

HONOR AMONGST THIEVES:  
ORGANIZED CRIME AND THE ILLICIT ANTIQUITIES TRADE<sup>1</sup>

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TABLE OF CONTENTS:

I.	INTRODUCTION .....	3
II.	DEFINING ORGANIZED CRIME .....	5
III.	CRIMINAL GROUPS IN THE ILLICIT ANTIQUITIES TRADE .....	7
	<i>a. Criminal Excavators</i> .....	8
	i. Subsistence Diggers .....	8
	ii. Tombaroli .....	11
	iii. Terrorists .....	12
	iv. Mafia and Gangs .....	15
	v. Methamphetamine-Fueled Diggers .....	18
	<i>b. Middlemen</i> .....	20
	i. Wholesalers .....	20
	ii. Traffickers .....	22
	<i>c. Retailers</i> .....	24
	i. Dealers .....	25
	ii. Auction Houses .....	27
	<i>d. Antiquities Owners</i> .....	29
	i. Collectors .....	30
	ii. Museums .....	31
IV.	LATERAL COOPERATION AMONG CRIMINAL ORGANIZATIONS .....	32
V.	CONCLUSION .....	35

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## ABSTRACT:

*Government agencies, non-profits, scholars, and advocacy groups alike assert that organized crime dominates the illicit antiquities trade. The illicit antiquities trade has been linked to money laundering, extortion, the drug and arms trades, terrorism and insurgency, and even slavery. This Article considers the connection between organized crime and the illicit antiquities trade, examines known criminal subcultures and evidence of their involvement in the trade, and analyzes lateral cooperation between loosely organized criminal groups. Finally, the Article poses the broader question of whether this lateral cooperation suggests that the antiquities trade as a whole operates as an organized criminal industry.*

## I. INTRODUCTION

Government agencies<sup>3</sup>, non-profits<sup>4</sup>, scholars<sup>5</sup>, and advocacy groups<sup>6</sup> alike assert that organized crime fuels the illicit antiquities trade. The illicit antiquities trade has been linked to organized criminal activities including money laundering<sup>7</sup>, extortion<sup>8</sup>, the drug and arms trades<sup>9</sup>, terrorism and insurgency<sup>10</sup>, and slavery.<sup>11</sup> Art

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<sup>3</sup> *The FBI Art Theft Program and Its Impact on Collecting: A Report from FBI Special Agent Robert Wittman and the Editor, AMERICAN SOCIETY OF ARMS COLLECTORS BULLETIN* 91 (2005), at 51 [hereinafter *FBI Report*] (“[I]llicit trafficking of cultural property is often associated with various other criminal activities, such as organized crime, money laundering, extortion, and fraud.”).

<sup>4</sup> *Art Crime Facts*, ASSOCIATION FOR RESEARCH INTO CRIMES AGAINST ART, <http://www.artcrime.info/facts.htm> (last visited Dec. 6, 2010) [hereinafter *ARCA Website*] (“Since [1961] most art crime is perpetrated by, or on behalf of, Organized Crime, thereby fueling their other activities, including the drug and arms trades and terrorism,” and “Art crime funds all organized crime enterprises, including terrorism.”).

<sup>5</sup> Edgar Tjihuis, *Trafficking in Stolen Art, Antiques and Cultural Property*, in *ORGANIZED CRIME: AN INTERNATIONAL ENCYCLOPEDIA* 223 (2005), at 223 (“One of the most diverse and international types of organized crime is the trade in stolen art and antiquities.”).

<sup>6</sup> Blythe Bowman, *Plunder of antiquities, A crime of global proportions*, *SAVING ANTIQUITIES FOR EVERYONE*, <http://www.savingantiquities.org/crime.php> (last visited Dec. 6, 2010) (“The drastic increase in the current market values of antiquities has precipitated an infiltration and monopoly of the black market by organized criminal syndicates. Plunder of ancient objects has become a thriving industry for these groups.”).

<sup>7</sup> See *FBI Report*, *supra* note \_\_; see also Patrick Hunt, *International Law and the Ethics of Antiquities Trafficking*, 11 *STAN. J. INT’L REL.* 80 (2010), at 81 [hereinafter *Hunt*] (“[T]here is growing concern that antiquities smuggling is often a money laundering operation for other criminal activity like narcotics, arms, and slavery.”).

<sup>8</sup> See *FBI Report*, *supra* note \_\_.

<sup>9</sup> See *FBI Report*, *supra* note \_\_; see also *ARCA Website*, *supra* note \_\_; Hunt, *supra* note \_\_, at 81; Gregory Elich, *Spoils of War: The Antiquities Trade and the Looting of Iraq*, *CENTRE FOR RESEARCH ON GLOBALISATION*, Jan. 3, 2004, at ¶ 13, <http://www.globalresearch.ca/articles/ELI401A.html> (last visited Feb. 22, 2011) [hereinafter *Spoils of War*] (“[T]he trade in antiquities is closely intertwined with that of the drug trade.”).

While the same trafficking channels are often used to move both drugs and antiquities, actual examples of this “intertwining” are rare. See NEIL BRODIE, JENNY DOOLE & PETER WATSON, *THE MCDONALD INST. FOR ARCHAEOLOGICAL RESEARCH, STEALING HISTORY: THE ILLICIT TRADE IN CULTURAL MATERIAL* 18 (2000), available at: [http://www.mcdonald.cam.ac.uk/projects/iarc/research/illicit\\_trade.pdf](http://www.mcdonald.cam.ac.uk/projects/iarc/research/illicit_trade.pdf) [hereinafter *STEALING HISTORY*] (describing such examples, one of which was, “In January 1999,

crime experts have charged that organized crime has occupied a dominant role in the illicit antiquities trade since the early 1960s.<sup>12</sup> Despite these assertions, the connection between organized crime and the illicit antiquities trade is rarely explained or substantiated. Some have charged the alleged connections are specious at best.<sup>13</sup>

This Article analyzes the repeated assertion that organized crime and the illicit antiquities trade are inextricably linked. In Part II, the Article examines definitions of organized crime, both vernacular and criminological, and suggests a definition for use in examining the connection between organized crime and the illicit antiquities trade. In Part III, this Article examines known criminal subcultures and evidence of their involvement in the trade, applying the suggested

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Spanish police broke up a smuggling ring that had been planning to trade stolen art and antiquities for cocaine.”)

<sup>10</sup> Elena Becatoros, *Smuggled Antiquities Funding Iraq Extremists, U.S. Says*, ASSOCIATED PRESS, Mar. 19, 2008, available at:

<http://news.nationalgeographic.com/news/2008/03/080319-AP-iraq-insurg.html>

[hereinafter *Becatoros*] (“Bogdanos, a New York assistant district attorney ... said the link between extremist groups and antiquities smuggling in Iraq was ‘undeniable.’”); see also Hunt, *supra* note \_\_.

<sup>11</sup> Hunt, *supra* note \_\_, at 81.

<sup>12</sup> ARCA Website, *supra* note \_\_. Organized criminal groups have been charged with perpetuating up to 80% of art crime (illicit antiquities crime is considered by many to be a type of art crime) *Interview with Noah Charney*, VENTIQUATTRO, April 14, 2007 (wherein Charney states that international organized crime syndicates “have a division for stealing cars, another for drug trafficking, another for art crime, functioning like a huge multinational corporation,” but conceding that no good statistics exist worldwide).

<sup>13</sup> Becatoros, *supra* note \_\_ (“Antonia Kimbell, an art trade manager at The Art Loss Register... said she had yet to see concrete evidence connecting the trade in illegal antiquities and insurgent financing.”); Jonathan Lopez, *Stealing and Dealing, Art & Antiques*, Summer 2010, at 42 (wherein the interviewer asks Robert K. Wittman, founder of the FBI Art Crime team, “From time to time I’ve been told that most of the world’s biggest art heists are carried out by organized crime syndicates, who then use the stolen works as collateral to finance drug deals, arms trafficking or even acts of terrorism...,” to which Wittman responds, “There are a lot of people who make things up to get their names in the paper.”); Peter Tompa, *Wikileaks, Tariq Aziz, and Archaeological Amnesia*, CULTURAL PROPERTY OBSERVER (Oct. 26, 2010, 3:39 AM) <http://culturalpropertyobserver.blogspot.com/2010/10/wikileaks-tariq-aziz-and-archaeological.html>; Kimberly L. Alderman, *Does the Illicit Antiquities Trade Fund Terrorism?*, THE CULTURAL PROPERTY & ARCHAEOLOGY LAW BLOG (Oct. 26, 2010) <http://culturalpropertylaw.wordpress.com/2010/10/26/does-the-illicit-antiquities-trade-fund-terrorism/>.

definition of organized crime to known excavators, middlemen, retailers and owners of illicit antiquities to determine whether the posited connection to organized crime can be substantiated.

In Part IV, this Article analyzes lateral cooperation between smaller, loosely organized criminal groups, posing the question of whether the antiquities trade as a whole is an organized criminal industry. Part V concludes that there is a connection between organized crime and the illicit antiquities trade if one employs a broader, criminological definition of organized crime. Part V further suggests use of a uniform definition of organized crime for use in discussions about the illicit antiquities trade, and disclosure of that definition order to facilitate meaningful discourse on organized crime and the illicit antiquities trade.

## II. DEFINING ORGANIZED CRIME

There is significant dispute over whether organized crime is truly to blame for the flourishing illicit antiquities trade.<sup>14</sup> There are multiple meanings of the term “organized crime,”<sup>15</sup> and this impedes meaningful discourse on the subject. “Organized crime” (and especially “organized criminal syndicate”<sup>16</sup>) evokes imagery of Cosa Nostra, the Japanese Yakuza, and the Irish Mob. However, criminological definitions are broader than the vernacular use of the term. This contradiction causes misunderstandings in discussions about organized crime’s role in the illicit antiquities trade.

The Federal Bureau of Investigation (FBI) defines organized crime as “any group having some manner of a formalized structure and whose primary objective is

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<sup>14</sup> See note \_\_ [currently 13]; see also Mark Durney, *Art Theft and Organized Crime?*, ART THEFT CENTRAL (June 16, 2010, 8:54 PM) <http://arttheftcentral.blogspot.com/2010/06/art-theft-and-organized-crime.html>.

