

# Addressing Art Trafficking and Restitution Through Anti-Money Laundering Legal Regimes

Emily Dombrowski\*

I.	INTRODUCTION .....	111
II.	INTERNATIONAL LEGAL FRAMEWORK REGARDING THE MOVEMENT OF CULTURAL PROPERTY .....	114
III.	THE ANTI-MONEY LAUNDERING LEGAL FRAMEWORK.....	118
	<i>A. International Anti-Money Laundering Legal     Regimes.....</i>	119
	<i>B. National Anti-Money Laundering Statutes .....</i>	122
IV.	A CASE STUDY: THE ANTE TOPIC MIMARA SCANDAL AND THE ITALIAN GOVERNMENT’S APPROACH.....	125
V.	CONCLUSION .....	130

## I. INTRODUCTION

World War II displaced not just people but their extraordinarily valuable belongings as well. Most of those belongings consisted of art, furniture, and musical instruments that found their way into Nazi hands.<sup>1</sup> American occupation forces then helped recover some of the artworks and gathered them at collection points for the rightful owners to claim.<sup>2</sup> At the Munich Central Collection Point, in 1948, a man named Ante Topic Mimara walked up, papers in hand, claiming 166 items.<sup>3</sup> The officials that ran the Collection Point were Americans, who did not realize until 1950 that Mimara’s claims to these items were not legitimate.<sup>4</sup> Eventually, these cultural items found their way to a museum in Zagreb, a city in modern-day Croatia, to which Mimara donated most of his personal collection

---

\* © 2018 Emily Dombrowski. J.D. candidate 2019, Tulane University Law School; B.A. 2016, Southern Methodist University. The author is from Flower Mound, Texas. She would like to thank her family for their support and encouragement over the years.

1. Konstantin Akinsha, *Ante Topic Mimara, “The Master Swindler of Yugoslavia,”* ARTNEWS, Sept. 2001, at 148.

2. *Id.*

3. *Id.* at 148, 152-53.

4. *Id.* at 148, 153-54.

containing many of the items retrieved from the Collection Point, and the National Museum in Yugoslavia.<sup>5</sup> The United States government investigated the papers and eventually notified the Yugoslavian government of Mimara's fabricated claims.<sup>6</sup> Although the Yugoslavian government attempted to find the objects in their museums, the searches proved unsuccessful, and countries like Italy, to which some of the items taken by Mimara actually belonged, were left to their own devices to locate their cultural property.<sup>7</sup>

Italy's claims to eight paintings rest on the premise that a law retroactively invalidates the sales of those pieces of cultural property during World War II.<sup>8</sup> The traditional avenues for restitution, through state departments and the courts, were explored.<sup>9</sup> In fact, the Serbian judgment rejected Italy's arguments and its first request for judicial assistance for return of the paintings.<sup>10</sup> Further, a number of legal problems have arisen surrounding this issue. One issue involves the fact that the artworks were transferred to Yugoslavia, which no longer exists, with Croatia, Serbia, and Bosnia and Herzegovina existing in its place.<sup>11</sup> Other issues complicating this situation include finding an appropriate criminal defendant and a proper venue, as the country in which the crime was perpetrated no longer exists.<sup>12</sup> Serbia argued that Italy and Germany had been allies at the time

---

5. *Id.* at 149-50.

6. *Id.* at 153-54.

7. *Id.* at 150; see also Gilberto Dondi, *From Goering to the Belgrade Museum Italian PM: "Give Us Back the Eight Masterpieces,"* IL RESTO DEL CARLINO (Nov. 27, 2016), <https://global.factiva.com/redirect/default.aspx?P=sa&NS=16&AID=9TUL000200&an=RESCAR0020161127ecbr000fx&cat=a&cep=ASI>; *Italy Reopens the Case of the Eight Finished Masterpieces in Belgrade*, IL PICCOLO ONLINE (Nov. 4, 2017), <http://ilpiccolo.gelocal.it/trieste/cronaca/2017/11/04/news/1-italia-riapre-il-caso-degli-otto-capolavori-finiti-a-belgrado-1.16077643?ref=search> [hereinafter *Belgrade*]; *Tintoretto "Prisoner" in Serbia Since Reich Times; Inquires to the Recovery of Masterpieces Purchased by the Regime*, ANSA GEN. NEWSL. ITALIAN (Nov. 26, 2016), [https://www.ansa.it/emiliaromagna/notizie/2016/11/26/inchiesta-per-recuperare-capolavori\\_b4f8deb0-c11a-4fa9-9d76-8ed46f903cdd.html](https://www.ansa.it/emiliaromagna/notizie/2016/11/26/inchiesta-per-recuperare-capolavori_b4f8deb0-c11a-4fa9-9d76-8ed46f903cdd.html); *Tintoretto Prisoner of War in Serbia*, IL GAZZETTINO ONLINE (Nov. 27, 2016), [https://www.iligazzettino.it/pay/cultura\\_pay/tintoretto\\_prigioniero\\_di\\_guerra\\_in\\_serbia-2106313.html](https://www.iligazzettino.it/pay/cultura_pay/tintoretto_prigioniero_di_guerra_in_serbia-2106313.html); *Belgrade, No Contact with Italy on Goering's Paintings; Historical Kusovac Absurd to Demand Something Sold Legally*, ANSA GEN. NEWSL. ITALIAN (Nov. 30, 2016), [http://www.ansa.it/emiliaromagna/notizie/2016/11/30/belgrado-no-contatti-su-quadri-goering\\_17ce6fc1-925f-4fce-b3a0-16281bde08fb.html](http://www.ansa.it/emiliaromagna/notizie/2016/11/30/belgrado-no-contatti-su-quadri-goering_17ce6fc1-925f-4fce-b3a0-16281bde08fb.html) [hereinafter *Belgrade*].

