

Artful Transactions: Transnational Threats and Unconventional Illicit Finance

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Introduction

Art, in its endless mediums, fulfills a deeply meaningful role in the world by channeling the creative impulse and echoing humankind's hopes, anxieties, and reflections of a particular time and place. For centuries, artwork has also been used as a store of value, beyond its apparent uses for aesthetic purposes. During times of currency debasement, art may be used as a hedge to minimize the negative impact on an investment portfolio. For instance, a wealthy family in Weimar Germany during the 1920s could be at risk of bankruptcy if the majority of their assets were held in the increasingly worthless Reichsmark. This risk could have been mitigated if they held a portion of their assets in collectibles such as fine art, convertible to a more stable currency if the family could find a buyer in another country. In addition, speculators may bid up artwork prices in a manner similar to that in a stock market, capitalizing on perceived arbitrage opportunities. Following the 2008 financial crisis, record low interest rates allowed investors to borrow cheaply to fund purchases in a wide variety of assets including artwork. Indeed, this environment has helped fuel record world art sales in 2014, four times the volume sold a decade ago.¹

In addition to these methods of using art as an alternative investment, its use as a function of illicit finance is increasingly apparent. Criminals hoping to conceal the proceeds of their illegal activities may consider artwork as an ideal money laundering instrument. This paper will examine numerous ways that Transnational Organized Crime ("TOC") groups, terrorists, and sanctions evaders can finance and conceal their activities by transacting in fine art. Particular attention will be given to the burgeoning global art market and its opaque network of dealers, artists, and buyers, enabling nefarious transnational actors unique exploitation opportunities. Artwork used as a payment facilitation option by economic sanctions evaders will be explored. Also, countermeasures will be proposed that may reduce opportunities accessible to criminals laundering their assets through artwork. Also, this paper will explore the role of art and antiquities theft in TOC and terrorist group activities, illustrating historical and recent examples.

Particular emphasis will be given to the ways in which these illicit actors can launder criminal proceeds in the underground art market. The economics of art theft will be discussed, illustrating a dynamic, global market.

Art: A Money Launderer's Masterpiece

Money laundering and organized crime form a symbiotic relationship. In order to properly disguise the origins of criminal profits, effective organized crime groups may utilize a diverse mix of front companies, investments, and schemes. Typically, money laundering involves three primary steps. Dennis Cox describes the steps: “The idea is that the initial proceeds enter the banking system at a perceived point of weakness (the placement stage) and then the funds are moved around such that the initial source of the funds is disguised (the layering phase) The funds are eventually reintegrated into the mainstream banking system as clean funds (the integration phase).”² Through this process, a successful money launderer will deposit their illicit proceeds into a legitimate legal structure or account. This may include a front company, real estate, high-end purchases (automobiles, boats), and the use of banking or asset management services. The ill-gotten proceeds are further mixed with seemingly legitimate or outright licit financial assets, thereby effectively concealing the true nature of criminal profits. Most attention and interdiction efforts have been focused on criminal use of the mentioned “traditional” laundering methods. Only recently has art attracted greater scrutiny as a vehicle for illicit finance. Fausto Martin De Sanctis, a Brazilian judge, has recently published *Money Laundering Through Art: A Criminal Justice Perspective* (Springer, 2013). His work provides an in-depth look at some of the inherent vulnerabilities of the art market, particularly from a jurisprudence perspective. Research on this topic has been scant, however, regarding the potential use of the art market by illicit transnational actors. This may seem puzzling, given the intrinsic nature of the art market that makes it an ideal environment for illegal enterprise: For one, artwork has the advantage of portability that other laundering instruments lack. This aspect allows the criminal to convert cash which may physically be difficult to transport,

especially across borders. The purchasing of the artwork can obscure the origins of profit and makes it convenient to ship and store. In addition to this benefit, the global art market is particularly vulnerable to money laundering given its lack of regulation. Unlike the financial system where a bank's compliance department enacts anti-money laundering (AML) safeguards established by industry and government regulators, the art market transacts with no such oversight. These advantages for illicit gain will be further discussed in later sections.