<sup>15</sup> Bojan Dobovek, *Organized crime – Can We Unify the Definition?*, POLICING IN CENTRAL AND EASTERN EUROPE: COMPARING FIRSTHAND KNOWLEDGE WITH EXPERIENCE FROM THE WEST (1996), available at: <http://www.ncjrs.gov/policing/org323.htm> (“There is no generally accepted definition of organised crime yet, due mostly to the quick development and changing of the forms in which organised crime appears.”); see William P. Jennings, Jr., *A Note on the Economics of Organized Crime*, 10 EASTERN ECONOMIC JOURNAL 315 (1984), available at: <http://www.jstor.org/pss/40324917> (“[T]here is no apparent consensus among researchers regarding the appropriate definition of the organized crime[.]”)

<sup>16</sup> See Bowman, *supra* note \_\_.

to obtain money through illegal activities.”<sup>17</sup> This definition does not require that the activities be criminal, merely illegal; violation of domestic or international civil law would qualify as potential activities for organized criminal groups under the FBI’s definition.

Compare the definition of organized crime in the United Nations Convention against Transnational Organized Crime: “A structured group of three or more persons... acting in concert with the aim of committing one or more serious crimes or offences... in order to obtain, directly or indirectly, a financial or other material benefit.”<sup>18</sup> The Convention defines a serious crime as one with a maximum punishment of at least four years incarceration.<sup>19</sup>

The UN definition of organized crime is broader than the FBI definition in the respect that it includes antiquities crime motivated by non-monetary benefits such as ideology, whereas the FBI definition would not. Further, the FBI definition requires a level of formal organization that would exclude many of the groups currently operating within the illicit antiquities trade. Under the UN definition, smaller, informally organized groups that incidentally participate in the illicit antiquities trade would be considered organized criminal actors. The FBI definition is broader only in the respect that it includes civil offenses as well as criminal ones.

The level of organization of criminal actors in the illicit antiquities trade varies. Syndicates range from “smaller organized gangs to the Sicilian and Russian mafias.”<sup>20</sup> Depending on the breadth of the definition used, legal actors may engage in activities that amount to organized crime.<sup>21</sup> For the purposes of this Article, and to create a broad definition of organized crime, a fusion of the FBI and UN definitions will be used:

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<sup>17</sup> *Glossary of Terms*, FEDERAL BUREAU OF INVESTIGATION, <http://www.fbi.gov/about-us/investigate/organizedcrime/glossary> (last visited Dec. 7, 2010) [hereinafter *FBI Glossary*].

<sup>18</sup> United Nations Convention against Transnational Organized Crime art. 2(a), Nov. 15, 2000, G.A. Res. 55/25, available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

<sup>19</sup> *Id.* at art. 2(b).

<sup>20</sup> Noah Charney, *Stolen Masterpieces: How Organized Crime Targets the International Art World*, THE CRIME REPORT (Mar. 11, 2010, 3:00 AM) <http://www.thecrimereport.org/archive/stolen-masterpieces-how-organized-crime-targets-the-international-art-world>.

<sup>21</sup> A.J.G. TIJHUIS, TRANSNATIONAL CRIME AND THE INTERFACE BETWEEN LEGAL AND ILLEGAL ACTORS 15-40 (2006).

*A structured group of three or more persons, acting in concert to violate the law, whose primary objective is to obtain a financial or other material benefit.*

It will be in the context of this definition that the connection between organized crime and the illicit antiquities trade will be examined.

### III. CRIMINAL GROUPS IN THE ILLICIT 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<sup>22</sup> by an illegal act. Ricardo J. Elia of Boston University has explained, “People think that there is an illicit and a legitimate market. In fact, it is the same.”<sup>23</sup> 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.<sup>24</sup>

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.

Despite the oft-repeated assertion that organized crime controls the illicit trade, there has been little scholarly treatment of the claim.<sup>25</sup> Following are the groups that have been identified in scholarly or popular literature that (1) have a known pattern of participation in the illegal antiquities trade, and (2) meet the definition of organized crime suggested in Part II of this Article (a structured group of three or more people, acting in concert to violate the law, in order to obtain a financial or other material benefit).

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<sup>22</sup> See Kimberly L. Alderman, *Ethical Trade in Cultural Property: Ethics and Law in the Antiquity Auction Industry*, 14 ILSA J. INT’L & COMP. L. 549, 560 (2008) [hereinafter *Ethical Trade*] (“A tainted item does not carry with it the appearance of having been illegally obtained or exported, so physical characteristics alone rarely reveal an object to be the fruit of past illegal acts.”).

<sup>23</sup> Mark J. Petr, *Trading Places: Illicit Antiquities, Foreign Cultural Patrimony Laws, and the U.S. National Stolen Property Act After United States v. Schultz*, 28 HASTINGS INT’L & COMP. L. REV. 503, 503 (2005).

<sup>24</sup> See generally TIJHUIS, *supra* note \_\_\_.

<sup>25</sup> VITO ANDREA IANNIZZOTTO, *BENI CULTURALI E LA CRIMINALITÀ ORGANIZZATA* (2000) (an exception to this general rule, exploring the connection between culture and organized crime, available only in Italian).

### A. Criminal Excavators

There is wide variety in the people and groups that illegally excavate archaeological materials. Most are motivated by poverty but, in some areas, there is substantial profit to be made in plundering. Generally, illegal excavators receive less than one percent of the final market value of their discoveries, but the proceeds are a boon to them nonetheless.<sup>26</sup>

As demonstrated in this subsection, the majority of criminal excavators work in organized criminal groups as defined in the broad definition in Part II of this Article. They work in crews of three or more, often with a foreman or sponsor, and collaborate with a local middleman to pawn off their finds. The objective of these operations is almost always financial benefit. One criminal excavator explained, “[T]here’s no alternative for me or my men. We work to put food on the table for our families... We are all unemployed.”<sup>27</sup>

#### Subsistence Diggers

Subsistence diggers (usually called subsistence looters<sup>28</sup>) are motivated by poverty to excavate archaeological materials in their local region in violation of national law.<sup>29</sup> Source nations (those from which archaeological materials most often originate) tend to be less prosperous than market nations (those in which archaeological materials are most often sold).<sup>30</sup> This economic disparity motivates locals to harvest untapped archaeological resources, often in agricultural off-seasons

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<sup>26</sup> Lisa J. Borodkin, *The Economics of Antiquities Looting and A Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 417 n. 10 (1995) (describing instances in Turkey and the U.S. where finders received very small amounts compared to the ultimate selling price of a marble statue and a Mimbres pot, respectively).

<sup>27</sup> See Christina Ruiz, *My Life as a Tombarolo*, THE ART NEWSPAPER No. 112, Mar. 2000, at 36, available at: <http://www.museum-security.org/tombarolo.htm> [hereinafter *Tombarolo*].

<sup>28</sup> This Article does not use the more common term “subsistence looter” because it implies a value judgment not helpful to the analysis herein.

<sup>29</sup> John Alan Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)*, 28 ENVIRONS ENV'T'L L. & POL'Y J. 1, 8-9 (2004) (describing subsistence looters as “trapped in the abyss of poverty”); Jonathan S. Moore, *Enforcing Foreign Ownership Claims in the Antiquities Market*, 97 YALE L.J. 466, 486 (1988).

<sup>30</sup> Ethical Trade, *supra* note \_\_\_, at 551 n. 6.



or when yields are poor.<sup>31</sup> David Matsuda, a scholar who has rigorously studied subsistence digging, has estimated that 97 to 99 percent of illicit excavations in Central America are performed by localized subsistence diggers.<sup>32</sup>

In Belize, subsistence diggers are called “huecheros.”<sup>33</sup> Huecheros sell illicitly excavated artifacts to a wholesaler, who can move them to dealers.<sup>34</sup> They call their finds “semilla,” meaning seed – planted by their ancestors to dig up and sell for money or actual corn seed.<sup>35</sup> Huecheros demonstrate how not all subsistence diggers consider themselves to be doing something illicit or criminal. Matsuda has explained, “Many of Latin America’s indigenous peoples see themselves as the legitimate heirs to both seeds and artifacts, which are conceived

of as ancestors’ gifts, given to humanity by real or mythological patrons to be harvested, or excavated, as it were, by later generations.”<sup>36</sup>

Matsuda interviewed 400 subsistence diggers and concluded that most of them were “refugees from civil violence and



Figure 1

<sup>31</sup> Aaron M. Boyce, *A Proposal to Combat the Illegal Trafficking of Pre-Columbian Artifacts*, 3 HISP. L.J. 91, 92 n. 3 (1997). David Matsuda has estimated that up to 500,000 people conduct seasonal subsistence digging in El Salvador and Guatemala, 30,000 to 50,000 in Belize, and 250,000 in the northern state of Jalisco in Mexico. David Matsuda, *The Ethics of Archaeology, Subsistence Digging, and Artifact Looting in Latin America: Point, Muted Counterpoint*, INTERNATIONAL JOURNAL OF CULTURAL PROPERTY 7, no. 1 (1998), at 5 [hereinafter *Matsuda*].

<sup>32</sup> Matsuda, *supra* note \_\_\_\_, at 91.

<sup>33</sup> Matsuda, *supra* note \_\_\_\_, at 88.

<sup>34</sup> See generally, Matsuda, *supra*

<sup>35</sup> Matsuda, *supra* note \_\_\_\_, at 87..

<sup>36</sup> Matsuda, *supra* note \_\_\_\_, at 88.

economic despair.”<sup>37</sup>

Subsistence digging is also widespread in Iraq and Afghanistan.<sup>38</sup> One Afghani villager explained, “[The villagers] tried to earn as much money as possible with their finds, to put food on the table for their children. You don’t do this for fun... If you’re not desperate, you never do this.”<sup>39</sup> Subsistence digging is not easy work; in the Middle East, men work in teams to dig holes straight down, and then tunnels radiating out on the horizontal plane in a star shape – called an underground gallery.<sup>40</sup> In Tepe Zargaran, a site plundered in the 1990s<sup>41</sup>, the galleries ran at a depth of 20 feet.<sup>42</sup>

Some sites in southern Iraq have been so extensively plundered that they look like “moonscapes.”<sup>43</sup> Archaeologist Maguire Gibson observed from a helicopter approximately 200 looters working in broad daylight at the site of Adab, and 200 to 300 at Isin.<sup>44</sup> In a 2004 photograph by John Russell, dozens of looters at Isin appear to be waving at him as he flies overhead in a helicopter (See Figure 1).<sup>45</sup>

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<sup>37</sup> Matsuda, *supra* note \_\_, at 91 (explaining “decades of prolonged civil violence forced subsistence farmers into unfamiliar ecosystems... It is in these outback areas – with no seed crops, poor soil, and unstable weather patterns – that the abundance of uncharted archaeological ruins became a viable socioeconomic alternative to starvation[.]”)