8. *Belgrade*, *supra* note 7.

9. Maggiore Lanfranco Disibio, Nucleo Tutela Patrimonio Culturale, Address at Tulane University Law School Summer Abroad in Siena (June 9, 2017).

10. *Id.*

11. *See id.*

12. *Id.*

the sale was made, meaning the sale was uncoerced, and therefore legal.<sup>13</sup> On the other hand, Italy's Carabanieri, unhappy with the results from the Italian ruling, have sought different judicial and diplomatic solutions.<sup>14</sup> Renewed interest in the Mimara conflict resulted in 2017, when Bologna's prosecutor made a request for international judicial assistance to Belgrade's Superior Court in regard to the return of the eight paintings (including a Tintoretto and a Veneziano).<sup>15</sup> These were the same works that were the subject of another letter rogatory and seizure request in 2015 that the Belgrade Court rejected.<sup>16</sup>

While many sources of international law converge on this unique overlap of trafficking, theft, and restitution of cultural property—mainly the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Property—here, the arguments employing those conventions fail because the items were legally exported from Italy and there are documents to support that transaction.<sup>17</sup> The next logical step would be to argue fraud based on the fact that the Munich Collection Point transaction was illegal because Mimara used fabricated documents—and this is where the international anti-money laundering laws come into play.<sup>18</sup> Both Italy and Serbia are parties to the main United Nations anti-money laundering convention,<sup>19</sup> and the laundering of title, or fraud, could be used as the legal basis to retrieve the Italian paintings located in Serbian museums courtesy of Mimara.<sup>20</sup>

---

13. *Id.* If the sale was uncoerced, then the London Declaration of 1943, which nullified transactions entailing the sale of cultural property made under duress during that time period, would not apply, and Serbia would not have to return the property.

14. *Belgrade, supra* note 7.

15. *Id.*

16. *Id.*

17. Disibio, *supra* note 9.

18. Akinsha, *supra* note 1, at 153-54.

19. United Nations Convention Against Transnational Organized Crime, Chapter XVIII, Sec. 12, 15 Nov. 2000, 80 Stat. 271, 2225 U.N.T.S. 209 [hereinafter Palermo Convention].

20. Disibio, *supra* note 9; *see also* Palermo Convention, *supra* note 19.

In general, money laundering and trafficking of cultural property and art often overlap.<sup>21</sup> Moreover, certain countries known for acting as transit nations for cultural property trafficking in the past, such as Switzerland, have passed anti-money laundering legal regimes and standards, indicating the increasing need for laws that address these issues.<sup>22</sup> So the question remains: is this a practical solution to lingering restitution disputes about improperly acquired or long-ago stolen artworks? This Comment addresses this question as well as the current legal background that potentially clouds the view of policy makers, scholars, and law enforcement officials when it comes to how they approach art and cultural property restitution. First, this Comment will assess the current legal framework regarding the international movement of cultural property, those legal tools to which scholars and governments normally resort, and its weaknesses. Next, this Comment will analyze both national and international anti-money laundering laws and their applicability to art and cultural property restitution and trafficking cases. Further, Italy's efforts to recover their art from Serbia will be explained and analyzed, paying special attention to the ways in which anti-money laundering statutes could be employed. Finally, this Comment will assess the greater applicability of anti-money laundering laws and why they should be applied to the field of art and cultural property law as a whole.

## II. INTERNATIONAL LEGAL FRAMEWORK REGARDING THE MOVEMENT OF CULTURAL PROPERTY

In order to assess the applicability and effectiveness of anti-money laundering laws, one should first understand the international legal regimes currently used to address the problem of art trafficking and

---

21. See generally Graham Bowley & William K. Rashbaum, *Has the Art Market Become an Unwitting Partner in Crime?*, N.Y. TIMES (Feb. 19, 2017), <https://www.nytimes.com/2017/02/19/arts/design/has-the-art-market-become-an-unwitting-partner-in-crime.html>; Henri Neuendorf, *Swiss Art Lawyers to Publish Best Practices Dossier on Art-Related Money Laundering*, ARTNET NEWS (Jan. 26, 2017), <https://news.artnet.com/art-world/art-money-laundering-best-practices-833621>; *About the Need of Forensic and Anti-Money Laundering Services for Art Market Professionals*, DELOITTE (June 2014), <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/risk/lu-forensic-aml-art-market.pdf>.

22. See Hugo Miller, *Geneva Art World Pens Anti-Money Laundering Guide Amid Scandals*, BLOOMBERG (Jan. 25, 2017), <https://www.bloomberg.com/news/articles/2017-01-25/geneva-art-world-pens-anti-money-laundering-guide-amid-scandals>; see also Neuendorf, *supra* note 21; *Guidelines on Combatting Money Laundering and Terrorist Financing*, RESPONSIBLE ART MKT. INITIATIVE (RAMI), <http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing/> (last visited Sept. 29, 2018).

restitution. The first international convention to directly address the movement and protection of cultural property as its sole objective was the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention).<sup>23</sup> The Hague Convention was revolutionary in the field of cultural property law because it was the first international legal instrument to define cultural property.<sup>24</sup> It was also the first convention to recognize that the protection of cultural property required not only national protection, but international protection, to be truly effective.<sup>25</sup> These revelations and the narrow parameters to which the convention was constrained resulted from rising concerns and claims to cultural property that had been looted or forced into commerce by Hermann Goering and his team during World War II.<sup>26</sup> To prevent these events in the future, the United Nations drafted the Hague Convention to encourage and articulate what protection actually encompassed: security and respect.<sup>27</sup> Moreover, the Hague Convention requires that cultural property entered on the International Register be marked with a distinctive emblem, that occupying parties continue to preserve and safeguard the cultural property in the territory being occupied, that special protective measures be taken to provide refuges for movable cultural property, how militaries should proceed when faced with cultural property during their operations, the transport of movable cultural property, immunity of certain pieces of cultural property, and the general application of the convention to both international and non-international conflicts.<sup>28</sup> While the Hague Convention represented a significant step forward in the prevention of the trafficking, looting, and general protection of cultural property, the main shortcoming of the convention remains that its force is limited to wartime.<sup>29</sup> Additionally, the Hague Convention falls short by placing the load of cultural property protection on the shoulders of each contracting party and fails to put into place any enforcement measures.<sup>30</sup>

UNESCO sought to address these specific problems in 1970 with the Convention on the Means of Prohibiting and Preventing the Illicit Import,

---

23. Final Act of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240.

24. *Id.* art. 1.