The Global Art Market: A World of Secrecy

As of 2013, the global art market reached 65 billion, near its previous record set in 2007.³ The growth of the global contemporary art market, in particular, has been extraordinary, at a 32% higher level than the previous peak in 2008.⁴ Although a fraction of the size of world securities and commodities markets, the art market retains many similar components, such as a global transaction network of buyers and sellers connected by endless intermediaries, dealers, and auction houses. Just as in stock and bond markets, there exists a primary and secondary market. At first glance, it may appear to function like any other market. However, this market's opacity distinguishes it from the relative transparency of others. Most other goods and services operate by principles of supply and demand, which determine price. The value of an artwork is almost wholly subjective, however, based on numerous factors. If the artist is well-known and has been exhibited in established galleries and museums, this most likely will positively affect the price. Conversely, if the work is by an upcoming or "emerging" artist, demand must be created. Because of the vast quantity of artwork and number of artists, a reputable dealer's representation remains the most effective route for a work to be noticed by the public. Promoting an artist's work most likely will involve showcasing the art's unique qualities, enhancing its scarcity value. Dealers will try to match the artwork that is for offer to one of their clients, typically individual art collectors. If a sale is reached, the buyer very likely will not be known to the public, at least not immediately. Eventually, by word of mouth or through a lease to a museum, the owner of the work might be

revealed. However, this is not necessary and the buyer may choose to keep the transaction private. Furthermore, dealers are bound by professional standards of privacy, and risk their reputation and business if they were to publicize a sale against their clients' wishes. Similarly, the buyers at auction houses such as Sotheby's and Christies may also not be disclosed. Often, the buyer is anonymous and not present at the auction as worldwide webcasting allows for bidders in various global locations.

The anonymity inherent in the art market should not be understated as to its implications for potential money laundering activity. Part of the allure of the art world is its secrecy and seeming exclusivity from outsiders. This secrecy beckons illicit finance activity. To members of transnational criminal groups or terrorist organizations, confidentiality is of paramount concern. Financing these groups through "traditional" means, i.e. banking, real estate, business fronts, etc. typically require more effort to obscure the true nature of the laundered money such as required documentation in opening accounts or public notices. Hence, the more steps involved in the process add to the possibility of being caught by authorities. In the art market, however, there is far less documentation and dealers will likely seek to protect their clients' identity. Additionally, the possibility of a sale may trump a dealer's concern that their client might be buying art with criminal proceeds. Since most dealers possess a client list that is a fraction of the size of a private bank or real estate broker, a single collector's purchase may make a significant difference in the dealer's income, potentially reducing the incentive to investigate suspicious activity. Further, art dealers and auction houses are not required by U.S. authorities, at least, to submit suspicious transaction activity reports that are required in banks and investment houses.⁵ This lack of transparency combined with a lack of regulation create an environment ripe for money laundering activity.

Money Laundering Cases

There has been a relatively low number of prosecuted criminal cases of money laundering through art, likely a result of its many opportunities afforded to disguise illicit origins of a transaction. Nonetheless, numerous examples point to a growing body of evidence that suggests law enforcement agencies have expanded efforts to infiltrate the

shadowy art world. In 2006, a cross-border case brought much attention to the role that art may play in large-scale financial fraud schemes. Edemar Ferreira, a senior Brazilian banker at Banco Santos, was convicted in 2006 for embezzlement, fraud, and money laundering charges by a Sao Paulo court. As part of the judgment, an asset forfeiture was ordered, which ultimately found \$20- \$30 Million worth of masterpieces of art including works by, Roy Lichtenstein, and Serge Poliakoff.⁶ Most notably, a Basquiat piece “Hannibal,” worth \$8 million was found by authorities in Manhattan, along with the other treasures, apparently smuggled into the country during the Brazilian investigations. The Homeland Security Investigations office at U.S. Immigration and Customs Enforcement (“ICE”) was given a lead by Brazilian authorities indicating the possible whereabouts of the works.⁷ It was later found that the art proved invaluable to Ferreira in both transforming and transporting the embezzled bank assets. As part of the money laundering scheme, Ferreira had the works of art smuggled into the U.S. by falsely labeling invoices and claiming the art works were worth a fraction of their true value. In fact, the Basquiat piece worth \$8 million, was labeled as having a \$100 value.⁸ This false invoicing allowed Ferreira to avoid customs duties and, more importantly it enabled the concealing of the illicit assets. While this case could be considered a prime example of white-collar crime rather than transnational organized crime or terror finance, it would be conceivable for these actors to employ similar strategies to move funds across borders. Further, it has become less clear as to the distinction between these groups and their relationship with white-collar criminal activity.

