>. It is worth to cite the extension of responsibility to legal persons operated by art. 13, which intervenes when one of the criminal offence above is committed for their advantage by a natural person who has acted by their own or as part of an organ of the legal person, if it occupies a leading position, depending on: power of representation, authority to take decisions and to exercise control on behalf of the legal person. It is also considered as collective responsibility the case in which the criminal offence occurred due to a deficit of control by the leading authorities.

---

<sup>208</sup> Ibid.

<sup>209</sup> Art. 6, *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>210</sup> Ibid. Art. 7.

<sup>211</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, Chapter II – Substantive criminal law, paragraph 55.

<sup>212</sup> Art. 9 and 10, *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>213</sup> Ibid. Art. 11.

<sup>214</sup> Ibid. Art. 12 and 14.



Chapter III is dedicated to the investigation, prosecution and procedural law, for which State Parties are required to take necessary legislative measures to ensure that investigations and prosecutions of the criminal offences identified by the convention are not subordinated to a complaint, neither subject to any statute of limitations. Additionally, it is also required that State Parties ensure that: the proceeds of crime described in the convention are subject to seizure and confiscation; the offender are extraditable and mutual legal assistance is available for the investigation and prosecution and prevention of the crime above<sup>215</sup>. Those measures also include the specialization of the authorities, which must be *ad hoc* qualified to deal with the illicit trafficking phenomenon<sup>216</sup>. For what concerns the extradition, the Convention reaffirms the principle *aut dedere, aut judicare*, meaning that State Parties shall ensure the persecution of the offence if they cannot proceed with the extradition of the offender<sup>217</sup>. The following chapter IV deals with the preventive measures that State Parties are required to introduce, which are categorized into two main grounds: domestic and international level. The former measures include the establishment of inventories and databases; the introduction of import and export procedures, including an *ad hoc* certificate; the introduction of due diligence provisions for art and antiquity dealers or auction houses or any other relevant actor which may be involved in the trafficking; the establishment of a central national authority for the protection of cultural property and educational and awareness-raising program; the report and monitoring of any suspicious sale or dealing; the encouragement of museums and similar institutions to not acquire illicitly removed cultural property and to comply with existing ethical Codes; the prevention of free ports and the improvement of the sharing of information<sup>218</sup>. Most of the latter measures are discerning from other pre-existing convention, as the UNESCO 1970 and the UNIDROIT 1995 conventions, hence the provision follows a double approach, as on one side it invokes the application of pre-existing document, and on the other side invokes the application of the new measures introduced<sup>219</sup>. On international level State Parties are required to implement measures for the promotion of international cooperation, contribute to international data collection on trafficking of movable cultural objects and facilitate the cooperation for protecting and preserving cultural property in case of armed conflict or instability<sup>220</sup>. Such measure, not only regard the promotion and connection of national database, but also the development and encouragement of the use of existing supranational database, as the one of INERPOL or ICOM's red list<sup>221</sup>.

---

<sup>215</sup> Ibid. Art. 18 and 19.

<sup>216</sup> Pistoia Emanuela, *Cooperazione penale nei rapporti fra diritto dell'Unione Europea e diritto statale*, in Univ. degli Studi di Teramo. Collana della Facoltà di Giurisprudenza, edizioni scientifiche italiane, 2008.

<sup>217</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*.

<sup>218</sup> Art. 20, *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>219</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, session 128 of the Ministry of Council of Europe Committee, paragraph 111.

<sup>220</sup> Art. 21, *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>221</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, paragraph 125.

Chapter V establishes follow up mechanism aimed at monitoring the ratification and implementation of the Convention. In particular, a committee of the parties is founded for this scope, which shall be composed by representative of signatories states and representatives from the Parliamentary Assembly of the Council, the European Committee on Crime Problems (CDPC) and the Steering Committee for Culture, Heritage and Landscape (CDCPP)<sup>222</sup>. Indeed, the intention of the authors of the Convention was the creation of a monitoring system, as simple and flexible as possible, based on the one established by the Convention against human trafficking<sup>223</sup>, in order to create a common ground for combatting organized crime and the offences related to cultural property<sup>224</sup>. Among the functions of the Committee, it can be cited the monitoring of the implementation of the Convention, the facilitation of the collection, analysis and exchange of information and good practices, express an opinion and make specific recommendations on any question concerning the implementation of the Convention<sup>225</sup>. Chapter VI treats the relationship with other international instruments, stating that the Conventions shall not affect any existing or future provision of other international instruments<sup>226</sup> and must be assimilated in accordance with the provisions of Vienna Convention on the law of treaties<sup>227</sup>. The last part of the Convention, licet chapter VII – VIII, is dedicated to the amendment procedure of the convention and the final clauses, which include provisions concerning the accession to the Convention, the territorial application, and the possibility of making reservations.

Clearly, the Nicosia Convention represent a fundamental instrument for the protection of cultural property, especially considering the demonstrated effort toward the unification of standards related to national criminal regulations. The Convention, which was influenced by the never-entered-into-force Convention of Delphi, was designed to complement and fill the gaps of the other existing international treaties, aimed at preserving cultural property and strength the legitimate interest of world communities in gaining access to cultural heritage, that nonetheless have demonstrated to be not sufficient for the persecution of such scope. On one side, the convention has been able of creating a uniformed set of standards and penalties for the persecution of the trafficking of cultural property, on the other side it has avoided any determination of the type of penalties to be reserved to each of the offences, leaving this duty to State Parties, who must ensure the adequate persecution of such offences. Indeed, if the definition of the object to which must be accorded a penal protection is already a complex and delicate action, it is even more complex the definition of the sanction that will persecute the offender of the object<sup>228</sup>. Therefore, exactly due to this choice, the Nicosia Convention

---

<sup>222</sup> Art. 22-23, *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>223</sup> Council of Europe, *Convention against human trafficking*, signed in Santiago de Compostela, 2015.

<sup>224</sup> Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, paragraph 139.

<sup>225</sup> Art. 24, *Convention on Offences relating to Cultural Property*, Council of Europe, 2017.

<sup>226</sup> *Ibid.* Art. 25.

<sup>227</sup> Signed in Vienna in 1969.

<sup>228</sup> Casini L., intervention during the conference: *Giustizia penale e patrimonio culturale, coordinate di un binomio complesso*, Dipartimento di giurisprudenza, Università di Roma Tre, 06/05/2019.

represents a balanced instrument between mandatory obligation for States and the freedom accorded to the latter to persecute such mandatory obligations. The third important merit of the Convention, then, lies in its ability of having balanced those dualistic aspects present in previous covenant. On one hand, the Nicosia Convention has deeply penetrated the domain usually reserved to states, on the other it gave State Parties the possibility to establish freely their own legal solutions, in a compatible manner with the provisions of the Convention. From this perspective, Nicosia Convention has demonstrated to have overcome the criticism of Delphi Convention, whose failure lied also in its too invasive intervention in state authority concerning penal initiative<sup>229</sup>. Hence, this open regime, both normative and substantial, considering that the signature is open for all state of the world, poses solid grounds for the effective creation of international standards, which really consider the national differences that exist in cultural policy<sup>230</sup>.

#### 2.4. International norms

Having examined both the national and European legislative framework, it must be now considered the last fundamental part of provisions which play an important role in combatting and preventing the illicit trafficking of cultural objects, licet international norms. Nevertheless, before going through those documents, some premises and historical events should be mentioned. In particular, it is well known that the biggest impetus for the adoption of international norms for protecting cultural heritage happened immediately after the second world war, which has seen a massive number of cultural properties being destroyed, lost, stolen or just disappearing, with terrible consequence on the heritage of humankind. For this reason, the international community decided to adopt the first *ad hoc* organic treaty for the protection of humankind cultural heritage: The UNESCO Convention on The Protection of Cultural Heritage in Case of Armed Conflict, signed in the Hague in 1954, which has established a new legal conception of cultural heritage<sup>231</sup>. This convention introduces some interesting general sanctioning obligations, which nevertheless does not have a great impact from the penal law perspective, but still represent a first attempt to protect cultural heritage<sup>232</sup>. Differently, the second protocol, adopted in 1999, plays a better role in the penal prosecution of the crime identified, as specifically addressed the criminalization of harmful behaviors that affect cultural heritage, most of which are strictly connected to illicit traffic<sup>233</sup>.

---

<sup>229</sup> Ibid.

<sup>230</sup> Bieczynski, Mateusz Maria, *The Nicosia Convention 2017: A New International Instrument Regarding Criminal Offences against Cultural Property*, in *Santander Art and Culture Law Review*, 2/2017. p. 255-274

<sup>231</sup> Maugeri Anna M., *La tutela dei beni culturali nel diritto internazionale penale. Crimini di Guerra e crimini contro l'umanità*, Giuffrè, 2008.

<sup>232</sup> Visconti A., *La repressione del traffico illecito di beni culturali nell'ordinamento italiano. rapporti con le fonti internazionali, problematiche applicative e prospettive di riforma*, 2021.

<sup>233</sup> Visconti A., *The Illicit trade in Cultural Objects. From Marginalization to the Current Surge in Attention by Transnational Criminal Policymakers*, 2021.,

Despite the limits of the Convention, included the limited scope, licet the application only in case of armed conflict, it is worthy to cite some of the most relevant provisions of the Convention.

The Hague Convention set a series of rules and responsibilities concerning cultural property for the invading forces of an armed conflict. Article 1, as reported in chapter I of this research, identifies the categories included within the term cultural property, to which the convention refers. Article 2 obliges Member States to protect, through the safeguard and the respect, cultural property as identified by art.1, including both movable and immovable cultural assets. Article 4 limits the lawfulness of attack against cultural property only to exceptional situations whereas a waiver can be invoked in case of imperative military necessity and establishes that the theft, misappropriation, and pillage of private or public cultural property is unlawful if committed within an armed conflict. Consequently, any parties to the covenant must undertake to prohibit and prevent any unlawful requisition of movable cultural property located in the territory of a state party. The Convention also invited Member States to introduce a distinctive emblem in order to facilitate the recognition of cultural property<sup>234</sup>. Additionally, the 1954 Convention affirms the principle for which the contravention of its provisions entails individual criminal liability, nevertheless, art. 28 only states that «*The High Contracting Parties undertake 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.* ».

More effective and relevant provisions are present in the two protocols to the Convention. In particular, the first protocol from 1954 introduces provisions on illicit traffic, stating that each contracting state party undertake to prevent the unlawful exportation, to take custody and to return cultural property belonging to the territory of an occupied state during an armed conflict<sup>235</sup>. Additionally, concerning the criminalization of such offences, the second protocol to the Convention requires State Parties to create offences in respect of the export, removal and transfer of cultural property, and also in relation to illicit excavations of archeological sites<sup>236</sup>. Furthermore, art. 15 of the second protocol imposes Member States to establish penal sanctions to punish the serious violations committed intentionally, including: «*(a) making cultural property under enhanced protection the object of attack; (b) using cultural property under enhanced protection or its immediate surroundings in support of military action; (c) extensive destruction or appropriation of cultural property protected under the Convention and this Protocol; (d) making cultural property protected under the Convention and this Protocol the object of attack; (e) theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention*». Lastly, art. 16 affirms the principle of universal jurisdiction for the serious violation listed

---

<sup>234</sup> Art. 6 Convention for the Protection of Cultural Property in the Event of Armed Conflict, UNESCO, 1954.

<sup>235</sup> Ibid. Art. 1, I protocol.

<sup>236</sup> Ibid. Art. 9 II protocol.

by art. 15. It must be underlined that individual members of criminal or terroristic organizations are bound by most of the provisions of the convention and its protocols regardless of the type of conflict they are acting in or whether they exercise control over a specific territory if the armed conflict in question occurs in the territory of a Member States<sup>237</sup>. The reason that lies at the bases of this principle is that cultural heritage should be given the same level of respect and protection in situation of armed conflict, regardless of the nature and size of the conflict<sup>238</sup>.

Sixteen years after the adoption of the Hague Convention, it has been adopted by UNESCO the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export or Transfer of Ownership of Cultural Property, which aims at reinforcing the solidarity between source and market nations in the fight against illicit traffic. In this perspective, it must be noted the specific differentiation of scopes of the Convention compared with the EU regulation of 1993: the latter indeed aims at balancing the principle of free circulation of goods and the conservation of the cultural property of Member States, the former aims at contrasting the illicit traffic<sup>239</sup>. Therefore, the 1970 Convention obliges State Parties to oppose to the illicit import, export and transfer of cultural property with the means at their disposal, and especially by removing their causes, ending current practices and helping to take the necessary reparations<sup>240</sup>. It is also recognized as illicit any import, export or transfer of cultural property effected contrary to the provisions of the Convention<sup>241</sup>. Article 4 reinforces the scope of the conventions, including within the categories of cultural heritage of State Parties also « (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory; (b) Cultural property found within the national territory; (c) Cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property; (d) Cultural property which has been the subject of a freely agreed exchange; (e) Cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property ». Article 5 is then dedicated to the measures required in order to ensure protection, whereas are included: the elaboration of *ad hoc* draft laws and regulations; the establishment of national authorities and services for the protection of

---

<sup>237</sup> Cfr. International Committee of the Red Cross (ICRC), *Practice relating to Rules 38, 39, 40 and 41*; and Hausler K., 'Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups' (2015-2) *Santander Art and Culture Law Review*, 117-146, 122-135.

<sup>238</sup> Chechi A., *Fighting and preventing offences relating to cultural property: existing rules and proposals for functioning regulatory systems, 'act for heritage!'* 24-26/10/2019 Nicosia, Cyprus.

<sup>239</sup> Cfr. Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021; Chiti M. P., *Beni culturali e comunità Europea*, 1997; Chiti M.P., Greco G., *Trattato di diritto amministrativo Europeo*, 2007.

<sup>240</sup> Art. 2 Convention 1970. Cfr. Magri Geo., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, 2021.

<sup>241</sup> Art. 3 Convention 1970. Cfr. Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, 2021.

cultural heritage; the creation of national inventories, the encouragement for the adoption of Code of conducts for dealers in cultural property; and the implementation of educational programs aimed at creating awareness on the respect for cultural heritage. The Convention clearly regulates and control the movement of cultural property, forcing State Parties to undertake some measures and instrument for this scope, which include the introduction of an export certificate and the consequent prohibition of certification-less exportation; the implementation of necessary measure for preventing museums and similar institutions from acquiring cultural property without an export certificate; the imposing of penal sanctions for any person contravening the Convention; the prohibition of importing stolen objects; the introduction of a register for dealers and the possibility to adopt emergency ban on importation when the cultural heritage of a State Party is seriously endangered by intense looting of archeological and ethnological artefacts<sup>242</sup>. Article 7 introduces relevant provisions concerning the return of stolen cultural property, providing that when the State Party of origin present a request for the return, the State Party where the stolen cultural property is located has to seize and return the property. For the proceeding, a request made upon diplomatic channel is needed, as well as documentation concerning the presence of the object in national inventories and evidence to support the claim, if the request is found to be consistent with the provisions of the Convention, the State of Origin of the property has to pay a compensation to the precedent owner, if he has acquired the property in good faith or holds a valid title under national law<sup>243</sup>. On this matter, it must be mentioned that despite the report of the Expert Committee of the Convention has referred to a compensation to be accorded to the purchaser in good faith, which seems to describe a purchaser who acted with the required due diligence and hence ignored anyway the illicit provenance of the object, *de facto* the Convention does not offer particularly relevant clarifications, leaving space for doubts on the interpretation of such provision<sup>244</sup>. Finally State Parties undertake, in a consistent manner with domestic law to prevent transfer of property that may be linked to illicit import or export; to ensure that the competent services cooperate for the restitution of illicitly exported cultural property; to admit action for the recovery of stolen or lost cultural objects; and recognize the indefeasible right of each State Party to declare and classify certain cultural property as inalienable, and consequently non-exportable<sup>245</sup>.

Some consideration of the 1970 Convention should be given, especially in respect to the following UNIDROIT Convention. In particular, the 1970 Convention, that is the most important document for what concerns illicit traffic, it included for the first time the general principle of the restitution of illicitly exported objects, which has then been reinforced by 1995 Convention and EU Directive from 1993, and results to be, at the moment, the most

---

<sup>242</sup> Art. 6 – 9, 1970 UNESCO Convention.

<sup>243</sup> Frigo M., *La circolazione internazionale dei beni culturali: diritto internazionale, diritto comunitario, diritto interno*, II edizione, Milano, Giuffrè, 2007.

<sup>244</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>245</sup> Art. 13, 1970 UNESCO Convention.

widespread document on the matter, as it counts more State Parties (143). The scope of this international conventions is to protect the cultural heritage of each Member States and, as it has been mentioned, this scope demonstrates a substantial difference from EU's Directives and Regulations, which are adopted in order to create a compromise between the free circulation principle and the conservation of European state's cultural properties<sup>246</sup>. It can be then argued, that while the UNESCO convention protects above all the cultural property of each state, the EU documents tried to find a way to protect such properties while protecting also the market and the free circulation principle. However, despite the several merit of the 1970 provisions, some defects that affect its implementation and effectiveness should be highlighted. The first concerns the consistency of the provision with domestic law, indeed there is no obligation for State Parties to change national law if found to be not consistent with the Convention. Consequently, it results particularly difficult to obtain a harmonization on national legislation in accordance with the document. Additionally, the Convention is not 'self-executing', by the way its principles are only applicable if present in domestic law, which contribute to poorish its effectiveness<sup>247</sup>. The other great limit of the Convention can then be found in the meagre discipline of the restitution proceedings, as it only obliges State Parties to restitute the property, which results to be illicitly transferred or stolen, in exchange of a compensation whereas the object has been acquired in good faith<sup>248</sup>. Despite this limit, anyway, the Convention introduces an extremely important principle, even if general, for which in the case of a theft or illicit exportation, the eventual protection of the owner in good faith of the object, entering in conflict with the Convention provision, and so cannot be applied to exclude the restitution. To conclude, the main problems concerning the application of the Convention are related to the consistency of national legislation, to the execution of the provisions due to its public law character and to the identification of the good faith principles, problems which are at the basis of the adoption of 1995 UNIDROIT Convention<sup>249</sup>.

The Convention on Stolen or Illegally Exported Cultural Property adopted by the UNIDROIT in 1995 was conceived on two main starting points: the necessity of harmonization within the private law framework and the opportunity to fix some limits of the previous general discipline of the proceedings and condition for the return and restitution of stolen or illicitly exported property. Thus, starting from those premises, the International Institute for the Unification of Private Law, in concert with UNESCO itself and influenced by the just-released EU Directive of 1993, elaborated a Convention under private law aimed at providing a uniformed framework of rules and procedures for the return and restitution of

---

<sup>246</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>247</sup> Frigo M., *1995 UNIDROIT Convention and its implementation*, Executive Course in Art and Law, 26/10/23, University of Florence.

<sup>248</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>249</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, Roma Tre Press, 2021.

cultural property. In particular, the differences in the domestic private law of State Party created the grounds for 'legislative gaps' in which it could have been possible to launder the illicit provenance of cultural objects simply by transferring and alienating the property in a state allowing good faith acquisition regardless of the illicit provenance, and then, through the use of the *rei sitae* principle<sup>250</sup>, the owner or possessor could refuse to return the object invoking a lawful property right.

Precisely with the scope of fixing this gap, it was adopted the 1995 Convention, which in article 1 clarifies its ground of application, licet for the request of restitution of stolen cultural objects and for the return of cultural goods subtracted from a Member State in contravention of its exportation law. It is important to underline that the differentiated use of the terms return and restitution in the UNIDROIT Convention is not made by chance, indeed, the concept of return, used for illicitly removed object, invokes public law, as it is connected to the conservation of requesting State cultural heritage; the concept of restitution, on the contrary, refers to object stolen from the owner and invokes international private law<sup>251</sup>. However, in order to facilitate the recovery of archeological artefacts illicitly excavated, the Convention permits to apply both the norms dedicated to stolen and illicitly exported objects. Article 1 also specifies that the request must be based on international grounds, it is then necessary and sufficient, to present it, that a cultural heritage has been stolen or transferred from its origin place to another state. It must be noted, for what concerns the provisions of article 1, that the Convention do not provide a definition of the terms used. This choice is justified by the persecution of the broader and most inclusive interpretation of the Convention, which has hence decided to provide national judges more discretion in the applicability of the norm, nonetheless such choice seems to create more grounds of uncertainty, as it can foster the adoption of different solutions in different national law regimes<sup>252</sup>. For what concerns the restitution of stolen cultural property, the Convention enacts that «*the possessor of a cultural object which has been stolen shall return it*<sup>253</sup>», nevertheless, if the possessor can present evidence of having exercised the necessary *due diligence* at the moment of the transaction, it can be accorded a *fair and reasonable*

---

<sup>250</sup> The principle of *Lex rei sitae* is based on the presuppose of the supremacy of the legislation of the state where the objects is located at the moment of transfer of property over the legislation of the state of origin of the object (*Lex originis*). In this sense is emblematic the case from the Court of Cassation: French Ministry of Culture v. De Contessini, 23/11/1995, where a painting had been stolen in Lyon and then had been sold multiple times in Italy, ending in the hand of De Contessini (4<sup>th</sup> buyer of the painting). France presented a request for the restitution of the painting, but De Contessini recalled the principle of good faith at the moment of the selling and refused to reconstitute the object. In order to decide whether or not De Contessini had a lawful right of property over the painting, the Court decide to apply the principle of *Rei sitae*, so as the transaction happened in Italy: Italian law should be applied. According to Italian legislation, a buyer in good faith can acquire the property even if the object has been stolen. Hence, for this reason, the Court found De Contessini to be the lawful owner of the painting.

<sup>251</sup> See G. Volpe, *La Convenzione UNIDROIT sul ritorno dei beni culturali rubati o illecitamente esportati*, in *Notiziario del Ministero dei beni culturali e ambientali*, n. 50, 1996.

<sup>252</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>253</sup> Art. 3, paragraph 1, 1995 UNIDROIT Convention.



*compensation*<sup>254</sup>. It must be highlighted that *due diligence* embeds more requirement than the precedent *good faith*, as it considers all the circumstances of the acquisition, including «*the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances*<sup>255</sup>». Therefore, if under the 1970 Convention was applied the *lex rei sitae* principle in order to determine the existence of a lawful property right, in this case it is applied the *lex originis* principle<sup>256</sup>. The preference accorded to the latter is the result of the difficulties registered in the application of article 7 of 1970 Convention in some national law regimes that allowed the acquiring of property having illicit provenance. Nevertheless, in order to present a request for a restitution the origin state has a time limit of 3 years since the acknowledgement of the location of the object and in any case maximum 50 years after the theft of the object, however, those time limits do not apply to the most important cultural heritage of State Party, for which there is no time requirement<sup>257</sup>. Lastly, as deductible from the explicative rapport of the Convention, the request can be presented both by the origin state and, for the first time, also by the robbed private owner, which until this convention could not present by himself an instance of restitution.

Considering now the return of illicitly exported or not re-imported cultural property, to which is dedicated Chapter III, it is established that the State of origin can request another State for the return such cultural objects, if the removal from its original territory significantly impairs «*(a) the physical preservation of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional or ritual use of the object by a tribal or indigenous community*»<sup>258</sup>. As well as for the restitution, the request for the return shall be presented within 3 years since the acknowledgment of the location by the requesting State, in any case within 50 years since the illicit exportation or missed re-importation<sup>259</sup> and, in case it is accepted, to the buyer who has acquired the object executing the necessary due diligence is accorded a compensation for the loss<sup>260</sup>. Nonetheless, differently from the case of restitution, the request of return can only be presented by State Parties<sup>261</sup>. Though, those provisions are not applicable if the export of the cultural object is no longer illegal at the moment of the request or if it is exported while the author is still alive or death from less than 50 years<sup>262</sup>.

---

<sup>254</sup> Ibid. Art. 4, paragraph 1.

<sup>255</sup> Ibid. Art. 4, paragraph 4.

<sup>256</sup> Frigo M., *1995 UNIDROIT Convention and its implementation*, Executive Course in Art and Law, 26/10/23, University of Florence.

<sup>257</sup> Art. 3, paragraph 3-5, 1995 UNIDROIT Convention.

<sup>258</sup> Ibid. Art. 5, paragraph 1-3.

<sup>259</sup> Ibid. Art. 5, paragraph 5.

<sup>260</sup> Ibid. Art. 6, paragraph 1.

<sup>261</sup> Ibid. Art. 5, paragraph 1.

<sup>262</sup> Ibid. Art. 7, paragraph 1.

The UNIDROIT Convention, like the previous documents, presents great merits, but also great weaknesses. On one side, it has overturned the *lex rei sitae* principle, preferring the law of the origin State, avoiding the possibility to launder illicit exported or stolen cultural objects. It also introduced more restrictive rules concerning the accordance of a compensation to the possessor of the object, introducing the concept of *due diligence*, which counts more requirements than *good faith* to be satisfied<sup>263</sup>. Additionally, to guarantee the efficiency of the proceedings, it has also been established an autonomous title of jurisdiction, to foster the return and restitution of cultural objects<sup>264</sup>. On the other side, the Convention insistence on a non-reservation policy, while fostering a uniform approach, may inadvertently affect its adoption, limiting its scope<sup>265</sup>. Hence, the document counts a small number of State Parties (54), which are mainly exporting countries, licet states whose cultural heritage more affected by the illicit traffic, which already have an advanced legislation in this field. The missed participation of importing countries, traditionally adverse to the regulation of the art market, is both the confirmation of the efficacy of the Convention and the reason for which it registered such a small number of ratifications<sup>266</sup>. Furthermore, the concept of due diligence can be weaker than the expected, if it is taken into account that in order to satisfy its requirement it is necessary to consult the available database and red lists and activate a verification proceeding, through the uploading of a picture and description of the object. Nevertheless, for a considerable part of the illicitly exported or stolen object does not exist any information in relevant database, with the consequent limitation of the principle itself<sup>267</sup>.

In any case, the importance of the 1995 Convention is unquestionable, as evidenced by its impact on other significant international documents, such as EU Directive from 1993<sup>268</sup> and 2014 and the Code of Ethics adopted by ICOM in 2004, where the principle of due diligence has been included<sup>269</sup>. Therefore, it must be underlined how the provisions of the Convention complement the Directives, authorizing EU Member States to apply the internal rule of the body for the matters that overlay and apply the Conventional provision for the subjects not contemplated in the Directives<sup>270</sup>. Nevertheless, this principle, known as ‘*disconnection clause*’, has only been invoked by 7 of the 14 State which are member both to EU and the

---

<sup>263</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>264</sup> Art. 8, 1995 UNIDROIT Convention.

<sup>265</sup> Frigo M., 1995 UNIDROIT Convention and its implementation, Executive Course in Art and Law, 26/10/23, University of Florence

<sup>266</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>267</sup> Michel van Rijn, ‘*Thieves of Baghdad*’, director Montaser Marai, Aljazeera Channel, 2007, [http://www.youtube.com/watch?v=X4Q\\_0p1L\\_YU](http://www.youtube.com/watch?v=X4Q_0p1L_YU).

<sup>268</sup> The preparatory works of the 1995 Convention started in 1986 and have been confronted and influenced the elaboration of the 1993 EU Directive.

<sup>269</sup> The preparing material produced for the 1995 UNIDROIT Convention had been used as model for the redaction of the EU 93/7 Directive, even if the latter was adopted earlier. The two documents reciprocally influenced themselves.

<sup>270</sup> Art. 13, *Convention On Stolen Or Illegally Exported Cultural Objects*, UNIDROIT, 1995.

1995 Convention, with consequent uncertainty on what would happen if the States, who did not accept the clause, will be called to choose between the Directive and the Convention<sup>271</sup>.

Five years after the adoption of the UNIDROIT Convention, it was signed another relevant document, which directly deals with the illicit trafficking of cultural object perpetrated by criminal organizations, licet the 2000 United Nations Convention against Transnational Organized Crime. The Palermo convention, aimed at contrasting transnational organized crime, is the most relevant document on international level for what concerns the contrast of criminal organizations<sup>272</sup>. This document recognizes the link between criminal activities and the offences against cultural heritage, convinced that its provision will constitute an effective tool for the contrast of such activities<sup>273</sup>. Hence, the Convention constitute an effective parallel instrument, which criminalized in a more general manner the type of offence related to cultural property. Article 5 mandates each State Party to enact legislation and take necessary measure to criminalize, when committed intentionally, the agreement to commit a serious crime for financial or material gain; the active participation in criminal activities; and the organization, direction, aid, abet, and facilitation of the commission of such criminal activities. It also obliges State Party, whose domestic law requires the involvement of an organized criminal group, to ensure that it covers all the serious crimes committable by those groups and to inform the UN secretary general about their legal framework. The Convention, likewise, requires State Party to adopt legislative measures to criminalize the intentional activities aimed at laundering the proceeds of the crime, which include: the conversion or transfer of property, knowing the illicit origin, for the purpose of concealing or disguising it; the aid in such activity; the concealment or disguise of the true nature, source, location, disposition, movement or ownership of a property, knowing that it is the proceeds of crime; the acquisition, possession or use of property, knowing that it is the proceeds of crime; and the participation, association or conspiracy to commit, or an attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences<sup>274</sup>. Article 12 requires Member States to adopt, within their possibility, any possible measure to enable the confiscation of: proceeds of crime or property the value of which corresponds to that of such proceeds; property, equipment or other instrumentalities used in or destined for use in offences mentioned by the Convention. The latter also introduces important provisions aimed at strengthening international cooperation, concerning the adoption of a new extraditions proceeding; mutual legal assistance and law enforcement cooperation; and the

---

<sup>271</sup> Magri G., *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto privato*, in *Il Diritto dei Beni Culturali*, 2021.

<sup>272</sup> Notaro Laura, *Modelli di incriminazione per il contrasto alla criminalità organizzata*, in *Il traffico illecito di beni culturali*, 2021.

<sup>273</sup> Preamble of the *UN Convention against Transnational Organized Crime*, 2000.

<sup>274</sup> Art. 6, *UN Convention against Transnational Organized Crime*, 2000.

promotion of training and technical assistance for constructing or advancing the necessary capacity of national authorities.<sup>275</sup>

In general, the Palermo Convention represents an additional transversal instrument to contrast the illicit trafficking phenomenon, directly addressing the part of trafficking perpetrated by organized criminal group. Nonetheless, the Convention can only be applied whereas the offence is transnational, meaning that is committed in more than one State; or it is committed in one State but a substantial part of its preparation, planning, direction or control took place in another State; or it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or it is committed in one State but has substantial impact in another State<sup>276</sup>. The Palermo Convention is undoubtedly full of potential in contrasting the phenomenon, especially considering that, among the legislative documents presented by this research, is the one that counts more State Party (190), providing a widespread legally binding document, that can become a land of last resort for combating the illicit trafficking and the involvement of transnational organized group, when happening in a State which is not part to the above presented conventional document.

The great potential of the Convention is also reflected by the great impact that it had in developing other international instruments<sup>277</sup> within this framework, which reaffirmed and strengthen the existing Conventional documents. Among those, it is worthy to cite the 2014 UN General Assembly Resolution<sup>278</sup>, which contains important guidelines concerning crime prevention strategies, criminal justice policies, international cooperation, and capacity-building measures to prevent and contrast the illicit trafficking in cultural objects. The document also encourages cultural institutions and private organizations to report suspected trafficking activities to competent authorities and states to develop and strengthen their legislation and policies strategies in line with the guidelines. Strictly connected to the latter, it must be mentioned the 2017 UN Security Council resolution n.2347, which recognizes the adverse impact of the illicit trafficking on peace and security and recognizes the linkage and connection between the illicit phenomenon and the terroristic, armed or organized criminal group. The Resolution urges Member States to develop and strengthen the enforcement of law and the judicial cooperation in preventing and contrasting the trafficking of cultural heritage and to ratify and implement the international relevant Conventional document.

---

<sup>275</sup> Cfr. Armone G.M., *La Convenzione di Palermo sul crimine organizzato transnazionale e la responsabilità degli enti: spunti di riflessione*; Balsamo A., *Il contrasto internazionale alla dimensione economica della criminalità organizzata: dall'impegno di Gaetano Costa alla "risoluzione Falcone" delle Nazioni Unite*, 2020.

<sup>276</sup> Art. 3, *UN Convention against Transnational Organized Crime*, 2000.

<sup>277</sup> See also the *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* from 2015; the UN Security Council Resolution n. 2199 (2015)

<sup>278</sup> Resolution adopted by the General Assembly on 18 December 2014 [on the report of the Third Committee (A/69/489)] n.69/196. *International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences*.

Member States are also called to establish procedures and databases concerning criminal activities related to cultural property and foster the cooperation of internal authorities<sup>279</sup>.

The next, and last, documents to be addressed in this section, which belong all to the soft-law instruments, are the Code of Ethics for Museums, adopted by ICOM in 2004, the UNESCO legislative and practical measures for contrasting the illicit traffic of cultural heritage<sup>280</sup>, adopted in 2006, and the rapport concerning the protection against traffic in cultural property, elaborated by UNODC in 2009. The Code of ICOM for museums is the result of the effort made by the international community in recognizing the role that museums can play for preserving and promoting culture, and hence in contrasting and preventing the illicit traffic of cultural goods. The scope of the Code, which has been reviewed more time, the last in 2022, is to provide guidelines and set standards for museums professional regarding the acquisition, conservation, exhibition, and research of cultural heritage. In regard to the prevention and contrast of illicit traffic, the Code encourages museums and other similar institutions, part to the Council, to ensure that appropriate measures are implemented in order to secure collections from being theft or damaged and to adopt a ‘*collection policy*’ that indicates the procedure of acquisition, care and use of the collection<sup>281</sup>. The Code also invites party institutions to acquire objects only when a valid title is held, indicating that the evidence of lawful ownership in a country is not necessarily a valid title<sup>282</sup>. Additionally, as it has been mentioned above, the Code also includes the requirement concerning the due diligence, which must be satisfied when acquiring an object and shall cover the full history of the item since it has been produced or found and, whereas an object is reasonably perceived as originating from an illicit activity, the acquirement of it should be avoided<sup>283</sup>. Therefore, the Code also invites museums, whereas endowed with an identification service, aimed at authenticating, and identifying the provenance of an object retained to be illicitly acquired, transferred, exported or imported, to not make public any declaration or information over the outcome of a verification until the appropriate authorities have been informed<sup>284</sup>. The Code also includes two separated principles dedicated to the return and restitution of cultural property, which reflects the same approach of the 1995 Convention in differentiating and defining the two proceedings<sup>285</sup>. For what concern the return, the Code encourages museums to be prepared to open a dialogue, with the country or community of origin, which should be conducted in an impartial manner, constructed on scientific, professional, humanitarian principles and on relevant applicable legislation<sup>286</sup>.