25. *Id.* pmb.

26. *See id.* art. 4.

27. *Id.* art. 2-4.

28. *Id.* art. 5-19.

29. *Id.* art. 18.

30. *Id.* art. 5-10.

Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention).<sup>31</sup> The 1970 UNESCO Convention enacted a much broader definition of cultural property, including literary, cinematographic and photographic items, furniture, and musical instruments.<sup>32</sup> Other notable developments consisted of requiring participating parties to establish national services for the protection of its cultural property that included drafting laws; setting up inventories and institutions; supervision of archeological excavations; establishing ethical standards for curators, collectors, and museums; and implementing greater educational and publicity measures.<sup>33</sup> Additionally, the 1970 UNESCO Convention requires signatory parties to manifest export certificates for cultural property (and prohibit the export of cultural property without that certificate), require those export certificates for imported cultural property, make restitution efforts when appropriate, impose penalties or sanctions for not following those requirements, and monitor and restrict the movement and transfer of illicit cultural property within their territories by establishing national services for these purposes.<sup>34</sup> Although the 1970 UNESCO Convention imposes more specific requirements on signatory nations regarding the import, export, and transit of cultural property during wartime or peacetime, the convention still relegates the establishment of enforcement and penalty mechanisms to individual signatory nations, which fails in comparison to having an international organization, such as the International Criminal Court, impose penalties.<sup>35</sup> Moreover, though the 1970 UNESCO Convention broadened the scope of cultural property protection in comparison to the Hague Convention, it failed to address the realities of cultural property and art trafficking: that it is more often carried out through mechanisms similar to other trafficking activities (i.e., drug trafficking, human trafficking, and so on).<sup>36</sup> While the intentions of imposing the establishment of national regulations and standards on signatory nations is a step forward, states need more detailed and specific guidelines as to how those regulations and standards should read.<sup>37</sup>

---

31. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, art. 1, T.I.A.S. No. 83-1202, 823 U.N.T.S. 231 [hereinafter UNESCO Convention].

32. *Id.* art. 1.

33. *Id.* art. 5.

34. *Id.* art. 6-14.

35. *Id.*

36. *See id.* art. 2.

37. *See id.*

Strides toward a more tailored, detailed international regime were made by UNIDROIT with its 1995 Convention on Stolen or Illegally Exported Cultural Property (hereinafter referred to as “the UNIDROIT Convention”), though its scope focuses on the return and restitution of cultural property after theft or illegal export.<sup>38</sup> The driving force of the UNIDROIT Convention is in establishing “minimal legal rules” regarding the return and restitution of cultural property, establishing remedies (including compensation), and facilitating legal trading practices.<sup>39</sup> Not only does the UNIDROIT Convention emphasize restitution, but it also establishes statutes of limitations for restitution claims, such as those for monuments, archeological sites, and public collections as well as what constitutes “removal” from a contracting state.<sup>40</sup> The UNIDROIT Convention also includes specific remedies, such as a court order requesting the return of a piece of cultural property or “fair and reasonable compensation.”<sup>41</sup>

What sets the UNIDROIT Convention apart from the previous international conventions are the references to specific judicial measures and remedies that can be invoked by contracting parties.<sup>42</sup> The Convention defines terms and statutes of limitations and lays out processes by which contracting parties can abide rather than merely delegating those decisions to the contracting parties, as the previous conventions do.<sup>43</sup> Although the UNIDROIT Convention in theory provides specific guidelines for restitution processes for stolen or illegally exported cultural property, in practice these guidelines never see fruition due to the lack of an international judicial forum for such claims and inadequate evidence.<sup>44</sup>

A recent decision regarding the destruction of cultural property (an issue closely tied to the trafficking of cultural property) rendered by the International Criminal Court (ICC) might address the lack of international

---

38. UNIDROIT Convention on Stolen or Illegally Exported Cultural Property, June 24, 1995, 2421 U.N.T.S. 457 [hereinafter UNIDROIT Convention].

39. *Id.* pmb1.

40. *Id.* art. 3-5. As far as removal is concerned, removal can consist of the impairment of (a) the physical impairment of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional or ritual use by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting state.

*Id.* art. 5.

41. *Id.* art. 4-6.