In 2003, four people were indicted in Miami after efforts to disguise drug trafficking proceeds were investigated. In this bizarre case that included the indictment of a Saudi prince, Nayef Al-Shaalan, two oil paintings by Francisco de Goya and Tsuguhara Foujita were sent to Miami in exchange for a cocaine shipment valued at \$20 million that was moved from Caracas to Paris.⁹ The DEA, who had investigated the case, became aware that drug traffickers were using art as a payment facilitator in transactions. Another drug-related money laundering investigation resulted in the prosecution of two New York art dealers, following a sting operation in 2001 by undercover agents. The dealers, Shirley Sack and Arnold Katzen, had offered their services, which included reselling

purchased artwork valued at over \$4 Million in Europe, to the undercover agents.¹⁰ This case offered a glimpse at how art dealers, pivotal elements of the art market, might be complicit in constructing money laundering schemes. Their role mirrors that of the financial broker or real estate agent in other markets that criminals use to conceal their illicit proceeds.

Countermeasures

Given the relative dearth of money laundering prosecutions involving artwork, major enhancements to current regulatory regimes and law enforcement techniques must be examined and implemented in order to stem the growth of illicit finance. As an industry, the art market's principal actors- auction houses, art dealers, and museums should consider develop self-regulatory bodies consistent with other industries. For example, the Financial Industry Regulatory Authority (FINRA), provides inter-firm oversight to anti-money laundering rules for Broker-Dealers and investment companies. The financial services industries industry has been historically plagued with money laundering violations. Although firms are required to have compliance departments directed under anti-money laundering ("AML") guidelines established in the Bank Secrecy act, the self-regulating body of FINRA provides an extra layer of review.¹¹ This oversight mitigates some of the risk firms face by ensuring that their employees identify potential client red flags. In addition, the measures help to protect a firm's reputation by preventing its exposure to dubious financial practices. Such practices would provide a much needed protective umbrella to the art market's participants. Major auction houses such as Christies' and Sotheby's have established AML procedures within compliance departments. These efforts should be applauded, but there remains a lack of coordination in the due-diligence procedures of the wider secondary market- namely that of smaller auction houses, museums, galleries, and art dealers. Given the reputational risk that these entities face if they are accused of wrongdoing due to money laundering violations, it would be prudent industry practice to implement a self-regulatory body reflective of other industries.

The financial sector, including banks and broker-dealers under the guidelines of the Bank Secrecy Act (“BSA”), are required to enact strict guidelines to stem money laundering. Congress, as part of an effort to squeeze drug trafficking organizations (“DTOs”)’ and terrorists’ funding sources, included in the BSA reporting requirements for financial institutions when opening customer accounts.¹² Thus, suspicious activity will be flagged for review, making illicit money flows more prohibitive and risky. Unfortunately, these requirements have not been extended to the art industry. This lack of reporting requirements has created an enormous vulnerability for exploitation by transnational criminals. Until the conditions of the BSA are broadened to include the art market, more criminal proceeds are likely to flow from the traditional financial sector and into this unregulated industry.

In addition to broadened regulatory controls, law enforcement must also be equipped with the knowledge and personnel necessary to detect and disrupt organized crime groups using art to mask their illicit proceeds. Sting operations, although sometimes effective, may fail to aid in the prosecution of terrorists and criminals. Since most of the prosecuted cases involving sting operations have featured law enforcement agents posing as buyers (drug dealers), the targets have been focused on art market intermediaries (art dealers). In order to effectively spot real criminals and terrorist financiers, more sophisticated approaches to undercover operations are necessary to curtail this activity. Such approaches may include the use of undercover agents impersonating art dealers in order to infiltrate this opaque market. This would require training the agents to essentially become art connoisseurs creating the persona of a “dealer.” While conceivably this may find some success, especially in well-funded Federal law enforcement agencies, alternatives should be considered. One such option may include the recruitment of art market participants as potential informants. Art dealers, for instance, could provide insights into trends in the marketplace. Potentially, this information could alert authorities to suspicious activity if there are questionable market entrants. In addition to these operational measures, law enforcement agencies should consider adding personnel, including experts in art crime, to investigate suspicious activity. Such measures have already been suggested in the form of Financial Intelligence Units (FIUs) which many Federal and local agencies have installed to combat financial crime.¹³

Ultimately, political will must provide the basis for supporting tougher anti-money laundering measures in the art market. Following the terrorist attacks on September 11, 2001, sweeping support for the PATRIOT Act demonstrated a consensus that much more was needed to be done to prevent another attack on the Homeland. Given the enormous threat that money laundering poses to the global financial system, current laws should be revised to increase oversight in the art market. These enhancements should include, but not be limited to, broadening BSA provisions to require art market participants to follow the same guidelines as the traditional financial system, such as filing Suspicious Activity Reports. Such revisions would be a positive development to stem the flow of funds to transnational organized crime and criminal groups.

