



IADAA NEWSLETTER JANUARY 2022

Conference to strengthen European cooperation in the fight against illicit trafficking in cultural property



Above: Vincent Noce, far left, questions Alexandre Giquello, President of the Drouot, Professor Marc-André Renold, Christie's CEO Guillaume Cerutti, IADAA Chairman Vincent Geerling and Henrik Hanstein, President of the Federation of European Auctioneers (back shown) at the conference in Paris. Also pictured, far right, is Roberto Riccardi, Head of Carabinieri Command for the Protection of Cultural Heritage.

Organised by the French Government as chair of Council of the European Union at the Auditorium Michel Laclotte, The Louvre, Paris February 1, 2022

Powerful arguments from Christie's CEO Guillaume Cerutti, President of the Drouot Alexandre Giquello and IADAA chairman Vincent Geerling transformed what was promising to be another box-ticking conference on cultural property trafficking into a real debate. In response to what had been unconvincing and complacent presentations by EU officials and French and EU politicians, all three attacked the cavalier manner in which the art market had been treated when it came to the new import licensing regulations. Giquello dismissed them as unrealistic, unnecessary and incomprehensible. He said they went too far and were catastrophic for the market. Geerling noted that they breached Commission president Ursula von der Leyen's mission statement with regards to evidence and proportionality, while Cerutti vehemently criticised a senior EU official with whom he was debating over consultation, saying the art market had been 'heard' but 'not listened to'. Henrik Hanstein, CEO of German auction house Lempertz and President of the European Federation of Auctioneers, listed numerous laws which the art market was already subject to, arguing that no more were needed. He also referred to the industry's efforts to work with museums and other experts to vet sales.

Key to the debate was its moderator, respected journalist Vincent Noce, an expert on such matters, who exposed the failings of the legislative process with probing questions. How would ordinary citizens protect their family heirlooms, for which they had no documentation because of the passing of the years, if subject to the new import licensing regulations, he asked Valérie Le Dure, Head of the European Commission's Unit overseeing the protection of citizens and enforcement of IPR, DG Taxation and Customs Union. They could produce family photographs or travel documents associated with the items' original import, she suggested as he shook his head in his incredulous response. Professor Marc-André Renold of the University of Geneva, a specialist in cultural property restitution, argued that anyone without paperwork who was uncertain about a family heirloom could simply send it back to its source country. The detachment from reality was palpable.



Hopes of any real dialogue were dashed from the start of the day when one speaker after the other, starting with European Commission Vice President Margaritis Schinas, **pictured here**, trotted out the usual inaccuracies about cultural property trafficking being “one of the most lucrative forms of criminality” (it is not), and “a significant source of income for terrorist groups” (as yet not shown).

There was talk of needing to co-operate with the art market, but it was clear from the approach that this meant telling the art market what it had to do rather than agreeing a constructive way forward.

A session on new technologies that claimed to aid the fight against trafficking was hampered by the failure of any of the digital presentations to work. The irony was not lost on those assembled.

Geerling asked Professor Markus Hilgert, Secretary General and CEO of the Cultural Foundation of the German Federal States, whether his much-lauded and heavily financed KikU-App would be able to make the distinction between authentic and fake objects or replicas and if KikU could make the distinction between legitimate and illegal items. The answer was no to both questions, which raises the question of how helpful artificial intelligence is in this case. ([See also IADAA's November 2021 Newsletter](#))

Noce asked Professor Renold about UNESCO's continuing use of the bogus \$10 billion evaluation of the annual value of trafficked cultural property. UNESCO has attributed the

figure to a Renold report, where it does not appear, and the professor has previously denied being the source. Here he dismissed the figure, as well as false claims that cultural property crime is second or third to drugs. If it is illicit, how can we evaluate it? he asked.

Having said that, however, he then dismissed the volume of traffic as a small consideration when considering the ethical position. But this argument is commonly used by people and organisations who have previously promoted figures heavily to support their case, only to change tack when they are shown to be untrue.

Renold emphasised the need for better due diligence more transparency, points immediately picked up by Cerutti, who listed all the measures Christie's undertook to fulfil these obligations – even before regulation – while adding that the market valued them because they helped bring stability.