42. *Id.*

43. *Id.*

44. *See id.*

judicial forum issue. In *Prosecutor v. Ahmad Al Faqi Al Mahdi*, the ICC convicted Al Mahdi of intentional destruction of cultural property under article 8 of the Rome Statute after he directed several attacks against ten mausoleums in Timbuktu, Mali, in 2012.<sup>45</sup> The court reasoned that Al Mahdi was charged under that specific provision of the statute, rather than a more general charge of destruction of property, because his intent fulfilled the mens rea requirement and his conduct constituted a direct attack, which the court defined as “an attack on cultural objects, and . . . not a link to any particular hostilities but only an association with the non-international conflict more generally.”<sup>46</sup> While the *Al Mahdi* case relates to the destruction of cultural property rather than the trafficking and restitution of cultural property, it nevertheless illustrates how an international forum for the adjudication of cultural property restitution claims could be successful.<sup>47</sup> The UNESCO Convention, the UNIDROIT Convention, and the ICC each fail to provide a forum for prosecuting art and cultural heritage trafficking, which makes catching that trafficking in action and securing evidence elusive.<sup>48</sup>

### III. THE ANTI-MONEY LAUNDERING LEGAL FRAMEWORK

Trafficking cultural property requires the crossing of borders and potentially the commission of other crimes, which in turn persist as obstacles to resolution.<sup>49</sup> This is precisely where many other types of legal regimes addressing other types of trafficking have used an indirect strategy: anti-money laundering laws.<sup>50</sup> Though these laws circumvent the primary crime (i.e., drug trafficking, human trafficking, and so on), the objective remains to halt drug, or other types of trafficking, through the money used to commit those crimes.<sup>51</sup> Here, law enforcement agencies

---

45. *Prosecutor v. Al Mahdi*, ICC-01/12-01/15, Public Judgment and Sentence (Sept. 27, 2016). Full facts of the case, while not wholly relevant to this Comment, can be found on pages 16-25 of the Al Mahdi judgment.

46. *Id.* at 10-11.

47. It is important to note that the 1998 Rome Statute of the ICC possesses jurisdiction over four types of international crimes (genocide, crimes against humanity, war crimes, and crimes of aggression), of which money-laundering is not included. Rome Statute of the International Criminal Court, art. 5(1), July 17, 1998, 2187 U.N.T.S. 90.

48. *See id.* *See generally* UNIDROIT Convention, *supra* note 38; UNESCO Convention, *supra* note 31, art. 5-17.

49. *See Introduction to Money-Laundering*, UNODC, <https://www.unodc.org/unodc/en/money-laundering/introduction.html?ref=menuaside> (last visited Mar. 21, 2018).

50. *See id.*

51. *See id.*



could merely swap their search for drugs for a search for cultural property.<sup>52</sup> While some cases may concern only the money-laundering achieved through the sale of cultural property, anti-money laundering statutes could also apply to situations, like that of Ante Topic Mimara, in which cultural property trafficking could be achieved through money laundering.<sup>53</sup> Trafficking in general requires the money to be cleaned or covered in some way and traffickers often use sales of cultural property to do so.<sup>54</sup> Therefore, international anti-money laundering laws are an effective existing legal mechanism to address cultural property trafficking.<sup>55</sup>

#### A. *International Anti-Money Laundering Legal Regimes*

As with many international legal regimes, the United Nations has formulated a basic overarching program regarding anti-money laundering laws.<sup>56</sup> The branch overseeing the Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism, the main legal regime governing anti-money laundering objectives, is the United Nations Office on Drugs and Crime (UNODC).<sup>57</sup> The UNODC defines money laundering as “the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence.”<sup>58</sup> In addition, the UNODC notes the “ability to prevent and detect money-laundering is a highly effective means of identifying criminals and terrorists and the underlying activity from which money is derived.”<sup>59</sup> The UNODC developed the Global Programme as a response to developing countries that faced difficulty trying to sustain economic growth and combat the spread of terrorism.<sup>60</sup>

---

52. *See id.*

53. *See UK Dealer Accused of Money Laundering*, ART L. & MORE FROM BOODLE HATFIELD (Mar. 14, 2018), <https://artlawandmore.com/2018/03/14/uk-dealer-accused-of-money-laundering/>.

54. *See Objectives of the Global Programme Against Money Laundering, Proceeds of Crime and the Financing of Terrorism*, UNODC, <https://www.unodc.org/unodc/en/money-laundering/programme-objectives.html?ref=menuse> (last visited Mar. 21, 2018).

55. *See id.*

56. *See id.*

57. *Id.*

58. *Introduction to Money-Laundering*, *supra* note 49.

59. *Id.*

60. *Objectives of the Global Programme Against Money Laundering, Proceeds of Crime and the Financing of Terrorism*, *supra* note 54.

While the Global Programme includes conventions against the trafficking of drugs, corruption, and financing terrorism, the most relevant convention is the United Nations Convention against Transnational Organized Crime (Palermo Convention).<sup>61</sup> The Palermo Convention extends the scope of money laundering crimes beyond that of drug trafficking to those like crimes against cultural heritage.<sup>62</sup> The Convention declares certain offenses crimes under international law and requires state parties to implement measures to combat these crimes.<sup>63</sup> For the purposes of this Comment, articles 6 and 7 specifically reference money laundering as a crime that must be established by that state party's domestic law or through other measures.<sup>64</sup> Article 6 criminalizes "the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purposes of concealing or disguising the illicit origin of the property" and the "concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing such property is the proceeds of crime."<sup>65</sup> Article 7 requires that Member States put into force a domestic regulatory regime consisting of customer identification, record keeping and the reporting of suspicious transactions, as well as adequate law enforcement cooperation and establishment of "financial intelligence units."<sup>66</sup> Therefore, the Palermo Convention not only officially criminalizes money laundering but also calls for measures and language that Member States are to implement in their domestic settings.<sup>67</sup> Providing language and specific initiatives allows Member States to adopt relatively uniform laws, meaning that this convention sets a guideline that everyone can apply and cuts out the extra steps of formulating language and specific measures from scratch.<sup>68</sup>

Another guiding source is the Financial Action Task Force's (FATF) Recommendations, to which the UNODC refers.<sup>69</sup> The FATF first drafted

---

61. *Id.* It should be noted that the original convention was the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the "Vienna Convention")—the convention upon which the Palermo Convention was built.

62. *See* G.A. Res. 55/25, at 2 (Nov. 15, 2000).