Banks under Fire

Transnational threats such as organized crime and terrorist groups constantly search for effective means to conceal their activities. While the global financial system has enabled criminals to move assets relatively stealthily, there has been an increase in pressure from authorities on banks that have failed to prevent money laundering. Instances such as the 2012 US vs. HSBC case have led to large settlements against major financial institutions. In the HSBC case, the United States Government alleged that HSBC willfully facilitated money laundering activity by Mexican drug trafficking organizations totalling \$881 million.¹⁴ In addition, the bank was found to violate the Bank Secrecy Act by engaging in transactions with sanctioned entities and individuals in Iran, Libya, Cuba, Sudan, and Burma. Eventually a settlement was reached that required a \$1.9 billion penalty from HSBC. In a more recent case in 2014 against BNP Paribas, the bank agreed to settle for a record \$8.97 Billion with the U.S. Government as it was found to facilitate transactions with Iranian, Sudanese, and Cuban sanctioned entities and people.

The HSBC and BNP Paribas cases illustrate important trends emerging from the nature of transnational criminal actors and the subsequent responses by law enforcement. Until recently, most large-scale indictments in the

United States for money laundering violations have targeted individuals associated with organized crime. Typically, the prosecuted criminal's assets are seized by the government and a sentence for jail time and fines will be handed down. Today's major cases have been brought against banks that fail to properly implement their anti-money laundering programs, allowing criminals to open accounts and conduct wire transfers often across borders. As the HSBC case also demonstrated, authorities have included sanctions violations in the same investigations into the financial institution's money laundering of more "traditional" drug trafficking organization' proceeds. This suggests that economic sanctions evasion is increasingly considered by authorities to be guided by similar methods to obscure the source of funds.

As banks are penalized by more punitive government action, they are likely to implement tougher anti-money laundering controls by adding personnel and enacting stricter guidelines for opening accounts and conducting due-diligence on wire transactions, for instance. These actions will likely deter transnational criminals from using the international financial system as frequently. At the very least, they must modify their operations in order to better circumvent the increased enforcement activity. Alternatively, illicit actors may seek less conventional methods of laundering their criminal proceeds. In this more restrictive environment, the art market appears as a possible substitute to traditional banking and asset management services.

Sanctions Evasion through Art

As previously discussed, sanctions evasion violations have been increasingly combined with money laundering investigations by, most notably, the U.S. Government. In order to circumvent laws, sanctions evaders will resort to activity most associated with "traditional" organized crime. Peter Andreas, an expert on illicit finance, has written extensively about this phenomenon. Andreas contends that when a government is sanctioned, it gravitates toward the underground economy to make up for lost revenues. As such, a government may actively

engage in activity such as smuggling and a system based on loyalty to the government in exchange for access to the underground economy begins to emerge. ¹⁵ A recent, striking example of this development is seen in the Iranian sanctions regime. Iran's Revolutionary Guards Corps (IRGC), an elite branch of the country's armed forces, has become an economic giant in recent years. A major reason for this growth has been its role in the black market. Ali Alfoneh, an expert on Iran's Revolutionary Guards Corps, describes their role in the Iranian sanctions regime:

The financial activities of the IRGC and the Basij have far-reaching impact on the Iranian economy and society. IRGC intervention distorts the market and marginalizes not only the private sector but also the revolutionary foundations that have dominated the Iranian economy since the revolution. The IRGC also places a burden on the public sector because of the hidden flow of public funds to IRGC companies through generous subsidies. The IRGC distributes some of its profits to keep its officer corps happy, some funds to buy the loyalty of civilians in the political arena, and some funds to elect politicians who then allocate additional national resources to the IRGC or its front companies. In addition, the IRGC's increasing wealth makes it increasingly independent of the state budget. The IRGC's transfer of wealth into these front companies, however, can also make these companies targets for international sanctions. ¹⁶

Sanctions on Iran's Central Bank in 2012 and its banks' disconnection from the SWIFT network effectively cut the country off from the global financial system. Iran's economic engine, its oil industry, found itself increasingly isolated and the transactions costs prohibitive. Because of its inability to clear transactions in US Dollars, Iranian payment processing became far more difficult. Thus, an opportunity for entrepreneurial sanctions evaders had developed.