<sup>38</sup> Peter Brems & Wim Van den Eynde, *Blood Antiques* (LinkTV broadcast Oct. 8, 2009) (transcript available at: <http://www.journeyman.tv/?lid=59906&tmpl=transcript>) [hereinafter *Blood Antiques*]; John Russell, *Looters in Iraq* (2004), available at: <http://www.earlham.edu/~vanbma/20th%20century/images/1967daytwentyfour06.htm> (photograph of looters at Isin waving at the photographer, who is overhead in a helicopter) [hereinafter *Looters in Iraq*]. **Need permission to run photo before printing.**

<sup>39</sup> *Blood Antiques*, *supra* note \_\_.

<sup>40</sup> *Blood Antiques*, *supra* note \_\_.

<sup>41</sup> *Afghanistan's ancient treasures a worrying modern-day trade*, THE NEWS INTERNATIONAL, Mar. 20, 2007, available at: <http://www.rawa.org/temp/runews/2007/03/20/afghanistan-s-ancient-treasures-a-worrying-modern-day-trade.html>.

<sup>42</sup> *Blood Antiques*, *supra* note \_\_.

<sup>43</sup> *Looters in Iraq*, *supra* note \_\_\_\_; *Spoils of War*, *supra* note \_\_, at ¶ 27.

<sup>44</sup> *Spoils of War*, *supra* note \_\_\_\_, at ¶ 27.

<sup>45</sup> *Looters in Iraq*, *supra* note \_\_\_\_.

## Tombaroli

In Italy, illegal excavators are called “tombaroli,”<sup>46</sup> and they may or may not be impoverished.<sup>47</sup> Tombaroli work in crews to search the Italian countryside, usually under cover of night, for ancient tombs and burial chambers.<sup>48</sup> Crews operate under the supervision or authority of a foreman.<sup>49</sup> They sometimes use mechanical diggers to break into the roofs of tombs.<sup>50</sup> Then, several men dig inside the chamber while a lookout watches for police, sometimes using infrared technology.<sup>51</sup> In an anonymous interview with a journalist, one tombarolo who had his own team reported that each tomb yielded between \$3,300 and \$5,700 worth of artifacts, of which the tombarolo took 60-70%, splitting the rest among his men.<sup>52</sup>

Burial tombs in Italy are often located on what is now farmland; experienced tombaroli use subtle signs such as changes in vegetation patterns to identify likely locations for these tombs.<sup>53</sup> Tombaroli may give the nearby farmers a cut of the profits for illegal excavations, although farmers are becoming less cooperative due to fear of State seizure.<sup>54</sup> One tombarolo explains regarding the tombarolo’s relationship with the public and each other, “We’re not like the Mafia; there is no violence, but there is a code of honor.”<sup>55</sup>

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<sup>46</sup> Meaning, literally, “tomb raiders” or “grave robbers.” Sue J. Park, *The Cultural Property Regime in Italy: An Industrialized Source Nation's Difficulties in Retaining and Recovering Its Antiquities*, 23 U. PA. J. INT'L ECON. L. 931, 954 n. 1 (2002).

<sup>47</sup> Tombarolo, *supra* note \_\_\_ (recounting the story of a tombarolo who explained, “I'd like to have an honest job, to spend my nights in bed with my wife, but there's no alternative for me or for my men. We work to put food on the table for our families.”); compare Ariel David, *Modern-day 'tomb raiders' feel the heat*, ASSOCIATED PRESS, July 6, 2007, available at: <http://www.msnbc.msn.com/id/19585643/> (telling the story of Pietro Casasanta, who “worked undisturbed in daylight with a bulldozer, posing as a construction worker... to dig into ancient Roman villas and unearth statues, pottery and other artifacts which he then sold for millions of dollars on the illegal antiquities market.”).

<sup>48</sup> Sue J. Park, *The Cultural Property Regime in Italy: An Industrialized Source Nation's Difficulties in Retaining and Recovering Its Antiquities*, 23 U. PA. J. INT'L ECON. L. 931, 931 (2002).

<sup>49</sup> Tombarolo, *supra* note \_\_\_.

<sup>50</sup> STEALING HISTORY, *supra* note \_\_\_.

<sup>51</sup> Tombarolo, *supra* note \_\_\_.

<sup>52</sup> Tombarolo, *supra* note \_\_\_.

<sup>53</sup> Tombarolo, *supra* note \_\_\_.

<sup>54</sup> Tombarolo, *supra* note \_\_\_.

<sup>55</sup> Tombarolo, *supra* note \_\_\_.

Tombaroli occasionally sell directly to local collectors, if they have the right connections and find an object they know a particular collector will like.<sup>56</sup> Some more seasoned tombaroli also make money by “selling” tombs, pointing less experienced tombaroli to unexcavated sites, and taking a flat fee or a cut for the tip off.<sup>57</sup> Like most criminal excavators, however, tombaroli usually sell to wholesalers.<sup>58</sup>

### Terrorists

There is little in the way of concrete evidence that terrorist groups participate in the illicit antiquities trade in any capacity other than incidentally. The occasional episodes brought to light by the media serve as indicators that some connection exists, although the extent of the connection remains contested.<sup>59</sup>

In 2005, the German secret service released that Mohammed Atta, the hijacker of the first plane to strike the World Trade Center on September 11, 2001, had attempted to sell Afghan antiques to a Göttingen professor in 1999.<sup>60</sup> Atta told the professor that he needed the money to purchase an aircraft.<sup>61</sup> This is the most cited example of the connection between terrorism and the illicit antiquities trade.

In a recent interview, Amir Ganor, the Director of the Robbery Prevention Unit of the Israel Antiquities Authority, stated that some of the antiquities looters in Israel are “connected to terror,” and that terrorists use the money earned from the antiquities to buy weapons.<sup>62</sup> He recounted a story where his Unit caught a

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<sup>56</sup> Tombarolo, *supra* note \_\_\_; Park, *supra* note \_\_\_.

<sup>57</sup> Tombarolo, *supra* note \_\_\_.

<sup>58</sup> Christine L. Green, *Antiquities Trafficking in Modern Times: How Italian Skullduggery Will Affect United States Museums*, 14 VILL. SPORTS & ENT. L.J. 35, 53 (2007).

<sup>59</sup> See note \_\_\_ [currently 13] of this Article.

<sup>60</sup> *Todespilot Atta wollte Terroranschläge vom 11. September 2001 durch illegalen Kunsthandel finanzieren*, DER SPIEGEL, July 16, 2005, available at: <http://www.spiegel.de/spiegel/vorab/0,1518,365376,00.html> [hereinafter *Der Spiegel*]; Christina Ruiz, *9/11 hijacker attempted to sell Afghan loot*, THE ART NEWSPAPER No. 210, Feb. 2010, available at: <http://theartnewspaper.com/articles/9-11-hijacker-attempted-to-sell-Afghan-loot%20/20188>.

<sup>61</sup> *Der Spiegel*, *supra* note \_\_\_.

<sup>62</sup> Eti Bonn-Muller, *Amir Ganor, Director, Robbery Prevention Division*, ARCHAEOLOGY, 2010, available at: [http://www.archaeology.org/israel\\_antiquities\\_authority/ganor.html](http://www.archaeology.org/israel_antiquities_authority/ganor.html) [hereinafter *Bonn-Muller*].

team of terrorists trying to sell an illegally excavated sarcophagus for “a lot of money.”<sup>63</sup>

The 2009 documentary “Blood Antiques” demonstrates how antiquities from Iraq and Afghanistan are transported to Europe (Brussels in particular) in an organized fashion.<sup>64</sup> The documentary argues that because terrorist organizations “run the show” in the “unstable countries” where the antiquities originate, “a large part” of the estimated 5 billion euros<sup>65</sup> spent on stolen antiquities annually finances terrorism.<sup>66</sup> The documentary offers anecdotal evidence that the Taliban harvests antiquities in the areas under their control, using the proceeds “to finance their war.”<sup>67</sup>

New York assistant district attorney and U.S. Marine Reserve Colonel Matthew Bogdanos has attested that the link between terrorism and antiquities

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<sup>63</sup> Bonn-Muller, *supra* note \_\_\_\_.

<sup>64</sup> Blood Antiques, *supra* note \_\_\_.

<sup>65</sup> The documentary does not explain where this number comes from, but it is a commonly used figure. According to the FBI Art Theft Program, “Art and cultural property crime—which includes theft, fraud, looting, and trafficking across state and international lines—is a looming criminal enterprise with estimated losses running as high as \$6 billion annually.” *Art Theft*, THE FEDERAL BUREAU OF INVESTIGATION, [http://www.fbi.gov/about-us/investigate/vc\\_majorthefts/arttheft/arttheft](http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft/arttheft). However, INTERPOL cautions, “It is very difficult to gain an exact idea of how many items of cultural property are stolen throughout the world and it is unlikely that there will ever be any accurate statistics.” *Frequently Asked Questions*, INTERPOL, <http://www.interpol.int/Public/WorkOfArt/woafaq.asp>.

<sup>66</sup> Blood Antiques, *supra* note \_\_\_\_. This echoes the sentiment expressed by art collector Arthur Brand, who commented, “The obvious link is when a hundred thousand people in the United States buy antiquities coming out of the [sic] Iraq, Iran, Lebanon and Pakistan. Nine out of 10 artifacts that come out of the Middle East are controlled by Hezbollah and Islamic Jihad.” Consider Laura de la Torre, *Terrorists raise cash by selling antiquities*, GOVERNMENT SECURITY NEWS, Feb. 20, 2006, available at: <http://www.savingantiquities.org/pdf/GSNarticle.pdf> [hereinafter *Terrorists Raise Cash*] (conceding that “Brand’s numbers cannot be confirmed.”)