---

<sup>279</sup> Resolution 2347 (2017) Adopted by the Security Council at its 7907th meeting, on 24 March 2017

<sup>280</sup> UNESCO, *Mesures juridiques et pratiques contre le trafic illicite des biens culturels: manuel de l'UNESCO*, 2006.

<sup>281</sup> Paragraphs 1.6 and 2.1, ICOM Code of Ethics for Museums, 2004

<sup>282</sup> Ibid. Paragraph 2.2

<sup>283</sup> Ibid. Paragraphs 2.3 and 2.4

<sup>284</sup> Ibid. Paragraph 5.1

<sup>285</sup> Frigo M., *Ethical Rules and Codes of Honor Related to Museum Activities: A Complementary Support to the Private International Law Approach Concerning the Circulation of Cultural Property*. International Journal of Cultural Property, 2009, p.49-66.

<sup>286</sup> Paragraphs 6.2, ICOM Code of Ethics for Museums, 2004

Differently, for what regard the restitution, the Code invites museums, in the event of a request coming from the State or people of origin of an object, that can be demonstrated to have been illicitly transferred or exported, to take prompt and responsible steps in order to cooperate for its return<sup>287</sup>. Lastly, the Code implements and refers to the relevant legislation as a standard to interpret its principles, requiring museums to conform fully to international, local and national laws and reserve the possibility, for the ICOM Executive Council, to terminate a membership in case a member commits activities which are substantially inconsistent with the principle of ICOM<sup>288</sup>.

Delving to the UNESCO handbook for contrasting the illicit trafficking of cultural heritage, the document invites and encourages States to adopt specific legislative and practical measures, in order to foster the contrast of the phenomenon. On the legislative side, the UNESCO handbook underlines the importance of reviewing and reinforcing domestic legislation, ratifying and implementing the relevant international conventional document, adopting the use of the UNESCO-WCO model of exportation certificate<sup>289</sup> and facilitating the bilateral negotiations within the Intergovernmental Committee of UNESCO<sup>290</sup>. Those measures, specifically require States to allocate a sufficient amount of financial resources to the monitoring of cultural good circulation, the adoption of an adequate administrative apparatus, the implementation of the conventional provision withing the national legislation, and to use and promote the UNESCO-WCO export certificate. However, on the latter, some criticisms have been reported, concerning the effectiveness and efficiency of the certificate. In particular, it has been noted that the impact of the certificate is neither relevant or positive, as demonstrated by the submitted States' report, which argued that most of the member already have an internal certificate of exportation, and in certain case, its compiling is referred to be particularly difficult<sup>291</sup>. On the practical measures side, the handbook refers to a series of document to be used for the circulation of goods, such as the ICOM Code of Ethics, the UNESCO Code for art dealer from 1999 and the ICOM's red list, where are reported the item at risk per country<sup>292</sup>. The practical measures also include the use of the provision of Object ID, which is a project aimed at aiding and guiding museums, individuals and institutions in the organization and management of cultural objects inventories, including specific principles for the redaction of the description of the object, in order to uniform the information on international databases and foster the identification of illicitly

---

<sup>287</sup> Ibid. Paragraphs 6.3

<sup>288</sup> Section 7 and paragraph 9(d) ICOM Code of Ethics for museums 2022

<sup>289</sup> In 2005, UNESCO and the World Customs Organization elaborated a model of export certificate, it is consultable here: <http://www.UNESCO.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/legal-andpractical-instruments/UNESCO-wco-model-export-certificate/#:~:text=United%20Nations,UNESCO%20%2D%20WCO%20Model%20Export%20certificate,illicit%20trafficking%20in%20cultural%20property.>

<sup>290</sup> Part 1, *Mesures juridiques et pratiques contre le trafic illicite des biens culturels*, UNESCO 2006.

<sup>291</sup> Pirri Valentini Anna, *Verso una nuova Governance nella circolazione dei beni culturali*, in *Il diritto dei Beni Culturali*, Roma tre Press, 2021.

<sup>292</sup> Part 2, Section C-D, *Mesures juridiques et pratiques contre le trafic illicite des biens culturels*, UNESCO 2006.

acquirer or exported objects<sup>293</sup>. Lastly, the handbook also encourages and promotes States to use the UNESCO database on cultural heritage legislation, which collect all the existing national and international legislative documents concerning cultural heritage law and the INTERPOL database for looted objects<sup>294</sup>.

The last document to be addressed is the one elaborated by UNODC, within the framework of the meeting of the expert group<sup>295</sup> concerning the protection against the trafficking in cultural property. Similarly to the UNESCO handbook, the UNODC first refers to the relevant legislative instruments, and then refers to the practical recommendations for the prevention and the contrast of the phenomenon. In particular, the UNODC mentions the 1954 Convention, the 1970 Convention, the UNIDROIT Convention and the Palermo Convention as fundamental instruments to be ratified and implemented against the phenomenon. Additionally, the document invites states to use the UN Model Treaty as a basis for any bilateral agreement concerning the protection of cultural heritage, which are also encouraged by the 1970 Convention<sup>296</sup>. For what regards the practical measures, firstly are mentioned the general recommendations of the Economic and Social Council of UN<sup>297</sup>, which include the strengthening of international law enforcement cooperation, the promotion of mutual legal assistance, the establishment of procedure for the seizure, restitution and return of cultural property, the launch of awareness campaigns and the introduction of security measures to prevent such type of offences. The UNODC document further includes specific measures concerning the integration of inventories and database, in order to create a single online portal; the use of the UNESCO handbook as a tool for law enforcement; the introduction of criteria for tax benefits deriving from a donation of cultural property, which should only be accorded when an appropriate provenance is provide; the promotion of loans and long term leases to balance some of the supply-and-demand pressures; and the creation of system to encourage the reporting of found cultural objects by local citizens. Lastly, the documents encourage the targeted use of the provision regulating organized crime, the criminalization of illegal acquiring and transfer of cultural property and a major use of the medication, through UNESCO office, in order to resolve international litigation <sup>298</sup>.

---

<sup>293</sup> Ibid. Section F. It is interesting to note that the project was founded by the Paul Getty Trust.

<sup>294</sup> Ibid. Section B and E

<sup>295</sup> Vienna, 24-26 November 2009, <https://www.unodc.org/documents/organized-crime/V0987314.pdf>.

<sup>296</sup> Art. 15, 1970 UNESCO Convention.

<sup>297</sup> ECOSOC resolution 2008/23 of 24 July 2008.

<sup>298</sup> Part VIII, UNODC “*Protection against trafficking in cultural property*”, 2009

### 3. The “illicit trafficking of cultural objects”

A well-known and common proverb assert “*once the law is established, the loophole is discovered*”. Thus far, this research has only investigated the role of the relevant legislative framework, which constitutes the necessary foundation to frame the illicit trafficking phenomenon, as it not only provides the instrument for preventing and contrasting this conduct, but it especially explicates the *illicit* attribute of the latter, which is determined by the commission of activities in contravention of the presented provisions and principles. It is thus now necessary to address the elements of deception, namely the illicit trade and trafficking, and scrutinize the linkage with organized criminal groups. However, some considerations are needed to better understand the complexity and challenges of contrasting the phenomenon. First and foremost, the effective reconstruction of the illicit trafficking phenomenon it is affected by the impossibility of collecting trustable data on the true dimension of the phenomenon, to the extent that even INTERPOL, after initially reporting the estimation of the black market of art being the third for importance in the world, later retracted the data, removing it from its website<sup>299</sup>. Additionally, a great part of the items which are trafficked is unknown, as it comes from illegal excavations or it has never been registered, rendering it impossible to discover the illicit activity without the objects itself. Lastly, the non-retroactivity of the conventional provisions and the later or missed ratification of the relevant convention by market nations, as well as the divergence of domestic legislation, affects the illicit attribute of the phenomenon, providing as it has been mentioned, space for loopholes.

#### 3.1. An overview of the illicit traffic of cultural objects phenomenon

The debates on the dimension of illicit traffic, aimed at measuring the phenomenon, is dominated by two main factions, which despite agreeing on the impossibility of producing reliable statistical research, on one side sustain that this black market is «*one of the world’s biggest illegal enterprises, worth billions of USA dollars, which has naturally attracted interest of organized crime*<sup>300</sup>» and, on the other side, argue that the illicit traffic of cultural goods is not evaluated billions of dollars and, sometimes, it is even denied its existence, but this is beside the point<sup>301</sup>. A report sponsored by European Commission and Rand Corporation have estimated the global market of art and antiquities to be evaluated , per year, a few hundred million of USA dollars globally and between 64 million and 318 million of

---

<sup>299</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento italiano*, 2021.

<sup>300</sup> World Custom Organization, *Cultural Heritage Programme*.

<sup>301</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods in Europe – Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade – Final report*, Publications Office, 2019.



euro in Europe<sup>302</sup>. On this matter, the WCO reported an estimation of the global sales of cultural items in 2021 of 65 billion of dollars. It is interesting to note that both reports estimated the global value of the market of art and antiquities, not the value of illicit traffic, this due to the impossibility of framing the licit and illicit market separately, as part of the literature has noted<sup>303</sup>. In spite of that, the WCO releases every year a report on illicit trades, dedicating one section to cultural heritage, where the data collected in the Archeo<sup>304</sup> platform are presented in order to try to measure the phenomenon. In 2017, the WCO reported 14.753 items seized by the relevant custom authorities of 25 countries, in 2016 it was registered a number of 8.343 items seized in 13 countries<sup>305</sup>. The illicit trade reports elaborated by WCO only partially evidences the dimension of the phenomenon, but perfectly showcases some of the threats that affect the estimation of the volume of illicit traffic in cultural property. Indeed, of over 185 Member States, only a small percentage of them reported seizure activities on the Archeo platform, whose completion is not compulsory, with the consequence of producing non-trustable data.

However, if it is clearly difficult to measure this phenomenon, as also underlined by the WCO in its reports, it is still possible to understand that is a massive phenomenon, which naturally occurs transnationally, that should not be considered only for the purely economic perspective, but especially for the protection of the heritage of humankind. Those considerations are confirmed by the many *ad hoc* investigations which are based transnationally and operate for the restitution and return of stolen or illicitly exported cultural objects, that constitute, together with the databases, the main sources to understand the dimension of this market. In this context, it can be cited the 2018 investigation Code-named “Demetra”, where the authorities of Germany, Italy, UK and Spain jointly cooperated for arresting 23 out of 41 suspects of illicit trafficking of cultural goods and seizing over 25.000 cultural items, which have been estimated to be worthy 40 million of euro<sup>306</sup>. Demetra mission has dismantled an organized illicit trafficking, whereas the illegal excavation activities were based in the provinces of Agrigento and Caltanissetta, then the archeological finds were transported to Turin, where a part of them was sold to private collectors and the rest was exported in Munich, where a partner organization was in charge of legalizing, selling and distributing the proceeds, which were then collected by an art dealer based in London, responsible for transferring it back to the Italian organization<sup>307</sup>. Along with

---

<sup>302</sup> Simon Mackenzie, Neil Brodie, Donna Yates, Christos Tsirogianni. *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*. Routledge, London-New York, 2020.

<sup>303</sup> Yates D., and Brodie N., "The Illicit Trade in Antiquities Is Not the World's Third-largest Illicit Trade: A Critical Evaluation of a Factoid." *Antiquity* 97, no. 394, 2023.

<sup>304</sup> Archeo is a “real-time communication tool” for the exchange of information and cooperation in the protection of the cultural heritage amongst Customs administrations, other enforcement agencies and competent national authorities, international organization, experts and NGO’s in order to prevent illicit trafficking in cultural property. WCO.

<sup>305</sup> *Illicit trade report*, WCO, 2016 and 2017 in European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods*, 2019.

<sup>306</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods*, 2019.

<sup>307</sup> Ibid.

Demetra mission, it is worth to cite the Pandora Operations, which are international mission guided by national authorities, INTERPOL and EUROPOL to contrast illicit traffic. In 2023, Pandora VII mission has concluded resulting in 60 arrest and over 11.000 restored cultural objects<sup>308</sup>, showcasing an increase compared to the 52 arrest and 9.408 seized objects of the previous mission<sup>309</sup>. Though, the record of Pandora missions has been reached surprisingly during the Covid-19 pandemic, that has seen the V Operation resulting in 67 arrest and 56.440 seizures of cultural items<sup>310</sup>. Globally, the Pandora mission have contributed to dismantle illicit trafficking activities deriving from different context, such as armed conflicts or political or economic instability, and opened a considerable number of investigations, some of which are still ongoing.

Considering the investigation proceedings, what emerges is that the illicit traffic takes advantage from a comprehensive scenario, whereas extensive criminal opportunities are combined with significant economic appeal and very low risk for those involved. Illicit traffic benefits from the high vulnerability of cultural objects and sites, including the easy portability of movable assets and the extremely permeable market structure; as well as the small probability of being discovered and the non-severity of potential sanctions<sup>311</sup>. The extension of such phenomenon is also influenced by a series of structural attributes, which also contribute to nourish the traffic itself. Among the latter, it results surely the problematics connected to illicit excavations, which in most cases regard unknown archeological sites from which are introduced in the market archeological items that have never been registered, making the proceeding for investigation and restoration even harder. Therefore, also the context of political instability and armed conflict contribute to facilitate and foster illicit traffic, as well as economic crisis, which can produce the so called “*subsistence diggers*” phenomenon<sup>312</sup>, in which the main driver of the traffic is local community in financial difficult managed by local criminal groups, who take advantage of their economic weakness<sup>313</sup>.

Nevertheless, there exist and additional distinctive attribute of this phenomenon, which must be taken into account when framing this offense, namely the “*grey*” nature of the market of art and antiquities itself<sup>314</sup>. Contrarily to other illicit trade, the traffic in cultural object does not figure among the *classic* black markets, whose areas of trafficking totally

---

<sup>308</sup> Grifeo Giuseppe, *Nuova operazione internazionale “Pandora VII”, Carabinieri TPC con Europol e Interpol contro il traffico illecito di beni culturali. Totale: 60 arresti e oltre 11.000 oggetti recuperati*, in Grifone, Artiglio, Penna, 06/05/2023. Last seen 30/01/24.

<sup>309</sup> INTERPOL *comunica i dati su Pandora VI*, in *Journal of Cultural Heritage Crime*, 09/02/2022. Last seen 20/01/24.

<sup>310</sup> INTERPOL, *More than 56.400 cultural goods seized and 67 arrested*, INTERPOL – News and Events, 2021.

<sup>311</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento Italiano*, 2021.

<sup>312</sup> Mackenzie S., Brodie N., Yates D., Tsirogianni C. *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*, 2020.

<sup>313</sup> Visconti A., *La Repressione Del Traffico Illecito Di Beni Culturali Nell’ordinamento italiano*, 2021.

<sup>314</sup> Mackenzie S., Yates D., *What Is Grey About the ‘Grey Market’ in Antiquities*, in *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy*, Oxford-New York, 2016.

qualify as illicit, whereas, as in the case of drugs or human beings, the economic activities are totally perceived to be contrary to collective interest and are so globally prohibited<sup>315</sup>. From this perspective, the illicit trade of cultural items is more similar to the illicit trafficking of waste, which is another phenomenon that attracts criminal groups, whereas the offence is integrated within a totally licit business, that is used to cover the illicitness of the traffic<sup>316</sup>. Indeed, the traffic of cultural items is part of a licit and legal market, which, precisely due to the presence of items having an illicit origin within it, has been defined with the terminology of “grey market”<sup>317</sup>. This grey connotate crucially characterize the processes that create the phenomenon, from the moment of the illicit excavation to the introduction in the market of the object, passing through the transit of it. Illicit traffic occurs in shadowed grey zone, composed by the legislative loopholes, caused by the different approaches of domestic legislation, which permits to launder the illicit provenance; by the scarce requirements of some States, namely market countries, for exhaustive control and certification; by the presence of unknown object, which are not identifiable without being found, due to their illicit provenance; and by the general scarcity of appropriate documentation of cultural objects itself<sup>318</sup>. Those grey area considerably contribute to favor the illicit traffic, which finds in this zone the possibility to easily concealment the provenance of cultural object and introduce them in the market.

Considering the aforementioned attributes of illicit traffic, it is imperative to emphasize and understand that this phenomenon does not affect every country equally, categorizing them into source countries, transit countries and market countries<sup>319</sup>. Therefore, the consequences of illicit traffic, as well as its value, are not evenly distributed, but primarily impact certain state which showcase particular characteristic. Illustratively, the phenomenon regards countries endowed with a rich cultural heritage supply, such as Italy and Greece, but also countries like Syria, Afghanistan and Ukraine, where the illicit trafficking is geared toward financing terrorism or facilitated by contexts of war. Hence, if on one side the illicit traffic has an unequal impact, on the other side it remains a global phenomenon, whereas some countries are affected and some other benefit from it. Notably, the Italian State, which is the focus of this research, has always belonged to the category of source nation, with a little role as market nation during colonialism, and has been object of a considerable high number of lootings, illicit excavations and exportations of cultural items for centuries. Indeed, it is well-known the case of the Napoleonic invasion of Italy, occurred between 1796 and 1797, whereas a considerable number of artworks have been looted. This fact led to the first

---

<sup>315</sup> Militello Vincenzo, *I traffici illeciti nel Mediterraneo e le organizzazioni criminali transnazionali*, in Studi in onore di Antonio Fiorella, I, Roma 2021, 290.

<sup>316</sup> Cass. Pen., Sez. IV, 19 ottobre 2011, n. 2117

<sup>317</sup> Mackenzie S, Yates D., *What Is Grey About the ‘Grey Market’ in Antiquities*, in *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy*, 2016.

<sup>318</sup> Mackenzie S., Brodie N., Yates D., Tsirogianni C., *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*, 2020.

<sup>319</sup> INTERPOL, *Assessing Crimes Against Cultural Property 2021, survey of INTERPOL member countries*, published in October 2022.

recovery mission of cultural object of Italian history, guided by Antonio Canova, which, elected Inspector General of Fine Arts by Pio VII, in 1815 went to Paris to request back the missing masterpieces. The result was the recovery of 63 pieces of art, nevertheless, Canova did not have any list of the objects that had been looted, and therefore is clearly hard to determine the true success of such mission<sup>320</sup>.

However, Napoleon has not been the only one interested in looting Italian cultural objects, investigations, criminal proceedings and objects in museums having a doubtful provenance prove that the Italian cultural heritage has never been truly safe, being constantly object of illicit appropriation, exportation or excavations. On this matter, during a written Chamber Interrogation to the Ministry of Culture in 2012, the member of the Italian Parliament Gianni Mancuso referred to a research elaborated by the University of Princeton, which estimated that since 1970 in Italy more than one million and a half archeological artefacts have been illicitly excavated and introduced in the international market<sup>321</sup>. According to another research elaborated by the International Observatory of Archeomafie and the Centre of Criminological Studies of Viterbo, the profits which derived from Italian illicit traffic reaches 150 million of euro per year and has involved 10.000 person in over 50 years<sup>322</sup>. In the latest report of the Carabinieri Tutela Patrimonio Culturale, from 2022, it is quantified that 48.522 artefacts and cultural item have been recovered and more than 1600 complaints have been presented for different offences against cultural property. In particular, among those, it has been registered a number of 193 complaints for theft, 66 for illicit excavations, 35 for illicit exportation, 91 for criminal organization and 478 for fencing<sup>323</sup>. Compared to the data of the previous year, licet 2021, there has been a little decrease in the rate of theft, with 346 objects looted in 2021 and 333 in 2022, mainly from public and private expositors<sup>324</sup>, nevertheless, the objects perceived to be more at risk of theft are the one hosted within church, due to the lack of supervision<sup>325</sup>. Lastly, to imagine the volume of the Italian traffic it must be considered that since their creation in 1969, the CCTPC has recovered over 3 million of cultural objects<sup>326</sup>.

The Italian case surely represent a case study in the panorama of illicit traffic of cultural objects, the great supply, and the great interest toward archeological objects and artefacts have been and are the main driver of this phenomenon. Nevertheless, there are some additional features that contribute to widespread the Italian traffic, licet the noted attractiveness

---

<sup>320</sup> Seminario Treccani, *Un Patrimonio da Salvare*, Online, 02/03/2023

<sup>321</sup> Atto Camera Interrogazione a risposta scritta 4-17218 presentata da Gianni Mancuso mercoledì 1 agosto 2012, seduta n.675 Mancuso, Girlanda, Ghiglia, Barani, De Luca, Crolla, Ciccioli e Bocciardo. - Al Ministro per i beni e le attività culturali.

<sup>322</sup> Cevoli Tsao, *Il traffico illecito di reperti archeologici ed opere d'arte come fenomeno criminale*, by G. Zuchriegel, *Possessione. Trafugamenti e falsi di antichità a Paestum* - Catalogo della mostra (Capaccio, 2 luglio-31 dicembre 2016), Napoli, 2016.

<sup>323</sup> Comando Carabinieri Tutela Patrimonio Culturale, *Attività operativa 2022*, published in 2024.

<sup>324</sup> Ibid.

<sup>325</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods*, 2019.

<sup>326</sup> Sky arte Italia, *Art Riders*, stagione 1, episodio 1.

of the illicit market for organized criminal groups, that find in this offence a quite safe source of profit, but also a safe way to launder money originating from other crimes, as will be explained in the upcoming section. However, whether operated or not by organized criminal groups, the illicit traffic of cultural objects in Italy, as highlighted by the available data and investigation proceedings, remains a tackling phenomenon, whereas different actors play different roles at different levels. Understanding these key actors and the repercussion of illicit trade is essential for unraveling the complexities of this type of offence and the role played by organized crime.

### 3.2. The structure of illicit ‘trafficking’ of cultural objects

“*Theory is elaborated from the practice*” is more than often argued in scholars and university debates and surely, in the case of illicit trafficking, it’s true. On one night of 1971, a group of *tombaroli*<sup>327</sup>, formed by local farmers, convened at the Etruscan necropolis of Greppe di Sant’Angelo, near Cerveteri, in search of valuable artefacts to be traded on the black market, which was becoming increasingly flourish, offering farmers a lucrative profit with minimal associated risk. That night revealed to be a fructuous one, as the tombaroli unearthed a masterpiece, a magnificent krater adorned with red figures perfectly conserved, later known as the Euphronios Krater. The masterwork of Euphronios had then been sold for 800 dollars by the tombaroli to Giacomo Medici, a well-known art dealer often involved in illicit affair, who illicitly exported the magnificent krater in Switzerland, where its enterprise ‘*Edition Service*’ was based. In the Helvetic republic Medici exhibited the artwork to its friend and affair partner Robert Hecht, who immediately opened the proceeding to legalize and sell the item. In 1972, one year after the illicit excavations, Hecht sold the masterpiece to the Metropolitan Museum of Art of New York for one million dollars and provided as proof of provenance the fake statement of an Israel citizen, who stated that the krater was an object he inherited from a family member<sup>328</sup>.

This story, very similar to the stories of many more other artefacts which had been looted, unveils the structure that connotes illicit trafficking, and somehow, the actors which are part of it. Theoretically, the illicit trafficking of cultural objects can be divided into four different phases, whereas four different actors play different roles. The beginning of the chain is formed by the tombaroli or smugglers, which illicitly excavates, loot and theft cultural items and usually sell them to an early-stage intermediary, who transport abroad the item, in this case Giacomo Medici. Then, the object passes through the hands of a late-stage intermediary, licet in this case Robert Hecht, who launders the illicit provenance of the object. Finally, the item is purchased by a collector, which in many cases, as with the

---

<sup>327</sup> Tombaroli is the term used in italian language to identify those who proceed with illicit excavations and the looting of archeological sites.

<sup>328</sup> Sky arte Italia, *Art Riders*, stagione 1, episodio 1.

Euphronios krater, is a museum<sup>329</sup>. This scheme, which was firstly theorized by Paul M. Bator in 1982<sup>330</sup>, can be so resumed:

- Stages: Loot/theft → Transportation → Laundering → Purchasing.
- Actors: Looter → Early-stage intermediary → Late-stage intermediary → Collectors.

Some explanation and consideration over this scheme are required in order to fully comprehend this phenomenon. First, it has been observed that those stages are a recurring feature of many cases of illicit trafficking, suggesting that is the manifestation of a based and commonly used internal structure. The stages appear to be the result of a specialization which occurred in all the phases of the illicit trafficking, which is proportional to the marginal profit of the traffic itself. The margin of profit and of specialization increase from the first stage to the last one, tombaroli which are at the basis of the traffic are required less specialization and earn the more marginal part of profit, on the contrary the late-stage intermediaries are gaining the best profit and are required the most exhaustive specialization in the chain, which is necessary to legitimize the purchase<sup>331</sup>. However, this specialization is needed in order to guarantee the performance of the traffic, whereas a single actor would not be able to cover all the different stages alone. Usually, looters and tombaroli have appreciable skill at locating the sites and knowledge about the local landscape, but lack of solid skill for what concerns the transportation of the cultural item abroad, and for this reason rely on the early-stage intermediary. The latter is highly skilled for what regard the exportation abroad of cultural items, has therefore an exhaustive knowledge concerning the relevant export legislations, but lacks of legitimization in front of the collector and depth knowledge of cultural items, both needed to negotiate with the buyer. Hence, the selling of the objects is assigned to the late-stage intermediary, who must showcase legitimacy in front of the public and possess a strong knowledge of art history in order to both launder and estimate the cultural item. The above-mentioned case Euphronios reflects this specialization scheme, as well as the increase of profit, demonstrating that in the illicit trade of cultural objects specialist, organized with a strong based structure, have more chance to succeed, which is the exact reason due which specialization occurs and is reinforced<sup>332</sup>.

Additionally, it must be considered that if on one side, sometimes, the routes of a cultural item from the theft to the purchase becomes longer, the roles and stages remains quite the same. There have been cases whereas a multiple number of early-stage intermediaries have been registered and the route has been more fragmented, as in the case of the Achyris phiale, who displayed three different intermediaries<sup>333</sup>. Therefore, also the phase of laundering can result in more fragmented action, as revealed by the many cases in which

---

<sup>329</sup> Campbell Peter B. *The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage*. International Journal of Cultural Property, 2013.

<sup>330</sup> See. Bator Paul M. "An Essay on the International Trade in Art." *Stanford Law Review* 34, no. 2, 1982. p. 275–384.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

Giacomo Medici used to sell and re-buy, under the regime of secrecy accorded to the vendor by auction houses, items he meant to traffic just to launder their illicit provenance<sup>334</sup>. Indeed, in many law regimes, such as the UK one the mere acquisition through an auction house of an illicit object would constitute an adequate proof of valid title of property and would have granted the illicit item all the requirements to be exported and imported around the world<sup>335</sup>. However, despite the laundering activity, Giacomo Medici always acted as early-stage intermediary and has never sold a cultural item directly to the purchaser. Lastly, there have also been cases, as the Operation Ghelas reveals, where the roles have been filled by a multitude of individuals. In this case, investigation proceeding unveiled a criminal network of eighty-five individuals dedicated to the trafficking of Italian antiquities in several different countries. The network was formed by a group of tombaroli, who used to sell looted items to smuggling cells based transnationally, which were exporting artefacts from Italy to Switzerland with the participation of a large number of participants, including a policeman and taxi drivers. Then, from the Helvetic republic objects were exported to Germany, Spain, UK and US, where a multitude of late-stage intermediaries would launder the item and sell it, among those also the auction house based in Munich ‘*Gorny and Mosch*’<sup>336</sup>.

The case of Ghelas Operation unveils that, on occasion, the roles and phases of illicit trafficking can be intricately divided internally, allocating distinct actions, that characterize the phases of the trafficking, among a wider sphere actor. This type of highly fragmented structure is emblematic of transnational organized traffics, wherein the magnitude of the trafficking requires a robust structure and an extensive division of task. On this concern, the Operation Ghelas showcased that the four stages elaborated by P. Bator had been distributed among a vaster plurality of actors. This fragmentation of roles in each stage of the traffic has been perfectly described by Donna Yates, Neil Brodie and Simon Mackenzie<sup>337</sup>. In particular, in the looting phase, it can be registered the entrance of a new player, licet the facilitator, whose scope is to facilitate the operation of the looters. The facilitators that intervene in this phase, usually are individuals put in a place of public trust, such as policeman or civil servants, which through corruptive or negligence means, favorite the looting. Hence, the stage of transportation can be divided among three different early-stage intermediary, licet brokers, transporters, and facilitators. The former play a key role, organizing the route of the looted object from the source to the market and providing the cultural item with false documentation that objects require for movement. If transport activities are not held by the broker itself, the illicit traffic relies on ad hoc transporters, whose role is moving the cultural item across international borders, from source to market countries, through transit countries. The last role of early-stage intermediaries is again the one of facilitator, that in this phase of

---

<sup>334</sup> Cevoli T., *Una storia senza voce*, Libe archeologia, 2021.

<sup>335</sup> Ibid.

<sup>336</sup> Campbell P. B. *The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage*. 2013.

<sup>337</sup> Mackenzie S., Brodie N., Yates D., Tsirogianni C., *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*, 2020.

the trafficking persecutes the scope of favoring the exportation of the objects through the means on negligence and corruption, for example by releasing exports certificates whereas those would not be accorded. Then, looking at the laundering phase, the role appears distributed as following: sellers and facilitators. The seller can be both an art dealer or an auction house, which in most of the case sell the cultural item with very little information about the history of the object or simply refer to an ‘*anonymous collector*’, taking advantage of the principle of anonymity. However, on this matter two facts must be underlined: first, the majority of purchasing happen through art dealer and private sales, only a small part takes place within auction houses; second, the latter are now getting more engaged in the traffic as facilitators of private sales, that is to say that act as intermediaries between the seller and the buyer or promote the organization of further affairs after a purchase. Lastly, among the facilitator of this stage, it is possible to individuate professionals and experts, which can act to increase the price of the artefacts or to avoid the buyer from knowing certain information about the provenance. At the end of this chain, noticeably, there is the purchaser, which as remarked can be a private collector, a museum or normal individuals.<sup>338</sup>

Having presented a comprehensive analysis of the configuration of the illicit trafficking of cultural good, it is imperative to underscore the primary drivers which constitute the *raison d’etre* of this illicit market. Indeed, as it has been noted, if there exist an illicit market is due to the presence of a demand, which is a necessary but no sufficient condition, and an offer, that is a necessary and sufficient condition. Whether in the offer or demand side, distinct drivers motivate the actors of this market presented above. For what concerns the offer side, licet tomb riders, it has been noted for the cases of Italian farmers that the main driver has been the easily accessible ‘high’ profit, which is the consequence of the great demand for cultural item, whereas the purchasers are willing to spend huge amount of money for balancing the risk assumed by the tomb riders. However, if at source the main driver surely is the profit that this market offers, it has been noted that the reasons behind the pursuing of this interest are different. It is indeed possible to identify three categories of tomb riders, licet subsistence diggers, white collars looters and terroristic diggers. The first category regards the traffic of cultural item in very poor state economies, whereas the substance diggers are interested in looting and excavation as a mean of subsistence, as it happened for example in Guatemala, where local farmers supplemented their low income with the traffic of Mayan artefacts<sup>339</sup>. The second category regards those who engage in looting activity without being in financial difficult, whereas the often-cited example is given by the illegal metal detectorist, which engage in the traffic for the high profit, but dispone of great financial stability, which is required to have access to expensive equipment used for such traffics<sup>340</sup>.

---

<sup>338</sup> Ibid.

<sup>339</sup> Paredes Maury S. *Surviving in the Rainforest: The Realities of Looting in the Rural Villages of El Petén, Guatemala*, Report submitted to the Foundation for the Advancement of Mesoamerican Studies (FAMSI), 1999.

<sup>340</sup> Mackenzie S., Brodie N., Yates D., Tsirogianni C., *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*, 2020.



The last category concern those who engage within looting and illicit excavation with the precise scope of financing terroristic groups or activities, as in the case of the illicit trafficking in Syria and Iraq, which represent the main source of income for the ISIS terrorist group<sup>341</sup>.