If Iran cannot access the international financial system, alternative tactics for creative sanctions evaders exist in the global art market. As discussed previously, artwork can be an effective money laundering instrument due to its portability. An aspect of this portability is its use as a substitute for holding cash. Thus, if a sanctioned Iranian entity wished to conduct an oil transaction, art could be used to facilitate the payment. To demonstrate, let's suppose the Iranian oil company wished to transact with a Chinese buyer. Iran's banks, including its Central Bank responsible for most large oil transactions, are banned from using the SWIFT messaging system. This exclusion prevents inter-bank payments necessary to conduct such a transaction. Alternatively, a scheme could develop whereby the

Iranian entity could receive payment from the sale of artwork if agreed to collusion by the Chinese buyer. Since artwork is both portable and potentially high-value, it is conceivable that numerous paintings could be sold as a payment facilitator. The artwork could be smuggled to a jurisdiction such as New York, where the paintings could be sold anonymously and the transaction could be cleared, effectively allowing Iran to skirt the SWIFT cutoff. While this hypothetical approach may seem far-fetched, Iran has historically used an international network of front companies to evade sanctions. At the very least, it is remarkably clear that art can be used quite flexibly in the activities of money launderers, whether they are drug traffickers or a terrorist state.

Art Trafficking: A Transnational Threat

Most academic research on illicit transnational actors' financial activities have been centered on drug trafficking, human trafficking and smuggling, counterfeiting, extortion, and kidnapping, amongst others. Far less attention has been made of the role that art and antiquities theft plays in the efforts of these groups. This should not understate the scope of the problem, given the trade's long history. As examined in the discussion of money laundering, the stolen or "looted," art market is an opaque one, at best. More specifically, there is a lack of distinction between the illegal and legal trade in the art and antiquities market. This could make interdiction efforts substantially more difficult when countering the threat of transnational group activities. Kimberly Alderman describes this phenomenon in regards to the illegal antiquities trade:

There is no clear distinction between the licit and the illicit antiquities markets. Archaeological materials are traded on the same market, regardless of whether they have been tainted by an illegal act.... It is worth noting that not all participants in the illegal trade are illegal actors; legal actors often participate in illegal transactions, either knowingly or unknowingly. This makes identifying distinct criminal groups in the context of the illicit antiquities trade difficult. Motivation for illegal acts ranges from profit, to ideology, to neuroses. Some groups are organized for the purpose of engaging in the illegal trade, while others participate only incidentally. Organizations range in size from transnational criminal syndicates to family-run operations. ¹⁷

Moreover, the mixing of legitimate and illegitimate elements of the stolen art and antiquities trade occurs at all levels in the supply chain. For example, the illegal antiquities trade begins often at the point of excavation. As many archaeological sites are located in developing nations where there is a lack of proper security over findings, much looting has taken place as a result.¹⁸ Also, in poorer countries, the propensity for collusion between individuals, criminal groups, and corrupt authorities is higher. A study by several scholars at Virginia Commonwealth University illustrates this:

The combination of numerous accessible and unprotected sites along with the increased incentives for looting has been dramatically changing the organization and operation of the market. With the advent of a transnational market, the range of individuals functioning as procurers and transporters has expanded to include not only local residents but members of the military, amateur archaeologists, civil servants, military personnel, businessmen, foreign visitors, art dealers, and criminals engaged in smuggling other commodities.¹⁹

This phenomena is consistent with the development of other illicit markets. Here, excavated art has replaced the traditional poppy or coca crop as a raw commodity. Similarities exist between the described interdependence of government, local business, and industry traders in Afghanistan. During the development of the lucrative opium trade in the 1990s, the illicit crop supported by the Taliban had provided a huge economic boost to the local economy.

²⁰ A major reason for the looting of the goods is its economic opportunity set for an otherwise impoverished, unemployed local population. In addition as noted by Lane, et al, "A variety of other factors, such as drought, famine, epidemics, hyperinflation, war, and population dislocation exacerbate already dire circumstances. The incentive for local populations to engage in illegal appropriation of art and antiquities is not simply the product of episodic crises or extremely economically disadvantaged conditions but rather those conditions coupled with opportunities for extraordinary economic rewards that can transform individuals' circumstances of life."²¹ Illegally excavated art presents a path for limited upward mobility in an otherwise hopeless economic situation.