<sup>67</sup> One Afghani trafficker reported, “The Taliban are also in this business in the areas under their control. They send pieces abroad. We’ve heard they’ve found something in Nimruz.” An Afghani villager explained, “We used to graze our cattle here until the Taliban came. The Taliban started to dig here. They worked for 40 days and nights. They dug a tunnel, but we don’t know what they found. Everyone said something different. Some said they’d found a mummy. There were lots of rumors, but the Taliban never let anyone near.” Blood Antiques, *supra* note \_\_\_.

smuggling is “undeniable.”<sup>68</sup> He argues that in late 2004, the Sunnis and al-Qaida in Iraq started using illicit antiquities as a source of funding, and the Shiite militias later followed suit.<sup>69</sup> However, he has said he is not able to release the hard data or intelligence that forms the factual basis for his assertions due to its sensitive nature.<sup>70</sup>

After 9/11, Bogdanos investigated the looting of the Iraq museum alongside agents from Immigration and Customs Enforcement (ICE).<sup>71</sup> He has described a December 2005 raid of a terrorist bunker in northwest Iraq that yielded automatic weapons, ammunition stockpiles, infrared goggles, and uniforms alongside “30 vases, cylinder seals<sup>72</sup> and statuettes that had been stolen from the Iraq Museum.”<sup>73</sup>

ICE is the primary agency in the U.S. responsible for policing the illicit antiquities trade, and its representatives appear less convinced of the link between terrorism and antiquities. ICE Senior Special Agent James McAndrew acknowledged only the possibility of that link.<sup>74</sup> Antonia Kimbell at the Art Loss Register also awaits hard evidence of the connection, explaining, “We haven’t come across a direct link.”<sup>75</sup>

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<sup>68</sup> See Footnote [\_\_10\_\_]; *Antiquity smuggling finances terror*, ASSOCIATED PRESS, Mar. 19, 2008, available at: <http://www.heritagewatchinternational.org/km/antiquity-smuggling-finances-terror.html> [hereinafter *Smuggling*].

<sup>69</sup> *Smuggling*, *supra* note \_\_\_\_.

<sup>70</sup> *Terrorists Raise Cash*, *supra* note \_\_\_\_; Matthew Bogdanos, *Thieves of Baghdad: Combatting Global Traffic in Stolen Antiquities*, 31 *FORDHAM INT’L L.J.* 725, 730 (2007) (alleging that antiquities are the new “cash crop” for insurgents, then explaining, “We do not have hard numbers—the traffic in art for arms is still too recent a phenomenon, and some of the investigations remain classified because of the connection to terrorists.”).

<sup>71</sup> See *Terrorists Raise Cash*, *supra* note \_\_\_\_.

<sup>72</sup> Cylinder seals are particularly valuable, retailing for up to \$500,000 with collectors. See *Terrorists Raise Cash*, *supra* note \_\_\_\_; *Spoils of War*, *supra* note \_\_\_\_ at ¶ 5 (describing seals as “esteemed by collectors” and “highly marketable”). Although excavators or wholesalers in source nations usually receive only a small fraction of the final retail value of an object, dealing in very valuable objects can still prove profitable.

<sup>73</sup> *Terrorists Raise Cash*, *supra* note \_\_\_\_; See also Becatoros, *supra* note \_\_\_\_.

<sup>74</sup> “I think it’s definitely possible without a doubt and probably more than likely probable,” McAndrew has explained. *Terrorists Raise Cash*, *supra* note \_\_\_\_.

<sup>75</sup> Becatoros, *supra* note \_\_\_\_.

### Mafia and Gangs

While the claim that organized crime controls the illicit antiquities trade evokes imagery from a James Bond story<sup>76</sup>, there is no known evidence that international criminal syndicates are involved in the trade.<sup>77</sup> However, reports of local mafias becoming involved in the illicit excavation and trafficking occasionally emerge, most often out of Eastern Europe. Although mafias and gangs are listed under criminal excavators in this Article, various local mafias have been reported to serve in three roles – as illegal excavators, wholesalers, and traffickers.

Bulgaria's mafia, for instance, has been increasingly involved in illegal excavation and trade in recent years. In 2008, Bulgarian prime minister Sergey Stanishev alleged that Bulgaria's mafia had a key role in trafficking "everything from sex slaves to antiquities."<sup>78</sup> One news report explained:

Tens of thousands of tomb raiders are systematically stripping Bulgaria. In some parts of the country, whole villages have taken up tomb-raiding and many of the digs are organised by the local mafia.<sup>79</sup>

Bulgaria's Unit for Combating Organized Crime (the country's anti-mafia police) has a department specifically assigned to address antiquities smuggling.<sup>80</sup> This department has conducted targeted raids to break up what are described as

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<sup>76</sup> Consider SPECTRE (SPecial Executive for Counter-intelligence, Terrorism, Revenge and Extortion), the fictional global terrorist organization from the James Bond stories. IAN FLEMING, *THUNDERBALL* (1961).

<sup>77</sup> Some art crime experts will protest, because there is evidence that international criminal syndicates are involved in the trade of stolen art. However, as to the illicit *antiquities* trade in particular, the evidence of their involvement is limited to the type described in Part III of this article.

<sup>78</sup> *Bulgaria acts to smash mafia's EU network*, THE TELEGRAPH, May 6, 2008, available at: <http://www.telegraph.co.uk/news/worldnews/europe/bulgaria/1932962/Bulgaria-acts-to-smash-mafias-EU-network.html>.

<sup>79</sup> Malcolm Moore, *Tomb Raisers Strip Bulgaria of Its Treasures*, THE DAILY TELEGRAPH, Aug. 29, 2007, available at: [http://novinite.com/view\\_news.php?id=84723](http://novinite.com/view_news.php?id=84723).

<sup>80</sup> *Bulgaria with 50 000 Illegal Antique Collectors*, SOFIA NEWS AGENCY, Nov. 6, 2010, available at: [http://novinite.com/view\\_news.php?id=121892](http://novinite.com/view_news.php?id=121892) [hereinafter *Bulgaria Collectors*].

“antique smuggling rings.”<sup>81</sup> Volodya Velkov, head of the Unit, has reported that there are 200 to 300 illegal treasure hunting groups in Bulgaria, “digging on orders from customers and having top of the line equipment such as 3D radars at the cost of USD [\$50,000] each.”<sup>82</sup> Velkov believes there are four existing channels for smuggling illicit antiquities from Bulgaria to the United States, with the main traffic moving through Austria.<sup>83</sup>

This echoed a similar story that emerged from the Ukraine in 2002, when mafia groups reportedly added looting to existing drug, prostitution, and protection rackets.<sup>84</sup> Mafia families were reported to directly employ archaeologists “after making them an offer that they can’t refuse.”<sup>85</sup> Some were running night digs on sites that were being legitimately excavated during the day.<sup>86</sup> Reports indicated that “archaeologists employed by the mafia gangs move[d] in on promising historical sites with diggers, floodlights, and armed guards to keep out concerned academics, rival gangs, and Ukraine’s under-funded police force.”<sup>87</sup>

The use of local mafias for illegal excavation is not limited to Eastern Europe. Russian officials have identified over forty Russian organized crime groups as dealing in stolen art and cultural property.<sup>88</sup> In Central America, it is estimated that 1 to 3 percent of criminal excavators are full-time artifact looters or smugglers, working within “the command and control structure of Mafia-like consortiums,” and interfacing with international markets.<sup>89</sup>

Beyond formally organized national mafias and gangs, there are also incidents of smaller gangs operating opportunistically in the illicit trade. In the days following the U.S. entry into Baghdad in 2003, Iraq’s National Museum was left with few guards, one of whom explained, “Gangs of several dozen came. Some had guns. They threatened to kill us if we did not open up.”<sup>90</sup> The guards unlocked the

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<sup>81</sup> *Id.*; *Bulgaria Anti-Mafia Police Break up Antique Smuggling Ring*, SOFIA NEWS AGENCY, Apr. 30, 2010, available at: <http://mafiatoday.com/general-breaking-news/bulgaria-anti-mafia-police-break-up-antique-smuggling-ring>.

<sup>82</sup> *Bulgaria Collectors*, *supra* note \_\_.

<sup>83</sup> *Bulgaria Collectors*, *supra* note \_\_.

<sup>84</sup> Murdo MacLeod, *Archaeology is new target for Ukraine’s mafia gangs*, SCOTLAND ON SUNDAY, Oct. 13, 2002, available at: <http://scotlandonsunday.scotsman.com/world/Archaeology-is-new-target-for.2368939.jp>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See FBI Report, *supra* note \_\_.

<sup>89</sup> See Matsuda, *supra* note \_\_, at 91.

<sup>90</sup> *Spoils of War*, *supra* note \_\_\_\_, at ¶ 2.



doors and the mob pushed their way through, although some still chose to smash and enter through a glass window (See Figure 2<sup>91</sup>).<sup>92</sup>



Many members of the mob quickly seized furniture and electronics.<sup>93</sup> Others, however, were well-dressed, “European-looking” men talking on cell phones or walkie talkies while perusing the available antiquities.<sup>94</sup> Professionals stormed in with equipment to lift heavier pieces, equipment to break into vaults, and glasscutters of a type not found in Iraq.<sup>95</sup> Some experts believe that unscrupulous art dealers had placed orders in advance, anticipating that the limited guard on the National Museum would inevitably fail in the crux of war.<sup>96</sup>

Even if professional thieves were involved in the plundering of Iraq’s National Museum, some artifacts were later recovered from residents who took them to prevent them falling into the hands of looters.<sup>97</sup> Others were recovered during raids by occupation troops and searches by customs officials.<sup>98</sup> Overall, however, there has been a low recovery rate of artifacts looted from the national

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<sup>91</sup> University of Chicago Press (*Need permission before printing*) - [http://www.rorotoko.com/index.php/article/lawrence\\_rothfield\\_book\\_interview\\_rape\\_mesopotamia\\_looting\\_iraq\\_museum](http://www.rorotoko.com/index.php/article/lawrence_rothfield_book_interview_rape_mesopotamia_looting_iraq_museum)

<sup>92</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 2.

<sup>93</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 3.

<sup>94</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 3.

<sup>95</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 3.

<sup>96</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 3.

<sup>97</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 11.

<sup>98</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 11.

museum of Iraq, and experts believe this supports the idea that professional thieves were involved.<sup>99</sup>

A similar scene played out in the northern city of Mosul after the fall of the Iraqi government. The first thieves who entered the museum there appeared to be “acting on behalf of Western dealers.”<sup>100</sup> They took only genuine pieces, ignoring replicas, and when they went through the basement library, they took only the rarest manuscripts.<sup>101</sup>

The use of gangs with professional thieves to plunder collections of valuable archaeological material is not new. In 1993, for instance, an “organized gang of 300 bandits” used hand grenades to blow open the Angkor Wat conservation compound.<sup>102</sup> They used a rocket launcher to blast through the main warehouse door, then looted 10 priceless statues inside.<sup>103</sup>

Under the broad definition of organized crime from Part II of this Article, even loosely structured mobs and gangs would constitute organized criminal groups because they are comprised of three or more people working in concert to violate the law, seeking a material benefit. This would be particularly true of the professionals who work with people on the outside to select antiquities that will prove most valuable, purportedly taking orders from dealers and collectors in anticipation of frenzied pillaging.