Delving to the drivers of the demand side, licet destination countries, where the purchase happens, it is useful, as remarked by the literature<sup>342</sup> to use the lenses of Pierre Bourdieu's concept of cultural capital. Yet, Bourdieu, a great sociologist of 20<sup>th</sup> century, identified three inconvertible form of capital, namely economic, social and cultural capital. Economic capital, licet wealth, is easily convertible into money and can be institutionalized as property right; social capital is formed by our acquaintance and, in certain condition, can be converted into economic capital and institutionalized as title of nobility; and cultural capital, which is represented both by the knowledge and cultural asset, can be converted into economic capital in its material manifestation and institutionalized as educational qualification in its intangible form. Bourdieu therefore distinguished the latter into three sub-categories, licet embodied, institutionalized and objectified cultural capital. Objectified capital is the only form of cultural capital, which can be converted easily into economic capital and does not require a great expenditure of time to be acquired, it's constituted both by a material and symbolical attribute and can be inherited also as mere economic capital, through the transmission of property title<sup>343</sup>. According to Bourdieu, art collection and the appreciation of art aesthetics contribute to the constitution of individual cultural capital, which is hence formed by both the material and immaterial value of a cultural object, which not only must be possessed but also comprehended in order to constitute the private cultural capital of an individual. On this matter, the writer and critic Lionel Trilling once noted that a work of art is both a source of power and an object of knowledge<sup>344</sup>. Hence, it can be argued that cultural capital represents a source of power, a status symbol, a synonymous of welfare and wellbeing. Consequently, the creation of an art collection, the exhibition of a title of property over an antiquity and the appreciation of artefacts are 'proof' of the cultural capital of an individual, which guarantees power and respect<sup>345</sup>. Therefore, the purchaser is moved by the pursuit of a status symbol, by the will of satisfying the desire of possessing a masterpiece, by the mere fact that having the possibility of buying such objects represent an instrument of power and respect. However, in this regard, it must be highlighted that those drivers, somehow, also characterize the cases whereas the purchaser is a museum. The inconsiderable amount of masterpiece which had been acquired by the Getty Museum, some of which will be cited,

---

<sup>341</sup> Pauwels Annelies. *ISIS and illicit trafficking in cultural property: Funding terrorism through art*, Freedom from fear magazine. Accessed 19/12/23.

<sup>342</sup> Mackenzie S., Brodie N., Yates D., Tsirogianni C., *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*, 2020.

<sup>343</sup> Bourdieu Pierre, *The Forms of Capital*. in Richardson, J., *Handbook of Theory and Research for the Sociology of Education*, Westport, CT: Greenwood, 1986. p. 241–258.

<sup>344</sup> Bator P. M.. "An Essay on the International Trade in Art." *Stanford Law Review* 34, no. 2 (1982): 275–384. <https://doi.org/10.2307/1228349>.

<sup>345</sup> Mackenzie S., Brodie N., Yates D., Tsirogianni C, *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*, 2020.

showcased that the driver of the different directors, mainly Marion True, who acquired artefacts having an illicit provenance, was the persecution of the highest interest of the museum, namely acclamation deriving from introducing in the collection such masterpieces and the possibility to compete with western museums institutions and attract visitors<sup>346</sup>.

### 3.3. The impact of illicit trade

Once having discusses the structure of the illicit trafficking of cultural objects it is opportune to consider the impact and the consequences produced by the illicit market itself. Indeed, the consequences of this phenomenon, inherently immeasurable, pose a significant menace to the heritage of nations and humankind. This threat extends beyond the mere economic implications, impacting critically the cultural and social sphere of the victim state. It is therefore necessary, to the possible extent, to discuss and scrutinize the invaluable impact cause by the illicit trafficking of cultural goods not only upon national identity and economy, but, above all on communities and individuals.

From the economic perspective, the consequences and the impact of illicit traffic can be at least considered from two different point of view. On one side, it can be considered through the lenses of the economic value of the cultural item which are looted, illicitly excavated or imported, which becomes an economic loss in the moment the objects are theft or exported. In this regard, to evaluate such economic loss, it is again useful the report elaborated each year by the Carabinieri TPC, which only for the year of 2021 reported an economic estimation of the global value of the recovered cultural good of over 86 million of euro. In 2020, the registered value was of over 30 million of euro, while in 2018 it reached 120 million of euro. Back to 2012, the estimated value was reported to be of 140 million of euro, while just in 2010 it has been of 22 million of euro<sup>347</sup>. Nevertheless, it must be emphasized that those estimation only regard the recovered cultural item of a precise year, leaving consequently outside of the calculation all the objects which have not been recovered or seized yet, and hence cannot represent a trustable measure of the effective impact of the phenomenon, it only represents a portion of it. On the other side, it can be considered the wider indirect economic loss, that is caused by the impoverishment and, in certain cases, disappearance of archeological sites, which impacts the possibility of opening the site and exhibiting the heritages to visitors, avoiding or reducing the possibility of generating a direct and indirect income from the heritage. On this matter, direct income refers to the profits which are directly generated by the fruition of the site, licet tickets and service within it, while indirect income refers to the economic return on the local community offering hospitality and touristic services, which may benefit from the affluence of visitors to the site.

---

<sup>346</sup> Cevoli T., *Una storia senza voce*, Libe archeologia, 2021.

<sup>347</sup> Carabinieri Tutela Patrimonio Culturale, *Rapporto Attività Operativa*, 2021, 2020, 2018, 2012 and 2010. Available at: <https://tpcweb.carabinieri.it/SitoPubblico/home/contenuti/pubblicazioni>

Some considerations over the economic impact are needed to better comprehend the general implications of the traffic. In particular, and providentially, economic consequences are recoverable: objects can be returned and restituted, and museums and archeological sites can exhibit them again. In a certain way, in most of the case, such as the mentioned Euphronios krater, economic consequences can be totally withdrawn, leaving no evidence, apart from history, of the process that led the object to be exhibited. In this perspective, it is interesting to mention the case of Morgantina, a small city in Sicily, where a considerable piece of the illicit traffic of the region has been based for decades during the 20<sup>th</sup> century, which has seen a great amount of cultural items being illicitly excavated and exported, some of which ended in over ocean museums. Starting from the 21<sup>st</sup> century, the cultural item illicitly subtracted from Morgantina, such as the Venus and the Treasure of Morgantina, started to be restituted to the Aidone museum, the local institution to which the artefacts belonging to the Morgantina site were exhibited, provoking a huge increase in the visits of the museums<sup>348</sup>. This case showcases that the economic impact can be restored, certainly, the years in which the Aidone museum was deprived of the possibility of exposing such masterpiece signified in an economic loss for the museums and local community, nonetheless, the latter have been recompensated somehow by the return of the artefacts, which has increased the number of visitors, fostering also local enterprises dedicated to hospitality. However, there exist an additional marginal consideration over the economic impact, licet the impact given by the underestimation of the pieces which are sold on the illicit market, which not only diminishes the economic value of the artefact, but also contributes to provide wider margin of profit to traffickers, which resell the item for considerable higher amount of money. Among such cases, one cannot overlook the story of the Assteas krater. Founded in 1974 by Antimo Cacciapuoti, a local worker who was conducting some excavations for the water network, the magnificent krater showcasing Zeus kidnapping Europe has firstly remained 'guest' in Antimo's house, becoming the pride of the family, and then, as the voices of a such important founding were widespread, has attracted the interest of illicit traffickers, who showed up at Antimo's door. Antimo was then convinced to sell the krater for 1 million of Lire, equivalent to 516 euro and a piglet. The Assteas krater has then been sold in 1978, through the intermediary Giacomo Becchina, to Samuel Schweitzer, a fake identity used for the transition, and finally in 1981 ended to be exhibited in the Getty Museum, which acquired the krater for 500.000,00 US dollars<sup>349</sup>. The case of the Assteas krater demonstrates how cultural object can be undervalued at the beginning of the chain, impacting over the economic value of the objects, which is diminished and granting more profit to traffickers.

Referring now to the cultural impact, this result even more difficult to measure compared to economic one. Firstly, cultural impact refers to the consequences over acquiring, sharing and inheriting knowledge through cultural heritage. In particular, for what concerns the acquiring of knowledge, the illicit trafficking of cultural items impacts this process in several manners.

---

<sup>348</sup> Archeoclub d' Italia Onlus sede Aidone-Morgantina, *No al traferimento della Dea di Morgantina dal museo Archeologico di Aidone*, in Change.org. 19/01/2018. Last seen on 20/01/24.

<sup>349</sup> Sky arte Italia, *Art Riders*, stagione 1, episodio 4.

First, as has been noted by the literature, an antiquity without an origin has limited historical relevance, it can provide only marginal and partial scientific information of the past<sup>350</sup>. Not having access to information concerning the location, the position, and the background of the objects affects the knowledge that can be acquired from the objects itself, it affects the possibility of understanding the use and purpose of the item and its origin. In other words: «*the originless vase displayed in a showcase retains its material and aesthetic properties, but it has lost all those invisible and intangible elements that, like the valence of atoms, enable it to connect with other element and give life to something new – a new molecule of information that can provide a more coherent and enriched picture of historical reality*<sup>351</sup>». Second, it must be considered the wider consequences of illicit excavations, which are conducted by non-professional using not adequate tools, which end to completely damage or destroy archeological sites. The consequences of such activity, not only impact the possibility of understanding the origin of the objects, but especially eliminates the possibility of acquiring specific knowledge that only through careful and attentive excavation would be found<sup>352</sup>. According to expert archeologists, which have been consulted in some Italian trafficking investigations, «*The Italian state has suffered no less significant heritage damage, as excavations carried out by incompetents, in the worst environmental conditions and under the pressure of haste and ‘treasure hunting’, allows for the recovery of only a portion, often not even the most precious, of the assets that are unfortunate enough to be attacked and plundered. It causes damage and often the total or partial destruction of the structures containing the artifacts*<sup>353</sup>». Archeological sites are then the majorly impacted by those consequences of illicit excavations, which due to the ‘barbaric’ method used are damaged and destroyed in an irremediable way. It is disconcerting to note that looters, while carrying out their excavations, specifically seek a certain type of cultural items, usually those enriched with details and value, which they perceived to be more valuable for the black market. The consequence is that all the findings deemed worthless by them are often destroyed in the process of excavations, as it happens to the building that host such treasures, which are completely damaged to allow them access to their loot<sup>354</sup>. To understand how widespread and disastrous those consequences are, one only need to take into account that such phenomenon affects the vast majority of archeological site worldwide, which have been subject to it since ancient times. This has been noted, for example, in the case of Tutankhamun’s tomb, mistakenly believed to be still sealed, when in reality it had already been looted in the last centuries of the Egyptian kingdom and subsequently in more recent times<sup>355</sup>. The same observation has been made by the writer and journalist Marek, who in his novel “*Gods, Graves and Scholars: The Story of Archaeology*” describes how, at the time of

---

<sup>350</sup> Bator P. M. “An Essay on the International Trade in Art.” *Stanford Law Review* 34, no. 2 (1982): 275–384. <https://doi.org/10.2307/1228349>.

<sup>351</sup> Manacorda Daniele, *Lezioni di archeologia*, Bari, Laterza, 2008.

<sup>352</sup> Bator P. M. “An Essay on the International Trade in Art.” *Stanford Law Review* 34, no. 2

<sup>353</sup> Archeologist Bertoloni, Colonna and Zevi in *I predatori dell’arte perduta*, Isman F, Skira, 2009

<sup>354</sup> Veres Zsuzanna, “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, 2014, p.91-116

<sup>355</sup> Grieco Christian. *Alla ricerca di Tutankhamon*. Franco Cosimi Panini Editore, Modena, 2023.

the world's most significant discoveries of archeology, the various discoverers had to regretfully realize that they were not the first to unearth those treasures. It is then not surprising that the preservation of the integrity of archeological sites is one of the most difficult issues in the framework of art trafficking<sup>356</sup>.

However, cultural impact not only regard the acquirement of knowledge, but also the accessibility and inheritance of knowledge through cultural heritage. Objects which are theft or looted may end up in a museum but may also become part of a private collection and never been known by the public, with a consequent loss of knowledge for all the humankind. This has been the case, for example, for 226 archeological artefacts from VI-III century b.C., which have been consigned to Italian superintendency in 2023 by an inheritor who realized the significance of the objects and decided to end the transmission of the collection started during the 70s. The recovered collection, composed of italics and Etruscan ceramics and bronzes and imperial-age roman glasses, had never been registered or exhibited, and only became known once denounced<sup>357</sup>. Despite the positive ending of this story, there is still a great number of similar cases which do not find equal end, provoking a great loss for the visibility and accessibility of cultural heritage. From this perspective, the inheritance of knowledge suffers even more the effects of illicit trade, if at least visibility may not suffer, the transmission of cultural heritage to future generation is totally affected by the phenomenon. Whether the object is looted and remains unknown or theft and remains unfound, it represents an inestimable loss for all the humanity, but especially for its belonging community. The case of the Nativity of Caravaggio stolen in Palermo in 1969, that will be exhaustively examined in the next chapter, perfectly explicates the incommensurability of the loss of knowledge caused by the missed inheritance of cultural heritage. The painting had a strong intangible attribute for its local community, who still suffer for the loss: who had the chance of admiring the original canvas grieves for not having the possibility of sharing such beauty with younger generations. Cultural items which are subtracted from the heritage of nations, communities and people, that won't be transmitted to future generations, represents a loss of understanding of the world, of history, of art, and of identity for its community of belonging.

Some considerations are again needed with respect to the consequences mentioned above. Contrarily to economic consequences, cultural ones are not totally reversible or recoverable. Once an archeological site or a monument is destroyed, it is hardly impossible to gain back the information that only scrupulous intervention would have acquired. Indeed, it is impossible to reconstruct the original location and owner of an object or its use without the context information, that are only accessible during the first excavation, and it is impossible to rebuild the remains of the ancient building that used to contain the looted treasures. Yet, it is impossible to transmit the value of those cultural objects which remain unknown or

---

<sup>356</sup> Bator M. P. "An Essay on the International Trade in Art." *Stanford Law Review* 34, no. 2, 1982. p.275–384.

<sup>357</sup> *Collezione di 226 reperti archeologici etruschi e italici recuperati da soprintendenza di Venezia e carabinieri TPC*, in *Archeoreporter*, 08/09/2023. Last seen on 30/12/23.

disappear. Therefore, it is not comforting the mere fact that sometimes at least visibility and inheritance are saved because those artefacts end up in museums: the new homes of those treasures, in most of the case considerable far from their origin place, spoil the objects of their context and significance, cutting off the story that the item could have teach, misshaping the knowledge it could transmit. On this matter, the illuminist Quatremere de Quincy perfectly exposed this concept in its work *“Letters to Miranda”*, that is a manifesto elaborated against the spoliation and displacement of Italian cultural heritage operated by the Napoleonic forces during the Italic campaigns. In particular, Quatremere de Quincy stated *«if you agree only on the possibility of harm that would be brought to the general education of Europe by the displacement of the models and lessons that nature, by its all-powerful will, has placed in Italy, and especially in Rome, you will also agree on the fact that the nation that would be guilty of this towards Europe, contributing to making it ignorant, would also be the first to be punished by the ignorance of Europe, which would rebound upon it<sup>358</sup>»*. For this reason, the Illuminist elaborated the so-called ‘*context theory*’, for which he affirmed that the context of an artefact cannot be substituted, it cannot be transported, while the object itself can. In his words: *«the true museum of Rome, the one I am speaking about, is indeed composed of statues, colossi, temples, obelisks, triumphal columns, baths, circuses, amphitheaters, triumphal arches, tombs, stuccos, frescos, bas-reliefs, inscriptions, fragments of ornaments, constructions materials, furniture, tools, etc. etc. but nevertheless, it is composed of the places, sites, mountains, roads, ancient streets, respective positions of the city in ruins, geographical relationships, connections between all objects, memories, local traditions, still-existing customs, comparisons and contrast that can only be made in the country itself.<sup>359</sup>»*. No one would then ever contradict the incommensurable damage that illicit trafficking of cultural objects surely provokes for the acquiring, sharing, and inheriting of knowledge for all the humankind.

Examining now the social consequences, those appear to be more complex and articulated compared to the one mentioned above. Priorly, social impact regard a multitude of implication, caused by illicit trafficking, which affect the social sphere of nations and community, licet the erosion of identity, the disruption of communities, the encouragement of criminal networks, and the financing of criminal activities through illicit trade of cultural goods. For what concerns the erosion of identity, it has been noted the deep relation that links cultural heritage and the national history and culture of the origin country, which shapes national identity and offers its community a common bond. Consequently, the loss of cultural heritage caused by the illicit trafficking generates a considerable gap in the identity of the country of origin and its community of belonging<sup>360</sup>. Recalling the words of the police officer in charge of interviewing Antimo Cacciapuoti, who referring to the Assteas krater strongly committed affirmed *«Antimo, this is our history, our identity, this masterpiece must return*

---

<sup>358</sup> Quatremere de Quincy Antoine Ch, *Lettres à Miranda*,

<sup>359</sup> *Ibid.* Letter 2.

<sup>360</sup> Cohan John Alan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property* (Part Two), 28 ENVIRONS ENVTL. L. & POL'Y. J. 1, 7, 2004.

home. *It belonged to our grandparents, it is yours, it is mine, it belongs to Sannio and to Campania, to Italy, it is part of the universal cultural heritage and one day it will be of the son of our son.*<sup>361</sup> ». Hence, the illicit trafficking of cultural goods not only provokes cultural or economic damages but can also have a tremendous moral impact on the cultural and historical identity of the country of origin<sup>362</sup>. This moral and social impact especially reverberates on the local community of origin, which as noted is affected in several way. Local communities can suffer for economic and cultural consequences, but also because of the social implications of illicit trafficking, as the impoverishment and damage of the environment caused by illicit excavations and looting and social disruption in the areas where it occurs. Additionally, social implication also poses security threats and collaborates to spread criminal offences, ranging from money laundering and tax evasion to the financing of terroristic activities. The illicit trafficking of cultural goods fosters organized criminal group, which are attracted by the great margin of profit and marginal risk compared to other illicit activities, with the consequent of causing social and political instability, as those profit may be used to finance other illegal activity<sup>363</sup>. Therefore, it has been noted that illicit trafficking of cultural goods not only serves as a financing tool for terroristic groups, but also represent a tool to demoralize communities, destruct history, weakening social solidarity and threat individuals' wealth<sup>364</sup>.

Concluding, also social implications deserve some considerations. The social and moral consequences caused by illicit trafficking surely represent an important threat for the preservation of national and community identity, but also of political and social stability. Those consequences, which clearly are not measurable, can be contrasted and fought, nevertheless are of hard recover. The erosion of identity may be recovered through the restitution and re-affiliation of the community to its heritage, environment and cultural spaces can be regenerated and partially reconstructed. Nonetheless, it is more complex to recover the damages caused by money laundering and the financing of criminal activity. However, it must be underlined that the international community as well as States have recognized the social impact of illicit trafficking and, as demonstrated by the Conventions mentioned in the previous chapter, are aiming at taking the necessary steps to dismantle this phenomenon.

#### 3.4. The correlation of illicit trafficking with other illicit market or activities

As a conjunction ring, prior to describing the correlation between illicit trafficking and organized crime, it is necessary to address the general correlation between the former and other illicit markets and activities. It has been mentioned that illicit market of cultural goods

---

<sup>361</sup> *Il Vaso più bello del Mondo recuperato da Roberto Lai meglio di Sherlock Holmes per il recupero delle opere d'arte rubate*, La Spia Press, 17 ottobre 2016, in Tsao Cevoli, *Storie Senza Voce*, Liberarcheologia. p.36.

<sup>362</sup> Veres, Zsuzanna, *The fight against illicit trafficking of cultural property: the 1970 UNESCO convention and the 1995 UNIDROIT convention*. Santa Clara Journal of International Law, 12(2), 2014. p. 91-116.

<sup>363</sup> UNESCO, *Illicit trafficking shall be recognized as a security issue*.

<sup>364</sup> Shelley Louise I. *"Illicit Trade and Terrorism."* Perspectives on Terrorism 14, no. 4, 2020. p. 7–20.

resembles some other illicit activity, such as the trafficking of waste, and it has also been noted that illicit trade of cultural objects conceptually differs from other illicit market, licet the one of army and drugs, which are totally considered immoral and illicit. However, it is necessary to recognize, that despite this differentiation, the black market of art shares more than expected with other illicit trade.

Despite the profound diversity of trafficked items, which apart from cultural goods include weapons, drugs, human being, waste and animals, most of the illicit market share the same routes. In a research elaborated by European Commission, which conducted *ad hoc* interviews with the stakeholder, expert and practitioners of the trafficking of cultural good, most of the individuals interviewed confirmed that the routes used for the illicit trade of cultural heritage are the same which are used for other illicit market, such as the one of firearms and drugs<sup>365</sup>. Additionally, not only the route seems to overlap, but also the network used for organizing the traffic, such as intermediary places and groups, seems to be shared in certain cases. Indeed, in order to let arrive the cultural item from the source to the market country, the networks of trafficker of cultural property will quite often rely on other existing networks, dedicated to the traffic of arms or drugs<sup>366</sup>.

However, there is an additional way through which the black market of art is related with other illicit market, namely the direct exchange of illicit traded cultural objects for other illicit items, such as arms and drugs. While transporting cash or diamonds across borders is almost impossible, and surely arise suspects, moving a cultural object is considerably simpler<sup>367</sup>. The case revealed by the journalist Domenico Quirico perfectly explicated this specific feature of the relation between illicit trafficking of art and other illicit markets and anticipates the relation with organized crime. In 2016 the journalist published an inquiry that unveiled a transnational criminal affair whereas terrorist belonging to ISIS were exchanging, through the intermediation of 'Ndrangheta, cultural item originating from Sirte, in Libya, for firearm, such as Kalashnikov and rocket launchers, exported from Ukraine and Moldavia from Russian mafia. The transportation of the cultural item was then granted by the Chinese criminality, who was in charge of transporting the item to the port of Gioia Tauro, Italy, where the exchange would take place<sup>368</sup>. This case not only reiterate the relation between terroristic financing and illicit trafficking of art, but also explicates the interest that such

---

<sup>365</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods in Europe – Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade – Final report*, Publications Office, 2019.

<sup>366</sup> Vincent Michel, *Extract from PATRIMOINES – The journal of the National Heritage Institute, entitled "East heritages": «Le trafic illicite des biens culturels dans les pays en conflit. De l'identification des objets à la judiciarisation des affaires»*, in *Patrimoines*, Paris, 15, 2020. p. 58-65.

<sup>367</sup> Manacorda Stefano. "Criminal Law Protection of Cultural Heritage: An International Perspective." *Crime in the Art and Antiquities World*, 2011, p.17–48.

<sup>368</sup> Quirico, Domenico. "Arte antica in cambio di armi. Affari d'oro in Italia", *La Stampa*, 16/10/2016, seen 03/01/2024.



groups have for this item, which are more tradeable than other illicit objects, transforming them into a mean of exchange for criminal groups.

Lastly, it must be mentioned the use of illicitly acquired cultural item to commit other illicit activities, less severe but not less relevant compared to the one mentioned above. As pointed out by the European Commission, the trafficking of cultural items fosters terrorism, money laundering, and tax evasion<sup>369</sup>. In particular, it seems that money laundering is particularly interconnected with the illicit trade of cultural objects, as cultural items are perfectly suitable for laundering money coming from illicit activities. This interconnection occurs both for laundering the profit of the illicit trafficking of cultural objects or to launder money originating from another illicit trade. For what concerns the former case, the launderer usually sells the stolen or looted cultural object to an intermediary, which acquires the object using the proceeds originating from another transaction of a looted object, then whose has received such money will act as such proceeds are of licit provenance<sup>370</sup>. However, cultural object may also be used to launder the proceeds originating from another illicit activity, such as the trade of drugs, arms or human beings. The case which has highlighted such interconnection dates back to the beginning of the 2000s, whereas a Connecticut art seller has been sentenced for the involvement into a scheme aimed at launder illicit drugs trafficking proceeds in exchange of art<sup>371</sup>. On this matter, it must be noted that such relation between money laundering and illicit trade is fostered by the fact that antiquities market is characterized by high profit, which can easily be justified without producing suspects. Additionally, as it has been noted, cultural object can be more easily transported through border compared to other forms of remuneration, such as money or diamonds, which contributes to foster the use of art as a money launder tool. Lastly, cultural objects offer a shorter proceeding to launder the money originating from a crime, which is therefore facilitated by the lack of transparency of the art transactions, as the privacy preservation of the purchaser or seller identity or the poor requirement for testifying the licit origin of the artefact<sup>372</sup>. Hence, for those reasons, the illicit art market, as well as the licit, has become of particular interest for money laundering activities, attracting particularly the interest of organized criminal groups, which can purchase the item through illicit proceeds and then selling them for clean money<sup>373</sup>.

For what concerns tax evasion, it has been noted that such activity finds fertile grounds in both the licit and illicit art market, for various reasons. First, in most of the cases art transactions lack of transparency, which facilitates the possibility of underreporting sales proceeds to tax authorities. Second, high-valued works can be bought and sold through offshore accounts and shell companies in fiscal paradises, which allow individuals to evade

---

<sup>369</sup> European Commission, Briefing on illicit trade of cultural goods, 25/07/2017.

<sup>370</sup> Venezia, Lorenzo. Il riciclaggio di denaro e il traffico di beni culturali, su *DirittoConsenso*, 28/10/20, seen on 03/01/2024.

<sup>371</sup> Lufkin Martha. 'Laundering Drug Money with Art', *Forbes*, 08/04/2003, seen on 03/01/2024.

<sup>372</sup> Hufnagel Saskia., King Colin. *Anti-Money Laundering Regulation and the Art Market*. *Legal Studies* 40(1), 2020. p.1-34. doi: 10.1017/lst.2019.28.

<sup>373</sup> *Ibid.*

taxes on capital gains. Similarly, tax payment can be avoided through payments in cash, which are not traceable and hardly traceable. Finally, in certain cases, loopholes in the regulation of fiscal regimes may foster tax evasion. Indeed, in the USA to whomsoever donates a piece to a museum, is accorded a fiscal discount. It is hence just necessary to overrate the piece to achieve a greater fiscal discount. Jiri Frel, one of Getty's curators, for years overrated the value of the donated pieces, so that donators could enjoy greater financial benefit. He actually created a well-established mechanism of fiscal elusion from which him and several collectors have received considerable benefits<sup>374</sup>.

Therefore, it cannot be underestimated the *fil rouge* that connects the market of cultural objects with other illicit activities, it is indeed a complex issue that must be considered while analyzing the phenomenon. It is hence clear that the fight of illicit trafficking of cultural objects must also be considered from a wider perspective, which considers its role in other illegal operation and criminal activities. Cultural heritage belongs to humankind and cannot become an instrument in the hand of terrorists, money launders and tax evaders, who undermine the tangible and intangible attribute of cultural goods.

---

<sup>374</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, 2021. p. 50.

#### 4. The correlation between organized criminal groups and illicit trafficking of cultural good in Italy

Delving into the core of this research, having analyzed the relevant legislative framework and having presented the structure and impact of the illicit trafficking of cultural objects, it is now necessary to address the relationship, interest and involvement of organized crime in the illicit trafficking of cultural goods in Italy. Nonetheless, before proceeding with a detailed analysis of the existing information and pertinent cases, it is judicious to preface with some clarification.

Despite the literature agrees on the fact that traditional organized criminal groups, as mafia, may participate in the illicit market of cultural objects, according to a great part of the literature, clear evidence of this has not been yet established. Studies on such correlation in Italy are numerically inconsistent and do not seem to offer a solid basis for the identification of a strong and constant correlation between Italian mafia and such phenomenon. It must be specified, however, that the scarcity of evidence is mainly caused by the scarce number of studies on the matter, which avoid the possibility of producing more exhaustive research in this field and by the scarce quality of the existing information<sup>375</sup>. However, if determining the correlation between ‘*mafia*’ organized criminal groups, as intended by art. 416-bis of Italian penal Code, and illicit trade of cultural object may be a tackling activity, it is surely easier the more general analysis concerning the involvement of organized criminal groups in such trafficking. Indeed, there is evidence that proves that the general illicit market of art, and particularly the one of antiquities, possesses specific features that usually connotes organized criminality<sup>376</sup>. It must be specified, nonetheless, that the application of art.416 presents considerable obstacles, as the article is strongly interpreted through ‘*traditional*’ mafia lenses, and consequently often does not find application when the organization considered does not belong to the traditional and characteristic Italian mafia organization, such as ‘Ndrangheta, Cosa Nostra and Camorra’<sup>377</sup>. Therefore, it is opportune to analyze the correlation between organized criminal groups and illicit trafficking of cultural good regardless from the specific nature of the criminal group but focusing on the organized structure and criminal behavior of the group.

Therefore, this research will consider both the case, licet art. 416 and 416-bis, with a particular focus on mafia-type organization in the case studies. Hence, this chapter will be dedicated to the analysis of the interest and involvement of organized criminal groups, either ‘simple’ or mafia-like organizations, within the illicit trafficking of cultural objects in Italy as well as to the examination of the relevant information discerning from investigations

---

<sup>375</sup> Regione Lombardia. *Il traffico illecito di opere d’arte in connessione con gli investimenti economici delle criminalità organizzate*. Policy Paper 200428IST October 2020.

<sup>376</sup> Ibid.

<sup>377</sup> Saviano Roberto, Podcast Muschio Selvaggio, Ep. 134, 04/12/23, <https://www.youtube.com/watch?v=INAvOMtn4GY>.

proceedings and to the structure of the management of the trafficking by such type of criminal groups. Lastly, this chapter will also refer to the specific phenomenon of Archeomafie, a specific category of organized criminal groups which is highly involved in the illicit trafficking of antiquities.

#### 4.1. The interest of organized crime in the illicit trafficking of cultural goods

“*Is organized crime interested in cultural good? And to what extent it is involved in its illicit trafficking?*”, those are the question which are becoming a subject of growing interest in scholar’s debate. If the matter has been appearing in the international literature since the end of the last century, it is only starting from 2008 that became one of the most debated questions in the panorama of the illicit trafficking of cultural good studies. The merit for the explosion of the topic in the academic theater must be given to the UN office on Drugs and Crime, which organized a series of meetings dedicated to the theme, following the implementation of the Palermo Convention, which has pointed a first steps into the criminalization of such phenomenon<sup>378</sup>. Those meetings have then been supported by academics and experts from all over the world, which started the discussion over the theme, organizing *ad hoc* conferences, with the scope of offering a compared answer to such questions<sup>379</sup>. The outcome of these conference and meetings has been the recognition of the existence of an organized criminal groups involvement in the illicit trafficking of cultural objects, which has hence stimulated the initiation of an interesting and highly engaged debate regarding the extent and type of involvement in such phenomenon.

The debate still on-going, which is still mainly based on theoretical contribution, showcase a complex structure, which is a consequence of the influence of social studies on the matter, that insist on a double perspective through which the issue can be addressed<sup>380</sup>. Certainly, this duality of lenses to frame the phenomenon has been originated by the fact that the concept of ‘organized crime’ is both used to refer to a group of individuals (*mens rea*) and to a group of criminal activity (*actus reo*)<sup>381</sup>. Indeed, the former approach prefers the definition of the characteristic of the group, such as the repartition of the task and the continuity of the group bond; while the latter approach focuses on the type of activity executed. Hence, this double perspective, which characterize any general debate on

---

<sup>378</sup> Mackenzie, Simon, *Illicit deals in cultural objects as crimes of the powerful*. in *Crime, Law and Social Change*, 56(2), 2011.

<sup>379</sup> See *Organized crime in art and antiquities*, edited by S. Manacorda, Conference on “*Organized crime in art and antiquities*” Courmayeur Mont Blanc, Italy 12-14 December 2008. See also *CCTPC Traffico Illecito Del Patrimonio Archeologico Internazionalizzazione Del Fenomeno E Problematiche Di Contrasto*, Atti del 7° Convegno Internazionale Roma, 25-28 giugno 2001.

<sup>380</sup> Regione Lombardia. *Il traffico illecito di opere d’arte in connessione con gli investimenti economici delle criminalità organizzate*. Policy Paper 200428IST October 2020

<sup>381</sup> See Finckenauer, J. O., *Problems of Definition: What Is Organized Crime? Trends in Organized Crime*, 2005; Paoli, L., *Implementation: Concepts and Actors*, 2002. In H.-J. Albrecht & C. Fijnaut (A c. Di), *The Containment of Transnational Organized Crime: Comments on the UN Convention of December 2000*.

organized crime, is strongly present also in regard to illicit trafficking of cultural objects. The literature as pointed out, more than one time, that institutions, experts and mass media reflect and showcase this dual approach, wavering between the consideration that the main actors involved in the illicit market of art and antiquities are complex criminal organization and the more general consideration that the entire market is a form of organized crime<sup>382</sup>. Thus, it results that the way the debate is structured, and the public opinion informed is strongly influenced by this duality. The first perspective, licet the involvement of organized criminal group in the illicit trafficking of cultural objects, is supported by the evidence of some cases which have seen the direct or indirect involvement of organized criminal groups within the phenomenon and by the constatation of the interest that such groups may have in illicit trafficking, as a scope and mean, for their activities. Contrarily, the second approach concentrates on the identification of the illicit trafficking of cultural good as a form of organized crime *per se*, suggesting that the way the illicit market is organized among the different actors involved represent a form of organized crime<sup>383</sup>. This research, for its purpose, will focus on the first perspective, seeking to analyze the involvement of organized criminal groups, and in particular mafia-type organizations in the illicit trafficking of cultural objects.

Hence, the starting point for this analysis cannot be anything but the fact that has been recognized that there exists an involvement of organized crime in the phenomenon, the question, undoubtedly tackling, is its extent and its nature in the specific case of Italy. Indeed, Italian state, as previously specified, is perhaps one of the richest countries in term of cultural heritage and undeniably occupies the position of being the European country most affected by the illicit trafficking of cultural objects<sup>384</sup>. As noted by the ex-head of Carabinieri TPC Nistri, upon initial consideration, it is plausible to believe that Italian organized crime is involved in illicit trafficking, as it is reasonable to believe that such groups, which have an important control over their territories, many of which have a considerable number of archeological sites and cultural heritage, may be interested in the high profit and low risk business granted by the illicit market of artefacts, especially in a country enriched of cultural heritage<sup>385</sup>. Indeed, as it has been mentioned, illicit trafficking represents a great way for financing organized criminal groups and terroristic one, as well as a tool for money laundering the proceeds of other illicit activities, it can be easily exchanged for other illicit product as firearms and drugs and it also grant a safe investment, as its value its rarely like to decrease<sup>386</sup>. The relevance of this sector for organized crime is confirmed by the annual

---

<sup>382</sup> Mackenzie Simon, *The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organized Crime in the International Antiquities Market*, 2011. In S. Manacorda & D. Chappell (A c. Di), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, p.69–85.