Geerling agreed, adding that with reputation being of the utmost importance to dealers, due diligence had been for decades a key tool in building confidence in the trade, while dishonesty acted against their interests.

Le Dure agreed that quantifying the exact scope and size of the trafficking problem was difficult, but then argued that the regulations were a proportionate response, which simply does not follow. Her persistence in talking over questions from Noce and contributions from Cerutti as she insisted that the market had been properly consulted struck a note of irony while prompting the angry response from Cerutti about the market not being listened to. To have galvanised the CEO of Christie's alongside several other influential leaders in defence of the art market in this way was unprecedented at such an event. The consequences may well be highly significant.

Sotheby's attempts to sell ancient Egyptian statue for \$3-5M; is it legal?

Egypt Today: January 28: This is arguably the most enlightening article ever written about the Egyptian mindset when it comes to reclaiming its heritage.

As the report details, an extraordinary and well-preserved statue, **shown here**, excavated from tomb No. G 2415 in the Great Western Region, next to the Pyramid of Khufu [Cheops], by the American archaeologist George Andrew Reisner is coming up for sale at Sotheby's. Unusually, a complete and confirmed provenance exists for the statue dating back to its excavation during the mission of the Museum of Fine Arts in Boston in 1913.

Equally unusual is the confirmed fact that the Fifth Dynasty piece formed part of the officially sanctioned partage retained by the Boston Museum.

However, despite this, Egypt is now demanding that the sale be stopped and the statue returned to Egypt as illicit.

Why?



The report states that according to Antiquities expert Abdel Rahim Rihan, director-general of Archaeological Research, Studies and Scientific Publication in the South Sinai Region, Egypt's 1983 Antiquities Protection Law changes everything because it cancelled all previous laws.

What this means is that Egypt is attempting to apply its 1983 law retroactively to all previous exports, no matter how official and sanctioned they were, as in this case, rendering all of these items illegal.

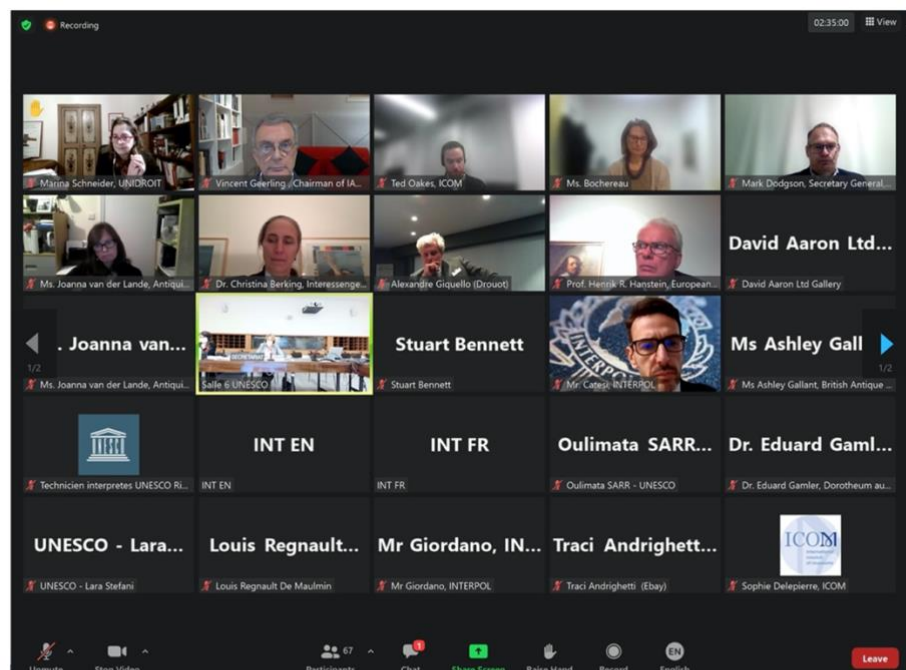
Partage was used as an effective system providing incentive for foreign powers to provide expertise, funding and equipment in the excavation of ancient sites. Having selected the best finds for itself, the Egyptian government presented the missions with artefacts, such as this statue, as gifts in return for their contribution.