### Methamphetamine-Fueled Diggers

There is a well-documented connection between methamphetamines and looting in the U.S., the Southwest in particular.<sup>104</sup> Garry Cantley, an archaeologist with the Bureau of Indian Affairs, has called the looting-meth connection an “epidemic.”<sup>105</sup> Meth addicts illegally excavate Native American sites, including burial grounds, in order to find pottery shards and arrowheads to sell to

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<sup>99</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 11.

<sup>100</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 24.

<sup>101</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 24.

<sup>102</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 16.

<sup>103</sup> Spoils of War, *supra* note \_\_\_\_\_, at ¶ 16.

<sup>104</sup> Nicholas Phillips, *Tweakers 'N Diggers: Looters are pillaging Native American burial grounds to finance their meth habits*, RIVERFRONT TIMES NEWS, Mar. 24, 2010, available at: <http://www.riverfronttimes.com/2010-03-24/news/tweakers-n-diggers-looters-pillaging-native-american-burial-grounds-finance-meth-habits> [hereinafter *Tweakers*].

<sup>105</sup> Samir S. Patel, *Drugs, Guns and Dirt*, ARCHAEOLOGY, Mar.-Apr. 2009, available at: <http://www.archaeology.org/0903/etc/drugs.html> [hereinafter *Patel*].

wholesalers to finance their drug habit.<sup>106</sup> Figure 3 shows looted Native American pottery strewn about a meth lab (See Figure 3).<sup>107</sup>

Monetary rewards are often secondary to the “twiggers”<sup>108</sup> true incentive, however; methamphetamine, like many stimulants, creates a compulsion for repetitive, focused behavior.<sup>109</sup> Meth addicts quench this thirst by artifact hunting, which is tedious, repetitive work – “It makes them the perfect, tireless looting workforce.”<sup>110</sup> Accordingly, meth addicts are the exception to the general rule that criminal excavators dig with the motivation of obtaining a financial benefit.

Although meth addicts do not necessarily organize with one another to hunt for artifacts, they are hooked into a larger system in which they can sell the artifacts to wholesalers or collectors, or trade them directly for drugs.<sup>111</sup>



Figure 3

<sup>106</sup> Patel, *supra* note \_\_\_\_; Tweakers, *supra* note \_\_\_\_.

<sup>107</sup> Photo courtesy of Bureau of Land Management, New Mexico (**need permission before printing**) <http://www.archaeology.org/0903/etc/drugs.html>

<sup>108</sup> A combination of the slang for methamphetamine addict, “tweaker,” and digger. Patel, *supra* note \_\_\_\_.

<sup>109</sup> Patel, *supra* note \_\_\_\_\_. (“The energizing and obsessive effects make it fun, almost pleasurable, for tweakers to do the tedious work of artifact hunting. They have the steam to wander sites and dig holes for hours, the focus to scan the ground closely, and the compulsive need to find more and more. According to those who have spoken to twiggers directly, the ability to sell artifacts seems almost secondary to the addictive thrill of discovery.”).

<sup>110</sup> Patel, *supra* note \_\_\_\_.

<sup>111</sup> Patel, *supra* note \_\_\_\_; Phillips, *supra* note \_\_\_\_.

### B. Middlemen

Those who illegally excavate most often sell to “middlemen”<sup>112</sup> (sometimes called “wholesalers”<sup>113</sup>). Middlemen include both wholesalers and traffickers,<sup>114</sup> who are both essential to the illicit antiquities trade, although neither excavates archaeological material themselves or sells to the ultimate owners. Middlemen are, quite literally, in the middle of the distribution ladder for illicit antiquities. As a rule, criminal excavators sell plundered objects to a middleman, who arranges for the artifacts to be smuggled into a market nation, where the objects can then be sold to collectors or museums.<sup>115</sup>

Middlemen must necessarily work with both criminal excavators and retailers in order to accomplish their goals within the illicit antiquities trade. Whether these actors are participants in organized crime under the broad definition from Part II of this article depends on whether a wholesaler buying objects from criminal excavators is viewed as working “in concert” with them. To some extent, the two are working toward different ends and have competing interests. Yet none of the criminological definitions of organized crime require a common goal – merely that the participants each have a goal, and work in concert with one another, in at least a loose structure. Middlemen satisfy these qualifications, and can thus be considered organized criminal actors.

#### Wholesalers

Wholesalers are the contacts for criminal excavators. Wholesalers make much larger financial gains than the individuals who dig up the archaeological

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<sup>112</sup> Bonn-Muller, *supra* note \_\_.

<sup>113</sup> Christine L. Green, *Antiquities Trafficking in Modern Times: How Italian Skullduggery Will Affect United States Museums*, 14 VILL. SPORTS & ENT. L.J. 35, 53 (2007).

<sup>114</sup> In literature on the illicit antiquities trade, the term “middleman” is generally synonymous with “wholesaler,” and falls into a different category from trafficker. These general distinctions are challenged when wholesalers employ crews of diggers or themselves engage in trafficking. Regardless of the business structure employed, wholesalers and traffickers do share the common characteristic of being in the middle of the distribution ladder for illicit antiquities. Accordingly, for the purposes of this Article and to avoid confusion, “middlemen” refers to wholesalers and traffickers generally, and the person to whom criminal excavators sell their goods is a “wholesaler.”

<sup>115</sup> STEALING HISTORY, *supra* note \_\_, at 29.

materials do.<sup>116</sup> In addition to finding traffickers or dealers for the illegally excavated artifacts, wholesalers may also arrange for false bills of provenance to aid traffickers in smuggling artifacts out of the source nation or into an intermediate or market nation.<sup>117</sup>

Wholesalers occasionally directly employ teams of diggers to perform illegal excavations.<sup>118</sup> This type of wholesaler pays his diggers salaries and supplies them with necessary tools and equipment.<sup>119</sup> This benefits workers who might dig all night and not find anything of value, and who cannot independently afford expensive equipment like metal detectors.<sup>120</sup> The diggers bring the loot back to the wholesaler in the morning, and the wholesaler contacts local dealers who can move the merchandise.<sup>121</sup>

In Italy, the wholesaler is called a *recettatore*, meaning “receiver.”<sup>122</sup> Recettatori in Italy are connected to traffickers who can move the antiquities to market nations.<sup>123</sup> Tombaroli are paid fixed rates for certain types of objects, so they

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<sup>116</sup> Asif Efrat, *A Theory of Internationally Regulated Goods*, 32 FORDHAM INT'L L.J. 1466, 1479 (2009); Juliana V. Campagna, *War or Peace: It Is Time for the United States to Ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts*, 17 FLA. J. INT'L L. 271, 286 (2005); STEALING HISTORY, *supra* note \_\_, at 13 (stating that the original finder receives less than 2% of the final price) and 14 (indicating the disproportionate allocation of profits is not limited to source nations; “[A] landowner in the United States accepted \$2,000 for a late Cretaceous Ankylosaur which was subsequently sold for \$440,000.”); Tombarolo, *supra* note \_\_ (wherein a tombarolo explains, “I estimate that [the middleman I work with] sells the stuff for 10 times what he paid me. Let me put it this way: he drives a Mercedes, I drive a Fiat Panda.”); Kimberly L. Alderman, *Ethical Issues in Cultural Property Law Pertaining to Indigenous Peoples*, 45 IDAHO L. REV. 515, 519-520 (2009) [hereinafter *Ethical Issues*] (“[T]he enormous revenues that are ultimately generated in the galleries or on the auction blocks do not filter back to the indigenous descendants of creator cultures. An ancient cylinder seal that fetches \$100 in a Baghdad souk may later sell for five figures in a New York gallery.”); Spoils of War, *supra* note \_\_\_\_, at ¶ 13 (describing how the criminal excavators of the Morgantina acroliths were paid \$1,000 in 1979, and the acroliths were sold by renowned dealer Robin Symes a year later for \$1 million).

<sup>117</sup> Chauncey D. Steele IV, *The Morgantina Treasure: Italy's Quest for Repatriation of Looted Artifacts*, 23 SUFFOLK TRANSNAT'L L. REV. 667, 680-81 (2000) [hereinafter *Steele*].

<sup>118</sup> Bonn-Muller, *supra* note \_\_.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>123</sup> Tombarolo, *supra* note \_\_\_\_.

are not necessarily loyal to any particular recettatore.<sup>124</sup> One tombarolo reported that it is not to his benefit to haggle too much with a recettatore, because the recettatore could always anonymously report the tombarolo to police.<sup>125</sup>

While tombaroli are most often the unemployed working class, recettatori are well-educated and “part of the establishment.”<sup>126</sup> If an object is too big for the tombarolo to transport from the site, a recettatore will arrange for immediate pick up.<sup>127</sup> On rare occasions, a tombarolo will work as a sort of middleman himself, connecting a less experienced tombarolo with the right recettatore, and taking a 10% cut for his efforts.<sup>128</sup>

### Traffickers

Wholesalers either traffic illicit antiquities themselves or outsource to someone who specializes in moving illicit objects. The shared characteristic of traffickers is that they smuggle illicit antiquities – across national and international borders,<sup>129</sup> or from remote to urban areas within the source nation.<sup>130</sup> Objects removed from source nations are often funneled through intermediary countries with lax import laws, and then legally imported into market nations.<sup>131</sup>

In Italy, professional smugglers are called *clandestini*.<sup>132</sup> Like traffickers in other countries, clandestini organize the route across national borders, ascertain who to bribe and arrange for the payments, and they may even identify buyers before sending the artifacts on their way.<sup>133</sup> Many illicit antiquities moving out of Italy leave Rome in a shipping container carrying legal goods such as car parts,

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<sup>124</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>125</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>126</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>127</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>128</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>129</sup> Steele, *supra* note \_\_\_, at 680-681.

<sup>130</sup> Archaeological objects are illicit when they either were illegally excavated or are being illegally exported. Aaron Kyle Briggs, *Consequences of the Met-Italy Accord for the International Restitution of Cultural Property*, 7 CHI. J. INT'L L. 623, 625 (2007) [hereinafter Briggs].

<sup>131</sup> Ethical Issues, *supra* note \_\_\_, at 520; STEALING HISTORY, *supra* note \_\_\_\_, at 31-33.

<sup>132</sup> Steele, *supra* note \_\_\_, at 680.