<sup>383</sup> Ibid.

<sup>384</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods*, 2019.

<sup>385</sup> Nistri Giovanni in S. Manacorda & D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, 2008. p. 71 – 86.

<sup>386</sup> European Commission, *EU action plan against illicit trafficking of cultural goods*, COM(2022) 800 final, 2022.

report of the Carabinieri TPC, that since their first public publication in 2007 include the relevant data concerning the criminal organization, and relative members, which have been persecuted in a specific year. Specifically, the most recent data, which comprises the period 2019-2022 have seen the persecution of 14 criminal organization involved in the illicit trafficking of cultural objects in Italy, for a total of 134 participants persecuted<sup>387</sup>. In the precedent three-year period Carabinieri TPC reported the persecution of 14 criminal organizations for a total of 136 members<sup>388</sup>. Therefore, is more than reasonable to believe that organized crime, groups are involved and interested in the illicit trafficking of art and antiquities.

As mentioned, in order to determine an effective participation of criminal groups in the illicit market of art, the major point of strength for the debate is given by the cases and operations that have unveiled their involvement in the chain of trafficking at different stages and in different context. Recently in 2019, operation “*Achei*” dismantled a criminal organization dedicated to the trafficking of archeological artefacts. The investigations regarded 80 individuals, of which 23 are being persecuted, whose activities were based in Italy, France, UK, Germany and Serbia. The criminal organization showcased a strong fragmentation of the roles, which ranged from the tomb raiders to the intermediaries, and from transporters to receivers. The criminal group, from which 10.000 archeological objects have been seized, was so well organized that had been renominated “*Archeological Criminality Crotonese*”<sup>389</sup>. Similarly, the operation Codenamed “*Mozart*” in 2005 has discovered a criminal organization, showcasing a pyramidal internal structure, whose members were tomb riders, receivers, and accomplices with ramification all over the world. The organization, whose activity were based in Italy, was responsible for the looting of the objects and its transportation, which were then sold through certain groups of broker and private collectors<sup>390</sup>. Therefore, the operation Codenamed “*Piovra*” unveiled a criminal organization, active in Calabria and Campania, which scope was the theft, looting and misappropriation of cultural goods. The management and logistic was in the hand of individuals belonging to local organized criminal groups<sup>391</sup>. Similarly, the investigation known as “*Tarlo*” revealed a criminal organization whose main activity was the theft of cultural objects from privates’ houses and worship places across Italy. The organization, structured among well-defined ‘batteries’ rooted in the peripheral area of Naples and mostly active in the center and south of Italy, had been managing the trafficking from the theft and transportation, through local unit, to the introduction of the item in the market, through a well-structured circuit of intermediaries and receivers<sup>392</sup>. It must be also mentioned the operation Codenamed “*Guardinghi*” which has focused on a series of criminal activities

---

<sup>387</sup> Comando Carabinieri Tutela Patrimonio Culturale, *Attività operativa*, 2022, 2021, 2020 and 2019.

<sup>388</sup> Comando Carabinieri Tutela Patrimonio Culturale, *Attività operativa*, 2018, 2017 and 2016.

<sup>389</sup> Giacomo Geloso, Captain of Comando Carabinieri TPC of Cosenza, interviewed 30/01/2024.

<sup>390</sup> Nistri G. in S. Manacorda & D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, 2008. p. 71 – 86.

<sup>391</sup> Ibid.

<sup>392</sup> Ibid.

enacted by a unique criminal group, which was mainly dedicated to the illicit exportation of cultural item. In particular, the criminal organization was submitting to the competent export office major painting to which it was attached a false statement aimed at faking the attribution and origin of the art piece in order to receive the valid export certificate. Once the certificates were released, the items were sold by different auction houses to individuals and shell companies and then re-imported back in Italy. This process enacted by the criminal group had a dual scope: on one side it was aimed at laundering the origin of the masterpiece, on the other it was aimed at increasing the value of the artefact. Finally, it is worth to cite the operation Codenamed “*Boucher*”, which has unveiled a criminal organization composed of different groups of tomb riders dedicated to money laundering. The groups, based in Puglia and Lucania, with ramification in France, despite the different origin were constituting a dense network of contacts aimed at concealing black market trade. The laundering procedure consisted in various phases: first, monies were deposited in French bank in exchange for archeological artefacts illicitly excavated in the south of Italy, then the artefact were sold by complicit in auctions and art galleries, and at the end the proceed were reinvested in real estates.<sup>393</sup>

The cases mentioned above, nevertheless, refer to organized criminal groups in general, as identified by article 416 of Italian penal Code. For what concerns the criminal organizations as identified by art. 416-bis, the evidence of a continuous and constant direct involvement of such type of organization is still missing, nevertheless, investigations proceedings suggest that there is a link between the illicit trafficking and mafia-type organizations, which in some cases can be directly or indirectly involved, through the participation of individual affiliated with such organizations<sup>394</sup>. On this matter, it must be reminded that the Italian State not only punishes the commitment of a crime within the context of a mafia organization, but it also condemns the mere conduct of being part of a mafia clan. Hence, it seems secondary whether this involvement its direct or indirect, what should be of interest is the existence of a link between the actors who traffic Italian cultural heritage and mafia-type organizations. However, as noted, it should be also kept in mind that the definition of article 416-bis its strongly anchored to the traditional concept of ‘mafia’, which finds little application nowadays for the new criminal groups that actually configure as mafia-type organization, but do not showcase the traditional attributes of ‘mafia’. Consequently, is not so rare to find within the illicit trafficking chain of cultural objects criminal organizations that are very similar to mafia-type groups, which nevertheless are not officially recognized to belong to such type of organization yet<sup>395</sup>.

For what concerns the involvement of the latter groups, namely organization comparable to mafia-type group, it is again useful to refer to the investigation proceeding as main source

---

<sup>393</sup> Ibid.

<sup>394</sup> Ibid.

<sup>395</sup> See *Mafia Capitale Legale Carminati Risponde a Saviano*, on Il Fatto Quotidiano, 23/07/2017, last seen 10/01/24.

of evidence. It has already been cited the operation “*Ghelas*” which has unveiled a complex criminal network of art traffickers, whereas every member had different specific task. According to the Carabinieri TPC, such criminal association was modelled on mafia-type groups, indeed, apart from not having mafia’s technical attributes, the association could rely on variegated local criminal groups active in the targeted areas, whose task were the organization and control of the different phases of the trafficking, including the research, loot and distribution of the items; the pre-sale preparation and the creation of reproductions of major pieces; the assessment of the value; the introduction of the item into illicit markets and the collection of buyers and contacts abroad. Moreover, the ‘bosses’ of the different groups exchanged among each other their expertise on the territory, the instruments necessary for clandestine excavations and the knowledge for managing the looted art pieces, and even traded among themselves authentic pieces to be used as model to create counterfeit works of art to be sold<sup>396</sup>. Likewise, the operation “*Arberia*” revealed a criminal organization, which acting on behalf of third parties, was dedicated to the theft and misappropriation of art pieces and antiquities in Calabria. The criminal organization was working following a precise scheme, whereas the commitment of any criminal activity had to be approved by the “*boss*” of the local “*ndrina*” and required the payment of 5% parcel on the proceeds of the crime<sup>397</sup>. Nevertheless, from this perspective, surely the operation Codenamed “*Mondo di Mezzo*”, also known as “*Mafia Capitale*”, represent the most interesting case among the one lying in between articles 416 and 416-bis. The operation led to the arrest of the ‘boss’ Massimo Carminati, linked to the “*Banda della Magliana*”, which has been accused of mafia-type criminal association, aggravated extortion, fraudulent transfer of assets, corruption, auction disruption and false invoicing. The arrest included the seizure of its heritage, which surprisingly included a ‘complete’ gallery made of paintings from Guttuso, Balla, Warhol, Botero and others, as well as archeological artefacts and also dozens of reproductions. The finding of the archeological and art pieces led to the opening of a new accuses against him for the trafficking of archeological artefacts and the receiving stolen good<sup>398</sup>. However, he only had been finally persecuted for ‘simple’ criminal organization, corruption, auction disruptions and false invoicing<sup>399</sup>. Indeed, the accuse of criminal association of mafia-type character has been totally refused by the judge, fact which has been strongly criticized by Roberto Saviano, which sarcastically argued that such imputation is only given to “southern bosses”<sup>400</sup>.

The case reported above, and in particular “*Mafia Capitale*”, showcase that there exists a sort of grey area whereas are located peculiar criminal organizations, which are modelled on

---

<sup>396</sup> Nistri G., in S. Manacorda & D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, 2008. p. 71 – 86.

<sup>397</sup> Ibid.

<sup>398</sup> De Martino Francesco, “*Ma Che Sei Cecato? - Massimo Carminati Finisce sul Banco Degli Imputati per Sculture e Dipinti Falsi*”, *Dagospia*, 09/07/2021, last seen 10/01/24.

<sup>399</sup> Angeli Federica, “*Mondo di mezzo, i giudici: Buzzi e Carminati, solo corruzione: la loro non era una cosca*”, *La Repubblica*, 17/10/2017, last seen 10/01/2024.

<sup>400</sup> *Mafia Capitale Legale Carminati Risponde a Saviano*, *Il Fatto Quotidiano*, 23/07/2017, last seen 10/01/24.



the mafia-type archetypal but are not identified as belonging to such criminal groups. Acknowledging this area is a necessary step to better frame the involvement of mafia-type organizations in the illicit trafficking of cultural objects. It is clear, indeed, that the limited identification of criminal organizations as in art. 416-bis reverberates on the possibility of determining the effective involvement of mafia-type clans in the trafficking of cultural objects. However, either considered as 'simple' or mafia-type criminal organization, those groups and individuals seem to represent a considerable threat for Italian cultural heritage, which should not be underestimated.

Referring finally to the criminal association, as identified by art. 416-bis, despite part of the literature denies the existence of a relation between mafia-type organization and illicit trafficking, arguing that such perception is promoted by the mass media and expertise to attract more attention to the matter<sup>401</sup>, investigations proceedings seem to suggest that the presence within the illicit market of mafia-type organizations, may not be monopolistic or systemic, but cannot be denied. Indeed, as already cited, Italy presents a high level of mafia-like criminal organization within its territory and it seems not very credible to imagine that the organizations involved in illicit trafficking are totally independent from such type of criminal groups. Undeniably, one of the typical behaviors of mafia-type organizations involves the execution of control over the illicit and profitable activities which occur within their territorial domain. Hence, it seems highly improbable that, a business which offers high profit and presents a huge offer, as well as demand, has not caught the interest and escaped the supervision of such type of criminal organizations. Indeed, such consideration find confirmation in the words of the PM Paolo Giorgio Ferri, who declared: « *I've heard some mafia's repentant with the scope of trying to recovery some cultural artefacts, which unfortunately we could not recovery, and yet I still remember the words of one of those, who in Sicilian said that from the territory of the area controlled by his zone neither a dog with a bone in the mouth would be able to exit. Clearly, it exists a capillary control exercised by the mafia in such areas, due to the great economic benefit of the trafficking, which contributes to strengthen the control of the market by mafia groups*»<sup>402</sup>. Therefore, it is also plausible to imagine that without the deeply rooted presence of mafia-type organization, Italy would be experiencing a situation similar to anarchy for the control of the trafficking of cultural goods, quite similar to the scenarios that characterize conflict zones, where autonomous actors would loot and theft cultural heritage until archeological sites are completely destroyed, and cultural sites spoiled<sup>403</sup>.

In this regard, there have been a considerable number of cases and circumstances that confirm at least the interest, if not the involvement, of such groups in art and antiquities trafficking. In 1992, for instance, Italian public opinion was shocked by the multiple theft

---

<sup>401</sup> Bowman Proulx, B. *Editor's introduction: The art crime prism*. Crime, Law and Social Change, 56(2), 2011. p. 111.

<sup>402</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, p. 136-137.

<sup>403</sup> Ceschi Geraldina, *Il Ruolo Della Criminalità Organizzata Nel Traffico Illecito Di Opere D'arte*, *Rivista di Studi e Ricerca sulla criminalità organizzata*, V. 5 N.3 2019.

organized by “*Mafia del Brenta*”, which has stolen five paintings, including works of Velázquez, Correggio and El Greco from the Estense Gallery of Modena<sup>404</sup>. The looters, guided by the ‘boss’ Felice Maniero, showcased a deep knowledge of the functioning of the museums, which permitted them to accomplish the theft without complications within a time of only 4 minutes. Three years after the theft, while convicted in jail, Felice Maniero started a collaboration with the authorities, whereas he has exchanged information concerning the location where the painting from Velasquez was hidden in change of penalties benefit. Indeed, the painting was found and restituted to the Gallery, and he obtained house arrest<sup>405</sup>. Another case that this research cannot fail to mention is the case of Carditello Royal Palace, which for decades has been exploited by the “*Camorra*” as a mine of works of art and luxurious furniture<sup>406</sup>. The Palace, situated in the territories of “*Casalesi*” clan, was victim of continuous robberies until 2011, year in which it has been acquired by the Ministry of Culture. To imagine the extent of the involvement of “*Casalesi*” clan, one should only consider that the majority of the marbles of the Palace have been used to decorate the Villas and graves of the family<sup>407</sup>. Analogously, in 2010 it was unveiled a criminal organization dedicated to the systematic looting of an archeological site in Calabria. According to the Carabinieri TPC the organization was headed by the ‘boss’ Pantaleone Mancuso, also known as “*Vetrinetta*”, belonging to the “*Ndrangheta*” clan, nevertheless he died in 2015 and the case never found a final verdict<sup>408</sup>.

However, one should also take into account the considerable number of seizures against mafia associates which had led to discovery of innumerable art and antiquities pieces. Among those cases, it can be cited the seizure against Beniamino Zappia, presumed associate of Bonanno’s clan, who was found in possession of paintings Guttuso, De Chirico and Dalí or the one against the ‘boss’ Gioacchino Campolo, who was in possession of almost 100 paintings, some of which authors were Fontana, Guttuso, Dalí and De Chirico. Therefore, it can be cited the seizure of the properties of Ernesto Diotallevi, exponent of the “*Banda della Magliana*” and treasurer of “*Cosa Nostra*” in Rome, which counted a heritage worth 25 million of euro, where also figured 27 paintings. Another case that must be mentioned is the investigation proceeding that has seen the discovery of archeological artefact in the house of the sister of Michele Zagaria, the famous ‘boss’ belonging to “*Casalesi*” clan. Similar discoveries have been also done in the houses of other members of Camorra, hence investigators justified the founding as a symbol of obsequy or part of profit given by the smugglers to the clan<sup>409</sup>. Yet in this context, the most striking case it is surely the one of the

---

<sup>404</sup> Cevoli T., *Una Storia Senza Voce*, Liberarcheologia, p. 145.

<sup>405</sup> Cettin Benedetta, “*Modena: trent’anni dopo il clamoroso furto*, *Corriere di Bologna*, 24/01/2022. Last seen on 11/01/24.

<sup>406</sup> Bray Massimo, *La Reggia di Carditello sottratta alla Camorra*, L’indice online, 03/2016. Last seen on 11/01/2024.

<sup>407</sup> De Luna Lara, *Dalla Camorra alla rinascita: la Reggia di Carditello torna a essere una fattoria (reale)* *La Repubblica*, 15/10/2020. Last seen on 11/01/2024.

<sup>408</sup> Cevoli T., *Una Storia Senza Voce*, Liberarcheologia, p. 144.

<sup>409</sup> *Ibid.* p.145.

two Van Gogh stolen from the Amsterdam homonymous museum in 2002 and found back in 2016 in a rural house situated in Castellammare di Stabia. The property was relatable to Raffaele Imperiale, one of the main drug suppliers of “*Camorra*” and has been searched in the framework of the investigation against the trafficker, which led to seizure tens of millions of euros of patrimony, including the two paintings, evaluated 100 million of euro and acquired by Imperiale for the mere amount of 5 million of euro. Commenting the case, general Parulli suggested that the paintings were used by Imperiale as a guaranty for the drug traffic, licet as a sort of insurance for south America narcotraffickers, with whom the clan was in affair<sup>410</sup>.

Those cases reveal that in certain condition and context, mafia-type criminal groups may participate in the illicit trafficking. As noted by the magistrate Diana De Martino in 2012 «*the involvement of characters belonging to mafia organization in the theft or detention of some important artefacts belonging to the State has been documented by investigative and processual acquisition*»<sup>411</sup>. Indeed, investigations have unveiled their involvement, which is mostly identifiable in the first stages of the chain of the traffic, particularly in the phase of transportation and early-stage intermediation, and during the process of illicitly acquirement of the objects<sup>412</sup>. Additionally, even if in less consistent manner, mafia-type groups may intervene along the process in order to grant the positive outcome of the activity, namely corrupting officials to obtain permission of exportation or excavation. Therefore, it must be also acknowledged that the grade of participation of such groups may also differ case by case, sometimes it can be involved the whole organization, sometimes just an individual belonging to such type of group<sup>413</sup>. This variability of the involvement of mafia-like organizations highlights the flexibility of such criminals and their capacity of adaptation to the specific needs of illicit trafficking. Indeed, the relevant literature comments that mafia-type organizations, depending on the specific circumstances, not only can play different roles across the chain of illicit trafficking, but also proceed with different *modus operandi*, enacting behaviors which can be hardly totally understood and comprehended by statistical means and research. The participation of such groups may be found within the first stages of the trafficking: behind an individual looter or a transporter there may be a wider structure orchestrated by criminal organization showcasing a certain hierarchy and internal organization, which take advantage of their power over the territory and their means by controlling the traffic of cultural heritage<sup>414</sup>. There are also cases whereas the role played by mafia-type associations is confined to the mere organization and facilitation of exchanges

---

<sup>410</sup> Ceschi G., *Il Ruolo Della Criminalità Organizzata Nel Traffico Illecito Di Opere D'arte*, 2019.

<sup>411</sup> De Martino Diana, *Infiltrazioni della criminalità organizzata nel traffico di opere d'arte*, in *Direzione Nazionale Antimafia, Relazione annuale sulle attività svolte dal Procuratore nazionale antimafia e dalla Direzione nazionale antimafia nonché sulle dinamiche e strategie della criminalità organizzata di tipo mafioso nel periodo 1 luglio 2011 - 30 giugno 2012*, December 2012, pag. 407.

<sup>412</sup> Regione Lombardia, *Il traffico illecito di opere d'arte in connessione con gli investimenti economici delle criminalità organizzate*. Policy Paper 200428IST October 2020.

<sup>413</sup> Campbell P. B. *The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage*. International Journal of Cultural Property, 2013.

<sup>414</sup> Ceschi G., *Il Ruolo Della Criminalità Organizzata Nel Traffico Illecito Di Opere D'arte*, 2019.

between cultural goods and other illicit products, such as firearms and drugs. The above cited case that has seen the involvement of ‘Ndrangheta suggest that mafia-type organizations may be involved in the illicit trafficking also as intermediary and for the purpose of facilitating criminal affairs among different criminal actors<sup>415</sup>. Finally, sometimes such criminal groups may be found at the end of the chain, as in the case of Imperiale, which invested money originating from criminal proceed in two masterpiece of Vang Gogh and then used the paintings as guaranty for his drug affairs.

The framework delineated by the mentioned cases and investigations contributed to reinforce the debate over the existence of a correlation between organized criminal groups and the illicit trafficking of cultural goods. If it is true, as argued by the literature, that it is impossible to evaluate the extent of the involvement of such criminal associations within the illicit market, it’s also undeniable their involvement and participation in the traffic chain. It is evident, indeed, that the presence of criminal organization within the market cannot be underestimated: the annual report of Carabinieri TPC evidence that the phenomenon needs to be constantly monitored, as remarked by the relevant data included within it. However, as it has been highlighted, the participation of criminal groups is motivated by several different reasons, some of which are intrinsic attributes of the illicit market of art itself and some of which are specific attributes of the Italian case. In fact, if on one side the involvement of such groups is motivated by the low risk and high profit of art and antiquities market, on the other side is fostered by the high presence of such organization in Italian territories. Furthermore, their interest in the traffic is also highly motivated by the peculiar characteristics of the illicit market of cultural objects, which can be easily exploited by such criminal groups for their purposes. Indeed, the mentioned cases have unveiled the different scopes that the illicit traffic may serve for criminal and mafia-type organizations, identifying different purposes, that can be resumed as follows:

- Direct form of profit through the acquirement, selling or transportation of cultural objects;
- Money laundering instrument for the proceeds of illicit trafficking;
- Form of long-term and safe investment;
- Form of guaranty for criminal affairs;
- and eventual “*coin of exchange*”.

Such variability of purposes served by the illicit trafficking of cultural objects undeniably contributes to foster the illicit phenomenon. Despite statistics signal a decrease in the illicit trafficking, in terms of thefts and lootings, data concerning the involvement of organized criminal groups seem to have a slighter decrease or an almost constant pattern. Hence, it is necessary to still address the phenomenon, to continue to collect the relevant information discerning from the investigation proceeding and to enact policies and procedures directly

---

<sup>415</sup> Quirico, Domenico. “*Arte antica in cambio di armi. Affari d’oro in Italia*”, La Stampa, 16/10/2016, seen 03/01/2024.

aimed at contrasting the involvement of such criminal groups within the chain of illicit trafficking of cultural objects.

#### 4.2. The management of illicit trafficking by organized criminal groups

The framework described above has surely illuminated the shadow that hides criminal organizations in the trafficking of cultural objects, nonetheless some aspects of the involvement of criminal groups within it should be more deeply addressed. In particular, despite the cases mentioned are not sufficient to delineate the dimension of the participation of such groups, it remains possible to provide some consideration over the management of the traffic by criminal groups. Indeed, the way criminal organizations manage their participation in the traffic appears more complex compared to the general structure of the illicit market. It is hence necessary to focus on the organizational structure, type of involvement and “collaborations” that connotes the participation of such groups.

For what concerns the structure, it must be noted as observed, that there exist both criminal organization which are formed with the precise aim of participating in the market and criminal organization, already dedicated to other illicit affairs, that enter it. However, both cases present a strong fragmentation of the roles among the various members of the group, which is usually organized through a pyramidal scheme, whereas every criminal group is headed by a “boss”. Indeed, the criminal groups present in the market are hierarchically organized, with individuals assigned to specific task related to the theft, looting, transportation, laundering and sale of the cultural objects. Moreover, apart from the mafia-type organization which are involved in the traffic, the mafia-like scheme is present also in other form of criminal groups involved in the traffic, which exploit smaller and less organized criminal groups, subjugated to them, to carry out the various phases of the trafficking<sup>416</sup>. It is clear, therefore, that the management carried out by these groups of illicit trafficking is more complex than the usual articulation of the phenomenon, both in terms of the number of actors involved and for the extensive availability of different resources in the hands of criminal organizations. In fact, criminal groups can dispense of network of intermediaries and receivers, as well as front man and corrupted officials, have knowledge on the relevant illicit routes and possible reseller, and held consistent amount of money, which can be invested in more functional tools for the excavation or the restoration pre-sale of the object. Furthermore, criminal organization can ensure themselves the ‘exclusivity of action’ in their territory of competence, the fidelity of all the ring of the chain, and also the silence of the local community, as well as the complicity necessary in each stage of the trafficking and the collaboration of international traffickers<sup>417</sup>. Consequently, any analysis

---

<sup>416</sup> Nistri G. in S. Manacorda & D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, 2008. p. 71 – 86.

<sup>417</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, p.135.

on this matter must take into account the complex and articulated nature of the participation of criminal groups in the trafficking of cultural objects<sup>418</sup>.

However, when referring to the structure that connotes the participation of criminal groups in the trafficking, this research cannot fail to mention what emerged in the investigations that led to the most significant trial for illicit trafficking in Italy, which better explain what it has been aforementioned. In 1995, in a paradoxical and, at the same time, fortuitous manner, the Carabinieri of Cassino found themselves conducting investigations for a road accident, in which the sole victim has been Pasquale Camera, a former finance guard and art trafficker. Upon their arrival at the scene of the accident, conducting the required verification of the case, the policemen came across a series of Polaroid photographs showcasing various archeological artefact at the moment of their discovery, among those there was also the aforementioned Assteas krater. Having ascertained the situation, the commander of Cassino, former member of TPC, decided to immediately consult the TPC office in Rome, whereas the case was assigned to general Conforti, who was already investigating on Camera. It was hence possible to proceed with a perquisition of Camera's apartment, which permitted Carabinieri TPC to discover hundreds and hundreds of photographs and documents concerning trafficked archeological artefacts and looted sites, including a single piece of paper whereas Camera had depicted the organizational structure of the group which he was involved with in the trafficking of cultural objects<sup>419</sup>. The scheme found in Camera's apartment, reported in figure 1-2<sup>420</sup>, may be helpful to frame the complex structure that connotes the management of the trafficking by criminal groups.

---

<sup>418</sup> Cinque Alba, *L'arte del Delitto, L'impatto dell'attività criminale delle c.d. "archeomafie" sul patrimonio culturale nazionale e la responsabilità penale del mercante d'arte*, in *Diritto penale e uomo*. p. 3-4.

<sup>419</sup> Cevoli T., *Una Storia Senza Voce*, *Liberarcheologia*

<sup>420</sup> Watson Peter, Todeschini Cecilia, *The Medici Conspiracy. The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Greatest Museums*, New York, Public Affairs, 2006.

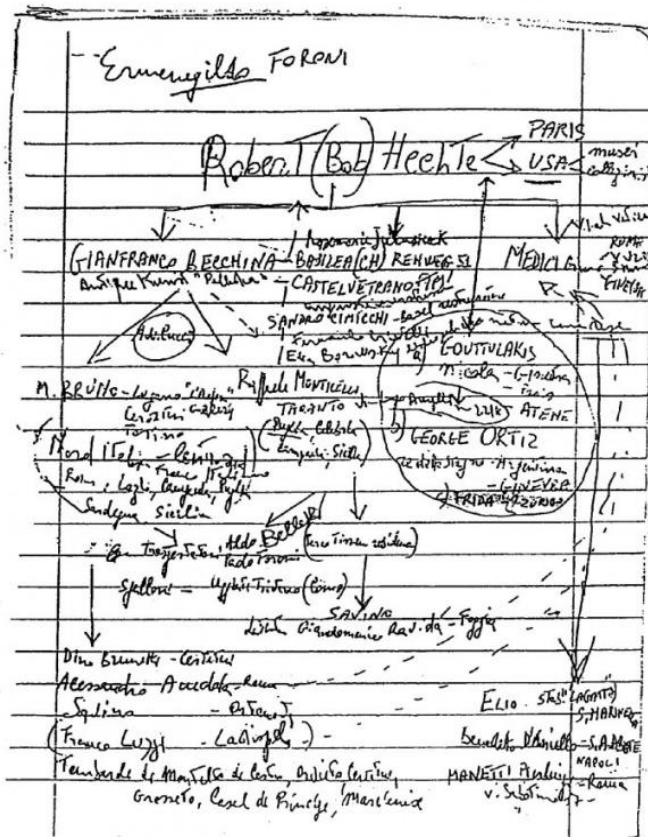


Figure 1 - Scheme of the illicit trafficking found in Pasquale Camera's Apartment .

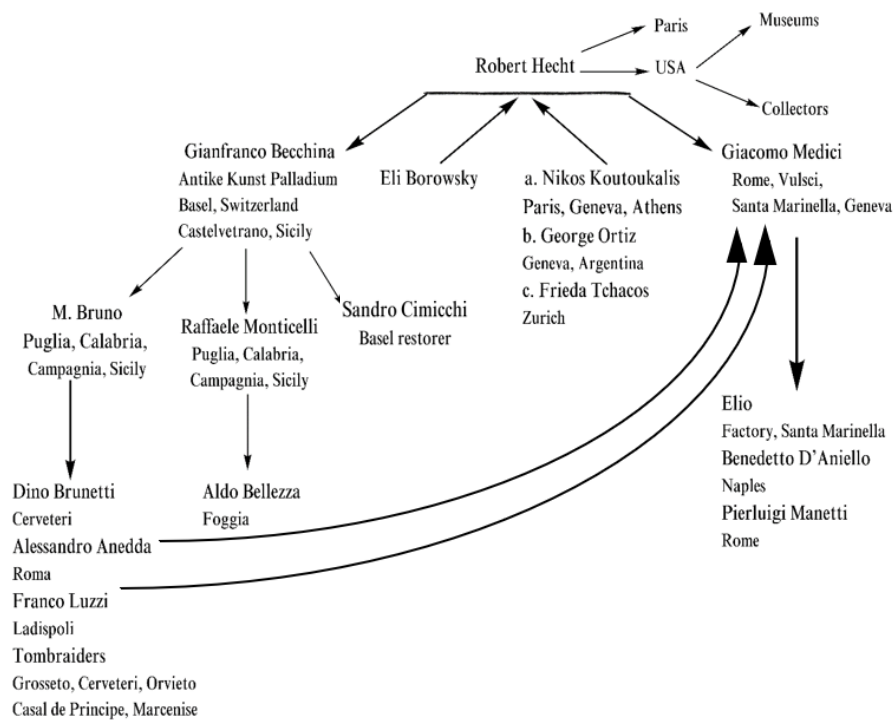


Figure 2 – Simplification of the scheme found in Pasquale Camera's apartment.

The document, handwritten, precisely reconstructs the organizational structure of the group of traffickers, identifying the tomb raiders and their respective local leaders, the various transporters, and intermediaries, as well as collectors and international sellers. According to the investigations, the scheme must have been written between 1990 and 1993, year in which one of the members died, it is hence collocated almost 20 years later the case of Euphonious krater, whereas some character already appeared. In particular, on the top of the “pyramid” is collocated Robert Hecht, who was responsible for the relation with private collector and museums and for the ‘final’ selling of the looted objects. On the subsequent level are situated Gianfranco Becchina and Giacomo Medici, to whom was assigned the role of mediator between Hecht and the various groups of tomb raiders, led by the respective zone leaders. Essentially, Becchina and Medici were responsible for recovering from the zone leaders. At this point the pyramid develops into various ramifications, one under the oversight of Becchina, and the other, alternatively, under the supervision of Medici. Therefore, under the control of Becchina, whose activities were based between Basil and Castelvetrano, can be found the zone leader Mario Bruno, who intermediates between Becchina and the tomb raiders Dino Brunetti, Alessandro Anedda and Franco Luzzi and others, for which the scheme also specifies the territory of intervention. From Becchina, two additional connections originate: one with the zone leader Raffaele Monticelli, who was serving as intermediary between Becchina and the tomb raider Aldo Bellezza; and the other with the Basil restorer Sandro Cimicchi. For what concerns Medici’s ramification, immediately after him are mentioned the tomb raiders Elia, Pierluigi Manetti and Benedetto D’Aniello, with their respective zone of activities. Moreover, two additional lines relate the already mentioned tomb raiders Anedda and Luzzi to the figure of Medici. Indeed, it must be noted that Medici used to have contacts with the majority of the tomb raiders to the extent that everyone boasted of having him as a client. However, returning on the scheme, it must be noted also the existence of two additional lines converging toward Hecht: the first connects him to the art seller Eli Borowsky, while the second connects him to a third group of names belonging to various owners of private galleries, which constituted the laundering and reselling ring of the chain, including Nikos Koutoulakis, George Ortiz and “Frida” Frederique Tchacos-Nussberger. To complete the frame, disconnected from all the names, but related to all, there is the name of Ermenegildo Zegna, the international transporter upon which all the traffic depended on, who was based in Cerveteri.<sup>421</sup>

Camera’s paper is probably one of the most debated proofs in the panorama of Italian investigations concerning criminal groups and the illicit trafficking of antiquities. It is therefore necessary to proceed per grades. First, the scheme provides a clear overview of the management of the trafficking. The bottom of the pyramid is formed by the tomb raiders, which are guided by territorial leaders. Those leaders are in charge of furnishing the traffickers, namely Becchina and Medici. The latter, rarely engage in direct relations and sales with museums, but rather entrust Hecht for this task. Hence, what results from the

---

<sup>421</sup> Ibid.



analysis of the document, is the scheme that clearly belongs to a criminal organization, as it has also been confirmed by the juridical proceedings enacted against the individuals involved. It must be said that most of the participants have been charged with the accuse of participation in a criminal organization, nonetheless, the majority of them escaped the sentence due to the principle of prescription, which has withdrawn the criminal offence. On this matter, it is interesting to note that one of the zone leaders of tomb-raiders, Raffaele Monticelli has been again accused of heading a criminal organization in 2022<sup>422</sup>. However, the perception of having discovered a criminal organization dedicated to the illicit trafficking of art and antiquities it has been present since the beginning of the investigation in the mind of Carabinieri. In particular, this research cannot fail to mention the words of General Conforti at the moment of the discovery of the document, who commented «*The moment I saw that scribbled sheet of paper, thought back to 1977, in Naples, when we found in very different circumstances the organigram of the Camorra. Organized criminals are strange from this point of view-after all, the Red Brigade made the same mistake as well. And that is, they write about themselves, they put it on paper. So organized delinquency doesn't change, it merely varies. And this time it was the same. It gave us the chance to move into terrain where, although we weren't floundering, we didn't have certainties.*»<sup>423</sup> »<sup>424</sup>. According to Conforti, the mere existence of this paper is already an interesting proof for its link with the *modus operandi* of mafia groups. It is clear that the document does not leave space for doubt or acquittals, as it has been commented “*it is a document in front of which no one can invoke alibis or exempt themselves*”<sup>425</sup>. And indeed, as General Conforti will later recount, all the information delineated in the scheme of Pasquale Camera will find confirmation through subsequent inquiries.