As in other illicit markets, the demand for a commodity- in this case art, is driven by a number of external factors. The consumer base is composed of both individuals and institutions around the world. Individuals are

represented by the art collector, with preferences for art from a particular time period and geographic area. Typically, these individuals are wealthy and have been concentrated in North America and Europe.²² In addition to individual collectors, museums continually acquire pieces from all parts of the world and time periods. The most well-known museums often have a large budget, enabling them to build their collections. However, because of the incentive to expand the size of their collections, they sometimes de-emphasize due diligence of a work's provenance.²³ This may excuse, in some cases, an illegal transaction history or reveal a looted artifact. When a museum's self-interest trumps the ethical considerations of potentially acquiring an illegally extracted work, it is wittingly or unwittingly promoting the sustainability of the illicit art trade. Hence, this market relies on both legitimate and illegitimate actors to function and grow. Rather than identifying this market as being a wholly illegal or "black" market, it is perhaps best fitting to identify it as "grey" in nature. Further, the role of intermediaries is crucial in the art market, as in the discussion about money laundering. Art dealers, as professionals, are responsible for knowing the provenance of a particular piece. Thus, they form a critical link in the chain from the supply source to its ultimate destination. Dealers, though, may place client discretion ahead of a work's questionable origins. In fact, out of "politeness," they may omit disclosure or conceal the provenance. As Lane et al describes, "Ignoring or concealing the origin of artifacts allows these dealers to sidestep the issue of how they were obtained and the identity of the sellers. Offering artifacts for sale through their dealerships provides buyers with assurance that the artifacts are authentic, a major concern for potential buyers."²⁴ By concealing the work's true identity, they may unknowingly be extending the lifeline of an illicit transaction chain.

Transnational Actors and the Illicit Art Market

As indicated, the stolen or looted art and antiquities market provides immense opportunities for transnational crime. Fundamentally, the market mirrors the development of other illicit markets. But who, in fact, are the benefactors? As our focus is on transnational organizations, it would be essential to determine what role organized crime or terrorist groups might play in this global market. This issue was the topic for a conference discussion at the UN in 2008, *Organized Crime in Art and Antiquities*. The conference highlighted the controversies surrounding the role and nature of organized crime in the illegal art trade. A study by Jessica Dietzler at the University of Glasgow summarized the conference's conclusions by noting that "The consensus of the 2008 UN conference was, in essence, threefold: first, that the involvement of organized crime in illicit antiquities trafficking depends entirely upon what is meant by 'organized crime;' second, that it does not appear to be organized in the stereotypical Mafia sense of the term; finally, that there was not enough information at the time to determine the precise role of organized crime in the trade."²⁵ While the limited information available about organized crime's involvement in the global illicit art trade presents challenges for robust analysis, it is possible to draw some conclusions from historical examples. One example is Italy's "Cordata" case, whereby "organized" elements were responsible for a wide-scale conspiracy. In 1995, Swiss and Italian Law enforcement officers raided a warehouse which led to the discovery of antiquities and invoices detailing international business relationships. Chappell and Polk conclude:

Further investigations were to reveal that the owner of the warehouse, an Italian art dealer named Giacomo Medici, had for many years been involved in an elaborate, highly lucrative and clandestine international trade in illicitly obtained antiquities, mostly acquired from the robbery of tombs and other archeological sites in Italy. In a further striking find, investigators also located a handwritten note and diagram listing by name the persons involved in this trade leading from the tombaroli (tomb robbers) to the middle men and art dealers like Medici, and ultimately to museums and collectors in the USA and Europe. This so-called organigram or chart revealed the entire

organizational chain or “Cordata” of those involved, and what their links were to some of the most prominent international dealers, auction houses, museums, and collectors in the world.²⁶

The “Cordata” illustrates how a criminal network within the antiquities trade might operate. Chappell and Polk further detail how, after Medici’s prosecution, two other art dealers originating from North America were also charged. One, Robert Hecht from California, was a well known art dealer. The other prosecuted dealer was Marion True, a former curator of the famed Getty Museum in Los Angeles.²⁷ Formerly reputable dealers like Hecht and True support the earlier proposition about the dynamics of the illicit art trade. Namely, the mixing of both legitimate and illegitimate elements create, in effect, a “grey” market. Further, the collusion of the dealers verifies the willingness for intermediaries to discount an unsavory provenance. By engaging in looted art transactions, the dealers reduced an invisible “firewall” that could otherwise be established by scrupulous gatekeepers. Instead, the illegally obtained and traded artwork was passed further along the supply chain, potentially making its way to a museum collection or private collector’s hands.