This draconian interpretation of its 1983 law means that it now wishes to renege on its side of the partage deal, in this case more than a century later, without offering any compensation.

Two days, two approaches... and two very different outcomes

UNESCO held seminars and debates about the art market on January 25 and 27, taking very different approaches with each, with very different results.

On January 25, almost 100 people logged on to the Zoom conference to debate revisions to UNESCO's guidance on its proposed code of ethics for the art market. Leading representatives and campaigners from the market were invited to present arguments and debate key issues. They included Vincent Geerling, chairman of IADAA, Erika Bochereau, Director-General of CINOA, the world's largest



Above: Getting it right: Almost 100 attendees at the January 25 debate on UNESCO's proposed code of ethics for the art market tuned in to a healthy discourse that included leading representatives of the trade as well as law enforcement, NGOs and others.

trade federation of dealers, and Mark Dodgson, Secretary-General of the British Antique Dealers' Association (BADA) and Vice President of CINOA.

IADAA has been a leading critic of UNESCO's attitude and approach towards the market over the years, but, along with the other trade representatives, appreciated that this appeared to be a genuinely constructive and good-faith initiative.

Geerling, Bochereau and Dodgson, as well as several commentators from the market throughout the session, addressed the practical application of what UNESCO is proposing.

Bochereau summarised the key issues regarding art market consultation over the proposals as follows:

- 1) The current wording of the Articles is problematic and much of it does not or cannot apply to the wider art market.
- 2) The tone of the consultation questionnaire proposes developing the existing code to broaden the articles and draft a commentary to the extent it cannot realistically be applied to the wider art market.
- 3) All codes must be periodically reviewed as the market, environment and legal framework evolves.
- 4) There is no point in UNESCO drafting a code that is not agreed to by trade, which is unworkable and which no-one signs up to.

This last point, especially, seems to have struck a chord with UNESCO, leading to this more effective engagement with the market.

Dodgson noted that the market is already subject to myriad laws and advised that any code proposed by UNESCO “needs to sit above these laws and reflect concepts of good practice already in place, not to do the job of those laws”.

He concluded that proposals “such as the use of the 1970 date, expectations of full historical documentation, ICOM Red Lists, database of laws and disclosure of confidential information, do not sit comfortably with the realities of the market in cultural property”.

Geerling, meanwhile, reminded those gathered of the message that he has been reinforcing for the past five years:

- The trade is as horrified by the destruction and iconoclasm as anyone else and we share a common cause in wishing to defeat it.
- The trade has more incentive than anyone else to stop the crooks because of the damage they risk causing the reputation of the legitimate trade.
- We will not find a workable solution unless all parties to the debate work together including Art Professionals – both dealers and auction houses.

All three representatives promoted the concept of the market as enduring guardians of cultural heritage through the trade, preservation and conservation of objects through the ages.

Geerling explained, yet again, about the practical difficulties surrounding export licences and the use of terms such as “cultural property”. Clarity of terms is essential for avoiding misunderstanding, he argued.

He reminded those gathered that the UNESCO Convention committed member states to drawing up specific lists of designated items of importance when reclaiming cultural patrimony, a commitment that a number of these states have not met.

Representatives from Interpol, UNIDROIT and other organisations contributed valuable viewpoints, with market reaction creating a genuine debate and identification of key issues that need thrashing out.

The event was enlightening for all of those involved, concluding with the clear acknowledgement that all sides needed to grasp this opportunity for positive outcomes and effective policy for raising standards in international trade.

How different this was from what followed two days later on January 27.

Titled *Fighting Illicit Trafficking of Cultural Property – A Capacity-Development Workshop on the Role and Means of the Financial Sector*, this was nominally about expertise and law enforcement around the issue of money laundering. However, it soon became clear that the true subject of the session was art market compliance.

So where did it go wrong?

Firstly, of the 20 speakers invited, many stressed the importance of engaging with the art market to find out what might work, what wouldn't and why, in order to come up with effective solutions. However, not one of them was from the market, which had been entirely excluded. It had been further excluded because the Zoom Chat facility was disabled and attendees were never allowed to intervene, raise information points or ask questions, even at the end during the Q&A session.