63. Palermo Convention, *supra* note 19, art. 3.

64. *Id.* art. 6-7.

65. *Id.* art. 6(a)(i)-(ii).

66. *Id.* art. 7(a)-(b).

67. *Id.* art. 6-7.

68. *Id.*

69. *See UN Instruments and Other Relevant International Standards on Money Laundering and Terrorist Financing*, UNITED NATIONS OFF. ON DRUGS & CRIME, <https://www.>

the Recommendations in 1990, with subsequent revisions up until 2003. The Recommendations consist of forty substantial items, measures, and remedies that the 180 Member States can implement in their domestic regimes.<sup>70</sup> Measures to implement include confiscation, seizure, freezing, investigation, customer due diligence and record keeping, additional due diligence for financial institutions as well as designated non-financial businesses and professions.<sup>71</sup> Suggested remedies include the formation and implementation of financial intelligence units, powers and responsibilities of law enforcement officers and cash couriers, sanctions, mutual legal assistance from other countries, freezing, seizure, extradition, and other forms of international cooperation.<sup>72</sup> Looking at these FATF Recommendations, Member States can easily formulate their own statutes, enforcement and regulatory standards because examples of specific actions and language are present in the Recommendations.<sup>73</sup> These are recommendations that 180 countries and observer nongovernmental organizations such as the United Nations and International Monetary Fund reference for money laundering activities in general—so why not use these legal standards already in place to address cultural property trafficking?<sup>74</sup>

In addition, the International Money-Laundering Information Network (IMoLIN), a research resource, possesses an Anti-Money-Laundering International Database, which consists of anti-money laundering laws and regulations, standards, overviews of countries and territories as to their anti-money laundering status, lists of national legislation, model laws, instruments, and conventions, and links to regional organizations and financial intelligence units.<sup>75</sup> One of the most

---

[unodc.org/unodc/en/money-laundering/Instruments-Standards.html?ref=menu](http://unodc.org/unodc/en/money-laundering/Instruments-Standards.html?ref=menu) (last visited Mar. 22, 2018).

70. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FIN. ACTION TASK FORCE 6, [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf) (last updated Oct. 2016).

71. *Id.* at 9-10, 12-13, 17-18. Additionally, recommendations for internal controls, transfer services, wire transfers, third party actions, transparency, regulation and supervision are discussed in the FATF Recommendations. The Recommendations also address specific measures to be taken against terrorist organizations and the financing of terrorism, an issue tangential to the topic of this Comment. *Id.* at 15-17, 20-21.

72. *Id.* at 22-28.

73. *See, e.g., id.* at 17-19, 21-22.

74. *See id.* at 6.

75. *Key Features—International Money Laundering Information Network (IMoLIN)*, UNODC, <https://www.unodc.org/unodc/en/money-laundering/Key-Features-IMoLIN.html> (last visited Mar. 21, 2018).

beneficial resources for states remains the model laws available on the database.<sup>76</sup> The Model Legislation on money laundering, confiscation, and international cooperation in relation to the proceeds of crime and the UNODC Money Laundering, Proceeds of Crime and Terrorist Financing 2003 create starting points for states that do not currently possess money laundering legislation and even have bracketed placeholders for that state's applicable ministers, regulatory bodies, and so on.<sup>77</sup> Moreover, the Model Provisions on Money Laundering for common law systems possess optional phrases for drafting legislation, indicating that the UNODC realizes the utility of these model provisions and wants to provide flexibility for states in order to encourage adoption of these model provisions.<sup>78</sup> With such resources available, and likely already in place, states have ample ability and structure to combat money laundering and the accompanying trafficking activities.

### B. National Anti-Money Laundering Statutes

As one of the many states at the forefront of the implementation of both anti-money laundering laws and cultural property laws, Italy provides a great example of a national anti-money laundering law.<sup>79</sup> Italy has implemented a national anti-money laundering statute under article 648, "Receiving stolen," in its penal code.<sup>80</sup> This article states that "who, in order to procure for himself or others a profit, acquires, receives or conceals money or things from any crime, or otherwise interferes in making them acquire, receive or conceal, is punished with imprisonment from two to eight years and with a fine."<sup>81</sup> Not only does this provide a good example of a national anti-money laundering statute, but it also uses

---

76. See *Model Laws*, INT'L MONEY LAUNDERING INFO. NETWORK, UNODC, <http://www.imolin.org/imolin/en/model.html> (last visited Mar. 21, 2018).

77. GLOBAL PROGRAMME AGAINST MONEY LAUNDERING: MODEL LEGISLATION ON LAUNDERING, CONFISCATION AND INTERNATIONAL COOPERATION IN RELATION TO THE PROCEEDS OF CRIME art. 1-2 (UNODC, 1999); see, e.g., UNODC MODEL MONEY LAUNDERING, PROCEEDS OF CRIME AND TERRORIST FINANCING BILL art. 2, 11 (UNODC 2003).

78. See generally MODEL PROVISIONS ON MONEY LAUNDERING, TERRORIST FINANCING, PREVENTIVE MEASURES AND PROCEEDS OF CRIME (FOR COMMON LAW LEGAL SYSTEMS) (UNODC Apr. 2009). See *id.* art. 3 (italicized "option" language), annex I (providing a model bill for financial intelligence units).

79. See, e.g., Titolo XIII, art. 648 Codice penale [C.p.] (It.).

80. *Id.*; see also G.A. Res. 55/25, at 2 (Nov. 15, 2000); Status of Treaties, *United Nations Convention Against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en) (last visited Mar. 20, 2018) [hereinafter *Palermo Membership List*].