<sup>133</sup> Steele, *supra* note \_\_\_, at 680.

food, or marble.<sup>134</sup> One technique used to hide the antiquities is to place them inside a hollowed-out marble slab, and then to seal the slab with stucco.<sup>135</sup>

Another technique used to smuggle illicit antiquities is to lie on the bill of lading. In 2006, for instance, officials in Pakistan reported seizing a shipping container in Karachi packed with 625 Buddhist sculptures worth over 1 million Euros, bound for the United Arab Emirates (See Figure 4<sup>136</sup>).<sup>137</sup> The bill of lading listed the shipment as “furniture.”<sup>138</sup>



Figure 4

The sheer amount of international cargo makes it impossible for customs agents to inspect the contents of every shipping container. The agents do open a tiny percentage, but they are looking for drugs, not stolen antiquities.<sup>139</sup> For those

<sup>134</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>135</sup> Tombarolo, *supra* note \_\_\_\_.

<sup>136</sup> Shakeel Adil (2006) (photograph of ancient Buddhist sculptures inside shipping container seized in Karachi), available at: <http://pakistaniat.com/2006/11/19/smuggling-historical-artifacts-to-sharjah>. (**Must get permission to use before printing**)

<sup>137</sup> Adil Najam, *Smuggling Historical Artifacts to Sharjah*, ALL THINGS PAKISTAN, Nov. 19 2006, available at: <http://pakistaniat.com/2006/11/19/smuggling-historical-artifacts-to-sharjah>.

<sup>138</sup> Imtiaz Gul, *China to build nuke plants in Pak*, THE TELEGRAPH, Nov. 18, 2010, available at: [http://www.telegraphindia.com/1061119/asp/foreign/story\\_7021846.asp](http://www.telegraphindia.com/1061119/asp/foreign/story_7021846.asp).

<sup>139</sup> Tombarolo, *supra* note \_\_\_\_.

objects transported by air, traffickers use private companies such as FedEx, UPS, and DHL, which are monitored even less stringently.<sup>140</sup>

This allows traffickers to develop paths to move illicit goods out of each source nation, and to use those paths habitually. In Iraq, for instance, antiquities recovered from the harvesting of insufficiently protected museums are driven overland either west to Jordan or north to Syria.<sup>141</sup> The objects are then sent to either Beirut, Dubai, or Geneva, where papers can be obtained.<sup>142</sup> Once the objects have papers, they can then “surface,” so dealers can sell them to private collectors, sometimes through auction houses.<sup>143</sup>

In Afghanistan, traffickers fly illicit antiquities out of the airports at Kabul or Kandahar with the help of corrupt customs officers.<sup>144</sup> The antiquities pass through either Bangkok, Singapore, or Dubai, and then on to Brussels.<sup>145</sup> After the objects slip through Belgium customs, they are then transported to warehouses near the Zavel<sup>146</sup> (Sablon Square<sup>147</sup>). Dealers come into the warehouses on Saturdays to shop for fresh merchandise.<sup>148</sup>

The paths of illicit antiquities and drugs most often cross at the trafficking stage, because traffickers sometimes use the same routes and means to smuggle all kinds of illegal goods.<sup>149</sup>

### C. Retailers

Retailers sell illegally excavated or exported antiquities to the public, and consist of dealers and auction houses. Selling illicit antiquities to collectors or museums is often legal under the laws of the market nations where sales usually take place.<sup>150</sup> This raises an interesting question when considering whether retailers are organized criminal actors in the illicit antiquities trade. Even under the broader definition of organized criminal groups, the participants must act in concert to

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<sup>140</sup> Terrorists Raise Cash, *supra* note \_\_\_.

<sup>141</sup> Smuggling, *supra* note \_\_\_\_.

<sup>142</sup> Smuggling, *supra* note \_\_\_\_.

<sup>143</sup> Smuggling, *supra* note \_\_\_\_.

<sup>144</sup> Blood Antiques, *supra* note \_\_\_\_.

<sup>145</sup> Blood Antiques, *supra* note \_\_\_\_.

<sup>146</sup> Blood Antiques, *supra* note \_\_\_\_.

<sup>147</sup> A square in Brussels famous for its antiques market. Robert Maitland and Brent W. Ritchie, CITY TOURISM: NATIONAL CAPITAL PERSPECTIVES (2009), at 152 (describing the Zavelon as an “antique cluster”).

<sup>148</sup> Blood Antiques, *supra* note \_\_\_\_.

<sup>149</sup> STEALING HISTORY, *supra* note \_\_\_, at 16.

<sup>150</sup> See note \_\_\_ [currently 168] of this Article.



*violate the law.* If a dealer or auction house is selling an object they know to have been illegally exported from a source nation, but their home nation does not have a bilateral agreement to enforce the export laws of that source nation, then the transaction is legal.

Accordingly, retailers would not fall under the umbrella of organized criminal groups unless they specifically facilitate illegal transactions. Nonetheless, they play a critical role in the illicit antiquities trade, and their contribution must be acknowledged.

### Dealers

Dealers serve as intermediaries between wholesalers and purchasers of antiquities (collectors and museums). Antiquities that have been illegally excavated or exported often pass through several dealers before being sold to collectors or museums.<sup>151</sup> Some dealers own antique shops while others work directly with specific collectors or curators to locate desired objects.

The typical dealer works within a market nation, selling finds to wealthy collectors and museums. However, retailers with antique shops in source nations are just as deserving of the title “antiquities dealers,” as they serve as a public interface for the illicit antiquities trade.

Antique shops are mediums through which some dealers move their wares. There are antique shops both inside and outside of source nations. The benefit of selling illicit artifacts in source nations is that they do not have to go through a trafficker to get smuggled out of the country; tourists do the smuggling themselves.<sup>152</sup> The drawback is that the objects will not sell for as high a price as they would in a market nation.

Antique shops in source nations target tourists, who are often willing to slip a token of their visit in their suitcases. These shops are numerous; there are 45 in Israel, for instance, most located in Jerusalem.<sup>153</sup> Illegally excavated beads are for sale “by the buckets full” in Bangkok antique shops.<sup>154</sup> Bangkok is reputed as a

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<sup>151</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 12.

<sup>152</sup> Thomas Kean, *Asia fights to stem loss of cultural treasures*, THE MYANMAR TIMES, Dec. 22, 2008, available at: <http://www.heritagewatchinternational.org/km/asia-fights-to-stem-loss-of-cultural-treasures.html>.

<sup>153</sup> Bonn-Muller, *supra* note \_\_.

<sup>154</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 16.

clearinghouse for illegal antiquities from all over Indochina, including Myanmar, Vietnam, Laos, Bengal, and Cambodia.<sup>155</sup>

In mainland Europe, Brussels serves as a hub for purchasing antiquities because of lax regulation of the trade.<sup>156</sup> Fifty thousand passengers and 2,000 tons of freight pass through the international airport in Brussels daily<sup>157</sup>, and screening for illegal antiquities is “basically an impossible task.”<sup>158</sup> There is no law in Belgium requiring dealers to prove that an archaeological object came in through legitimate channels.<sup>159</sup> Illegally excavated antiquities are on display in the front windows of antique shops in Brussels.<sup>160</sup> Dealers are often fully aware that they are selling illegally excavated objects.<sup>161</sup>

Most illicit antiquities dealers use the traditional channels of antique shops and building their clientele. However, those who use less traditional means to hawk their wares are using eBay to reach a worldwide audience.<sup>162</sup> Industrious dealers may also employ “loot-to-order” services, as they did in the case of the 12<sup>th</sup>-century

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<sup>155</sup> Kean, *supra* note \_\_ (explaining how there is a movement toward using reproductions instead, in no small part because the antiquities are simply running out – most of Myanmar’s treasures, for instance, have already left the country).

<sup>156</sup> Blood Antiques, *supra* note \_\_ (wherein a Belgian government official explains, “[Illegal antiquities are] not on the top of anyone’s list.”).

<sup>157</sup> Blood Antiques, *supra* note \_\_.

<sup>158</sup> Blood Antiques, *supra* note \_\_ (stated by Belgian customs officer Pol Meuleneire).

<sup>159</sup> Blood Antiques, *supra* note \_\_.

<sup>160</sup> Blood Antiques, *supra* note \_\_.

<sup>161</sup> Blood Antiques, *supra* note \_\_ (wherein a dealer says, “It’s obvious that if a piece comes from Afghanistan, it has been stolen.” When asked, “Every piece?” she responds, “Yes, of course.”); compare Susan Montaya Bryan, *Crackdown on Looters Hurts Artifact Dealers*, ASSOCIATED PRESS, Aug. 21, 2009, available at: <http://www.reznetnews.org/article/crackdown-looters-hurts-artifact-dealers-38220> (describing Walter Knox, a dealer in a gallery in Scottsdale, AZ, who says every week he has to run someone out of his gallery for trying to sell him stolen pots. “I post my rules so people know I’m not going to deal with anything shady.” As a retired police officer, Knox may be the exception rather than the rule.).

<sup>162</sup> Patrick E. Tyler, *Museum Asks eBay to Block Some Sales*, THE NEW YORK TIMES, Oct. 30, 2004, available at: <http://www.nytimes.com/2004/10/30/arts/30trea.html>; Dalya Alberge, *Illicit artefacts sold as eBay turns blind eye*, THE TIMES, Dec. 18, 2006, available at: [http://technology.timesonline.co.uk/tol/news/tech\\_and\\_web/the\\_web/article757359.ece](http://technology.timesonline.co.uk/tol/news/tech_and_web/the_web/article757359.ece). But see Charles Stanish, *Forging Ahead: Or, how I learned to stop worry and love eBay*, ARCHAEOLOGY Vol. 62 No. 3, May/June 2009, available at: <http://www.archaeology.org/0905/etc/insider.html>

Cambodian temple of Banteay Chmar.<sup>163</sup> The temple was covered in “breathtaking” bas reliefs, but has since been gutted by thieves, some of whom worked for dealers who would allow collectors to order their sculptures directly off the temple walls.<sup>164</sup> Local archaeologists describe looting in the region as “on a virtually industrial scale.”<sup>165</sup>

### Auction Houses

Auction houses and museums are both legal actors frequently credited with perpetuating the illegal antiquities trade by way of quasi-legal or illegal actions.<sup>166</sup> While auction houses may not be organized criminal actors per se, the significance of their involvement in the illicit antiquities trade as a whole cannot be overlooked.