In truth, the investigation proceeding effectively unveiled all the process and *ratio* operating among the group. Maurizio Pellegrini, who assisted the PM Paolo G. Ferri in the investigations, actually dismantled the strategic organizational scheme hidden within the chart of Camera. He noted that there was a triangulation within the scheme, whereas "X", in this case Medici, wants to sell to "Y," licet a museum or a private collector, nonetheless, "Y" does not wish to be seen buying from "X", and for this reason, "X" passes the object to "Z", a trusted intermediary, in most of the case based in Switzerland, who is in charge of selling the item to "Y". Obviously, to the intermediary is recognized a compensation for the role played in the transaction, nonetheless the chief purpose of the triangulation is deception. It

---

<sup>422</sup> Casula Francesco, *Traffico di reperti antichi tra Taranto e Bruxelles. In 13 rischiano il processo*. La gazzetta del mezzogiorno, 23/06/22, last seen on 21/01/2024.

<sup>423</sup> Watson P, Todeschini C., *The Medici conspiracy*. p.18.

<sup>424</sup> It is opportune to mention some backgrounds of Roberto Conforti. In particular, during the 60s he was in service in Sardinia, at the time affected by the activities of banditry. Then, from 1969, he has been servicing in Naples, in the neighborhood of Poggioreale, whereas is located the famous homonymous prison. During the years in Naples, Conforti is assigned an important investigation concerning the relation between Camorra and Cosa Nostra, He was then again moved to Rome, at the end of the 70s. Finally, in 1990, Conforti was assigned to the Comando Carabinieri TPC, where he brightly ended his career. It is hence clear that Conforti possess a great knowledge of criminal organization.

<sup>425</sup> Isman Fabio, *I predatori dell'arte perduta*, Skira, 2006.

is opportune to precise, however, that the origin of such type of triangulation is related to firearms dealing, whereas the intermediary would try to disguise who has been the last owner of a particular set of weapons when the general trading of the items is not allowed. In this case, it is a practical way for covering up who is the real source of a looted or stolen antiquity. Nevertheless, such practice is rather more deceptive than obvious compared to a single triangulation, it was indeed unknown before, and has unveiled new level of organization<sup>426</sup>. From the investigations it also emerged that each group of tombaroli used to refer to the other with the term ‘*cordata*’, which is of particular interest for the intrinsic meaning that it embeds. The groups, indeed, which were located at the base of the scheme, were in charge of keeping the end point of the chain clean, alike a rope, *corda* in Italian, which bounds together mountaineers to grant them mutual safety<sup>427</sup>. Furthermore, it was discovered that Becchina, who’s the pivotal nexus in the chain alongside Medici, granted a fixed monthly salary to his excavators, especially the most adept, for the conducted illicit excavations. In this way, Becchina ensured himself a constant furniture of archeological artefacts and an effective control over the groups of tombaroli<sup>428</sup>.

As noted by the PM Ferri, the possibility of discovering the level of details found in Camera’s scheme in other cases concerning the trafficking of antiquities is very rare. Indeed, the criminal organization that has been unveiled by the document is just one among many, it is just a single rock in an entire garden<sup>429</sup>. However, despite being a singular case, whose criminal activities concluded at the beginning of the 2000s, the *modus operandi*, the strategies and organization, seems to have remained persistent in the subsequent investigations. It is indeed undeniable the merit of the Camera’s paper case of having illuminated the organizational attribute, which is proper of the criminal organization itself, and so it remains a sort of constant of the cases that has seen the engagement of such groups in the trafficking. As noted, Raffaele Monticelli, who has been mentioned in the scheme as zone leader, has been found guilty of heading another criminal organization dedicated to the trafficking, which not so surprisingly showcased a hierarchical and triangulated structure<sup>430</sup>. Similarly, in 2015 Carabinieri TPC recovered 5.000 items, which had been looted by a criminal organization showcasing a strong division of roles and the triangulation scheme, alike the case of Camera<sup>431</sup>. It can then be argued that the management of the trafficking by these groups can only be organized, precisely due to the intrinsic nature of these actors. Their management is characterized by a strong hierarchical structuring of roles and task division, with discerning authorities control flowing from top to bottom, involving extensive

---

<sup>426</sup> Watson P., Todeschini C., *The Medici Conspiracy. The illicit journey of looted antiquities from Italy’s tomb raiders to the world’s greatest museums*, Public Affairs, 2007. p.77-79.

<sup>427</sup> Ibid.

<sup>428</sup> Ibid. p.293.

<sup>429</sup> Ibid.

<sup>430</sup> Casula F., *Traffico di reperti antichi tra Taranto e Bruxelles. In 13 rischiano il processo*. La gazzetta del mezzogiorno, 23/06/22, last seen on 21/01/2024.

<sup>431</sup> Germanà Bozza Giancarlo, *Un’anfora attica recuperata nell’Operazione Teseo*, in Archeomafie, Anno VII, n.7, Osservatorio Internazionale Archeomafie, 2015.

collaborations and presenting a strong continuity in the activity. Continuity which is also granted by the possibility of selling the items in more than one fragment, creating a sort of ‘addition’ in the buyer<sup>432</sup>. Conversely, within the market of cultural objects, every single piece or objects possesses an inherent value, there is nothing that cannot attract a potential buyer. And is it well-known that as long as there will be a demand, there will be a supply.

#### 4.3.The “Archeomafie”

As it has been unveiled, the involvement of criminal organization within the illicit market of cultural goods is much more frequent and complex than one might imagine. As revealed, criminal groups, either recognized as articles 416 or 416-bis, actively and consistently participate in the market. It has also been showcased that such organizations operate through specific patterns and strategies, as the hierarchization of roles and selling triangulation. Furthermore, it also emerged a sort of shade in the *modus operandi* of the participants groups, a shadowed area whereas some organization involved are so sophisticatedly and peculiarly organized that investigators have to question themselves whether the nature of such groups can be defined as a mafia one. In light of these considerations, starting from the late 90s, it appeared a new terminology to identify the involvement of such organization within the trafficking of cultural objects, namely the term “*Archeomafia*”.

The expression “*Archeomafia*”, result of the union of archeology and mafia, appeared for the first time in a dossier of 1999 edited by Legambiente, entitled “*Archeomafie and the case of Villa Romana del Casale*”<sup>433</sup>. The dossier was aimed at denouncing the degradation and abandonment of the archeological site, dated back to the III century A.C. and registered in the UNESCO world heritage list, which was also victim of the lootings of tomb raiders<sup>434</sup>. However, the origin of the term must be framed in a wider context. In particular, starting from the late 90s and beginning of 2000s, it started to be theorized the existence of a correlation between illicit excavations, the trafficking of cultural objects and mafia-type criminal organization, yet judiciary evidence had not yet been found<sup>435</sup>. Contextually, the term started to be used by Legambiente together with another terminology, licet “*Ecomafia*”, expression used to refer to mafia alike criminal organization dedicated to illicit activities which provoke damages to the environment, as the illicit trafficking and disposal of waste<sup>436</sup>. This association is not surprising, as mentioned, the illicit trafficking of cultural goods and the trafficking of waste share similar characteristics and *modus operandi*. Indeed, both the illicit phenomenon infiltrate into a licit market, attracting the interest of criminal organizations, which can benefit from the high profit and relative low risk associated with the activities. Furthermore, an additional impetus for the origin of the expression has been

---

<sup>432</sup> Watson P., Todeschini C., *The Medici Conspiracy*. 2007.

<sup>433</sup> See Ceschi G., *Il Ruolo Della Criminalità Organizzata Nel Traffico Illecito Di Opere D’arte*, 2019.

<sup>434</sup> Legambiente, *UNESCO alla Siciliana. I siti in sofferenza della bella sicilia*. Nulla die, 2021.

<sup>435</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia. P. 132.

<sup>436</sup> Legambiente, *Rifiuti S.p.A. I traffici illegali di rifiuti in Italia. Le storie, i numeri, le rotte, le responsabilità*, Roma, 2003.

precisely given by the discovery of Camera's scheme, which for the first time has brought the attention of the public opinion to the involvement of organized groups in the trafficking of cultural objects<sup>437</sup>. In 2002, General Conforti together with the archeologist Fabio Maniscalco noted that «*starting from the 70s, in Italy, it has developed the so-called phenomenon of archeomafie, which is based on organization of traffickers, dedicated to the theft, commercialization and occult investment of cultural objects.*<sup>438</sup> ». In the same year, the director of the Environment and Legality Observatory, Enrico Fontana, observed that «*The one of archeomafia, as denominated by Legambiente, is a phenomenon which is assuming ever more a 'global' connotation. By now, there is a widely spread opinion for which, in the face of these illicit activities that have assumed an increasingly international relevance, there should be a decisive reinforcement of the collaborations among states and of the prevention and the repression of the phenomenon, through the elaboration of a common international legislation aimed at contrasting more effectively the 'traffickers of culture'.*»<sup>439</sup>.

Therefore, the term Archeomafia originates from the acknowledgement that such illicit activities are perpetrated by criminal organizations, which showcase a complex organizational structure and attributes similar to mafia clans<sup>440</sup>. Indeed, the idea of highlighting, with the term "archeomafie", the mafia attribute, finds origin by a double constatation. On one side, there is the recognition that unlawful acquisition of antiquity and artefacts, independently from the provenance, is just the first step of a long series of phases which, through the black market, brings cultural objects in the hands of unscrupulous collectors or museums. If a theft or an illicit excavation, which are relatively simple actions, can be accomplished by individual criminal or be improvised, the further phases of the trafficking, as the illicit exportation, laundering, falsification of documents and introduction within the market, presupposes a criminal organization structured through a pyramidal scheme, with precise hierarchies and well-defined roles<sup>441</sup>. The reference to the concept of mafia is also due to the constatation that such criminal networks could not manage a such high-profit activity without, at least, the consent of the mafia clans that control their targeted zone. Those groups, indeed, are particularly active in the southern regions of Italy, which are some of the richest regions in terms of cultural heritage, but at the same time also represent the most subjected to the extensive control of mafia groups<sup>442</sup>.

However, it must be noted that the use of the term, licet the specific attributes it refers to, varies among scholars. On one side, the most widespread use of the expression refers to all the illicit activities, perpetrated by criminal organization, which constitute a harm to the cultural heritage of humanity, regardless from their specific typology<sup>443</sup>. According to this

---

<sup>437</sup> Zecca Antonio, *Archeomafia: il traffico di opere d'arte trafugate dai siti archeologici italiani*. 26/04/2020.

<sup>438</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia. P. 132.

<sup>439</sup> Ibid. p. 134.

<sup>440</sup> Osservatorio internazionale Archeomafie.

<sup>441</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, p. 133-134.

<sup>442</sup> Ibid. p.135-136.

<sup>443</sup> See *Archeomafie*, edited by Osservatorio Internazionale Archeomafie, n.1; Grossi L., *Le archeomafie*, in *Il traffico illecito di beni culturali*, Roma Tre Press; Cinque A., *L'arte del Delitto*, in *Diritto Penale e uomo*.

approach, the term includes all the actions and activities that characterize the illicit trafficking of cultural objects, including the looting, theft, damaging, laundering, and destruction. On the other side, a smaller part of the literature seems to use the terminology only to refer to criminal groups dedicated to the trafficking of archeological artefacts<sup>444</sup>. This latter usage it is motivated by the perception that most of the cases, that see the involvement of such criminal organizations, have as target archeological sites. Moreover, this use emphasizes the greater complexity of the trafficking in archeological artefacts, which is composed of illicit excavations, transportation, laundering and so forth activities, in comparison to the so-called art theft, which is perceived to be less organized<sup>445</sup>. Due to this distinct use of the term, though is evident that the literature opts in favor of the former, the omission of a provision addressing the “*archeomafie*” in the reform of Italian penal Code seems to be a significant loss not only for the protection of Italian cultural heritage, but also globally. It must be mentioned, indeed, that the draft legislation of the reform included a provision of this sort, through the draft of article 518-sexiesdecies<sup>446</sup>. The latter entitled “*organized activity for the illicit trafficking of cultural objects*” aimed at punishing whomsoever, through multiple operations and continuous organized means and activities, transfers, alienates, unlawfully excavates, or manages cultural objects<sup>447</sup>. During the approval, the Senate decided to suppress such title, leaving only the aggravating circumstance of art. 416. It seemed, hence, appreciable the legislative intent to eliminate any doubt concerning the attributability of the so-called Archeomafie within the associative scheme<sup>448</sup>. However, the change of road operated by the Senate moved in the direction of ‘*leaving the issue open*’. It will be up to the public prosecutor to verify case by case whether, and to what extent, the dynamics of the offences reproduce the typical elements of article 416 of the Penal Code<sup>449</sup>.

Notwithstanding, this remains a missed opportunity for the legislator, but especially for the protection of the cultural heritage of Italy and humanity. If indeed Italy always represented a model for the protection of cultural heritage, due to the role it has played in developing *ad hoc* legislations and establishing an *ad hoc* enforcement authority, it seems that in this case it could have done more. Despite nowadays the term *archeomafia*, and all that is behind it, in Italy is commonly recognized, to the point that it also appears in the official acts of the Parliamentary Commission Antimafia, the legislator decided to omit an explicit reference to the phenomenon. Among the reasons that discouraged the adoption of such provision, as it has been mentioned, there has been the observation that it does not exist yet a similar offence in international law, and hence, the norm would have found little applicability. Nonetheless, this only matter in the legislative framework: in the international literature, the term

---

<sup>444</sup> See Ceschi G. *Il Ruolo Della Criminalità Organizzata Nel Traffico Illecito Di Opere D'arte*, 2019.

<sup>445</sup> Ibid.

<sup>446</sup> See Chapter II.

<sup>447</sup> D.d.L. 882.

<sup>448</sup> Grossi Lorenza, *Le Archeomafie*, in *Il diritto dei Beni Culturali*, 70-93, Roma Tre Press, 2021. p.92.

<sup>449</sup> Ibid.

*archeomafia*, is already being used to refer to criminal organizations, which all over the world, and more particularly in the weakest areas, whereas poverty and war reign, benefit and gain profit from the withdrawal of cultural heritage from community, territory and context of origin<sup>450</sup>. Therefore, it can be argued that Italian legislators should have had more faith in the power of emulation of Italy in the framework of cultural heritage. If in a first instance the provision may have revealed useless or unjustified, it could have opened new path for the protection of cultural heritage. Indeed, the introduction of a provision criminalizing precisely criminal organization dedicated to the trafficking of cultural objects, could have constituted a tool to reinforce the weakness of the prosecutions of such offence. The aforementioned Camera's scheme has seen the majority of its '*inscribed*' not being persecuted due to the prescription of their offences. Hence, the introduction of a norm recognizing and criminalizing the phenomenon of archeomafie could have opened the prospective of an *ad hoc* designed judiciary *iter*, that perhaps would prevent many trials for traffic of cultural objects from ending in prescription<sup>451</sup>. Recognizing the existence of archeomafie, adopting this terminology in the literature must be the point of beginning, not of arrival.

---

<sup>450</sup> Cevoli T., Una storia senza voce, *Liberarcheologia*, p.136.

<sup>451</sup> *Ibid.*

## 5. Case studies

As it has been acknowledged, the purpose of this thesis is offering a complete understanding of the correlation between organized criminal groups and the trafficking of cultural objects. The previous chapters have attempted to delineate a full overview of the phenomenon, through an attentive examination of the relevant legal framework and a scrupulous analysis of the attributes of illicit trafficking, criminal groups, and their correlation. Although many cases had already mentioned, it seems opportune to conclude this research with the scrutiny of specific case studies. Nonetheless, those cases should not be perceived as a mere '*object of study*', though the scope of their narration is to bring even more evidence on the phenomenon. Instead, these cases represent the most interesting, and vicious, anecdotes of how our heritage has been kept, and can be, hostage by organized criminal groups. Therefore, the stories that will be now examined not only constitute the most important and damning testimonies of the involvement of these criminal groups in the trafficking, but also illustrate the mistakes, developments and efforts made by the Italian State and individuals to counteract the phenomenon.

### 5.1. The theft of Palermo's Caravaggio

The first story that will be narrated, that is the theft of Caravaggio's Nativity from the Oratory of San Lorenzo in Palermo, undoubtedly represents one of the most famous art thefts of the history. Indeed, the painting compares in the list of the ten most researched artefacts of the world, as it has never been found back. Yet, before proceeding with the narration, it is important to acknowledge that this case in particular it has been also reconstructed thanks to an *ad hoc* visit of the Oratory and an interview conducted with Antonella Lampone<sup>452</sup>, testimony of the discovery of the theft and of subsequent events.

The night between the 17 and the 18 of October 1969 a *battery* of criminals entered, with a simple crowbar from the main door, in the Oratory of San Lorenzo, a small ecclesiastical building which hosted a Caravaggio painting known as "*Nativity of the Saints Francesco and Lorenzo*". Once inside, the criminals act undisturbed: it is indeed a stormy night in Palermo, and it is hardly impossible to notice what is happening inside the oratory. Thus, the thieves, after moving the candelabras that separated them from the painting, began to cut, alike a murder, the perimeter of the canvas of Caravaggio. Then, after tearing the canvas from its frame, the criminals wrapped it in a carpet found in the oratory and escaped undisturbed into the night. The day after, the two sister who were serving as guardians of the oratory and the daughter of one of them, namely the 16 years old Antonella Lampone, entered as usually the oratory and discovered the theft of the painting and of the carpet. Curiously, as noted by Lampone, her aunt that morning was suffering from a particularly

---

<sup>452</sup> The visit of the Oratory of San Lorenzo and the interview with Antonella Lampone have both been conducted in October 2023.

intense form of headache to the point that she considered she might have been ‘drugged’ by the criminal to act undisturbed. Her room indeed was relatively close to oratory. However, since the first moment it was clear to the guardians and to the young Mrs. Lampona that what it has been committed in the night was a tragedy. Observing the badly cut pieces of the border of the canvas still attached to the frame, contemplating the empty space created by the absence of the painting and admiring the entire ensemble deprived of its protagonist it was a tragedy. Effectively, it is still a tragedy nowadays to observe those tiny fragments that remain attached to their frame and realize the incommensurable loss that our cultural heritage has suffered. Anyway, once the theft was discovered, it was immediately reported to the competent authorities (Carabinieri TPC had been founded just five months before), drawing on the painting not only the interest of investigators but also of the press and public opinion. In the interview, Mrs. Lampona recalled how the Palermo superintendence visited the oratory after the theft, and the superintendent commented that he did not even remember that there was a Caravaggio exposed in the oratory. Meanwhile, the press started to comment the case, describing it as a theft worth one billion of lire and wondering who there was behind it<sup>453</sup>.

“*Who are the executors? And where is the painting?*”. Those are the questions that still do not find a firm answer despite more than 50 years of investigations. As observed by the General of Carabinieri TPC Riccardi «*in this story of certain there is only the fact that the painting is missing. The only other certainty is that we will keep looking for it, until we’ll be here.*»<sup>454</sup>. Actually, in this story there are more doubts than certainties, nonetheless, it now seems widely recognized that certainly behind the theft there is the mafia. Although during the investigation have emerged the most various theories on the case, as the unrealistic rumors that narrated that Alain Delon, who was in Sicily at the time for the filming of “The Gattopardo”, stole the painting after seeing its magnificence, it appears that a common pattern among those is the presence of mafia<sup>455</sup>. It must be noted, however, that in a first instance the investigations have been carried out frenetically and non-homogeneously and it was not given a concrete and effective investigative response. It should be considered that in the subsequent years, the oratory has been once again the target of criminal, which theft some of the figurines adorning the decorative curtains of Giacomo Serpotta. It has been admitted that the first response to the theft has been meagre and inadequate, by the way at the time mafia had not yet been delineated in its organizational structure. In that period, the journalist Peter Watson declared that he had entered in contact with an art dealer from Laviano, in the province of Salerno, who was willing to sell him the masterpiece. Unfortunately, the chosen day for the affair was the 23<sup>rd</sup> of November 1980, the day in which

---

<sup>453</sup> See Giornale di Sicilia, “*Caravaggio da un miliardo rubato a Palermo*” 20/10/1969 and Ora di Palermo, “*È palermitana la gang che ha trafugato il Caravaggio*, 21/10/1969.

<sup>454</sup> Olivieri Serena, *Natività di Caravaggio: una storia semplice? Le intricate vicende investigative del dipinto più cercato al mondo*, in Journal of Cultural Heritage Crimes, 24/04/2020 last seen 24/01/2024.

<sup>455</sup> See Document XXIII, N. 44, Commissione Parlamentare Di Inchiesta Sul Fenomeno Delle Mafie E Sulle Altre Associazioni Criminali, Anche Straniere. 21/02/2018.



the Campania region has been devastated by a terrible earthquake, and the meeting never happened<sup>456</sup>.

Providentially, starting from the 90s it was finally given an effective and massive investigative response, which led to a first reconstruction of the fact. What emerged during this new wave of investigations can be divided into two main theories, one of which reports the painting as being destroyed, and each involves the participation of mafia. Indeed, according to more than one hypothesis, sustained by different declarations released by some mafia repentant and other justice collaborators, on the theft there is also the shadow of Cosa Nostra. For what concerns the fate of the masterpiece, different Cosa Nostra repentant provided various versions, some of which have been released by individuals which are likely to be directly involved in the affair<sup>457</sup>. Basing on the released declarations, it was primarily possible to delineate the components of the *battery* who theft the painting, some of which have ended serving Cosa Nostra in the following years. It also emerged the involvement of the mafia clan of *Santa Maria del Gesù*, at the time headed by Stefano Bontade, whose members were also Francesco Marino Mannoia, and the brothers Vincenzo and Gaetano Grado. The clan of Bontade, as it will be revealed, has played a prominent role in the organization of the theft organization, or in any case in the management of the canvas immediately after its removal. On this matter, it must be mentioned that Mrs. Lampone referred that, in the period immediately before the theft, some ‘strange characters’ appeared in the oratory acting as tourist and making questions, but «*it was clear that they were not tourist at all*». Although there have not been official confirmation yet, the possibility that the *battery* of thieves may have conducted a preliminary inspection seems plausible.

A first theory over the fate of the masterpiece emerged in 1996, the mafia repentant Mannoia, in the framework of one of the most important processes held by Italian court, licet the process against Giulio Andreotti, the former president of the Italian party “*Democrazia Cristiana*”, released its own version of the facts. Mannoia, who was a member of the clan of Bontade, referred that the painting had been destroyed by himself in person, after the constatation that it could not be sold due to its terrible conditions of conservations. The canvas, indeed, had been damaged during the theft, either when it was cut from the frame or when it has been wrapped on itself for the transportation. The process Andreotti ended in Palermo in May 2003, the politician will be declared guilty for “*friendly and direct relation with prominent members of Cosa Nostra*” by the Court of Appeal, but he will never be persecuted thanks to the prescription of its offence. On the other hand, the declaration made by Mannoia will be taken even too seriously. In light of what he affirmed, for the investigators, every effort to recover the painting indeed would have been vain. It can be hence said that, in a first moment, it has been given prominence to the words of Mannoia, after all he resulted to be directly involved in the theft and its criminal relevance suggested

---

<sup>456</sup> Cevoli T., *Brevi osservazioni sul furto della Natività con i Santi Lorenzo e Francesco d'Assisi di Caravaggio: un caso aperto da cinquant'anni* (1969-2019), 2019. p.97-101.

<sup>457</sup> Ibid.

that his word could be reliable. Moreover, his testimony found confirmation in the declarations of other justice collaborators, like Salvatore Cucuzza, head of the clan of *Porta Nuova* until 1994, which confirmed that the painting had been destroyed. Another statement, made by the justice collaborator Gaspare Spatuzza, reported that the painting had been burned after being given to the Pullarà family, who was heading the *Santa Maria del Gesù* clan.

Nevertheless, despite such theory had been supported by several elements, it has been contradicted by other investigative findings. First, there were reasonable motives to believe that the painting could not had been destroyed. Indeed, just some years before the theft, the painting had been subjected to an intensive work of restoration, which was properly aimed at protecting the canvas in circumstances of this type. Hence, it seems not credible that it was destroyed due to its terrible condition of conservation. Such consideration led the inquirers to sustain that Mannoia may had confused the canvas with another painting, namely a work of Vincenzo da Pavia, which has been stolen from a church situated adjacent to the oratory<sup>458</sup>. Secondly, also other members of the clan headed by Bontade have expressed their version, and according to those the painting had not been destroyed. Among those, Vincenzo Grado referred that he had been asked to manage the transportation of the painting to Milan, and then to Switzerland. Nonetheless, such demand never converted into facts and the project was not mentioned again. Furthermore, another member of the clan of *Porta Nuova*, referred that the painting had ended in the hand of the drug trafficker Gerlando Alberti, head of the family of *Porta Nuova*. Vincenzo La Piana, familiar to Alberti confirmed this version, precisating that Alberti buried Caravaggio's work in an iron crate in the countryside of Palermo. Nonetheless, such crate has never been found by the investigators. Finally, according to Salvatore Cancemi, implicated in the commission of Capaci massacre of 1992, whereas the judge Giovanni Falcone lost his life, the painting had not been destroyed and it was used as symbol of power during the reunions of the "*Cupola*".

At this point, however, the investigation came to a standstill once again. One on side there was the version according to which the canvas had been destroyed; on the other side there was the theory for which it was in possession of the family of *Porta Nuova*, yet no evidence of this had been found. A new turning point for the investigation occurred with the XVII legislature. Indeed, between the 2013 and 2018, under the presidency of Rosy Bindi, the Parliamentary Committee Antimafia decided to proceed with a re-examination of the theft of the Nativity of Caravaggio. The committee has worked for 5 years on the review of the case, and on the 21<sup>st</sup> of February 2018 released a final report illustrating the new reconstruction of the fact, approved by the committee itself. Hence the committee, autonomously identified some justice collaborators to be heard, selecting them basing on a

---

<sup>458</sup> Ibid.

precise and attentive analysis of the existing information<sup>459</sup>. This new wave of investigation will reveal absolutely crucial, not only for the effort of effectively reconstruct the theft of the painting, but in particular for demonstrating that the recovery of the canvas is still possible.

One of the first to be heard has been Gaetano Grado, one of the few justice collaborators who had not been previously heard on the case. Grado, at the time of the theft, was responsible for monitoring the situation in the center of Palermo on behalf of Stefano Bontade. Two days after the theft of Caravaggio's work, Grado recounted that he had been approached by Gaetano Badalamenti, who would have asked him to gather information for a possible recovery of the "*Caravaggiu*". Badalamenti was interested in the painting as he had heard it had an incommensurable value. As mentioned, in the days immediately following the theft, newspaper reported some estimation of the painting, nonetheless, such information had already been highlighted, some months before the theft, in a television documentary, dedicated to the works of Caravaggio. According to Mrs. Lampone it was due to such television program that the canvas became victim of the thieves. However, following the request of Badalamenti, Grado started to search information concerning the thieves and the fate of the painting. He got to discover the authors of the theft, which were a small *battery* of thieves. At this point, Grado ordered to one of the thieves to deliver the painting, which was currently kept in a dilapidated house in the periphery of Palermo, to the person «*he knew*» and granted that he would be recompensated for that. Hence, it emerged that the theft had not been commissioned by Cosa Nostra, the latter has entered the affair only after the stealing, which has been an autonomous action of the thief's *battery*.

The painting was then given to Giuseppe Di Maggio, head of the *Branaccio* family, who then assigned the custody of the canvas to Francesco Mafara, his nephew, who hid the masterpiece in a cave situated in San Ciro Mareddolce while waiting for more details. Caravaggio's work was then consigned to Stefano Bontade, who stored the canvas in one of his properties denominated "Magliocco". Finally, at this point, the painting was given by Bontade to Gaetano Badalamenti, who pretended the canvas due to its position of "Sicilian Representative". While consigning the painting to Badalamenti, Bontade stated «*Take it. But keep in mind that it's unsellable because it is priceless; it's not easy to sell*<sup>460</sup>». Gaetano Grado will also reveal what has been the fate of the masterpiece after ending in the hand of Badalamenti. Indeed, according to what Badalamenti declared to Grado, he had in plan to sell the painting to a Swiss art trafficker he knew. According to what Badalamenti confessed to Grado, the Swiss trafficker went to Palermo to examine the canvas, and decided to buy it, specifying that in order to resell it more easily, it would have been necessary to divide it in more part. Grado will then have confirmed from Badalamenti that the canvas had been cut into four pieces and then sold. Grado commented the fact as following «*they have collectors*

---

<sup>459</sup> Bindi Rosy, *Il furto della Natività del Caravaggio*, Relazione approvata dalla Commissione Parlamentare di Inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere, nella seduta del 21 febbraio 2018.

<sup>460</sup> Document XXIII, N. 44, Commissione Parlamentare Di Inchiesta Sul Fenomeno Delle Mafie E Sulle Altre Associazioni Criminali, Anche Straniere. 21/02/2018.

there (...), people who have private museums and who have divided it into four, in practice, for the megalomania of saying “I have a piece of the Caravaggio”»<sup>461</sup>. Hence, according to Grado version, the painting had been transported to Switzerland in a fruit van and still entire, then once arrived at destination, it has been cut into four parts or perhaps more, which have then been sold. The whole fact happened within a few months of 1970. Some months later, Badalamenti visited Grado and gave him 50.000 Swiss francs for its services, even though he did not specify what services, Grado was sure that it was the proceeds of the sale of the painting. Grado’s declaration conclude with adding some more details on the whole story. In particular, the justice collaborators stated that the Swiss collectors was from Lugano and that, according to Badalamenti, it was one of the most important traffickers of cultural heritage in the world, who disposed of an infinite patrimony. Badalamenti also referred to Grado that the Swiss trafficker must have been an expert, a person endeavored with a great knowledge capable of understanding the artistic and cultural value of the painting. Indeed, Badalamenti narrated that «*stu scimunito – stupid in Sicilian – asked me the permission to remain a bit more to contemplate the painting. We gave him a chair. Tears appeared in his eyes. He was truly a passionate.*»<sup>462</sup>. Grado also identified the members of the battery of thieves and of the Swiss trafficker, however, the only name that has been made public by the authorities, for investigative reasons, is the one of Mannoia.

Precisely because he was mentioned by Grado, the Anti-Mafia committee deemed it necessary to conduct a new hearing of Mannoia. The latter confirmed its participation in the theft, even though he was not present the night of the stealing. Nonetheless, he organized the theft, also through an inspection of the oratory, which confirms the words of Mrs. Lampono, and the day after he managed the transportation of the canvas to a factory in disuse, whereas the painting has been shown to a first possible buyer. However, the buyer refused to buy the masterpiece due to the damages reported by the canvas, and at this point, according to what Mannoia previously stated, he burned the painting. Nevertheless, Mannoia in front of the Anti-Mafia committee retracted his previous statement regarding the fate of the artwork. He then recounted that despite there has been the intention to destroy the canvas, this had never happened. Mannoia further added that he had provided this version only to avoid having to continue answering more questions about the matter. It cannot be excluded, however, that Mannoia gave this version of the fact just to ‘increase’ his criminal figure. The latter also refuted the rumors asserting that the painting was used as a symbol of power in the meeting of Mafia, dismissing such claims as an *urban legend*. Finally, Mannoia suggested that the painting may have remained in a property situated in Palermo of Giuseppe Marchese, the person who took the painting the day after the failed selling. Clearly, Carabinieri have conducted the necessary site inspections in the indicated area, but they never found the canvas.<sup>463</sup>

---

<sup>461</sup> Ibid.

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

Finally, the Anti-Mafia Committee retained necessary to conduct more audition with others justice collaborators, including Vincenzo La Piana and Fabio Manno, both connected to Gerlando Alberti. The declaration released by the two collaborators have totally withdrawn the version for which Alberti hid the painting in an iron crate in a property of his own. Furthermore, also Gaspare Spatuzza has been re-heard by the Committee, who discovered that the version of facts released by the latter is not reliable, as he acquired the information *de relato*, from a subject, a young male, who again acquired them *de relato*. Moreover, such information where not directly mentioning Caravaggio's work, it was a deduction of Spatuzza that the painting mentioned could have been the one of the San Lorenzo oratory.<sup>464</sup>

It is undeniable that the Committee has played a fundamental role in reconstructing the story of the theft of the Nativity, and for this reason it is necessary to recognize its absolute merits. First, the Committee has the great merit of having refuted some version of the fact, in particular the one that mentioned the destruction of the painting, which according to the Committee investigation has never been destroyed. Indeed, the declarations of Grado and Mannoia, as well as the refutation of Spatuzza version, confirm that the masterpiece, maybe divided, it still exists. The second merit is having verified the version related to Gerlando Alberti, which appear inconsistent and not very reliable. The Committee indeed retains that such version has originated by the relation in affairs between Badalamenti and Alberti, especially for the affairs in Switzerland, and due to the interest of the latter in art works. Additionally, the Committee has the merit of having heard for the first time Grado, which actually offered the version that seems now to be the most reliable. Indeed, according to the Committee it is plausible that the theft has been conducted by not expert thieves, unaware of the real value of the painting, as it is plausible that Cosa Nostra, and in particular Badalamenti became interested in the Nativity only after the theft. Furthermore, the reconstruction of the *battery* of thieves given by Grado is perfectly consistent with the findings of the previous investigation, so it can be asserted that at least there are no doubts over the identity of the responsible, although they cannot be persecuted anymore as the prescription for such offence is expired. Last, it is highly plausible that the painting has ended in the hands of the Swiss collector, not only due to the known relation of Badalamenti and Switzerland, but especially due to the recognition by Grado, through some photographs, of the person who bought the canvas. Hence, in light of what it has been mentioned, it can be retained that Badalamenti, at the time head of the heads of Cosa Nostra, understanding the immense value of the theft painting, decided to recover the canvas and benefit from it. For this reason, he organized the selling of the painting to the Swiss collector and managed its transportation to Switzerland with a restricted group of trusted men.<sup>465</sup>

The Committee, in its final remarks, defined the story of the theft of Caravaggio as a “*simple story*”, quoting the famous novel of Leonardo Sciascia, published posthumously in 1989. Unfortunately, this is the simple story on the banality of evil and mafia power, the story of

---

<sup>464</sup> Ibid.