81. Titolo XIII, art. 648 C.p. (It.).

the phrase “any crime” to encompass a broad range of crimes through which to attack money laundering activities.<sup>82</sup> Moreover, on May 25, 2017, Italy adopted the Legislative Decree No. 90 of May 25, 2017, Ordinary Supplement No. 28 of the Italian Official Gazette No. 140 of 19 June 2017 (Italian Decree), which created rules that encompass the activities of virtual currency providers, created an Ultimate Beneficial Owner Register, reformed customer due diligence measures, and enhanced the sanctioning regime as to the subjective liability of corporate representatives and criteria to determine severity of violations and penalties when it comes to reporting suspicious activity.<sup>83</sup> Italy, therefore, shows commitment and possesses significant legal resources that allow them to effectively combat trafficking activity through anti-money laundering laws.<sup>84</sup>

Similarly, Switzerland recently made efforts to implement an anti-money laundering legal regime as it relates to art and cultural property trafficking.<sup>85</sup> Sparked by seizures of art and antiquities at its Geneva Freeport and the Bouvier scandal, the Swiss formed the Responsible Art Market Initiative (RAMI), composed of lawyers, consultants, and art dealers, and drafted ten standards by which the art and cultural property community should abide.<sup>86</sup> The RAMI standards aim to establish clear rules for art dealers and collectors, significant players in the art and cultural property market, in a legal climate in which the rules constantly change, demonstrating a need for standardization.<sup>87</sup> One of the most important reasons for the creation of the RAMI Guidelines was the understanding that the “illicit trafficking of art and antiquities . . . facilitates money laundering and other financial crimes”—in other words, the understanding that the two crimes are linked.<sup>88</sup>

The RAMI Guidelines on Combatting Money Laundering and Terrorist Financing highlight the ways in which the art market is particularly susceptible to money laundering, including that it is an

---

82. *Id.*

83. Agostino Papa et al., *IV Anti-Money Laundering Directive: The Issuance of the Italian Legislative Decree Implementing the Directive*, DLA PIPER (June 26, 2017), <http://www.dlapiper.com/en/italy/insights/publications/2017/06/anti-money-laundering-directive-in-italy/>.

84. *See id.*; *see also* Titolo XIII, art. 648 C.p. (It.); G.A. Res. 55/25, at 2 (Nov. 15, 2000); *Palermo Membership List*, *supra* note 80.

85. Miller, *supra* note 22.

86. *Id.*

87. *Id.*

88. Neuendorf, *supra* note 21.

international market, use of proxies, the use of foreign or offshore accounts, the high value goods involved, the culture of discretion, and the conversion abilities inherent in art and cultural property.<sup>89</sup> The RAMI Guidelines provide general risk monitoring, knowledge, due diligence, recording, and training standards as well as red flag lists that highlight the more specific activities to look for in transactions.<sup>90</sup> The Red Flag list is especially useful, detailing transaction, client, and artwork red flags and the specific measures to take when art business professionals encounter one.<sup>91</sup> For example, when an art professional encounters a client who uses multiple offshore accounts or structures that are also opaque, the Red Flag Guidelines instruct that art professional to request verification documentation to identify the “ultimate beneficial owner(s)” (an idea previously referenced in the Italian Decree) behind the structure and record the response.<sup>92</sup> These Red Flag Guidelines, in addition to the general Guidelines and the RAMI “Country Guides,” furnish concrete and specific avenues to address suspicions, potential, and real encounters with money laundering activity in the art market.<sup>93</sup> In fact, the very existence of these Guidelines illustrates their necessity and utility—some of the founding members are art auction houses, freeports, and foundations spanning several countries.<sup>94</sup>

While the RAMI Guidelines are not strictly legal instruments, they still indicate a need for standards when it comes to the intersection of money laundering and art and cultural property trafficking, and art transactions in general.<sup>95</sup> Coupled with the anti-money laundering statutes that many countries currently have in place, the ubiquity of anti-money laundering laws and admissions of its overlap with art and cultural

---

89. *Guidelines on Combatting Money Laundering and Terrorist Financing*, *supra* note 22, at 3.

90. *Id.* at 4-10.

91. *Red Flags Money Laundering and Terrorist Financing Risks*, RAMI, [http://responsibleartmarket.org/wp/wp-content/uploads/2017/01/RED-FLAG-LISTS\\_web.pdf](http://responsibleartmarket.org/wp/wp-content/uploads/2017/01/RED-FLAG-LISTS_web.pdf) (last visited Mar. 22, 2018).

92. *Id.*

93. *Id.*

94. *Founding Members*, RAMI, <http://responsibleartmarket.org/organisation/> (last visited Mar. 22, 2018).

95. See *Guidelines on Combatting Money Laundering and Terrorist Financing*, *supra* note 22, at 4-10; see also *Red Flags Money Laundering and Terrorist Financing Risks*, *supra* note 91; *Founding Members*, *supra* note 94.

property trafficking make anti-money laundering law an obvious solution.<sup>96</sup>

#### IV. A CASE STUDY: THE ANTE TOPIC MIMARA SCANDAL AND THE ITALIAN GOVERNMENT'S APPROACH

The Ante Topic Mimara Scandal presents a good example of a multi-faceted approach taken by government to a situation of art trafficking.<sup>97</sup> Though it may or may not have explicitly involved money laundering, the scandal demonstrates how the issues of art trafficking and money laundering intertwine and how the former can be exposed by the latter.<sup>98</sup> This Part will detail both the steps used by the Italian government in regard to the Ante Topic Mimara scandal and how the current international and national anti-money laundering statutes and standards can be used to combat both this scandal and future art and cultural property cases.