An estimated thirty to forty percent of all the world’s antiquities pass through auction houses, making them the most public portion of the antiquities market.<sup>167</sup> Yet, studies repeatedly show that up to ninety percent of antiquities auctioned through the houses are illegally excavated or exported.<sup>168</sup> This is because even if an object has been illegally excavated or exported, it is frequently still legal to sell it in a market nation.<sup>169</sup>

Ricardo Elia of Boston University completed a study in which he examined 1,881 Apulian vases sold through the Sotheby’s saleroom from 1960 to 1997, concluding that *not one* had a published provenance.<sup>170</sup> This finding suggested “every single Apulian vase sold at Sotheby’s over a 37-year period might have been illegally excavated or at least illegally exported from Italy.”<sup>171</sup>

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<sup>163</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 16; STEALING HISTORY, *supra* note \_\_\_\_, at 20.

<sup>164</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 16.

<sup>165</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 16.

<sup>166</sup> See generally Ethical Trade, *supra* note \_\_\_\_.

<sup>167</sup> *Id.*, at 561 n. 67.

<sup>168</sup> *Id.*, at 560 n. 63 (citing to PETER WATSON, *SOTHEBY’S: THE INSIDE STORY* 304 (1997)); Ricardo J. Elia, *Digging Up Dirt: Antiquities Case Unearths Corruption*, WALL STREET JOURNAL, June 19, 2002, available at:

<http://online.wsj.com/article/0,,SB1024442830326084200-search,00.html>. Compare Spoils of War, *supra* note \_\_\_\_ (describing a study that estimated between 65 and 90 percent of antiquities sold at auction in London lacked established provenance, “a fairly reliable indication of illicit origin).

<sup>169</sup> Bonn-Muller, *supra* note \_\_; Ethical Trade, *supra* note \_\_\_\_, at 559-560; STEALING HISTORY, *supra* note \_\_\_\_, at 32-33 (with a section on “the international loophole”).

<sup>170</sup> STEALING HISTORY, *supra* note \_\_\_\_, at 27; Spoils of War, *supra* note \_\_\_\_, at ¶ 17.

<sup>171</sup> STEALING HISTORY, *supra* note \_\_\_\_, at 27.

Aside from quasi-legal sales, it is not uncommon for plainly illicit artifacts to show up in the auction catalogue, only to be pulled just before the auction.<sup>172</sup> An Attic jar and a Greek jug listed for £2,000 and £4,000 respectively were pulled from an October 2010 auction at Bonhams after the Italian authorities filed a claim that the objects had originated with infamous trafficker Giacomo Medici.<sup>173</sup> This was despite a warning received in April 2010, when Bonhams had to pull another object after listing it because it was revealed Medici loot.<sup>174</sup>

The antiquities at stake are not always of inconsequential value; the Sevso treasure was pulled from the Sotheby's auction block in 1990 after the documentation of provenance was determined false.<sup>175</sup> The hoard is now estimated to be worth more than \$100 million.<sup>176</sup>

In the past, auction houses have been more directly involved in the illicit trade. The investigation into infamous dealer Giacomo Medici yielded documents showing that "in individual cases, regarding more valuable pieces, Sotheby's personnel had either been aware that objects sold on their premises had been illegally exported from Italy, or had themselves had a hand in the arrangements."<sup>177</sup> The carabinieri (Italian police) found that Sotheby's had allowed Medici to

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<sup>172</sup> The Italian government has not released the photographs of the extant Medici objects to the public (or the auction houses), so the houses defend that they lack the requisite knowledge to know what objects are illicit in origin. See generally, Kimberly L. Alderman, *Is Italy "Asking For It" By Refusing to Release the Medici Photographs? Three items at Christie's raise questions*, THE CULTURAL PROPERTY & ARCHAEOLOGY LAW BLOG (June 6, 2010) <http://culturalpropertylaw.wordpress.com/2010/06/06/is-italy-asking-for-it-by-refusing-to-release-the-medici-photographs-three-items-at-christies-raise-questions>.

<sup>173</sup> *Lots of trouble on New Bond Street*, THE INDEPENDENT, Oct. 27, 2010, available at: <http://www.independent.co.uk/news/uk/crime/bonhams-lots-of-trouble-on-new-bond-street-2117393.html> (reporting that "[d]ays before the auction the house received an email from an eminent academic alerting them to the questionable provenance of the lots, but it pressed ahead with the sale.").

<sup>174</sup> *Id.*

<sup>175</sup> *Sesvo Treasure*, BBC, Mar. 23, 2007, available at: [http://www.bbc.co.uk/insideout/east/series11/week9\\_castle\\_ashby.shtml](http://www.bbc.co.uk/insideout/east/series11/week9_castle_ashby.shtml).

<sup>176</sup> See *Id.* (estimating the value of the collection as between £50-100 million); see also Alan Riding, *14 Roman Treasures, on View and Debated*, THE NEW YORK TIMES, Oct. 25, 2006, available at:

<http://www.nytimes.com/2006/10/25/arts/design/25sevs.html?ref=arts&pagewanted=all> (estimating the value at more than \$187 million); see also Peter Landesman, *The Curse of the Sesvo Silver*, THE ATLANTIC, Nov. 2001, available at: <http://www.theatlantic.com/magazine/archive/2001/11/the-curse-of-the-sevso-silver/2331> (estimating a worth of up to \$200 million).

<sup>177</sup> STEALING HISTORY, *supra* note \_\_\_\_, at 27.

purchase back some of his own objects in order to acquire for them an apparently legitimate provenance.<sup>178</sup>

In recent years, the auction houses have pledged via codes of conduct not to knowingly sell illegally exported artifacts, and have established compliance departments to oversee implementation of the codes.<sup>179</sup> While this is a step in the right direction, it does not necessarily prevent the listing of illicit antiquities. The auction houses rely on the provenance of objects as described by their owners, who are unlikely to be forthcoming about illicit origin.<sup>180</sup>

#### *D. Antiquities Owners*

The two major groups of people who own antiquities are collectors and museums. While collectors and museums may not constitute organized criminal groups, even under a broad definition, no discussion about the organization of the illicit trade in antiquities is complete without consideration of their role in the trade.

Collectors and museums are most often located in market nations, where it is sometimes legal to purchase objects that have been the subject of an illicit act.<sup>181</sup> Even when it is illegal, they are often isolated from criminal liability. The crimes with which unscrupulous purchasers can be charged have a scienter element, requiring the State make a showing that they *knew* the objects were illicitly excavated and exported. Because collectors and museums are the “end of the line,” they are less likely to take part in a lateral structure of organized criminal activity.<sup>182</sup> Instead of committing what they know to be criminal acts, retail buyers of antiquities are more likely to not ask too many questions or turn a blind eye to questions about an object’s provenance.

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<sup>178</sup> STEALING HISTORY, *supra* note \_\_\_\_, at 27 and 29 (“Looted antiquities then acquire a patina of legitimacy when ultimately they are sold, without provenance, by dealers and auction houses.”)

<sup>179</sup> STEALING HISTORY, *supra* note \_\_\_\_, at 28 (describing the code of conduct and compliance department established by Sotheby’s in the wake of the Peter Watson investigation); *See generally* Ethical Trade, *supra* note \_\_\_\_.

<sup>180</sup> Ethical Trade, *supra* note \_\_\_\_, at 553.

<sup>181</sup> *See* note \_\_\_\_ [currently 168] of this Article.

<sup>182</sup> Part IV of this Article discusses the concept of lateral and vertical criminal structures in more detail.

## Collectors

Collectors of antiquities – licit or illicit – tend to be wealthy, “high society” people.<sup>183</sup> Maguire Gibson of the Oriental Institute of Chicago has explained, “[Collectors] are very, very well-connected people. They are able to get a meeting with whoever [sic] they like, when they like... They are very affluent people, too. One of the leading lights is a former State Department man[.]”<sup>184</sup> The affluence of collectors allows them to pay premium prices for objects that generated only small profits for the local people who unearthed or plundered them. Their collective influence permits them to lobby for less restrictive import regulations, and to individually avoid prosecution for collecting illicit antiquities.

Collectors do not always rely on dealers to provide them with choice objects. Occasionally, the more industrious will themselves go out in search of antiquities. For example, when the Phnom Penh media reported on the discovery and looting of a site in Cambodia, collectors traveled to the nearby village and approached locals, looking to buy direct.<sup>185</sup>

The archaeological community tends to criticize antiquities collectors. Archaeologist Ricardo Elia, for instance, has stated, “Collectors are the real looters... Without their money and their demand, there would be no market.”<sup>186</sup> Some collectors may never take part in a technically illegal transaction, since in market nations it is often legal to buy objects that have been illegally excavated or exported from a source nation. Nonetheless, collectors are an indispensable component of the antiquities trade and, consequently, the illicit antiquities trade.

Collectors do not necessarily organize with one another in a conventional model of organized crime. However, when they purchase objects that organized criminal groups have moved, they participate in a broader criminal system that has the primary purpose of trading illicit goods for monetary gain.

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<sup>183</sup> Blood Antiques, *supra* note \_\_ (Reporting, “This is a world of its own, one that doesn’t take to being investigated. It’s a high society world. If you really start digging in the art world, heads of people in high places would roll. There’s also the aristocracy, some of whom also have collections of these so-called ‘blood antiquities.’”).

<sup>184</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 20.

<sup>185</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 16.

<sup>186</sup> See Hunt, *supra* note \_\_\_\_, footnote 2. Consider that “the late Archaeological Commissioner of Belize stated in a personal communication with [David Matsuda] that the intensity of subsistence digging [in Belize] is inextricably linked not to auction house prices but to the success or failure of subsistence agriculture.” Matsuda, *supra* note \_\_\_\_, at 94.

### Museums

Like collectors, museums are not likely to fit into any definition of organized criminal group – even a broad one. However, they too have historically participated in a system that moves illicitly excavated or exported antiquities from source to market nations.

In *The Medici Conspiracy: The Illicit Journey of Looted Antiquities, From Italy's Tomb Raiders to the World's Greatest Museums*, authors Peter Watson and Cecilia Todeschini describe a vast network of antiquities trafficking from Mediterranean tombs to museums in market nations.<sup>187</sup> This network operated for decades, with museum personnel turning a blind eye to issues about provenance or, in some instances, knowingly acquiring illicit objects.<sup>188</sup>

In a classic example, the Metropolitan Museum of Art in New York purchased the Lydian hoard in 1969, knowing that the 363 objects were illegally excavated and exported from Turkey.<sup>189</sup> Although the \$1.5 million acquisition violated Turkish law, it was legal under US law, so the purchase moved forward.<sup>190</sup> In 1993, after a prolonged lawsuit, the Metropolitan was forced to return the objects to Turkey without compensation.<sup>191</sup>

Since the enactment of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, museums in market nations have been subject to more regulation from laws and codes of ethics.<sup>192</sup> Neil Brodie explained, “Museum professionals welcome clear guidelines from professional organisations, especially for dealing with issues like the illicit trade, which involves negotiating legal and ethical minefields.”<sup>193</sup>

There has been increasing pressure on museums to tighten acquisition and

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<sup>187</sup> PETER WATSON & CECILIA TODESCHINI, *THE MEDICI CONSPIRACY: THE ILLICIT JOURNEY OF LOOTED ANTIQUITIES FROM ITALY'S TOMB RAIDERS TO THE WORLD'S GREATEST MUSEUMS* (2006) [hereinafter WATSON].