<sup>465</sup> Ibid.

how one of the masterpieces of one of the greatest painters of Italian history has been threatened as it was a carton of smuggled cigarettes or a batch of drug, transferred abroad in exchange of dirty money, benefiting unscrupulous foreign collectors. The investigative effort made by the Anti-Mafia Committee has transformed the Nativity of Caravaggio into a «*symbol of the dichotomy between State and mafia, a metaphor of the struggle between Good and Evil, also fought through the moral value of art and culture, and through the protection of the historical artistic heritage of the Nation, whose safeguarding constitute a fundamental principle of the Constitution of the Italian Republic*<sup>466</sup>». It is hence clear that the investigations conducted by the Committee can only represent a further step, a turning point, but not the last effort to find the Caravaggio. For this reason, the Committee has transferred all the proceeding of the investigations to the competent authorities, who are continuing the research of the painting, which must be kept going tenaciously.

Meanwhile in 2015, 46 years after the theft, a reproduction of the Nativity has been placed in the oratory to replace the original, filling only materially the void left by the canvas. Indeed, even if it is now possible to visit the oratory and imagine the magnificence of such work within the chapel, which is enriched of wonderful marbles and details, one cannot forget the damage and sufferance provided by the theft of the painting, as mentioned by the permanent guide of the oratory, which accompanies all the visitors into the discovery of this beautiful heritage. Therefore, it must be emphasized and praised the merit of the local community, who manages the oratory, of having somehow succeeded in valorizing a cultural site despite the absence of its protagonist. Indeed, the guides not only recount the history and significance of the works located in the oratory, but also narrate the damage suffered by the site and community, trying to sensitize the visitors on the trafficking. However, the choice of placing a copy in the void space left by the original canvas has given origin to an interesting debate on themes as originals and reproductions and on the choice between removal and museumization of artworks, in name of higher security standards or of the protection *in situ*, or again in name of preserving their value and the link between the artefact and the context. Furthermore, the placement of the reproduction also raises questions concerning what would happen if the original will be found. It seems reasonable to believe that the chosen option would be the museumization of the original painting, continuing to expose the reproduction in the oratory. In any case, it is clear that a similar choice would become a paradigm for future recovery of theft artefacts<sup>467</sup>.

Therefore, all we can do is hope to have the possibility, one day, to answer these questions, to see this masterpiece once again, to marvel at it and to study it. In the meantime, it will be necessary to never stop talking about the Nativity and raising awareness among individual; after all, we do not know what detail will bring us closer to the canvas. It is hence essential to keep the spotlights on the work of Caravaggio, lest someone recognize it one day.

---

<sup>466</sup> Ibid.

<sup>467</sup> Cevoli T., *Una Storia senza voce*, Liberarcheologia, 2021.

## 5.2. Giacomo Medici

This is the story of another protagonist of the illicit trafficking, in this instance, however, the subject at hand is not a victim, as the Nativity, but rather a perpetrator, namely Giacomo Medici. This name is not unknown to this research, as it was not unknown to General Conforti when he found Pasquale Camera scheme. Indeed, Carabinieri TPC already knew the art trafficker, and had even ‘surprised’ him with some visits to his house more than one time. The property, situated in Vulci, was adjacent to an archeological site, which has been compulsory purchased by the Italian State, after the advice of some archeologist<sup>468</sup>. However, at the moment of the discovery of Camera’s scheme, Carabinieri had no concrete proof of his involvement in the illicit trafficking of cultural good. Therefore, this is the story of how the greatest Italian trafficker has been discovered and condemned.

As mentioned, Medici was already known to Carabinieri TPC, nonetheless until the finding of Camera’s scheme there was no evidence to proceed against him. For this reason, such finding has been crucial, because it has opened the possibility to further delve into the investigations, starting from the possibility of tapping Medici’s phone. Hence, Carabinieri started to prepare the successive stages of the investigation, trying to identify among the contacts of Medici, who could bring them closer to him. The result of such research led to a man called Roberto Cilli, zone leader of the tomb raiders of the Naples area. However, before Carabinieri could ever proceed against him, the faith appeared again in this story and something unbelievable happened. Indeed, in the catalogue of that year, licet 1995, of Sotheby’s London was showcasing a photograph of a sarcophagus that was on the Carabinieri TPC list of stolen work. The sarcophagus had been theft from the church of San Saba, situated in Rome on the Aventino hill. Hence, the Carabinieri presented Sotheby’s the evidence that such piece had been theft, forcing them to provide the name of the seller, which was an enterprise called Edition Service, located in 7 avenue Krieg and run by Henri Albert Jacques. At this point Carabinieri TPC made a request to Swiss authority to inspection the address and approached Jacques, who declared to be just a fiduciary, the true owner of the company is Giacomo Medici. He also added that the company was actually based in the Freeport of Geneva, the address in possession of Carabinieri was just an accommodation address<sup>469</sup>. Some background on the Geneva Freeport is needed. The structure is a massive set of warehouses, just outside the city of Geneva, whereas objects of all kinds can be located without being taxed, and more importantly, without officially entering the Swiss borders. Again, Carabinieri TPC requested the Swiss authority the permission to proceed with an inspection of the place, and on 13 September 1995, they proceed with the raid. Edition Service warehouse was situated in corridor 17 room 23, when Carabinieri together with the Swiss authority entered, in a first instance could not see anything ‘special’, yet they would soon revise their stance. The ‘room’ is a huge a space of 240 m2 divided into three different

---

<sup>468</sup> Watson P., Todeschini C., *The Medici Conspiracy*, 2007, p.19.

<sup>469</sup> Ibid. p.20.

environments, one designated as showroom and used by Medici for his meeting with the buyers. When the Carabinieri started to open the cupboard, they rapidly changed their minds: each shelf of the cupboard was filled with any sort of antiquity, it was so impressive that they could not believe what they were looking to<sup>470</sup>. The inspection of Edition Service warehouse led the Carabinieri TPC to discover not only an infinite amount of theft and looted antiquities, but also photographs and polaroids, letters and invoices, notes and condition report, all document that would leave no doubts on the criminal activity enacted by Medici. In lights of what has been found in Geneva, the public prosecutor Paolo G. Ferri was assigned to the case, in order to prosecute Medici.

However, at this point of the facts, another incredible event happens: the investigation initiated by the Camera's scheme get to cross with another set of investigations, which had been originated by the figure of James Hodge. The latter was an archeologist that used to work at Sotheby's in the early 90s and who was accused by the auction house itself of theft and forgery. He had indeed looted a helmet. Anyway, Hodges, probably as form of defense, had stolen from the auction house also some document, that according to him would prove the unethical behavior of Sotheby's. Among those, there was a document which reported three names of Swiss citizens that during the years had consigned to the auction house an innumerable quantity of cultural objects. One of the names was Giacomo Medici. Moreover, Hodges was in possession of several documents related to the Edition Service and other similar enterprises, with their relatives 'legal beneficiaries'. It came out that Medici, throughout the 1980s, has sold to Sotheby's an indefinite number of antiquities, probably more than any other owner, Obviously, none of the antiquities had a declared provenance and they were all sold through the use of fake enterprises, first through the so-called Hydra Gallery, and then through the Edition Service<sup>471</sup>. It took a year from the entrance in the Freeport to connect the two investigations. Indeed, at this point the PM Ferri realized that if the documents leaked from Sotheby's could be matched with the archive of Medici, he would have the possibility to demonstrate beyond any reasonable doubt that Giacomo Medici was the central figure of the illicit trafficking of cultural objects in Italy. So, once the Carabinieri TPC had acquired the documents from the UK police, they transmitted all the relevant information to the Swiss authority, demanding a new inspection of the room 23. Request that will be accorded in the spring of 1997<sup>472</sup>.

This time the visit to the Freeport involved nineteen persons, including archeologists, Carabinieri, Swiss authorities, and Giacomo Medici itself, followed by his lawyer. Once in site, the team of archaeologists realized that in order to have no doubt on the status of Medici's antiquities, the examination of the artefacts must be carried out by the best experts that the Italian panorama could provide. It will be chosen a committee of three important scholars: Gilda Bartoloni, Giovanni Colonna and Fausto Zevi, who will analyze, catalogue

---

<sup>470</sup> Ibid.

<sup>471</sup> Watson P, Todeschini C., *The Medici Conspiracy*, 2007. p.23-31.

<sup>472</sup> Ibid.



and study the provenance of the more than 4.000 antiquities collected by Medici in the Freeport. The group of archeologists will carry out a massive work that will permit not only the reconstruction of the provenance of the objects, but also the unveiling of the strategies enacted by Medici to launder the provenance of the objects. Indeed, what immediately caught the attention of the archeologists, it was that a consistent number of pieces had a Sotheby's tag still attached. As it has been mentioned, Medici used to launder the objects through auction houses, whereas he would sell and buy the object with two different fake enterprises, obtaining with a single action both the laundering of the objects and the definition of a price on it<sup>473</sup>. Clearly, the work conducted by the team of archeologist constitutes the major evidence for the prosecution of Medici. Nonetheless, as in the case of the Nativity, such investigation will acquire a more important meaning. Indeed, in this case, it was the first time that archeologists had the chance to study such a large number of illicitly excavated objects in such depth manner. The study of Medici warehouse permitted to carry out an examination of illicit material that has never happened before, changing forever the world of archeology. The team of archeologists visited the warehouse 6 distinct times, in a period going between July 1997 and April 1999, for a total of twenty-three days in all. On July 2 they submitted their final report to the PM Ferri.<sup>474</sup>

Meanwhile the team of archeologists worked on the antiquities found in Medici's warehouse, PM Ferri charged Maurizio Pellegrini of conducting an attentive analysis of the document discerning both from the Hodge file and from the Geneva Freeport, as well as the papers found in Camera's apartment. It has already been mentioned the role played by Pellegrini in unveiling the triangulation scheme of the selling, nonetheless he discovered much more. Some photographs he analyzed, let him to discovery that Medici did not only traffic archeological objects, but he has also been able to acquire frescos coming, presumably, from the buried city of Pompei. Indeed, he discovered pictures showcasing the whole process, from the moment of their removal to the moment of their reconstruction. It was an 'horror story' whereas beautiful frescos of the roman age had been brutalized by the tomb raiders. Some of them, as Pellegrini noted, were not even properly reconstructed, but were reconstructed in separated part, in order to be more easily sold. Furthermore, Pellegrini also discovered that Medici also trafficked stolen objects, most of which were theft in churches or Villas. Indeed, among Medici's documents, he also found a copy of the Carabinieri list of stolen objects, whereas some pages had a mark on it. Among those, there was a page reporting the picture of a capitellum stolen from Villa Celimontana, in Rome, which was used by Medici as his desk holder.<sup>475</sup>

Gradually, the investigation revealed, as it is commonly said in Italy, *life death and miracles* of Giacomo Medici. Apart from the interesting acquisition of the authorities concerning the management of Medici and the forensic archeology, one of the most relevant, and interesting,

---

<sup>473</sup> Rai, Petrolino. *Ladri di Bellezza*. St. 2018, available on Raiplay.

<sup>474</sup> Watson P., Todeschini C., *The Medici Conspiracy*. 2007. p.52.

<sup>475</sup> Ibid. p.61-76.

information that emerged regards the destination of the antiquities trafficked by Medici, licet in most of the cases museums. Indeed, Medici is not a simple trafficker, but is the trafficker of museums. Even though he rarely engaged directly in affairs with museums, which usually were carried out by Hecht, museums were his main buyers. Undoubtedly, the ‘best client’ of the business duo was the Getty Museum, for the reason denominated ‘*Museum of tombaroli*’, to which the couple has sold thousands of artefacts, some of which have already been restituted to Italy. Anyway, among their clients there also figured the names of the Museum of Fine Art of Boston, the Metropolitan Museum of New York, the British Museum of London, the Staatliche Museum of Berlin, and the Miho Museum of Tokio<sup>476</sup>.

However, the investigations against Medici have also collected the testimonies of some figures involved in the trafficking, which had helped authorities in confirming their supposition on the case. In particular, yet before the first inspection of the Freeport, Carabinieri had the chance of hear Albert Jacques, who confirmed them the ownership of Edition Service by Medici. He also admitted being the founder of other enterprises, such as the Tecafin S.A. and the Xoilan Trader, which he started on behalf of Robert Symes, another late-stage intermediary like Hecht. Investigators also got the chance to auction some tomb raiders and middleman, as Walter Guarini, who explicated that Medici did not sell directly to museums, because Getty wanted the intermediation of Hecht. Guarini also mentioned a *memoria* wrote by Hecht, nonetheless he did not know the location or nature of such document<sup>477</sup>. Similarly, Frida Tchacos, who has been heard by Ferri in 2001 and 2002, confirmed both the fact that Hecht had wrote a memoir to be published after his death and the close relation in affair between Hecht and Medici<sup>478</sup>. Anyway, the most crucial interrogation has been the one conducted in the USA in 2001 by Ferri and two Conforti’s men versus Marion True, the Getty Museum curator accused of having acquired a consistent number of looted objects from Hecht and Symes. She confirmed that her predecessor bought some pieces from Medici, who she got to know for the first time in 1984. She also confirmed the praxis of Hecht and Medici of selling antiquities in fragments, which was aimed at creating a sort of ‘addition’ in the various museums, who would continue to buy the fragments to reconstruct the whole piece<sup>479</sup>.

Despite all the information that emerged, that would guarantee the possibility of persecuting Medici, Swiss authorities decided to leave this duty in the hands of Italian tribunals. As it has been mentioned, most of the individuals present in Camera’s scheme had not been persecuted due to the prescription of the offence, nonetheless, and luckily, this has not been the case of Giacomo Medici. The process against Medici started the 4<sup>th</sup> of December of 2003 at the court of Rome, he chose to proceed with the so-called abbreviate rite, which in case he was found guilty, would grant him the discount of one-third of the condemn. Notably, the

---

<sup>476</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, p.50-55.

<sup>477</sup> Watson P., Todeschini C., *The Medici Conspiracy*, 2007. p.146-151

<sup>478</sup> Ibid. p.191-193.

<sup>479</sup> Ibid. p.203-211.

facts aforementioned represented part of the accuse, nonetheless, Medici has also provided his 'very own' version of the story. According to Medici, the antiquities found in the Freeport all belonged to a Swiss collector, that then will become the Hydra Gallery, from which he bought them in order to donate them to the Italian state. He also stated that the objects sold through Sotheby's were not coming from Italy. Indeed, he incredibly stated that all the antiquities were originating from countries as Egypt, Syria, Greece and other non-italic regions, nonetheless he wanted to donate such objects to Italian museums, not to a Greek one. Contrarily to what he said, he later added that in the Freeport, at least 2.900 pieces were not valuable, but Italian. In other occasion, he said that the objects had been sent him for restoration and the polaroids were simple picture he took to study his works. Shortly saying, he provided a quite interesting and creative version, original but false.<sup>480</sup>

The last session of the process has been held on the 13 December of 2004, whereas the judge Muntoni convicted Medici to 10 years of imprisonment and 16.000 euro of criminal fee, for being responsible for the crimes of:

- Participation in an organized criminal group, committed until April 2002 (count 1);
- Continues and aggravated fencing (count 2);
- Illicit exportation of archeological objects (count 4).

Nonetheless, the Court acquitted Medici for the accuse of 'missed denounce' (count 3) as the fact has not constituted an offence. Adverse to this ruling, the defendant Medici and the Public Prosecutor appealed at the Court of Rome. On the 15<sup>th</sup> of July 2009, the Rome Court of Appeal released his final verdict. The Court dismissed the prosecution of Medici for the crimes of count 4 and confirmed the rest of the previous sentence, abbreviating the jail conviction to eight years. At this point, Medici decided to present an appeal to the Court of Cassation, justified according to Medici's lawyer by several vitious and law violation in relation to the proof presented. It was also argued that the judge failed to effectively demonstrate the participation of Medici into a criminal organization. However, the Court of Cassation declared inadmissible all the appeal presented by Medici, which had been found to be inconsistent and not relevant. The Court also specified that there is no duty upon the judge, in order to apply art.416 of the Penal Code, to reconstruct specifically the story of the organization or the single position of the members<sup>481</sup>.

Undoubtedly, the process to Giacomo Medici has become a cornerstone of the fight of illicit trafficking in correlation with organized criminal group. It has been the first time investigators had to face with the organized crime attribute of the trafficking, as it was the first time they encountered in the same place such a huge quantity of trafficked archeological artefacts. It is hence clear that the impact of this story is unquantifiable, as it brought light on a shadow that will hardly return as it was. The case not only revealed the strategies and schemes of traffickers, but also unveiled the role played by auction houses and museums in

---

<sup>480</sup> Ibid. p. 269-277.

<sup>481</sup> Corte di Cassazione Italiana, 2870/204 of 07/12/2011.

this phenomenon. While Sotheby's shutdown some of his archeology departments, the various museums involved started to retribute, not without some reluctance, part of the looted artefacts. In 2007 the Getty Museum, the best client of Medici and Hecht, signed an agreement with the Italian state for the restitution of 39 pieces, against the requested 52, that is in any case an irrisory percentage if we consider that Getty owns 44.000 artefacts without provenance which are retained to belong to Italy<sup>482</sup>.

To conclude, this is the story of the greatest Italian trafficker, the story of the man who deprived our heritage of some of the most magnificent existing antiquities, as the Euphronios krater. Indeed, the archeological artefacts trafficked by Medici included some of the finest object that have ever been produced by the humankind, which showcased an incommensurable historical, artistic, and intellectual value. The damage perpetrated by Medici is hence unmeasurable, he deprived antiquities and communities of their identity, he produced an infinite loss of knowledge, and we cannot estimate something that does not exist anymore. Yet, despite all the discoveries made by archeologists and historians, there are many more details about past civilizations that we do not know. Breaking the bridge between the antiquity and its context, as Medici has done, means destroying the possibility of discovery such details.

### 5.3. The men of Castelvetro: Gianfranco Becchina and Matteo Messina Denaro

This is the story of two distinct characters, the art trafficker Gianfranco Becchina and the mafioso Matteo Messina Denaro, which shared not only the same place of birth, but also the same passion for art. Gianfranco Becchina, who compared in Camera's scheme, is art dealer, or trafficker, based in Basel, Switzerland. He is from Castelvetro, in Sicily, a small city unfortunately well known for its criminal stories. It is indeed in Castelvetro that will be found in 1950 the body of Salvatore Giuliano, the famous bandit, apparently killed by the police, he was a person 'well informed'. It is again in Castelvetro that happens the known scandal that has followed the massive earthquake occurred in 1968 in the zone of Belice-Valley, whereas mafia creamed off most of the funds designed for the victims. Castelvetro is part of the reign of Cosa Nostra, and more in particular of the family of Messina Denaro. The family Messina Denaro has always been interested in art, somehow. Francesco "*don Ciccio*", the father of Matteo, actually initiated his career as a tomb raider and is also responsible for the theft of the Efebo of Selinunte. His 'passion' for archeology will never stop, he will indeed assume habitually various tomb raiders to depredate the site of Selinunte<sup>483</sup>. Don Ciccio will end up passing this passion down to his son, who would then write on a famous *pizzino* «*with the traffic of antiquities we support the family*»<sup>484</sup>.

---

<sup>482</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, 2021. p.181.

<sup>483</sup> Rizzo Carlotta, *Don Ciccio e l'Efebo di Selinunte*, in Journal of Cultural Heritage Crimes, 11/08/2023. Last seen on 30/01/24.

<sup>484</sup> *Matteo Messina Denaro e le opere d'arte*. In tp24, 28/01/23. Last seen on 30/01/24.

However, let's return to Becchina. In 1995, following the raid against Giacomo Medici, Becchina decided to return back to Castelvetro, while his wife Rosie, remained in Basel. Clearly, following the facts of Camera's paper, the Carabinieri TPC started monitoring the phone of Becchina, who revealed that not only his wife was visiting Sicily quite often, but also that Becchina business in Basel was still open. Hence, Carabinieri TPC and Ferri decided to have Rosie Becchina followed while waiting to conduct the raid in the warehouse that Becchina mentioned to have. Unexpectedly, she brought them to two other warehouses, one in the Freeport of Basel and the other outside, which surprisingly were both registered to the name of a well-known mafioso. In May 2002 it took place the raid in the three warehouses of Becchina in Basel: Carabinieri will find approximately 6.000 cultural objects, 13.000 documents and 8.000 photographs. It must be noted, as PM Ferri underlined, that compared to Medici, Becchina was less selective and meticulous than Medici. The documents found revealed that Becchina used to sell to Sotheby's and Christie's in London and that in some cases he sold the pieces through his sister Anna Spinelli. Following the raid, thanks to the phone taping Carabinieri and Ferri discovered fourth warehouse, that will be found in 2005, whose content were mainly documents. Among those there were some elements suggesting a relation of Becchina with some museums, as the Boston Museum of Fine Arts, the Cleveland Museums, the Louvre and the Metropolitan Museum.<sup>485</sup>

However, after the first raid to the three warehouse, Rosie Becchina refused to collaborate with the authorities, and she was held in prison. She immediately refers to Mario Roberty, the lawyer of Symes and Tchacos, who contacted Becchina to inform him that his wife had been kept. Becchina hence decided to immediately fly to Basel, but he never made it to cross the Switzerland borders. Indeed, at the airport of Milan, where he had the change of plane, he was arrested and immediately taken to Rome. What is interesting to note is that immediately after being caught, Becchina started to state that he was mad, and so he could not be kept neither in jail or being interviewed. Nonetheless, after being visited by a psychiatric, Becchina was declared sane and convicted to jail. He has been held for six months, at the end of which he was automatically released<sup>486</sup>.

Returned back home in Castelvetro, waiting for his trial, Becchina will declare that his activity as art dealer is over and will retire to his private life. Indeed, Becchina in Sicily has enterprises, lands and properties, among which figures the magnificent palace of Princeps Tagliavia Aragona Pignatelli Cortes, from the 17<sup>th</sup> century. He also owns a land in Belice-Valley whereas he produces olive oil since the 1980s. Meanwhile, rumors about a presumed relationship between Becchina and Matteo Messina Denaro start to spread. Indeed, it was rumored that the tomb raiders who supplied Becchina were on the payroll of the family of Messina Denaro, first of don Ciccio, and then of Matteo. It was also rumored that Becchina, as revealed by the justice collaborator Concetto Mariano, took part in the preparation of the theft of the Dancing Satyrus, ordained by Matteo Messina Denaro, that fortunately never

---

<sup>485</sup> Watson P., Todeschini C., *The Medici Conspiracy*, 2007. p.290-294.

<sup>486</sup> Ibid. p. 296-299.

happened<sup>487</sup>. On this matter, Becchina in 2009 released an interview where he stated that «*No, Mafia really no. The fact that can exist even just some suspects on me or on an involvement of mine in any plan attributed to Matteo Messina Denaro, it something that deeply hurts me and it's totally unfounded.*»<sup>488</sup> ».

In 2011, the judge of the preliminary ruling of the Court of Rome will seize the documents and antiquities found in Becchina's warehouse and indict him with the accuse of participation in an organized criminal group (art.416 Penal Code). Nevertheless, with considerable regret, the judge is forced to realize that the accuses against Becchina for illicit exportation, illicit excavations and fencing of antiquities and cultural objects have now expired due to prescription. At this point, Becchina decided to respond, and appeals to the Court of Cassation, requesting his antiquities and artefacts back. In 2012, the Court of Cassation rejects his appeal and confirms the restitution to the Italian state of the seized objects and documents. In 2015, fourteen years after the opening of the investigations, the case is close, with the official confiscation of Becchina's antiquities, mostly from southern Italy, which are evaluated over 50 million of euro. In the same year, on the 12<sup>th</sup> of January L'Espresso and Repubblica published a journalistic inquiry referring to a *fil rouge* that seems to link Matteo Messina Denaro and antiquarians, businessman curators of the world's most important museums. Becchina responded with a defamation lawsuit, which will be listened to. On August 29<sup>th</sup>, 2016, the journalist Valeria Ferrante, author of the inquiry, will be condemned for defamation.<sup>489</sup>

Meanwhile, magistrates will continue to investigate the connection between politics, business and mafia, which moves around the shadow of at that time fugitive Matteo Messina Denaro. In November 2015, Giuseppe Grigoli, owner of an important chain of supermarkets located in the province of Trapani, accused of being the treasury man of Messina Denaro, will declare that between 1999 and 2006 Becchina used to give him money to be delivered, through his brother-in-law Vincenzo Panicola, to the Castelvetro boss. In his words «*Gianfranco Becchina had to give this thing and so they need to end in the hands of Panicola, for then arrive to Matteo Messina Denaro*». On November 15<sup>th</sup> of 2017, the Anti-Mafia Investigative Directorate of Trapani seizes the entire movable and company assets related to Becchina, evaluated more than 10 million of euro. Surprisingly, when Carabinieri arrived to one of the properties of Becchina, licet Spinelli Palace, the building was completely burning. One year later, in summer 2018, Guardia di Finanza of Palermo and Carabinieri Ros proceed with the seizure of the sixty-million patrimony of Giovanni Savalle, business partner of Becchina in the Atlas Cementi s.r.l. company, who was indeed suspected of being related to Messina Denaro.<sup>490</sup>

---

<sup>487</sup> Messina Denaro voleva rubare il Satiro danzante: la passione della mafia per i reperti archeologici. In Blogsicilia.it, 15/11/2017. Last seen 30/01/24.

<sup>488</sup> Isman Fabio, *Io, complice dei boss per rubare il satiro? Assurdo*, Il Messaggero, 17/08/2009.

<sup>489</sup> Cevoli T., Una storia senza Voce, Liberarcheologia, 2021. p.45-47.

<sup>490</sup> Ibid. p.48-49.

Some months later, in October 2018, the accuses prompted against Gianfranco Becchina for participation in an organized criminal group, as in art. 416-bis, were dismissed by the judge of the Court of Palermo, on advice of the Prosecutor of the district Anti-Mafia, Carlo Marzella. On the matter Becchina, who always declared that he had never known Matteo Messina Denaro, commented satisfied: «*A necessary verdict, determined by the scrutiny with which the judiciary authority evaluated each of the investigative arguments, based on too many groundless rumors.*<sup>491</sup> ». In October 2021, a sentence of the Court of Trapani had reaffirmed what stated by the Court of Palermo and dismissed the case. More recently, in 2022, Gianfranco Becchina sent a letter to a local magazine of Castelvetrano, where he explains once again his position in the case. In a passage of the letter, Becchina states «*It just so happens that nothing and no one, apart from the usual rural rumors, associates my art dealer activity with Sicily. In the extensive documentation fully reviewed in Switzerland, copied and appraised by the experts of the Rome Superintendency, no artifact, photo, or sales invoice has been identified that could be linked typologically to Sicily and, in particular, to Selinunte. This appraisal, that costed a considerable sum to the State, has been able to dispel the preconceived investigative hypothesis that implicated me as associated with Messina Denaro in the trade of ancient art.*<sup>492</sup> ».

In January 2023, Matteo Messina Denaro, after more than 30 years of being fugitive, has been arrested. He died in September 2023, without answering a single question of his correlation with Gianfranco Becchina, or on any other issue. Meanwhile, Becchina is still alive, he is now 85 years old, and despite being deprived of his patrimony, at least for the moment, he avoided being jailed. At the moment, only authorities know if this is the true epilogue of the story or if there is still more to be written. What we can say is that there are many details that remain to be explored, such as the name of the *mafioso* to whom the warehouses were registered, never disclosed by the authorities, which remains a significant unknown. It seems indeed difficult to imagine that a business extensive as the one managed by Becchina could have escaped the control of one of the most important and powerful bosses of Cosa Nostra. Yet, until more conclusive evidence is brought forward, we are left with this uncertainty.

#### 5.4. The “Artwork” Negotiations

The following story is, for certain aspects, the most peculiar that will be presented by this thesis. Indeed, it is not a story about the greatest trafficker or the greatest theft but is the narration of how various mafiosi and mafia groups blackmailed the Italian state by threatening and seizing its cultural heritage, in the framework of one of the darkest periods

---

<sup>491</sup> Capizzi Francesca, *Decade l'accusa di associazione mafiosa nei confronti di Gianfranco Becchina. Chiesta l'archiviazione*, Castelvetranonews, 21/10/2018. Last seen 30/01/2024.

<sup>492</sup> Becchina Gianfranco, *Dopo la confisca del patrimonio Becchina dice la sua: “Sentenze accertano nessun commercio di reperti selinuntini e liceità mia attività in Svizzera”*, Castelvetrano News, 03/06/2022. Last seen 30/01/24.

faced by the Republic, licet the fight so-called “*Season of the car bombs*” that will lead to the so-called State-Mafia negotiation. In this period, that is comprised between the late 80s and the 90s, Italy is devastated by the criminal actions of various criminal groups as Cosa Nostra, ‘Ndrangheta, Camorra, Mafia del Brenta, Banda della Magliana and other similar association. The reason behind the terroristic attack executed by those groups lies in the introduction of the art. 41-bis<sup>493</sup>, introduced in 1986, which has introduced an ad hoc jail regime for the individuals convicted for art.416-bis, known as *carcere duro* (hard prison). If initially the attach and the other criminal actions, aimed at blackmailing the Italian state for the abolition of art.41-bis, targeted civilians and authorities, from the 90s onwards, these groups began to target cultural heritage asset.

The starting point of this story, hence, is the theft executed by Mafia del Brenta in 1992 at the Estense Gallery of Modena when, as it has been aforementioned, five masterpieces had been stolen. The canvas of Velasquez has been rescued through Felice Maniero, who exchanged information concerning the ubication of the painting for penalties benefits in 1993. In the same year, two other canvases will be recovered, while the last two will be recovered only in 1995. But what has been the fate of the canvases in the years far from the museum? An answer to this has been given by the PM Roberto Tartaglia in 2018, in the framework of the trial of first grade regarding the alleged State-Mafia negotiations<sup>494</sup>. According to PM Tartaglia «*there was a second negotiation channel, which has been known in history, for simplification, as the ‘second negotiation’ or ‘the negotiation of artworks’*. *It represents a negotiation channel that is absolutely synchronous, perfectly coinciding with the temporal stages and events of the main negotiation.*»<sup>495</sup> ». Indeed, he explicated that the justice collaborator Paolo Bellini, who has been part of ‘Ndrangheta, has handed to the boss Antonino Gioè, who died in 1993, an envelope containing precisely the pictures of the painting stolen from the Estense Gallery and expressed the possibility of obtaining penalties benefits and assistance in exchange for the recovery of these artworks. Subsequently, according to what Tartaglia referred to have been told by Bellini, Gioè gave the latter a note with five names (Bernardo Brusca, Luciano Ligio, Pippo Calò, Giuseppe Giacomo and Giovan Battista Pullarà), implying that the recovery of the paintings should imply the accordance of legal benefits for those individuals. In the same circumstance, Bellini referred that Gioè told him that they could not recover the Estense Gallery’s painting but however they could recover other important artworks, through Matteo Messina Denaro, in exchange of some penitentiary benefit for the names on the note. Nonetheless, Bellini revealed to Tartaglia that the negotiation stopped in December 1992, because Gioè had not anymore the

---

<sup>493</sup> Law 10 October 1986, n. 633.

<sup>494</sup> The trial for the State-Mafia Negotiation started in 1999 and ended in 2021 in the bunker room of the Court of Rome.

<sup>495</sup> Baldo Lorenzo, Pettinati Aaron, *Stato-mafia, Bellini e la seconda trattativa*, Antimafia 2000, 12/01/2018. Last seen 01/02/24.



interest to continue, as he was negotiating with the ‘highest level of the Government’. Hence the recovery of the painting has not been directly linked to the intervention of the mafia<sup>496</sup>.

Various justice collaborators have confirmed the narration given by Bellini and reported by the PM Tartaglia, among those also Mario Santo di Matteo and La Barbera. According to Di Matteo when Bellini and Gioè met for the second time, it was present another collaborator, who was hiding upstairs to hear the meeting. Di Matteo also stated that he has been personally told by Gioè that Bellini was a powerful figure with relations with the intelligence services and claimed that, in exchange for these paintings, he could secure benefits for certain mafia prisoners. Similarly in 2019, La Barbera, who was present during one of those meetings, confirmed the exchange of the envelope containing the pictures of the stolen paintings and the note of Gioè with the five names. He also referred to have been present when it was discussed the possibility of obtaining penitentiary benefits for the names on the note. Furthermore, La Barbera has added that some individuals, who were present during the discussion of the exchange, later approached Toto Riina, Biondino and Messina Denaro, asking how they could proceed and where they could find the artworks. In particular, La Barbera stated that they immediately visited Matteo Messina Denaro, who was considered the art expert of Cosa Nostra, to show him the pictures of Modena’s paintings and to ask him if Cosa Nostra could do something to recover them.<sup>497</sup>

Another key version has been given by the justice collaborator Giovanni Brusca. The latter, who was arrested in 1996, is one of the authors of the massacre of Capaci. Brusca referred that once he has assisted, while hiding, at one of those meetings, mentioning that Riina personally authorized him to continue the contact. In particular, he affirmed that he has seen the envelope with the pictures and, after Riina added the name on the list, he was authorized to proceed. Brusca also added that Riina, after having informed him of the irrelevance of the proposal in the *papello*<sup>498</sup>, has signaled him to proceed with the second channel of negotiation. Indeed, in that moment, the first channel of negotiation was in a blind point, and Brusca referred to have been told by Riina to “*keep going*”. Brusca also mentioned that Riina added some more names to the one already mentioned in note, namely Giuseppe Giacomo Gambino and Ligio. Furthermore, Brusca explained that in these meetings where Riina authorized him to proceed, it emerged that some paintings were offered by the clan of Porta Nuova, which explains the presence of Pippo Calò in the note. The others were supposed to be given by Messina Denaro, who had organized a meeting with another figure,

---

<sup>496</sup> Leonelli Giuseppe, *Dipinti rapinati nel '92 a Modena, per i PM furono oggetto di trattativa con la mafia*. La Pressa, 24/03/2018, last seen 31/01/2024.