The Italian government was aware of the illicit nature of the Ante Topic Mimara transaction in the 1950s after the eight Italian paintings were transferred to the Belgrade Museum.<sup>99</sup> Nonetheless, the current controversy most likely officially began in November 2004, when the Two Towers in the National Gallery in Bologna, Italy, hosted an exhibition of works from the Belgrade museum, in which were included the eight “prisoners’ of war” Italian paintings.<sup>100</sup> At that point in time, the exhibition curators assumed the legitimacy of the declarations of ownership of the Belgrade museum because it was a national museum.<sup>101</sup> After, the Carabinieri and the Cultural Heritage Units of Bologna and Florence pieced together a provenance, or history of ownership, of the paintings, which indicated evidence of sales to Walter Andreas Hofer and Hermann Goering, after which they were transferred to Ante Topic Mimara at the Munich Central Collection Point.<sup>102</sup>

---

96. See *Founding Members*, *supra* note 94; see also Bowley & Rashbaum, *supra* note 21; Neuendorf, *supra* note 21. See generally *About the Need of Forensic and Anti-Money Laundering Services for Art Market Professionals*, *supra* note 21; *Art-Related Due Diligence*, DELOITTE, <https://www2.deloitte.com/lu/en/pages/art-finance/solutions/art-related-due-diligence-services.html> (last visited Mar. 20, 2018).

97. See *Belgrade*, *supra* note 7.

98. See *id.*

99. Dondi, *supra* note 7.

100. *Id.*

101. *Id.*

102. *Id.*

Then, in 2015, Bologna sent a request for seizure of the paintings along with an international letter rogatory, which is the “request from a judge . . . to the judiciary of a foreign country requesting the performance of an act which, if done without the sanction of the foreign court, would constitute a violation of that country’s sovereignty.”<sup>103</sup> As previously discussed in this Comment, some of the legal issues with the transfer are that Ante Topic Mimara was purportedly acting for a country that no longer exists (Yugoslavia, now the countries of Serbia, Croatia, and Bosnia and Herzegovina),<sup>104</sup> who the appropriate criminal defendant should be, and of what legal basis the claim should consist.<sup>105</sup> However, the Court of Belgrade rejected that request.<sup>106</sup> The Serbian judge reasoned that precedence should be given to the politics at the time of the transaction at the Munich Central Collection point—that all of the parties involved, including the United States, Italy, and Serbia, were Allies at the time and a decision was made to let Yugoslavia keep the items.<sup>107</sup> In addition, the transfer occurred using what at the time appeared to be lawful documents.<sup>108</sup> Serbia also argued that prescription applied, as long as the acquisition had not occurred through crime or fraud, because the paintings had remained in Yugoslavia for almost seventy years.<sup>109</sup>

Then, in late 2017, the Bologna prosecutor sent a second request for international judicial assistance regarding the return of the Italian paintings.<sup>110</sup> Nonetheless, Italy had argued that money laundering could be a possible legal basis for the claim because the transfer had been perpetrated by fraud and both Italy and Serbia were parties to the UNODC Convention Against Transnational Organized Crime.<sup>111</sup>

---

103. *Id.*; 275: *Letters Rogatory*, U.S. DEP’T JUST., <https://www.justice.gov/usam/criminal-resource-manual-275-letters-rogatory> (last visited Mar. 21, 2018). I contacted the Bologna prosecutor, Roberto Ceroni, about the letters rogatory and other documents about the case, but the second international request for judicial assistance and related documents are currently confidential.

104. Ante Topic Mimara and Belgrade now correspond to the area of the former Yugoslavia that is now Serbia. *What Is the Former Yugoslavia?*, UNITED NATIONS INT’L CRIM. TRIBUNAL FOR FORMER YUGOSLAVIA, <http://www.icty.org/en/about/what-former-yugoslavia> (last visited Mar. 23, 2018).

105. Disibio, *supra* note 9.

106. *Belgrade*, *supra* note 7.

107. Disibio, *supra* note 9.

108. *Id.*

109. *Id.*

110. *Belgrade*, *supra* note 7.

111. Disibio, *supra* note 9.



Evidenced by Italy's acknowledgement of the application of anti-money laundering statutes, the Serbian and Italian authorities could apply those statutes to resolve this dispute. Articles 6 and 7 of the UNODC Palermo Convention require that Member States criminalize money (or property) laundering and implement a regulatory or supervisory regime for banks and nonfinancial institutions.<sup>112</sup> Both Serbia and Italy ratified the Palermo Convention and both have implemented domestic anti-money laundering statutes.<sup>113</sup> Serbia would have jurisdiction according to article 15(2)(b), which states that "the offense is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory," or article 15(2)(c)(ii), which establishes jurisdiction per an offense that is "one of those established with article 6, paragraph 1(b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offense established in accordance with article 6, paragraph 1(a)(i) or (ii) or (b)(i), of this Convention within its territory."<sup>114</sup> Because Ante Topic Mimara purportedly acted as an agent of the state of Yugoslavia (now Serbia) and that he acted in conformance with 6(b)(i) or (ii), Serbia would establish jurisdiction.<sup>115</sup>

Then, the states could apply article 12(1)(b), "Confiscation and seizure," which states that "property, equipment or other instrumentalities used in or destined for use in offenses covered by this Convention" can be confiscated or seized.<sup>116</sup> However, because this issue crosses international borders, and in fact occurred in a third party state, Italy and Serbia could look to article 13 "International cooperation for purposes of confiscation" to determine standards for the process for the confiscation of the property if the other state has jurisdiction.<sup>117</sup> Article 13 provides that parties can:

- (a) Submit the request to its competent authorities for the purposes of obtaining an order of confiscation and, if such order is granted, give effect to it; or
- (b) Submit to its competent authorities, with a view of giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1 of this Convention insofar as it relates to proceeds of crime,

---

112. Palermo Convention, *supra* note 19.

113. See Money Laundering and Terrorism Financing, Art. 2, No. 113/17 Official Gazette of the Republic of Serb. 17 Dec. 2017.