As demonstrated in the “Cordata” case, organized, transnational elements exist in the illicit art and antiquities market. Further, it is clear that the criminals in this market are motivated by one chief concern: attaining profits. What is not obvious, however, is the role of art and antiquities in another transnational group: terrorists. Terrorists have been widely known to utilize activities (drug trafficking, cigarette smuggling, extortion, smuggling, etc.) that organized crime traditionally uses in order to finance their operations and plot attacks. In addition, increasing links between Transnational Criminal Organizations (“TCOs”) and terror groups have demonstrated enhanced cooperation between the actors. However, it appears that the art market does not exhibit the cooperative structures between these transnational groups. In fact, the reasons for TCOs and terrorist group involvement in the art trade are wholly dissimilar. While the goals of TCOs in the art trade are chiefly economic in nature, terrorist groups have utilized art toward their political ends. Art oftentimes serves as a symbol for a particular identity,

whether national, ethnic, or religious. Thus, terrorist groups have used art objects as targets, when they are deemed inappropriate or sacrilegious. Evidence of this behavior can be attested to by Nikos Passos:

Art, antiquities, and cultural heritage thus play an integral role in the formation and perpetuation of national identity and self-image, and the destruction of such resources inevitably contributes to the destruction of a people's identity. In 2001, for example, the Taliban ordered the destruction of the Buddhas of Bamiyan in Afghanistan. These monumental sculptures, carved into sandstone cliffs during the third through fifth centuries AD, were among the most significant treasures in Afghan cultural heritage. Despite public outcry over the cultural and historical value of the sculptures, the Taliban deemed them insulting to Islam. In an act that some have labeled cultural terrorism, the statues were blown up following the orders of the Taliban's supreme leader.²⁸

As reflected in this case, the Taliban uses art as a weapon in their "cultural warfare" against the ancient Buddhist relics in Afghanistan. The Buddhas were deemed a threat to the ideological purity of the Taliban's Islamist vision. Instead of looting the artifacts to profit from their sale, the Taliban chose to destroy the objects, reflecting the political motive of terrorist activity. In a more recent and striking example, the Islamic State (ISIS) has also systematically destroyed ancient relics as part of their efforts to rid their captured territories of what they consider "un-Islamic". ISIS' destruction of ancient artifacts in Mosul, Iraq's largest museum demonstrate the "cultural terrorism" tactics reflective of the previously discussed activities of the Taliban.²⁹ While these examples reflect the importance that art plays in terrorist propaganda as opposed to use as a funding source, this phenomenon does not always hold true. In fact, there is a distinct possibility that the head of the terrorist group behind the September 11th, 2001 attacks may have attempted to finance their operation through the illicit antiquities market. As Der Spiegel Magazine reported in a 2005 article, a professor at the University of Gottingen in Germany had been approached by Mohammed Atta, the leader of the 9/11 attacks. Atta reportedly told the professor that he was looking to sell some ancient Afghan artifacts and wanted to know how to reach potential buyers.³⁰ Whether or not Atta was successful in eventually selling the Afghan artifacts, as reported, the use of the illicit art market as a potential funding mechanism for terror activity remains a logical possibility. A more compelling example of terrorist finance in relation

to illicitly acquired art was the case of the Iraqi insurgency following the U.S.-led invasion. As Matthew Bogdanos describes:

We do not have hard numbers – the traffic in art for arms is too recent and shadowy a phenomenon – and some of the investigations remain classified because of the connection to terrorists. But this illicit trade has become a growing source of revenue for the insurgents; ranking just below kidnappings for ransom and “protection” money from local residents and merchants. Among the most prized items are cylinder seals, intricately carved pieces of stone about the size of a piece of chalk that can sell for US\$250,000, enabling an insurgent to smuggle millions of dollars in his pocket. Given this almost limitless supply of antiquities, the insurgency appears to have found an income stream sufficiently secure to make any chief financial officer sleep well at night. As a result, the desert night is filled with the roar of bulldozers ripping into the ancient mounds of clay that were once thriving cities.³¹

Bogdanos describes an Iraqi insurgency using their country’s ancient artifacts in a far different manner than ISIS has recently done, almost a decade later. Recognizing the huge profit potential from the illicit antiquities trade, the insurgency employed tactics more common to organized crime by smuggling instead of razing the Iraqi museums.