<sup>188</sup> See generally WATSON, *supra* note \_\_\_\_.

<sup>189</sup> Briggs, *supra* note \_\_\_\_; STEALING HISTORY, *supra* note \_\_\_\_, at 10 (explaining that “[t]he Metropolitan knew at the time of its purchase that the material had been looted and exported illegally - a junior curator had been to Turkey and visited the looted site, and had managed to identify the matching parts of a pair of sphinxes held by the museum - and did not mount a display until 1984, when the material was exhibited without provenance under the misleading title of the East Greek Treasure.”)

<sup>190</sup> See STEALING HISTORY, *supra* note \_\_\_\_, at 10.

<sup>191</sup> See STEALING HISTORY, *supra* note \_\_\_\_, at 10.

<sup>192</sup> See STEALING HISTORY, *supra* note \_\_\_\_, at 43.

<sup>193</sup> See STEALING HISTORY, *supra* note \_\_\_\_, at 43.

loan policies, and many museums will no longer purchase objects without documentation establishing a legitimate ownership history.<sup>194</sup> Still, museums may receive donations of unprovenanced antiquities, for acquisition or loan, which are later revealed to be illicit.<sup>195</sup> At present, museums are also more likely than they were in the past to return objects on ethical grounds even when there is no legal basis to demand repatriation.<sup>196</sup> This shows an increased focus on ethical behavior on the part of museums, and a move away from literalism concerning the law.

#### IV. LATERAL COOPERATION AMONG CRIMINAL ORGANIZATIONS: THE ILLICIT ANTIQUITIES TRADE AS AN ORGANIZED CRIMINAL MEGAGROUP

A pattern of interconnectedness emerges when examining discrete groups within the illicit antiquities trade. These groups cannot and do not function independently from one another. They are interdependent by necessity; without the wholesalers, there would be insufficient demand to keep criminal excavation profitable; without traffickers, unscrupulous dealers would not have access to illicitly excavated or exported antiquities. The manner in which the criminal groups collaborate with one another is distinctly less categorical than the organization of the groups themselves.

The interconnectedness among the criminal groups reveals a broader, organized system that comprises the illicit antiquities trade. If any of the criminal groups ceased to function – the excavators, the wholesalers, the traffickers, or the retailers – the illicit antiquities trade would end. Therefore, the illicit antiquities trade serves as a biosphere of sorts for smaller, discrete criminal groups.

The argument can therefore be made that the illicit antiquities trade *itself* constitutes organized crime. This does not necessarily validate the claim that organized crime “controls” the illicit antiquities trade. That claim relies on the notion of a transnational criminal enterprise larger than the antiquities market itself.

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<sup>194</sup> Briggs, *supra* note \_\_\_\_.

<sup>195</sup> See STEALING HISTORY, *supra* note \_\_\_\_, at 47-48.

<sup>196</sup> Kimberly Alderman, *Yale Agrees to Return Machu Picchu Artifacts to Peru: Ethics-Based Repatriation Efforts Gain Steam*, CULTURAL HERITAGE & ARTS REV., Fall/Winter 2010, at 3; STEALING HISTORY, *supra* note \_\_\_\_, at 18 (“[I]n the spring of 1999 [Medici] came to an agreement with the Italian *carabinieri* to return three fragments of a bowl made by the well-known ancient potter Euphronios. The other fragments of this bowl were in the J Paul Getty Museum in Los Angeles, and... the museum voluntarily returned what it possessed to Italy.”)



As discussed in Part III of this Article, there is no legitimate distinction between the licit and illicit antiquities trades; all antiquities are bought and sold on the same market, regardless of legality.<sup>197</sup> The antiquities market has been called a “gray market,”<sup>198</sup> because there is no distinct “black market” or “white market” for antiquities. It is commonly accepted that the vast majority of the antiquities sold at auction were illegally excavated or exported.<sup>199</sup> For example, it is estimated that only five percent of the over 13,000 Apulian red-figure vases known to exist were excavated legally.<sup>200</sup> Therefore, there is no illicit division of the trade, because most participants deal in at least some illicitly excavated or exported material, even if unknowingly.

The auction industry is the most public portion of the antiquities market.<sup>201</sup> The sales that take place pursuant to auctions are, to as great a degree as possible, public. If ninety percent of the antiquities that go through these public sales were illicitly excavated or exported<sup>202</sup>, then it is fair to approximate that at least this percentage of undocumented, private deals are for materials with an illicit origin. The infrastructure for the antiquities market has developed amidst more pressure from the illicit trade than from the licit trade, due to sheer volume. Accordingly, many facets of the market infrastructure serve no legitimate purpose for licit traders, but do serve to benefit those who trade in illicit antiquities.

Whether or not the trade in licit antiquities could function independently of the illicit trade, it does not. The illicit trade depends upon the licit trade in order to promote an appearance of legitimacy. Collectors and dealers can present themselves as legitimate businesspeople because, at least in theory, they *could* deal exclusively in legally obtained antiquities. Dealers and collectors are perceived as “people who can speak seven languages, have university degrees and are highly intelligent.”<sup>203</sup> They are just as much participants in and members of this organized criminal megagroup as are the traffickers and the crews who dig antiquities out of the ground under cover of night. Without wealthy dealers and collectors, the efforts of all the other actors would be for naught. Collectors tend to have political

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<sup>197</sup> See Part III of this Article.

<sup>198</sup> See Blythe A. Bowman, *Transnational Crimes Against Culture: Looting at Archaeological Sites and the “Grey” Market in Antiquities*, 24 J. CONTEMPORARY CRIM. JUSTICE 225 (2008).

<sup>199</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 12; Part III Section C of this Article.

<sup>200</sup> Spoils of War, *supra* note \_\_\_\_, at ¶ 17.

<sup>201</sup> Ethical Trade, *supra* note \_\_\_\_.

<sup>202</sup> See note \_\_\_\_ [currently 162].

<sup>203</sup> Terrorists Raise Cash, *supra* note \_\_\_\_ (quoting Arthur Brand, art collector).

influence,<sup>204</sup> and they tend to oppose reform of the trade because they are benefiting from its largely unregulated nature.

Meanwhile, the licit trade in antiquities uses the illicit trade for its infrastructure. The sheer volume of unprovenanced antiquities justify the highly developed infrastructure for their trade. If the market were restricted to documented legal goods (three to ten percent of the current trade, depending on who you ask), it would not be possible for as many dealers, auction houses, and museums to survive.

Accordingly, the relationship between the licit and illicit antiquities trades echo the interconnectedness and interdependence of the criminal groups discussed in Part III of this Article. These criminal groups depend on one another to keep the antiquities trade functioning; pull any rung of the ladder out – the excavators, the middlemen, the traffickers, or the retailers – and the system will not function. Similarly, the licit and illicit antiquities trades so significantly depend on one another that they are not readily distinguishable. Again, “People think that there is an illicit and a legitimate market. In fact, it is the same.”<sup>205</sup>

If the illicit antiquities trade operates as an organized criminal industry, and the licit antiquities trade is indivisible from the illicit trade, it could be said that the antiquities trade as a whole functions as an organized criminal megagroup. Any actor who participates in the antiquities trade is contributing to the larger system that enables and perpetuates organized crime. This applies even to scrupulous participants who insist on provenance and have never handled a tainted object.

Auction houses continue to trade in antiquities because there are at least some licit objects on the market. There is a presumption of legitimacy, which is why proof of acceptable provenance is not required, merely suggested.<sup>206</sup> Licit transactions serve as a smokescreen and set the stage for the trade in objects of illicit origin. In this way, above-board transactions are indispensable to the illicit trade in antiquities.

The discrete organized criminal groups identified in Part III of this Article operate, for the most part, within national boundaries, cooperating with organized criminal groups in other jurisdictions to move illicit goods. This cooperation points toward an organized criminal megagroup that is transnational in character. Although antiquities crime crosses national borders, law enforcement does not, making effective prosecution and prevention particularly difficult.

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<sup>204</sup> See note \_\_\_ [currently 177] of this Article.

<sup>205</sup> See note \_\_\_ [currently 23].

<sup>206</sup> This is the general, not absolute, rule. Some auction houses require paperwork establishing provenance for certain locations or types of objects. See *Ethical Trade*, *supra* note \_\_\_, at 570.

## V. CONCLUSION

Multiple meanings of the term “organized crime” have impeded meaningful discourse in discussions about the illicit trade in antiquities. Accordingly, the author suggests that scholars and experts strive toward a unified definition of the term as it pertains to the trade. A broader definition, akin to the one propounded in Part II of this Article, would be helpful: *a structured group of three or more people, acting in concert to violate the law, in order to obtain a financial or other material benefit.* This broader definition encompasses most known participants in the illicit antiquities trade, ranging from tombaroli to the Ukrainian mafia to unscrupulous collectors and dealers. It also takes into account violations of criminal or civil law, inside or outside of nations in which transactions take place.

This definition is criminological in nature and designed to facilitate meaningful discourse through uniformity and transparency. Compare the vernacular concept of “organized crime,” used to increase public concern about the illicit trade.<sup>207</sup> Regardless of the definition employed, increased clarity is needed in discussions about the connection between organized crime and the illicit antiquities trade. As an alternative to a unified definition, discussants should account for variation in meaning of the term “organized crime.”

Examining the actors in the illicit antiquities trade through the lens of this broad definition of organized crime reveals the interconnected relationship between those actors. Lateral cooperation of organized criminal groups in the illicit antiquities trades reveals that the trade itself is an organized criminal megagroup of sorts, transnational in character. This is the only framework through which the claim that organized crime controls the illicit antiquities trade is justified.

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<sup>207</sup> Putting the illicit antiquities trade on par with the arms trade, terrorism, and human trafficking justifies the study of the trade, and enforcement of regulations aimed at thwarting it. The groups and agencies who allege most strenuously that organized crime controls the illicit antiquities trade tend to be the same ones that depend upon public concern for funding or support.