<sup>497</sup> Ibid.

<sup>498</sup> The *papello* is the document containing the request made by Toto Riina, which has been consigned to the Carabinieri by Massimo Ciancimino in July 1992, in the framework of the main channel of negotiation. The requests included: The review of the sentence of the ‘maxiprocesso’; the withdrawal of art.41-bis; Review of the law ‘Rognoni-La Torre; review of the law on Mafia Penitent; the recognition of benefits to dissociated Red Brigades for mafia convicts; house arrest after the age of 70; imprisonment near family house; no censorship for mails of family members; preventive measures of seizure not admissible; arrest only if caught in *flagrante delicto*; removal of fuel taxes as it happen in Aosta.

expert of art, in order to make an ‘inventory’ of what Cosa Nostra could offer in the negotiations. Brusca also précised that he felt the exigence of keeping Riina constantly updated on the evolution of the second channel of negotiation, as he was afraid that the latter could affect the outcome of the main negotiation. On this matter, Brusca confirmed that after the summer of 1992, when the first channel was revived, Riina asked to close the second channel of negotiations, because it was no longer needed.<sup>499</sup>

Effectively, this parallel mechanism of negotiations, whereas when one was stopped the other one proceed and vice versa, has been also described and confirmed in 2018 by Tartaglia itself. As he noted «*when the negotiation with Vito Ciancimino goes on, the one of the artworks get stopped, while when the main channel of negotiation slowdowns - and Riina says ‘it would be needed another theft’ – the second negotiation continues, until the conclusion, which coincides with the conclusion of the other.*<sup>500</sup> ». As mentioned, the channel on negotiation stopped after the summer of 1992. The negotiation of artwork will never become something of concrete, concluding without the recovery of any painting. However, despite the closing of the latter, cultural heritage remained involved also in the subsequent events. Indeed, the 27<sup>th</sup> of May 1993, a car bomb, situated in Georgofili Street in Florence by Cosa Nostra, exploded provoking the death of five person, more than forty injuries and the damage of the buildings of Palazzo Vecchio, Pulci Tower and the Galley of Uffizi, damaging 173 paintings. The reason of the attack lies in the just happened arrest of Riina, and the attack seems to be the mafia response to the arrest of his boss. Some months later, the 27<sup>th</sup> of July 1993 in Milan, another car bomb exploded provoking the death of five person, twelve injuries and the damaging of the Villa Reale of Milan, and in particular the Gallery of Modern Art and the part of the building dedicated to contemporary art. In the same night, some kilometers more to the south, in Rome, Cosa Nostra provoked the explosion of other two car bombs: one in front of the facade of the Basilica of San Giovanni in Laterano, and the other just outside the church of San Giorgio al Velabro. The first explosion provoked damages on the façade of the Basilica and to its gate, while the second one damaged the wall structures of the church and adjacent buildings.<sup>501</sup>

Even in this case, it will be the justice collaborator La Bernarda who will shed lights on a series of attach that clearly targeted our cultural heritage. Indeed, La Bernarda referred that during one of those meetings between Gioè and Bellini, the latter commented «*but what are you doing here in Sicily? Who is carrying out such activities? Those things do not lead anywhere: magistrates, carabinieri... Try with monuments and you will see how they will wake up in the morning. Try with the church that is the one who rules.* ». According to La Barbera, Bellini also argued «*if one morning Italy wakes up without the Pisa Tower, imagine*

---

<sup>499</sup> Ibid.

<sup>500</sup> Baldo L., Pettinati A., *Stato-mafia, Bellini e la seconda trattativa*, Antimafia 2000, 12/01/2018. Last seen 01/02/24.

<sup>501</sup> Franchi Elena, *Colpire lo Stato attraverso I beni culturali: gli attentati del 1993*, La ricerca, Loesher.it, 25/05/2021. Last seen 01/01/2024.

*if you cannot go and negotiate with the State.* »<sup>502</sup>. It seems hence that it was Bellini who suggested to Cosa Nostra to attach the cultural heritage in order to negotiate with the state. Nonetheless, in the version released by Bellini and reported by PM Tartaglia in 2018, it was Gioè who made the comment concerning the possibility of attack the Tower of Pisa. However, whether the suggestion arrived from Bellini or not, it was Cosa Nostra who decided the victims of the attacks. It must be mentioned in this framework the testimony of Mariano Concetto, who referred that Messina Denaro chose the targets of the attacks of 1993 by scrolling some books of art history<sup>503</sup>. Furthermore, the justice collaborator Salvatore Annacondia, affiliated to Cosa Nostra, referred already in 1993, that he got to know, while in jail, that Cosa Nostra was preparing a plan in order to blackmail the State on art. 41-bis through the destruction of artistic monuments<sup>504</sup>.

This case, which only partially and indirectly relates to the trafficking of cultural goods, confirms that criminal groups, and more in particular mafia organizations, have understood the incommensurable value that cultural goods represent for the State, and also for individuals. Quoting the words of the archaeologist Fabio Maniscalco *«organized crime itself has realized how attacking cultural heritage can represent a ‘paying target’ thanks to the facility of execution and the significant media attention that such an endeavor arouses.*<sup>505</sup> ». Furthermore, this case strengthens the demonstration of the interests that such criminal organization can have with respect to cultural good and its trafficking. We cannot forget Riina words, when the negotiations were lagging, he simply suggested to theft some more artefacts. It is hence clear that when cultural objects end in the hands of such criminal groups, they can be exploited by those groups in different manner. In this case, cultural objects became the target of a ‘war’, that was being conducted by the Mafia against the State. To conclude, the one that has been described is not only the story of how our heritage has become a victim, as judges or magistrate, of the Mafia, but above all, it is the story of how the Mafia has recognized the intrinsic and intangible value of cultural assets, far more powerful than their economic value, which has always been the subject of interest for these criminal groups.

### 5.5. The operation “Orso Bruno” and “Metallica”

The last case that will be mentioned by this research is useful to complete the described framework concerning the involvement of criminal, and in particular, mafia organization within the trafficking of cultural objects. The following story brings novelty on all aspects

---

<sup>502</sup> Audicion of Gioacchino La Barbera, 18/06/2019. Min. 25-31. <https://www.youtube.com/watch?v=m4mniyUc3KY&list=LL&index=7&t=2490s>

<sup>503</sup> Giacalone Rino, *Mafia, arte e il potere di Messina Denaro*, in “AlqamaH”, 16/11/2017. Last seen 01/02/2024.

<sup>504</sup> Baldo L., Pettinari B., *Stato-mafia, Bellini e la ‘seconda trattativa’*, in “Antimafiaduemila”, 12/01/2018.

<sup>505</sup> Maniscalco Fabio, *La tutela dei beni culturali in Italia*, Napoli, 2002. p.20-21.

mentioned until now, as it introduces a new organization, licet 'Ndrangheta, whom had been using the illicit trafficking of cultural object for a totally different purpose compared to the precedent cases, licet money laundering. This is the story which confirms not only that all kinds of mafia organizations are interested in the illicit trafficking of cultural objects, but also that the purposes that such goods serve for this organization are infinite.

The operations Codenamed "*Orso Bruno*" and "*Metallica*" both conducted by Italian finance authorities, licet Guardia di Finanza, have both seen as target the mafia group 'Ndrangheta, which has been involved in the trafficking of cultural objects only and specifically for laundering the proceeds of the traffic of drugs. In particular, the operation Metallica is the result of the investigative efforts made by the Antimafia Investigative Direction of Milan who, in 2008, seized jointly with the Spanish authorities the more than 70 paintings and arrested 24 individuals for participation in a mafia-type criminal organization (art. 416-bis). For what concerns the paintings, twenty-one have been seized in Italy, while the rest has been found in Spain, among those the investigators found a canvas of Modigliani, evaluated millions of euro, that was supposed to be re-sold, for laundering purposes, for 8 million of euro. According to what has emerged during the investigation, the 'Ndrangheta organization bought the seized painting in order to launder the proceeds of the traffic of drugs, and in particular the traffic of cocaine, primary activity of the organization together with usury and extortion activities. The entire group of the individuals persecuted was headed by Giuseppe "*Pepe*" Onorato and the headquarter of their activities was located in a bar of Milan, in Andrea Maria Amperè Street, whereas the boss would dispose of an 'office' to receive victims, client and potential business partner<sup>506</sup>. The organization showcased a strong and hierarchical fragmentation of the roles; indeed, it was specifically Sergio Landonio, trustable man of 'Ndrangheta who managed the financial and artistic aspects of the traffic of drugs. Landonio, together with his son, managed the whole process of laundering for the organization: they would buy and resell through the major auction houses and Italian galleries paintings and statues; hence one laundered the money would have been re-invested in the illicit activities carried out by the criminal group. For his role in the chain Landonio has been convicted to 12 years of jail, and his son Gianluca, who also was in charge of the management of laundering process, has been arrested in 2016 in Spain, whereas he was fugitive<sup>507</sup>.

Similarly, the operation Orso Bruno targeted the 'Ndrangheta boss Beniamino "*Tito*" Zappia, important drug trafficker of the south of Italy. In 2009, the Investigative Direction of Antimafia of Rome seized him his whole patrimony, included more than 300 paintings of incommensurable value. Indeed, the authorities of Rome had proof to believe that Zappia was the referent of important families, belonging to Cosa Nostra, as the Bonanno of New York and the Cuntrera-Caruana of Toronto. The investigation, conducted jointly by the

---

<sup>506</sup> Ceschi G., *La criminalità organizzata nel traffico illecito di opere d'arte*, 2019. p.29

<sup>507</sup> *Operazione della Dia contro la Ndrangheta da Milano a Reggio*, in "Nuova Cosenza", 08/07/2008. Last seen on 30/01/24.

Antimafia Investigative Direction of Rome and Canada's authorities had targeted a transnational criminal organization headed by the mafia family of Rizzuto, whose city of origin is Cattolica Eraclea, historically linked to the mafia family of Cuntrera-Caruana and Bonanno<sup>508</sup>. Center of the investigation proceeding has been the hypothesis of an activity of money laundering managed by the company Made in Italy, based in Rome close to Palazzo Chigi, who was supposed to launder 600 million of euro originating from the trafficking of drugs. The treasure of Zappia, which included works of Guidi, Sironi, Levis, Grossi, Guttuso, Morandi, Fattori, De Chirico and Dali but also antiquities and reliquiae, has been estimated to be evaluated at least 10 million of euro<sup>509</sup>. In 2016, the seizure becomes official, despite the acquittal of the defendant, his patrimony remains under the protection of the Italian state. Zappia is hence left with his liberty but deprived of his private museum composed of 345 paintings and more than 200 statues.

The operation Metallica and Orso Bruno undeniably have the merit of having unveiled the umpteenth mafia organization participating in the trafficking of cultural goods. If the cases mentioned before had highlighted the direct interest that mafia and criminal groups have in respect of the trafficking of cultural objects, which provides high profit and relatively low risk; this case has highlighted the marginal interests that such group may have. In this case, cultural objects are not the target of the activities, and not even a form of guaranty, as in the case of Van Gogh paintings and Camorra, it only represents an instrument to launder the proceeds of another criminal activity, without any additional particular interest for the objects itself. If at least in the precedent case, the interest of such groups invoked a minimum comprehension of the value of the cultural objects, in this case cultural artefact represent a mere tool to foster the traffic of drugs. Thus, this is the story of how cultural heritage from protagonist of the traffic can be transformed into a marginal actor of another illicit activity, further diminishing its value.

---

<sup>508</sup> Castaldo Lelio, Processo "Orso bruno", tutti assolti: per Spagnolo e gli altri fine di un incubo, in "Sicilia24ore", 25/11/2012.

<sup>509</sup> Galullo Roberto, I boss che amano l'arte: collezionisti e pittori fai da te. 18/05/2012. Last seen 31/01/24. <https://st.ilsole24ore.com/art/notizie/2012-05-18/sacro-fuoco-boss-larte-132105.shtml?uid=Ab5CNTeF>

## Conclusions

Just as the painter who, once finished painting the canvas, steps back and admires it from afar, in its entirety, it is now the moment for this research to do the same. The analysis conducted by this research was aimed at unveiling the correlation, in the Italian case, between illicit trafficking of cultural properties and organized criminal groups. The former, as highlighted by this research is a complex phenomenon, which not only regard the mere illicit circulation of cultural objects, but also encompasses a wider set of criminal activities, that have the scope of facilitating and favoring the trafficking itself. Indeed, as the cases mentioned revealed, such criminal behaviors also include the laundering of the illicit provenance, in most of the cases through auction houses or façade enterprises established by the traffickers itself, as in the case of Medici; the management and organization of illicit excavation, conducted by groups of tomb raiders, which in some cases are even paid alike any other normal job, as it has been discovered in the case of Becchina; or the falsification of official documents, as it happened in the case of the Euphonious krater. It is hence clear that the trafficking phenomenon embeds a major complexity compared to the mere illicit circulation of cultural objects, to the extent that part of the literature has even argued that the trafficking itself constitute a form organized crime, due to its complex criminal nature<sup>510</sup>.

Nonetheless, this research has excluded this approach, arguing that such complexity of the phenomenon is given by the wide margin of participation of organized criminal groups, which are the major responsible of it. As mentioned in chapter IV, the activities that connotes the illicit trafficking require an organized structure, characterized by a strong fragmentation of the roles, hence it can be argued that the illicit trafficking can only be carried out by criminal organizations, which can dispose of the instruments and means required for the positive outcome of the trafficking. In fact, criminal groups can dispose of network of intermediaries and receivers, as well as front man and corrupted officials, have knowledge on the relevant illicit routes and possible reseller, and held consistent amount of money, which can be invested in more functional tools for the excavation or the restoration pre-sale of the object. Those instruments are necessary to carry on the trafficking, which can be seen as an organized enterprise managed by organized criminal groups that requires continuity. Further, the complexity is also given by the different purposes that the trafficking can serve for those criminal groups, which include, apart from the mere profit gaining, money laundering, tax evasion, form of non-traceable investment, form of guarantee for criminal affairs, and eventual coin of exchange. Those scopes only contribute to enrich even more the criminal behaviors of the trafficking. On this point, it must be noted that the Annual reports of Carabinieri TPC signal a constant trend for what concerns the persecution of

---

<sup>510</sup> Mackenzie S., *The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organized Crime in the International Antiquities Market*. In S. Manacorda & D. Chappell (A c. Di), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* Springer, 2011. p. 69–85.

organized criminal groups dedicated to the trafficking of cultural property<sup>511</sup>, underlying that the participation of such groups more than the exception represents the praxis.

For what concern the type of criminal organizations involved in the Italian illicit trafficking, chapter IV of this research has identified the participation of two main type of groups, licet criminal (art.416 p.c.) and mafia-type organizations (art.416-bis p.c.), with a shadow area in between. The former are usually criminal organization constituted with the precise scope of engaging within the trafficking of cultural objects, which hence represent the primary and only activity of the organization. On the contrary, the latter are pre-existing organizations, which can also participate in the trafficking of cultural objects but are mainly dedicated to other illicit activities. The major difference among the two types of organization then lies in the fact that, while criminal organizations, as the one unveiled by Camera's scheme, manage the trafficking in its entirety, mafia organization can both participate just in some particular phases, as the case of the two Van Gogh found in the hands of Camorra, or in the whole chain of the trafficking, as in the case of Messina Denaro. Nonetheless, as this research has highlighted, there exist a shadowed area in between the two, which is given by the fact that there exist criminal organizations, which despite not being identified as art. 416-bis of the penal Code, actually showcase mafia attributes. It is precisely due to the recognition of this shadowed area that starting from the beginning of the 21st century academic and institutional literature started to use the term Archeomafia to refer to criminal organizations that, showcasing mafia attributes, engaged in the illicit trafficking of cultural objects.

However, as this research has pointed out, there it still exists some reticence to strongly recognize the involvement of criminal organization within the trafficking, as well as the phenomenon of trafficking itself. In this context, this research cannot fail to repeat the findings of a research conducted by European Union, mentioned in chapter III, that has unveiled that a considerable part of the art market does not perceive illicit trafficking *as a particular issue*<sup>512</sup>. Nonetheless, priorly from who is the trafficker, the existence of this phenomenon, with the consequence it embeds are undeniable. Indeed, if there may be some reticence in firmly establish who is the fueler of this phenomenon, the consequences of such illicit activity have been recognized yet hundreds of years before the adoption of the firsts document addressing the topic. As reported by chapter III, already in 1796, the writer Qautrèmere de Quincy strongly opposed to the depletion of Italian cultural heritage from the Napoleonic forces referring to the incommensurable consequences that the removal of Italian masterpiece from their place of belonging would cause to the understanding of the value of the object and to its community. As a matter of fact, the consequences of the illicit removal, transfer, and circulation of cultural object, which impact on the social, cultural and economic sphere of nations and community, have always been recognized by international community

---

<sup>511</sup> Comando Carabinieri Tutela Patrimonio Culturale, *Attività operativa*, 2022-2016.

<sup>512</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods in Europe – Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade* – Final report, Publications Office, 2019.

and institutions, as well as by the academic literature. What has been less comprehended it is the wider context in through which the illicit trade is framed.

Evidence of this can be found in the legislative document and their evolution, which has been addressed by chapter II of this thesis. In particular, the UNESCO 1970 Convention, that represents one of the oldest and surely the most ratified instrument among the mentioned document, lies its foundation in the recognition that the illicit trade of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin<sup>513</sup>. Despite the Convention prohibits the illicit import, export and transfer of cultural property, it fails to persecute such offences and the one, as showcased by these thesis, may be linked to the latter, introducing only the obligations for State Parties to favor the return and the restitution of illicitly traded cultural property and to established preventive mechanism as exports certificates. Similarly, subsequent documents as the EU regulation of 1993 and the UNIDROIT Convention of 1995, have better addressed the restitution procedures, introducing more requirement for the principles of good faith and due diligence, but yet have failed to deal with the wider phenomenon of the trafficking and, consequently, with its criminal persecution. Nonetheless, to pose in favor of this failure, it must be recognized, as evidenced by this work, that the great cases that disclosed the phenomenon of the trafficking have started to being unveiled only in the late 90s. Indeed, the finding of Camera's scheme which has led to dismantling one of the greatest criminal organizations dedicated to the illicit trafficking of cultural objects only happened in 1995, the same year in which it was adopted the UNIDROIT convention.

Therefore, is not surprising that starting from the 2000s it has been registered a better comprehension of the phenomenon. As a matter of fact, yet in 2000 the Palermo Convention addressed the identification and criminalization of transnational organized crime, extending its provisions also to the criminal groups dedicated to the trafficking of cultural property. Nonetheless, it will be only in the 2017 that the international community will directly address the illicit trafficking of cultural property phenomenon, in the Nicosia Convention. The latter has addressed for the first time the criminalization of the illicit trafficking of cultural objects, introducing rules aimed at sanctioning the various phases that compose the phenomenon and has recognized the correlation between criminal cultural offences and organized criminal group.<sup>514</sup> Indeed, the Nicosia Convention has specifically introduced, as aggravating circumstance for the crimes of the document, the criminalization of the commission of such activities in the framework of organized criminal group<sup>515</sup>. In fact, the 2017 Convention has been the product of the efforts made by other international organizations from the 2000, as

---

<sup>513</sup> Art. 2, 1970 UNESCO Convention.

<sup>514</sup> Chechi A., *Fighting and preventing offences relating to cultural property: existing rules and proposals for functioning regulatory systems*, 2019. p.7.

<sup>515</sup> Art. 15, *Convention on the Offences relating to Cultural Property*, Council of Europe, 2017.



the UNESCO, UN and UNODC<sup>516</sup>, in shedding light on the necessity of a criminalization of illicit trafficking, and as well, of the participation of criminal organizations in such offences.

The Italian response to this *call for action* has been individuated in the reform of Title VIII-bis of Italian penal Code, which has pursued the same purposes of the Nicosia document. Indeed, the new article 518-sexiesdecies of the Code has finally introduced the aggravating circumstance, for all the offences of the title, of being executed in the framework of an organized criminal group. The reform has also contributed to the definitive abandonment of the indirect penal protection system, with the consequence of having increased the penalties and the gravity of the offences. Despite at first glance this may seem a marginal aspect, as Captain Giacomo Geloso, head of the Comando TPC of Cosenza, has noted *«the reform has allowed us to make investigative procedures more efficient. Indeed, the increase of the penalties has allowed us, for example, to access a simpler and shorter process for requesting surveillance and phone taping, measures necessary for the efficiency of the investigations. The request for these investigative instruments, before the reform, was subject to a series of procedures and elements that only slowed down the investigations.»*<sup>517</sup>. It is hence clear that this represent a fundamental innovation, especially in light of the fact that, as the cases mentioned have revealed, surveillance and phone taping are crucial to discover the traffickers and tomb raiders. However, if it is undeniable the merit of the reform of having directly addressed from a penal law perspective the problem of illicit trafficking, as aforementioned, this must be the starting point and not the point of arrival.

Having reconstructed the main findings of this work, it is therefore time for this research to draw its conclusions. Indeed, the findings of this research leave space for some final considerations, which regard the possible enhancement of the contrast of the phenomenon, which imply the intervention on various level, such as the legislative, cultural and social one. On the legislative level, as mentioned the Nicosia Convention and the Title VIII-bis of Italian penal Code have the great merit of having finally persecuted the criminalization of illicit trafficking and the eventual participation of organized criminal groups in it. Nonetheless, it seems that those documents could have done something more. Indeed, in both cases the recognition of the correlation between organized criminal organizations and illicit trafficking it only happens through an aggravation of the offences and not through the establishment of an offence dedicated to organized activities for the trafficking of cultural property. It must be noted in this sense, as already mentioned, that for instance the introduction of an article addressing the precise case of organized criminal groups dedicated to the trafficking of cultural objects, was present in the draft of the reform of Title VIII-bis. Therefore, it is reasonable to say, accordingly to the finding of this research, that the legislator should strongly promote the adoption of such provision, as it is necessary to strengthen even more

---

<sup>516</sup> See UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage of 2003; UNESCO Operational Guidelines for the Implementation of the 1970 Convention; International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and other Related Offences, developed in 2014 by UNODC.

<sup>517</sup> Captain Giacomo Geloso, head of the Comando TPC of Cosenza, interviewed on 30/01/2024.

the contrast of this phenomenon. Indeed, the exclusion of such provision from the reform has left open the problem of identifying this specific offence, as it is duty of the public accus to verify in each case if the dynamic of the case can be relatable to the requirements of art. 416. Furthermore, the exclusion of such norm avoids the possibility of introducing even stronger mechanism for the persecution of such offence, as higher expiring terms for the extinction of the offence due to prescription or the possibility of considering, for the calculation of the latter, all the single offences as a unicum, which would then permit to use as starting term for the prescription the date of the last event of the offence<sup>518</sup>.

Hence, from a legal point of view, this research strongly suggests and favors the adoption of a norm, particularly on national, but also on international level, aimed at criminal persecuting organized criminal groups involved in the trafficking of cultural property. This norm is needed in order to avoid, as it has been demonstrated to happen in many cases, that the organized traffickers are not persecuted due to the prescription of the single offences, as it happened in the case of Becchina. Medici itself, that has been one of the few on Camera's scheme to be persecuted, has seen the accuse of illicit exportation being withdraw due to the prescription, being then only jailed for the offence of participation in an organized criminal group<sup>519</sup>, as art.416 of the penal Code. Hence, in order to effectively contrast the participation of criminal groups in the illicit trafficking, it is needed a recognition on legal level of the phenomenon as a whole, and not as an aggravating circumstance.

The contrast of this phenomenon, nonetheless, cannot be only persecuted through legislation, which undoubtedly represent a major instrument, but not the only one. On state level, it is needed an efficient and effective collaboration among States and the relatives' authorities, as well as a concrete and efficient use of the international online databases and platforms, as the INTERPOL Database for looted objects or the Archeo Platform. Indeed, it has been demonstrated that this phenomenon is transnational by nature, and hence requires a transnational response. The case aforementioned have demonstrated that without an effective collaboration among authorities it is hardly impossible to persecute criminal organization involved in the trafficking of cultural objects. On supranational level, EU, UN and the Council of Europe must continue to promote the adoption of strong standards for the prevention of such offences and the adoption of the Nicosia Convention, which as noted, is open for signatures from any country of the world. Similarly, museums and auction houses should enhance the control over the items, requiring for more specific information of the objects.

On social and cultural level, it seems that there is an aspect to which has been given less prominence, which nonetheless remains fundamentally relevant for addressing the phenomenon: the involvement of communities and individuals, from expert to normal

---

<sup>518</sup> Cfr. Lupària L., *Tutela dei beni culturali e processo penale*. 2020; Isman F., *I predatori dell'arte perduta*, 2009; Colombo D., *La confisca di beni culturali in caso di estinzione del reato per decorso del termine di prescrizione*, 2023.

<sup>519</sup> Rome Court of Appeal, 15/07/2009.

people, from authorities to smuggler. Most of the cases mentioned by this thesis have seen the intervention or participation of various figures, which, even if in different manners, had made the difference. Among those, we cannot fail to mention the efforts of Tommaso Cestrono, the “*angel of Carditello*”, who for years has endeavored to contrast the criminals who tried to plunder the Reggia of Carditello and worked tirelessly to ensure that the palace was protected and valorized. Cestrono, who received the keys and role of guardian by the judicial custodian, remained on guard of the magnificent bourbon residence despite the several threats received from criminals, fighting for all his life for the protection of the site<sup>520</sup>. It is imperative to mention also the case of the Assteas krater, which would have never had returned back to home without the choices of two opposite individuals: the Carabinieri TPC Roberto Lai and the tomb raider Antimo Cacciapuoti. Indeed, the former, through an attentive and precise choice of words, has stimulated Cacciapuoti to collaborate, trying to convey to him the importance of the krater, not only for Italy and for Campania, but also for himself and for the future generations. In other words, Lai tried to make Cacciapuoti reflect on the intangible value that the krater embedded, and as we know, the latter decided to speak, providing Carabinieri TPC the definite proof needed for the return of the masterpiece. In 2018, after Cacciapuoti died, his sons visited Roberto Lai to let him know that since their father has met him, he never missed a chance of visit, at least once per month, the Archeological Museum of Sannio, where the Assteas krater has been returned and exposed, thanks to the efforts of Lai and to the repentance of Cacciapuoti<sup>521</sup>. Similarly, the cases of Medici and Becchina would never be unveiled without the huge efforts of the PM Ferri and his committee of archeologists and specialists, who offered their knowledge and resources to disclose the criminal groups that for years had impoverished our cultural heritage.

What is the *fil rouge* of this cases? And what it does suggest to us? The just mentioned individuals, even though showcased different backgrounds, they have all been moved by the passion and interest for cultural heritage, by the recognition of the threat that this phenomenon poses to cultural goods and humankind, by the sentiments that connects us to our culture. In essence, they were recognizing the cultural heritage, not only basing on their material and tangible value, but on their intangible attributes and value. It is hence necessary to continue on this path and strengthen the consciousness of individuals and communities on their cultural heritage, whose thefts should always be perceived as harming the entire community, the entire state. The damage caused by the illicit trafficking affects all of us, even if we are not conscious of such loss, we endure it. It is not coincidental that the 1954 UNESCO Convention has defined the destruction of cultural heritage as a crime against humanity. Half a century later, the Council of Europe, in the Faro Convention of 2005, has recognized that «*every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others*» and affirmed the «*need to involve*

---

<sup>520</sup> Sardo Raffaello, *Muore l'angelo di Carditello, il custode della Reggia*. La Repubblica, 25/12/2013. Last seen 07/02/2024.

<sup>521</sup> Cevoli T., *Una storia senza voce*, Liberarcheologia, 2021. p.36-37.

*everyone in society in the ongoing process of defining and managing cultural heritage.* »<sup>522</sup>. The Faro Convention is a unique document that puts individuals and human values at the heart of the concept of cultural heritage and recognizes the existence of an «*individual and collective responsibility towards cultural heritage*»<sup>523</sup>. This latter point is fundamental, as it calls for the action of everyone and underlines the ‘universal value’ of cultural heritage, which belong to everyone and must be protected by the whole humankind. It is hence reasonable to observe that, somehow, the spirit of the Convention can be found in the actions of the actors aforementioned, suggesting that the contrast of this phenomenon must also happen through a recognition of the responsibility that each person embeds with respect to cultural heritage. On this matter, the Council of Europe called for the necessity of establishing new form of cooperation among authorities, communities and individuals<sup>524</sup>. The Italian authorities already had established some mechanism through which everyone can collaborate to contrast the phenomenon, as the dedicated tool on the Carabinieri TPC app, whereas can be uploaded pictures of cultural items and verify if they are listed in the archive of stolen items<sup>525</sup>. Nonetheless, the instrument cannot help in the cases where the objects had been looted, as those items are unknown until their recovery. In this regard, individuals are invited to signal to the competent authorities any illicit excavations, through the emergency number 112.

Therefore, the involvement of communities and individuals is also crucial for the contrast of this phenomenon, as it can potentially make the difference. What is required is to invest on individuals and communities through awareness campaigns, publications and the promotion of initiative that can create consciousness on the illicit trafficking phenomenon and its impact. Local communities, especially in zone particularly enriched of sites, should be guided toward the creation of networks dedicated to the protection of local archeological sites from looters and to the creation of awareness on the gravity of engaging in organized criminal activities and damages of illicit trafficking. Moreover, it is essential to continue the activities that Carabinieri TPC carry on in schools and university, as those are crucial to sensitize future generations on the impact of the trafficking and the instrument to contrast it. Similarly, cultural institution must continue to invest in initiative and exhibitions whereas stolen and looted cultural objects are at the center, which are crucial to create awareness and spread the understanding of the phenomenon.

Sensitize individuals and communities is essential. As mentioned, the cases of this research demonstrated the importance of recognizing the intrinsic value of cultural heritage and the threat that illicit traffic and organized criminal groups poses to it. We cannot then undervalue the importance of raising awareness among individuals, amid which there may be the future traffickers or the future defendant of our cultural heritage. As an instance of this, it can be

---

<sup>522</sup> Preamble of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

<sup>523</sup> Art. 1, Convention on the Value of Cultural Heritage for Society, Council of Europe, 2005.

<sup>524</sup> Council of Europe, *The Faro Convention action plan handbook 2018-2019*.

<sup>525</sup> The database nonetheless contains a minor number of items compared to the internal database of Carabinieri TPC. It is suggested for a better outcome to use various pictures.

mentioned the testimony of the Marshal Mirko Marchetti, who is member of the Comando TPC of Trastevere, Rome. Indeed, the story of the latter perfectly encapsulates the importance of gaining consciousness on the phenomenon. Marchetti grew up near Cerveteri, where he has directly seen the operate of the groups of tomb raiders engaging with the looting of archeological sites, some of them were even the fathers of some of his school colleagues. Strongly committed to oppose to this phenomenon, Marchetti has enlisted in the Carabinieri, deciding to dedicate his mission to the protection of our cultural heritage, and almost as to close the circle, he has found the surnames he already knew in the investigations of his colleagues<sup>526</sup>.

Without the past we cannot face the future. This is a commonly quote which is more than often mentioned in regard of the protection of cultural heritage. What is not so often mentioned is that this quote not only represent the reason why cultural properties should be protected, but it also explicates the way protection must be conceived. If indeed, in the past our cultural heritage, as this research tried to demonstrate, has suffered too much under the dirty hands of organized criminal groups, the future must be conscious of this threat and prepared to face it. Regrettably, the value of art remains perennially and rarely gets free from the shadow of trafficker and organized criminal groups, always hungry of profit. These groups, exploiting the vast cultural resources of our country, deprive us of our history and our past for their own benefit. By shedding light on the complexity that characterizes this phenomenon, this work aimed at contributing to the ongoing effort to combat the criminal networks involved in the trafficking in Italy, some of which, as has been unveiled, showcase mafia attributes. Therefore, just as the Mafia can be fought only united, breaking down the walls of silence, speaking out and seeking to build alternatives for communities in the territories more affected by mafia clans, so it must be to combat criminal groups engaged in the trafficking. If the complexity of the phenomenon is given by the organized nature of the criminal groups involved; the solution inevitably involves a State, communities and individuals that are organized to counter it.

---

<sup>526</sup> Interview of 09/02/2024 with Mirko Marchetti, Marshal of Comando TPC – Roma Trastevere.