Art Trafficking: A Strategic Assessment

What can be done to stem the illicit flow of art and antiquities? This question may initially seem daunting, given the relative lack of knowledge about the extent of TOCs’ and terrorist groups’ activities in the trade. Further, the inherent opacity of the global art market creates a virtual indistinguishability between illicit and licit elements. Certain proposed regulatory measures, as recommended in the money laundering section, do not extend to preventing the looting of museums or excavation sites worldwide. However, there are several key areas where both art industry participants and policymakers can achieve potentially significant progress. For one, the art industry leaders (auction-houses, museums, leading galleries) should initiate a self-regulating body that penalizes its members for participating in the illegal art and antiquities trade. Stricter rules for provenance discovery could be adopted, perhaps erecting the critical “firewall” needed to prevent illegally acquired works and artifacts from mixing with legitimate collections. Punitive measures for rule-breakers could be enforced, thereby discouraging the concealment of an artwork’s identity. Also, policymakers should consider enacting legislation that would bring harsher penalties

to individuals and institutions engaging in the sale of illegal or looted works. In addition, enhanced international cooperation should be encouraged to protect excavation sites and improve location security. While these efforts may not end the illicit art and antiquities trade, they would be welcoming improvements to the status quo.

Conclusion

Art's role as both a money laundering instrument and a funding source for transnational crime groups and terrorist organizations should not be understated. The lack of scholarly research concerning this topic is alarming, given the sheer size of the global art and antiquities market. While record sales may be partially reflective of the growth in worldwide wealth, there is no reliable data illustrating the impact of the market's illicit activity. Further, there has not been a national debate to determine how the current regulatory regime facing financial institutions might be expanded to include the art market. Would it be a wild assumption to assert that this global market is being inflated by money laundering? At this year's World Economic Forum in Davos, Switzerland, it was Nouriel Roubini making a claim to this effect. He pointed out the heightened speculation inherent in the art market of today, while pressing the need for increased regulation to stamp out money laundering and tax evasion that is rampant in the market today.³² Beyond the prescribed steps outlined in the paper for enhanced regulation and law enforcement training, the academic community must also share the burden of responsibility for bringing this issue into the policy debate.

Notes

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¹⁹ *Ibid.* Pgs 247-248

²⁰ Vanda Felbab-Brown. *Shooting Up : Counterinsurgency and the War on Drugs*. Brookings Institution, 2010. Pg. 128

²¹ *Time Crime*. Pg. 247

²² *Ibid.* Pg.249

²³ *Ibid.* Pg. 253

²⁴ *Ibid.*

²⁵ Jessica Dietzler. "On 'Organized Crime' in the illicit antiquities trade: moving beyond the definitional debate." Trends in Organized Crime. Springer, 2012. Volume 15, Number 4. December 2012. Pg. 8

²⁶ Duncan Chappell and Kenneth Polk. *Unraveling the "Cordata": Just How Organized Is the International Traffic in Cultural Objects?* Crime in the Art and Antiquities World Illegal Trafficking in Cultural Property. Springer, 2011. Pgs 100-101.

²⁷ *Ibid.* Pg. 101

²⁸ Nikos Passos. *Overview of Crime and Antiquities*. Crime in the Art and Antiquities World Illegal Trafficking in Cultural Property. Springer, 2011. Pg. 53

²⁹ <http://www.nytimes.com/2015/02/27/world/middleeast/more-assyrian-christians-captured-as-isis-attacks-villages-in-syria.html>

³⁰ <http://www.spiegel.de/spiegel/print/d-41106138.html>

³¹ Matthew Bogdanos. *Thieves of Baghdad: The Global Traffic in Stolen Iraqi Antiquities*. Crime in the Art and Antiquities World Illegal Trafficking in Cultural Property. Springer, 2011. Pg. 162

³² <http://www.ft.com/intl/cms/s/o/092def86-a250-11e4-aba2-00144feab7de.html#axzz3YVgIG2WS>