114. Palermo Convention, *supra* note 19, art. 15(2)(b), (c)(ii).

115. *Id.*

116. *Id.* art. 12(1)(b).

117. *Id.* art. 13(1).

property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.<sup>118</sup>

While article 13(2) states that the requested State Party “shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities”; article 13(7) allows the State Party to refuse to take action if the offense is not considered to be one under the Convention.<sup>119</sup>

Italy and Serbia most likely followed these steps up until Italy sent its second request for judicial assistance (although not necessarily or explicitly) in accordance with the Palermo Convention.<sup>120</sup> While Italy requested the return of the paintings, Serbia issued a judicial decision refusing to grant that request.<sup>121</sup> It should be noted that the success of using the Palermo Convention rests on establishing that Ante Topic Mimara laundered the money or the title for the paintings Italy requests.<sup>122</sup> This would require Italy to find evidence from their provenance research and details from research on the scandal generally.<sup>123</sup> Nevertheless, it should also be noted that the FATF issued a Global Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Compliance Review for high-risk jurisdictions on February 23, 2018, for Serbia.<sup>124</sup> In its review, the FATF notes that Serbia should work to “ensur[e] adequate and effective investigation and prosecution of third party and stand alone [money laundering].”<sup>125</sup> Although the Mimara scandal occurred in the 1940s, the investigation is happening now, and the fact that the FATF has determined Serbia to be a high-risk jurisdiction due to inadequate investigation and prosecution of money laundering indicates that this scandal might be suffering due to those deficiencies.<sup>126</sup>

Even in spite of Serbia’s current status, the Palermo Convention in conjunction with the FATF Recommendations and sufficient evidence that the title to the paintings had been laundered by Mimara could be used to

---

118. *Id.* art. 13(1)(a), (b).

119. *Id.* art. 13(2), 13(7).

120. *Belgrade*, *supra* note 7.

121. *Id.*

122. Palermo Convention, *supra* note 19, art. 6.

123. Dondi, *supra* note 7.

124. *Improving Global AML/CFT Compliance: On-Going Process—23 February 2018: Serbia*, FIN. ACTION TASK FORCE, <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2018.html#iraq> (last visited Sept. 29, 2018).

125. *Id.*

126. *Id.*

resolve the dispute between Italy and Serbia. However, it should be noted that this case, as well as many other cases involving state or government actions, and cases involving the actions of private individuals, would not face the same scrutiny under anti-money laundering laws as they would under statutes such as the Foreign Sovereign Immunities Act (FSIA) and the Act of State Doctrine and their national equivalents in other countries.<sup>127</sup> Because conventions like the UNODC Palermo Convention require that a money-laundering offense occur and that a national of a state party perpetrate it, cases involving private individuals who launder money or title would fall under the Convention.<sup>128</sup> Those Holocaust restitution cases involving states and their agencies, however, would still be subject to national statutes similar to the United States' FSIA and Act of State Doctrine.<sup>129</sup> The main issue, as seen with the Mimara scandal, remains that the requested state could argue that concrete proof is lacking and that it has retained possession of the paintings for so long as to have gained the title to them by prescription.<sup>130</sup>

However, the greater applicability of anti-money laundering laws must be emphasized. Demonstrated need by the art and cultural property community and the sheer ease with which anti-money laundering laws can be applied point to those laws as a sought after and readily available legal resort.<sup>131</sup> Even if the legal avenues of applying the Palermo Convention and national anti-money laundering statutes fail, states could still opt to draft bilateral treaties using language provided by model anti-money laundering provisions.

---

127. Notable international cultural property cases have often involved statute of limitations issues, FSIA claims, and Act of State doctrine claims. *See, e.g.*, *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1037 (9th Cir. 2010) (holding that the case falls under the expropriation exception to the FSIA so as to grant jurisdiction to U.S. courts); *Republic of Austria v. Altmann*, 541 U.S. 677, 701-02 (2004) (holding that the FSIA applies to actions taken before its 1976 enactment); *Kunstsammlungen Zu Weimar v. Elicofon*, 678 F.2d 1150, 1165-66 (2d Cir. 1982) (holding that the FSIA and Act of State doctrine barred claims for paintings possessed by German museum); *Menzel v. List*, 267 N.Y.S.2d 804, 815-16 (N.Y. Sup. Ct. 1966) (holding that the FSIA did not govern the action because the painting was seized by a non-government political organization and not in the territory of a foreign government).

128. *See, e.g.*, *Williams v. Nat'l Gallery of Art*, 2017 WL 4221084, at \*6-9 (S.D.N.Y. Sept. 21, 2017).

129. *See, e.g.*, *Cassirer*, 616 F.3d at 1037; *Altmann*, 541 U.S. at 701-02; *Elicofon*, 678 F.2d at 1165-66; *Menzel*, 267 N.Y.S.2d at 815-16.

130. Disibio, *supra* note 9.

131. *See, e.g.*, *Guidelines on Combatting Money Laundering and Terrorist Financing*, *supra* note 22, at 1.

## V. CONCLUSION

With the ubiquity and increasing awareness of the applicability of anti-money laundering laws to cultural property and art trafficking, the only question remaining is why states refrain from using those anti-money laundering statutes toward this type of crime. While the lack of an international forum to adjudicate money laundering persists, the issues of legal structure and available remedies have been resolved. Cases like the Ante Topic Mimara scandal lend themselves to resolution by anti-money laundering conventions and statutes, especially when fraud and laundering of title are present.<sup>132</sup> Although countries may argue that other international legal instruments directly applying to cultural property and art trafficking should be employed first, anti-money laundering laws present an extremely useful and effective second option when those other international legal instruments fail.

---

132. See *UK Dealer Accused of Money Laundering*, *supra* note 53.