## Bibliography

- Angeli Federica, “*Mondo di mezzo, i giudici: Buzzi e Carminati, solo corruzione: la loro non era una cosca*”, La Repubblica, 17/10/2017, last seen 10/01/2024. [https://roma.repubblica.it/cronaca/2017/10/17/news/mondo\\_di\\_mezzo\\_le\\_motivazioni\\_della\\_sentenza\\_solo\\_corruzione\\_nessuna\\_mafia\\_-178524284/](https://roma.repubblica.it/cronaca/2017/10/17/news/mondo_di_mezzo_le_motivazioni_della_sentenza_solo_corruzione_nessuna_mafia_-178524284/)
- Archeoclub d' Italia Onlus sede Aidone-Morgantina, *No al trasferimento della Dea di Morgantina dal museo Archeologico di Aidone*, in Change.org, 19/01/2018. Last seen on 20/01/24. <https://www.change.org/p/no-al-trasferimento-della-dea-di-morgantina-dal-museo-archeologico-di-aidone>
- Armone Giovanni M., *La Convenzione di Palermo sul crimine organizzato transnazionale e la responsabilità degli enti: spunti di riflessione*, in Rivista231.
- Asif Efrat, *Governing Guns, Preventing Plunder: International Cooperation against Illicit Trade*, Oxford: Oxford University Press, 2012.
- Baldo Lorenzo, Pettinati Aaron, *Stato-mafia, Bellini e la seconda trattativa*, Antimafia 2000, 12/01/2018. Last seen 01/02/24. <https://www.antimafiaduemila.com/dossier/processo-trattativa-stato-mafia/68520-stato-mafia-bellini-e-la-seconda-trattativa.html>
- Balsamo Antonio, *Il contrasto internazionale alla dimensione economica della criminalità organizzata: dall'impegno di Gaetano Costa alla “risoluzione Falcone” delle Nazioni Unite*, in Il Diritto Penale, 2020.
- Bator M. Paul. “*An Essay on the International Trade in Art.*” *Stanford Law Review* 34, no. 2 (1982): 275–384. <https://doi.org/10.2307/1228349>.
- Bator Paul M, “*An Essay on the International Trade in Art.*” *Stanford Law Review* 34, no. 2: 275–384, 1982. <https://doi.org/10.2307/1228349>.
- Becchina Gianfranco, *Dopo la confisca del patrimonio Becchina dice la sua: “Sentenze accertano nessun commercio di reperti selinuntini e liceità mia attività in Svizzera”*, Castelvetro News, 03/06/2022. Last seen 30/01/24.
- Bieczyński, Mateusz Maria, *The Nicosia Convention 2017: A New International Instrument Regarding Criminal Offences against Cultural Property*, in Santander Art and Culture Law Review 2/2017 (3): 255-274 DOI: 10.4467/2450050XSNR.17.017.8432
- Bindi Rosy, *Il furto della Natività del Caravaggio*, Relazione approvata dalla Commissione Parlamentare di Inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere, nella seduta del 21 febbraio 2018.
- BlogSicilia.it, *Messina Denaro voleva rubare il Satiro danzante: la passione della mafia per i reperti archeologici*. In Blogsicilia.it, 15/11/2017. Last seen 30/01/24. <https://www.blogsicilia.it/trapani/messina-denaro-voleva-rubare-il-satiro-danzante-la-passione-della-mafia-per-i-reperti-archeologici/417851/>

- Bourdieu Pierre, *The Forms of Capital*. Richardson, J., Handbook of Theory and Research for the Sociology of Education, Westport, CT: Greenwood, pp. 241–58, 1986.
- Bowman Proulx B., *Editor's introduction: The art crime prism. Crime, Law and Social Change*, 56(2), (2011). <https://doi.org/10.1007/s10611-011-9315-4>
- Bray Massimo, *La Reggia di Carditello sottratta alla Camorra*, L'indice online, 03/2016. Last seen on 11/01/2024. <https://www.lindiceonline.com/arti/arte/la-reggia-di-carditello-sottratta-alla-Camorra/>
- Brocca Marco, *La Disciplina di uso dei Beni Culturali*, in Aedon – Rivista di arti e diritto online, n.2, 2006. Issn1127-1345. audi
- Brodie Neil, 'Heart of Confusion? EU Regulation 2019/880 on the Import of Cultural Goods and the Fight against Terrorism', in Market of Mass Destruction, 2020.
- Buonomo Roberta, *La restituzione dei beni culturali usciti illecitamente dal territorio di uno Stato Membro alla luce della direttiva 2014/60/UE*, in Aedon – Rivista di arti e diritto online, n.3, 2014. Issn1127-1345.
- Cammelli Marco, *Il Codice dei beni culturali e del paesaggio*, Il Mulino, Bologna, 2007.
- Cammelli Marco, *Il Codice dei Beni Culturali e del Paesaggio: dall'analisi all'applicazione*, in Aedon – Rivista di arti e diritto online, n.2, 2004.
- Campbell Peter B. *The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage*. International Journal of Cultural Property, 2013. doi:10.1017/S0940739113000015.
- Capizzi Francesca, *Decade l'accusa di associazione mafiosa nei confronti di Gianfranco Becchina. Chiesta l'archiviazione*, Castelvetronews, 21/10/2018. Last seen 30/01/2024. <https://castelvetronews.it/notizie/attualita/castelvetro/decade-l-accusa-di-associazione-mafiosa-nei-confronti-di-gianfranco-becchina-chiesta-l-archiviazione/>
- Carabinieri TPC, *Traffico Illecito Del Patrimonio Archeologico Internazionalizzazione Del Fenomeno E Problematiche Di Contrasto*, Atti del 7° Convegno Internazionale Roma, 25-28 giugno 2001.
- Carabinieri Tutela Patrimonio Culturale, *Rapporto Attività Operativa*, 2022, 2021, 2020, 2019, 2018, 2017, 2016, 2012 and 2010. Available at: <https://tpcweb.carabinieri.it/SitoPubblico/home/contenuti/pubblicazioni>
- Casertano Letizia. "The Law Governing Cultural Heritage in Italy: Universal Values Versus National Cultural Identity" *Global Jurist* 17, no. 3 (2017): 20160019. <https://doi.org/10.1515/gj-2016-0019>
- Casini Lorenzo, "Italian Hours": The globalization of cultural property law, *International Journal of Constitutional Law*, Volume 9, Issue 2, April 2011, Pages 369–393, <https://doi.org/10.1093/icon/mor040>

- Casini Lorenzo, intervention during the conference: *Giustizia penale e patrimonio culturale, coordinate di un binomio complesso*, Dipartimento di giurisprudenza, Università di Roma Tre, 06/05/2019.
- Cass. Pen., June 15, 1998, no. 7129
- Cass. Pen., Sez. IV, 19 ottobre 2011, n. 2117
- Cass. Pen., Sez. 2 n. 2870/204 of 07/12/2011.
- Cass. Sez. II, n. 9026, 5 novembre 2013.
- Cass. Sez. II, n. 37678, 17 giugno 2017.
- Cass. Sez. 2, n. 42052, 19 giugno 2019.
- Cass. Sez. 2, n. 30399, 07 giugno 2018.
- Castaldo Lelio, *Processo “Orso bruno”, tutti assolti: per Spagnolo e gli altri fine di un incubo*, in “Sicilia24ore”, 25/11/2012.
- Casula Francesco, *Traffico di reperti antichi tra Taranto e Bruxelles. In 13 rischiano il processo. La gazzetta del mezzogiorno*, 23/06/22, last seen on 21/01/2024. <https://www.lagazzettadelmezzogiorno.it/news/taranto/1347537/traffico-di-reperti-antichi-fra-taranto-e-bruxelles-in-13-rischiano-il-processo.html>
- Ceschi Geraldina, *Il Ruolo Della Criminalità Organizzata Nel Traffico Illecito Di Opere D’arte, Rivista di Studi e Ricerca sulla criminalità organizzata*, V. 5 N.3 2019, <https://doi.org/10.13130/cross-12561>.
- Cettin Benedetta, *Modena: trent’anni dopo il clamoroso furto*, Corriere di Bologna, 24/01/2022. Last seen on 11/01/24. [https://corrieredibologna.corriere.it/bologna/cronaca/22\\_gennaio\\_24/modena-trent-anni-clamo\\*roso-colpo-banda-maniero-galleria-estense-e6c10f10-7ce6-11ec-8496-2352c5724bb1.shtml#](https://corrieredibologna.corriere.it/bologna/cronaca/22_gennaio_24/modena-trent-anni-clamo*roso-colpo-banda-maniero-galleria-estense-e6c10f10-7ce6-11ec-8496-2352c5724bb1.shtml#)
- Cevoli Tsao, *Brevi osservazioni sul furto della Natività con i Santi Lorenzo e Francesco d’Assisi di Caravaggio: un caso aperto da cinquant’anni (1969-2019)*, 2019.
- Cevoli Tsao, *Una storia senza voce*, Liberarcheologia. 2021
- Chechi Alessandro, *Fighting and preventing offences relating to cultural property: existing rules and proposals for functioning regulatory systems, ‘act for heritage!’*. Conference Promoting the Council of Europe Convention on Offences relating to Cultural Property, within governments and civil society 24–26/10/2019 Nicosia, Cyprus.
- Chiti Mario P., *Beni culturali e comunità Europea*, Giuffrè, Milano, 1997.
- Chiti Mario P., Greco Guido, *Trattato di diritto amministrativo Europeo*, Giuffrè, Milano, 2007.
- Cinque Alba, *L’arte del Delitto, L’impatto dell’attività criminale delle c.d. “archeomafie” sul patrimonio culturale nazionale e la responsabilità penale del mercante d’arte*, in *Diritto penale e uomo*.
- Cleere Henry, *European Convention on the protection of Archeological Heritage*, in *Encyclopedia of global archeology*, 1992. p.2619-2623.



- Cohan John A., *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property* (Part Two), in ENVIRONS ENVTL. L. & POL'Y. J., 2004.
- Colombo Davide, *La confisca di beni culturali in caso di estinzione del reato per decorso del termine di prescrizione*, in *Giurisprudenza penale*, 2023.
- *Collezione di 226 reperti archeologici etruschi e italici recuperati da soprintendenza di Venezia e carabinieri TPC*, in *Archeoreporter*, 08/09/2023. Last seen on 30/12/23. <https://www.archaeoreporter.com/it/2023/09/08/collezione-di-226-reperti-archeologici-etruschi-e-italici-recuperati-da-soprintendenza-di-venezias-e-carabinieri-tpc/>.
- Cominetti Marta, Seele Peter. *Hard soft law or soft hard law? A content analysis of CSR guidelines typologized along hybrid legal status*. *Uwf* 24, 127–140 (2016).
- Commissione Parlamentare Di Inchiesta Sul Fenomeno Delle Mafie E Sulle Altre Associazioni Criminali, Anche Straniere, *Document XXIII*, n. 44. 21/02/2018.
- Council of Europe, *explanatory Report to the Convention on Offences relating to Cultural Property*, session 128 of the Ministry of Council of Europe Committee, b. Action of the Council of Europe.
- Council of Europe, *Framework Convention on the Value of Cultural Heritage for Society*, 2005.
- D'Agostino Luca, *I traffici illeciti nel mediterraneo*, In *diritto penale contemporaneo*, 2018.
- De Luna Lara, *Dalla Camorra alla rinascita: la Reggia di Carditello torna a essere una fattoria (reale)*, *La Repubblica*, 15/10/2020. Last seen on 11/01/2024. [https://www.repubblica.it/sapori/2020/10/15/news/campania\\_reggia\\_di\\_carditello\\_progetto\\_fattoria\\_reale-270517017/](https://www.repubblica.it/sapori/2020/10/15/news/campania_reggia_di_carditello_progetto_fattoria_reale-270517017/)
- De Luna Lara, *Dalla Camorra alla rinascita: la Reggia di Carditello torna a essere una fattoria (reale)*
- De Martino Diana, *Infiltrazioni della criminalità organizzata nel traffico di opere d'arte*, in *Direzione Nazionale Antimafia, Relazione annuale sulle attività svolte dal Procuratore nazionale antimafia e dalla Direzione nazionale antimafia nonché sulle dinamiche e strategie della criminalità organizzata di tipo mafioso nel periodo 1 luglio 2011 - 30 giugno 2012*, December 2012.
- De Martino Francesco, *'Ma Che Sei Cecato? - Massimo Carminati Finisce sul Banco Degli Imputati per Sculture e Dipinti Falsi'*, *Dagospia*, 09/07/2021, last seen 10/01/24. <https://www.dagospia.com/rubrica-29/cronache/ma-che-sei-ldquo-cecato-rdquo-massimo-carminati-finisce-banco-276082.htm>
- De Jong Daniella, Stewart James G. *Illicit Exploitation of Natural Resources*. In: Jalloh CC, Clarke KM, Nmehielle VO, editors. *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges*. Cambridge: Cambridge University Press; 2019. p. 590–618.

- Demuro Gian Paolo, *I Delitti Contro Il Patrimonio Culturale Nel Codice Penale: Prime Riflessioni Sul Nuovo Titolo VIII-bis*, Sistema Penale, 2022
- Di Nicola Andrea, Savona Ernesto U., *Organized Crime around the World*, Helsinki, Finland: Heuni – United Nations around the world, 177, 2003. <https://hdl.handle.net/10807/7297>.
- Directive of European Union n. 2014/60 of 15 May 2014 on *the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State*.
- Directive of European Union n. 93/7 of 27 March 1993 on *the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State*.
- Disegno di Legge n.882
- ECOSOC resolution n. 2008/23 of 24 July 2008.
- EU Council Directive 93/7/EEC of 15 March 1993.
- EU Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods.
- EU Regulation (EC) No 2469/96 of 27.12.1996.
- EU Regulation (EC) No 806/2003 of 5.6.2003.
- EU Regulation (EC) No 974/2001 of 8.6.2001.
- EU Regulation 2019/880 of 17 April 2019.
- European Commission', *Portal on the fight against trafficking of cultural goods*, in Implementation Appraisal, European Parliament, July 2017. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603259/EPRS\\_BRI\(2017\)603259\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603259/EPRS_BRI(2017)603259_EN.pdf)
- European Commission, *Briefing on illicit trade of cultural goods*, 25/07/2017. [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2017\)603259](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2017)603259)
- European Commission, Cultural Heritage in EU policies: Protection against illicit trafficking. <https://culture.ec.europa.eu/cultural-heritage/cultural-heritage-in-eu-policies/protection-against-illicit-trafficking>
- European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods in Europe – Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade – Final report*, Publications Office, 2019, <https://data.europa.eu/doi/10.2766/183649>
- European Commission, *EU action plan against illicit trafficking of cultural goods*, COM(2022) 800 final, 2022, <https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=CELEX:52022DC0800>.
- Europol, *Crimes areas and Statistics. Illicit trafficking in cultural goods, including antiquities and works of art*. <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/illicit-trafficking-in-cultural-goods-including-antiquities-and-works-of-art>

- Europol, *More than 56400 cultural goods seized and 67 arrested*. 11/01/2021. Last seen on 20/01/24. <https://www.interpol.int/News-and-Events/News/2021/More-than-56-400-cultural-goods-seized-and-67-arrested>
- Famiglietti Gianluca, Pignatelli Nicola, *Codice dei Beni Culturali e del Paesaggio*, Nel Diritto Editore, I edizione, 2015.
- Finckenauer, James O., *Problems of definition: What is organized crime?. Trends in Organized Crime* Vol. 8, 63–83, 2005. <https://doi.org/10.1007/s12117-005-1038-4>
- Franchi Elena, *Colpire lo Stato attraverso I beni culturali: gli attentati del 1993*, La ricerca, Loesher.it, 25/05/2021. Last seen 01/01/2024. <https://laricerca.loescher.it/colpire-lo-stato-attraverso-i-beni-culturali-gli-attentati-del-1993/>
- Frankiewicz-Bodynek Anna, Stec Piotr, *Defining “National Treasures” in the European Union. Is the Sky Really the Limit?*, Santander Art and Culture Law (5): 77-94 Review 2/2019. DOI:10.4467/2450050XSNR.19.014.11562.
- Frigo Angelo, *Il codice Urbani*, The Journal of Cultural Heritage Crime, 2017.
- Frigo Manlio, *1995 UNIDROIT Convention and its implementation*, Executive Course in Art and Law, 26/10/23, organized by University of Florence, Florence.
- Frigo Manlio. *Ethical Rules and Codes of Honor Related to Museum Activities: A Complementary Support to the Private International Law Approach Concerning the Circulation of Cultural Property*. International Journal of Cultural Property, 16(1), 49-66, 2009.
- Frigo Manlio, *La circolazione internazionale dei beni culturali: diritto internazionale, diritto comunitario, diritto interno*, II edizione, Milano, Giuffrè, 2007.
- Galullo Roberto, *I boss che amano l’arte: collezionisti e pittori fai da te*. 18/05/2012. Last seen 31/01/24. <https://st.ilsole24ore.com/art/notizie/2012-05-18/sacro-fuoco-boss-larte-132105.shtml?uuid=Ab5CNTeF>
- Gardini Silia, *La verifica preventiva dell’interesse archeologico*, in Aedon – Rivista di arti e diritto online, n.2, 2023. Issn 1127-1345.
- Geloso Giacomo, Captain of Comando Carabinieri TPC of Cosenza, interviewed 30/01/2024.
- Germanà Bozza Giancarlo, *Un’anfora attica recuperata nell’Operazione Teseo*, in Archeomafie, Anno VII, n.7, Osservatorio Internazionale Archeomafie, 2015.
- Giacalone Rino, *Mafia, arte e il potere di Messina Denaro*, in “AlqamaH”, 16/11/2017. Last seen 01/02/2024. <https://www.alqamah.it/2017/11/16/mafia-arte-e-il-potere-di-messina-denaro/>
- Giannini Massimo S., *I beni culturali*, in Rivista trimestrale di diritto pubblico, 1976.
- Gioacchino La Barbera, *audiction of*. 18/06/2019. Min. 25-31. <https://www.youtube.com/watch?v=m4mniyUc3KY&list=LL&index=7&t=2490s>

- Giraldi Angelo, Sorbello Pietro, *L'arte del terrore: degradare la cultura per finanziare la guerra*, in *Il traffico illecito di beni culturali*, in *Diritto Penale Contemporaneo*, 03/2022.
- Grieco Christian. *Alla ricerca di Tutankhamon*. Franco Cosimi Panini Editore, Modena, 2023.
- Grifeo Giuseppe, *Nuova operazione internazionale "Pandora VII", Carabinieri TPC con Europol e Interpol contro il traffico illecito di beni culturali. Totale: 60 arresti e oltre 11.000 oggetti recuperate*, in *Grifone, Artiglio, Penna*, 06/05/2023. Last seen 30/01/24.
- Grossi Lorenza, *Le Archeomafie*, in *Il diritto dei Beni Culturali*, 70-93, Roma tre Press, 2021.
- Hausler Kristin, 'Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups', *Santander Art and Culture Law Review*, , 2015.
- Hufnagel Saskia, King Colin, *Anti-Money Laundering Regulation and the Art Market*, in *Legal Studies*, 40(1), 1-34, 2020. doi: 10.1017/lst.2019.28.
- ICOM Code of Ethics for Museums 2022.
- ICOM Code of Ethics for Museums, 2004.
- International Committee of the Red Cross (ICRC), *Practice relating to Rules n. 38, 39, 40 and 41*. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule38>
- INTERPOL, *Assessing Crimes Against Cultural Property 2021, survey of interpol member countries*, 2022.
- INTERPOL, *Illicit goods – the issues*. <https://www.interpol.int/Crimes/Illicit-goods/Illicit-goods-the-issues>
- Isman Fabio, *I predatori dell'arte perduta*, Skira, 2009.
- Isman Fabio, *Io, complice dei boss per rubare il satiro? Assurdo*, *Il Messaggero*, 17/08/2009.
- Lafarge Francois, *La circolazione internazionale dei beni culturali, dopo le modifiche del codice*, in *Aedon – Rivista di arti e diritto online*, n.1, 2009. Issn1127-1345.
- Law 20.6.1909, n. 364
- Legambiente, *UNESCO alla Siciliana. I siti in sofferenza della bella sicilia*. Nulla die, 2021.
- Legambiente, *Rifiuti S.p.A. I traffici illegali di rifiuti in Italia. Le storie, i numeri, le rotte, le responsabilità*, Roma, 2003.
- Leonelli Giuseppe, *Dipinti rapinati nel '92 a Modena, per i PM furono oggetto di trattativa con la mafia*, *La Pressa*, 24/03/2018, last seen 31/01/2024. [https://www.lapressa.it/articoli/il\\_punto/rapina-del-92-a-modena-il-ruolo-della-mafia-nel-recupero-dei-quadri](https://www.lapressa.it/articoli/il_punto/rapina-del-92-a-modena-il-ruolo-della-mafia-nel-recupero-dei-quadri)
- Lixinski Lucas, 'A Third Way of Thinking about Cultural Property', *Brooklyn Journal of International Law*, n. 44, 2019.

- Lufkin Martha. ‘*Laundering Drug Money with Art*’, Forbes, 08/04/2003, seen on 03/01/2024.
- Lupària L., Tutela dei beni culturali e processo penale, in Roma Tre Press, 2020.
- Mackenzie Simon, Brodie Neil, Yates Donna, Tsirogianni Christos, *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities*. Routledge, London-New York, 2020.
- Mackenzie, Simon, *Illicit deals in cultural objects as crimes of the powerful. Crime, Law and Social Change*, 56(2), 2011. <https://doi.org/10.1007/s10611-011-9317-2>
- Mackenzie, Simon, *The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organized Crime in the International Antiquities Market*, 2011.
- Magri Geo, *Le Convenzioni UNESCO e UNIDROIT 1995 e la loro incidenza sul diritto private*, in *Il Diritto dei Beni Culturali*, Roma Tre Press, 2021.
- Manacorda Daniele, *Lezioni di archeologia*, Bari, Laterza, 2008.
- Manacorda Stefano, intervention of 4.5.2017 from II Commissione (Giustizia) of Camera dei Deputati, XVII Legislatura. 2017.
- Manacorda Stefano, *Organized crime in art and antiquities*, edited by, Conference on “Organized crime in art and antiquities” Courmayeur Mont Blanc, Italy 12-14 December 2008.
- Manacorda Stefano. “*Criminal Law Protection of Cultural Heritage: An International Perspective.*” *Crime in the Art and Antiquities World*, 17–48, 2011. doi:10.1007/978-1-4419-7946-9\_2.
- Maniscalco Fabio, *La tutela dei beni culturali in Italia*, Napoli, 2002. p.20-21.
- Mannu Luisa, *Brevi note sul ritrovamento di beni culturali sopra e sotto il suolo*, in Aedon – Rivista di arti e diritto online, n.1, 2006. Issn1127-1345.
- Mantovani, F., *Lineamenti della tutela penale del patrimonio artistico*, in Rivista Italiana. Diritto processuale penale, 1976.
- Maugeri, Anna M., *La tutela dei beni culturali nel diritto internazionale penale. Crimini di Guerra e crimini contro l’umanità*, Giuffrè, 2008.
- Merryman, John Henry, “*Two Ways of Thinking About Cultural Property.*”, in the American Journal of International Law 80, no. 4, 831–853, 1986. <https://doi.org/10.2307/2202065>.
- Merryman, John Henry, *The Public Interest in Cultural Property*, in California Law Review Vol. 77:339, 1989.
- Militello Vincenzo, *I traffici illeciti nel Mediterraneo e le organizzazioni criminali transnazionali*, in Studi in onore di Antonio Fiorella, I, Roma 290, 2021.
- Mußnug Reinhard, *Europäischer und nationaler Kulturgüter-Schutz*, in AA.VV., Aktuelle Fragen des Kulturgüterschutzes, a cura di R. Mußnug e G. Roellecke, Heidelberg, 1998.
- Nistri Giovanni, *National experience: Italy*, in S. Manacorda & D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, 71 – 86, Springer, 2008.

- Notaro Laura, *Modelli di incriminazione per il contrasto alla criminalità organizzata*, in *Il traffico illecito di beni culturali*, 2021.
- NuovaCosenza, *Operazione della Dia contro la Ndrangheta da Milano a Reggio*, in “Nuova Cosenza”, 08/07/2008.
- OECD - Organisation for Economic Co-operation and Development ‘*Governance Frameworks to Counter Illicit Trade*’, Paris, 2018. <http://www.oecd.org/corruption-integrity/reports/governance-frameworks-to-counter-illicit-trade-9789264291652-en.html>.
- *OG Operational Guidelines for the implementation of the World Heritage Convention* (WHC.19/01- 10 July 2019) <https://whc.UNESCO.org/document/178167>
- Olivieri Serena, ‘*Natività di Caravaggio: una storia semplice? Le intricate vicende investigative del dipinto più cercato al mondo*’, in *Journal of Cultural Heritage Crimes*, 24/04/2020 last seen 24/01/2024. <https://www.journalchc.com/2020/04/24/nativita-di-caravaggio-una-storia-semplice-le-intricate-vicende-investigative-del-dipinto-piu-ricercato-al-mondo/>
- Paredes Maury S., *Surviving in the Rainforest: The Realities of Looting in the Rural Villages of El Petén, Guatemala*, Report submitted to the Foundation for the Advancement of Mesoamerican Studies (FAMSI), 1999.
- Pauwels Annelies. *ISIS and illicit trafficking in cultural property: Funding terrorism through art*, Freedom from fear magazine. Accessed 19/12/23.
- Pirri Valentini Anna, *Verso una nuova Governance nella circolazione dei beni culturali*, in *Il diritto dei Beni Culturali*, Roma tre Press, pp. 39-51. 2021.
- Pistoia Emanuela, *Cooperazione penale nei rapporti fra diritto dell’Unione Europea e diritto statale*, in Univ. degli Studi di Teramo. Collana della Facoltà di Giurisprudenza, edizioni scientifiche italiane, 2008.
- Quatremere de Quincy Antoine Ch., *Lettres à Miranda*,
- Quirico Domenico. ‘*Arte antica in cambio di armi. Affari d’oro in Italia*’, La Stampa, 16/10/2016, seen 03/01/2024. <https://www.lastampa.it/esteri/2016/10/16/news/arte-antica-in-cambio-di-armi-affari-d-oro-in-italia-1.34788871>
- Rai, *Petrolio. Ladri di Bellezza*. St. 2018, available on Raiplay.
- Ramacci Luca, *Primo rapido sguardo d’insieme sulla legge 9 marzo 2022 n.22 in tema di reati contro il patrimonio culturale*, Lexambiente, 2022.
- Regione Lombardia, *Il traffico illecito di opere d’arte in connessione con gli investimenti economici delle criminalità organizzate*. Policy Paper 200428IST, 2020.
- Rizzo Carlotta, *Don Ciccio e l’Efebo di Selinunte*, in *Journal of Cultural Heritage Crimes*, 11/08/2023. Last seen on 30/01/24. <https://www.journalchc.com/2023/08/11/don-ciccio-e-lefebo-di-selinunte/>
- Ruccia Gisella, *Mafia Capitale Legale Carminati Risponde a Saviano*, Il Fatto Quotidiano, 23/07/2017, last seen 10/01/24.

- Sandulli Maria A., *Codice dei Beni Culturali e del Paesaggio*, Giuffrè, III Edizione, 2019.
- Saviano Roberto, Podcast Muschio Selvaggio, Ep. 134, 04/12/23, <https://www.youtube.com/watch?v=INAvQMtn4GY>.
- Shelley, Louise I., “*Illicit Trade and Terrorism.*” *Perspectives on Terrorism*” 14, no. 4, 7–20, 2020. <https://www.jstor.org/stable/26927661>.
- Sky arte Italia, Art Riders, season 1, episode 1. <https://guidatv.sky.it/programmi-tv/arte-e-cultura/art-raiders-caccia-ai-tombaroli/stagione-1/episodio-1/c077f43e-51f5-443c-9129-f8ef4c5a725a>
- Sky arte Italia, Art Riders, season 1, episode 4. <https://guidatv.sky.it/programmi-tv/arte-e-cultura/art-raiders-caccia-ai-tombaroli/stagione-1/episodio-4/f85a9142-cf15-4d72-9fdf-8cb2929a2038>
- Szabados Tamas, ‘*The EU Regulation on the Import of Cultural Goods: A Paradigm Shift in EU Cultural Property Legislation?*’, 18 CYELP 1, 2022.
- Tp24, *Matteo Messina Denaro e il traffico delle opere d’arte*. In tp24, 28/01/23. Last seen on 30/01/24. <https://www.tp24.it/2023/01/28/caccia-a-messina-denaro/matteo-messina-denaro-e-il-traffico-delle-opere-arte/186330#:~:text=%E2%80%9CCon%20il%20traffico%20di%20opere,il%20padre%20per%20l'arte>.
- Treccani, *Un Patrimonio da Salvare*, seminario online, 02/03/2023.
- Tsao Cevoli, *Il traffico illecito di reperti archeologici ed opere d’arte come fenomeno criminale*, edited by G. Zuchriegel, *Possessione. Trafugamenti e falsi di antichità a Paestum*- Catalogo della mostra (Capaccio, 2 luglio-31 dicembre 2016), Napoli, 2016.
- Tsao Cevoli, *Una storia senza voce*, Libe archeologia, 2021.
- UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Aja, 1954.
- UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2003.
- UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970.
- UNESCO, *Convention on the Protection of Underwater Cultural Heritage*, 2001.
- UNESCO, *Illicit trafficking shall be recognized as a security issue*. <https://www.UNESCO.org/en/articles/illicit-trafficking-cultural-goods-shall-be-recognized-security-issue>
- UNESCO, *Mesures juridiques et pratiques contre le trafic illicite des biens culturels: manuel de l’UNESCO*, 2006.
- UNESCO, *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 2015.

- UNESCO, Underwater Heritage 2001. <https://en.UNESCO.org/underwater-heritage/2001>
- UNIDROIT, Convention on Stolen or Illegally Exported Cultural Objects, 1995.
- United Nations *International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences*, Resolution adopted by the General Assembly on 18 December 2014 [on the report of the Third Committee (A/69/489)] n.69/196.
- United Nations, *Convention on the fight of transnational organized crime*, Palermo, 2000.
- United Nations, Resolution 2347 (2017) Adopted by the Security Council at its 7907th meeting, on 24 March 2017.
- United Nations, Security Council Resolution n. 2199, 2015.
- UNODC, ‘*Protection against trafficking in cultural property*’, 2009
- UNODC, Trafficking in cultural property. <https://www.unodc.org/unodc/en/organized-crime/intro/emerging-crimes/trafficking-in-cultural-property.html#:~:text=Trafficking%20in%20cultural%20property%20involves.artefacts%20of%20its%20shared%20heritage>
- UNODC, *Definition of organized crime*, module 1, published in october 2018, <https://www.unodc.org/e4j/zh/organized-crime/module-1/key-issues/defining-organized-crime.html>
- Van Rijn Michel, ‘*Thieves of Baghdad*’, director Montaser Marai, Aljazeera Channel, 2007, [http://www.youtube.com/watch?v=X4Q\\_0p1L\\_YU](http://www.youtube.com/watch?v=X4Q_0p1L_YU)
- Venezia, Lorenzo, *Il regolamento UE 2019/880 sull'importazione dei beni culturali, culturali*, in *Diritto Consenso*, 2022.
- Venezia Lorenzo, *Il riciclaggio di denaro e il traffico di beni culturali*, su *DirittoConsenso*, 28/10/20, seen on 03/01/2024. <https://www.dirittoconsenso.it/2020/09/28/riciclaggio-di-denaro-e-traffico-di-beni-culturali/>
- Veres Zsuzanna, *"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, 91-116, 2014.
- Villafrate Annamaria, *Criminalità organizzata*, in *Studio Cataldi il diritto quotidiano*, luglio 2022.
- Vincent Michel, *Le trafic illicite des biens culturels dans les pays en conflit. De l'identification des objets à la judiciarisation des affaires*, extract from *Patrimoines – The journal of the National Heritage Institute*, Paris, 15, p. 58-65, 2020.
- Visconti Arianna, *Problemi e Prospettive della tutela penale del patrimonio Culturale*, Giappichelli, 2023.
- Visconti Arianna, *Beni culturali e diritto penale*, su *Treccani Diritto*.



- Visconti Arianna, *La Repressione Del Traffico Illecito Di Beni Culturali Nell'ordinamento Italiano. Rapporti Con Le Fonti Internazionali, Problematiche Applicative E Prospettive Di Riforma*, 2021.
- Visconti Arianna, *The Illicit trade in Cultural Objects. From Marginalization to the Current Surge in Attention by Transnational Criminal Policymakers*, 2021.
- Volpe G., *La Convenzione UNIDROIT sul ritorno dei beni culturali rubati o illecitamente esportati*, in Notiziario del Ministero dei beni culturali e ambientali, n. 50, 1996.
- Watson Peter, Todeschini Cecilia, *The Medici Conspiracy. The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Greatest Museums*, New York, Public Affairs, 2006.
- World Customs Organization, 'Illicit Trade Report 2012', 2013. <http://reports.wforum.org/global-agenda-Council-2012/Councils/illicit-trade/>
- World Customs Organization secretariat, *Illegal waste trafficking: more data is key to getting a better grip on this trade*, 22nd February 2019.
- World Customs Organization, *Cultural Heritage Programme*. <https://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage-programme.aspx>
- World Customs Organization, *Illicit trade report*, 2016 and 2017 in European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie, N., Batura, O., Hoog, G. et al., *Illicit trade in cultural goods in Europe – Characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade – Final report*, Publications Office, 2019.
- Yates Donna, Mackenzie Simon, *What Is Grey About the 'Grey Market' in Antiquities*, in *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy*, Oxford-New York, 2016.
- Yates Donna, Neil Brodie. "The Illicit Trade in Antiquities Is Not the World's Third-largest Illicit Trade: A Critical Evaluation of a Factoid." *Antiquity* 97, no. 394, 991-1003, 2023. doi:10.15184/aqy.2023.90.
- Zecca Antonio, *Archeomafia: il traffico di opere d'arte trafugate dai siti archeologici italiani*. 26/04/2020. Last seen on 30/01/24. <https://terraferma.home.blog/2020/04/26/archeomafia-il-traffico-di-opere-darte-trafugate-dai-siti-archeologici-italiani/>