This meant that art market experts with current experience in anti-money laundering policy, who could have answered a number of the queries raised among the speakers, were not able to do so. These

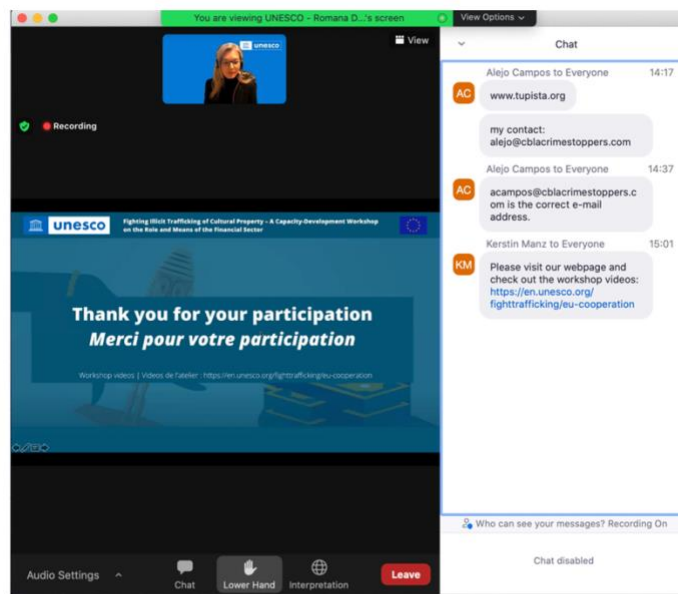
included the leading trade representatives within the EU and the primary global markets. One of the most extraordinary – but welcome – contributions came from Dr Donna Yates and Dr Neil Brodie, academics who have spent years calling for more and more restrictions for the art market.

Their entire presentation set out arguments put forward by the art market itself for years, including the need to avoid using confusing terms such as cultural property / cultural goods and the fact that data and information regarding looting and trafficking was unreliable and largely compromised by false claims. This had even blighted their own European Commission report on trafficking and terrorism financing conducted with Ecorys in 2019, they said, a staggering admission about a report that lacked the required evidence to justify the import licensing proposals, but whose publication was delayed until they had been introduced.

Of the other speakers, Maja Dehouck, a researcher at the University of Amsterdam's CRAAFT project investigating terrorism financing, had the best grasp of the tensions that arise between the law and practice and acknowledged how essential it is to involve the art market in policy formation.

One of the chief problems among academics and policy makers is their failure to understand why proposals may prove impractical. For example, while many assume that confidentiality around the identity of sellers is driven purely by dishonest motives, the reality is that dealers and auction houses are prevented from being more transparent about them for perfectly valid reasons, such as data protection law, the need to protect commercially sensitive information and the personal security of clients.

One suggestion was to use the diamond industry as a model for applying AML rules to the art market. However, this is entirely unsuitable because while diamonds are a measurable commodity in a single market, art and antiques forms thousands of micro markets dealing in unique objects.



Above: Getting it wrong: Despite debating anti-money laundering measures for the art market, the January 27 debate, involving around 20 speakers, did not include anyone from the market. Because it disabled the Chat facility on Zoom and failed to open the Q&A session at the end to attendees, issues raised that could have been addressed by experts remained unanswered.

The result of the exclusion of informed art market representatives here was that the session failed to solve its own challenges, many of which could have been answered by those listening in without the access to contribute.

Here are some suggestions of how UNESCO and other NGOs and authorities could improve this moving forwards:

- Co-opt two or three leading trade representatives in relevant disciplines onto any working group.
- Speak to those already dealing with these practical problems with AML within the UK where the law is already being enforced.
- Consult regularly with the UK regulator, which is speaking to the market in detail on a regular basis.

If the January 27 event demonstrated UNESCO's longstanding failure to engage the experts properly, the January 25 event set out the example it should have followed.

With changes at the top within UNESCO's culture sector comes renewed hope. It must not miss the opportunity to follow this through.

Billionaire's Looted Art Still On Display At Israel Museum

News Concerns: January 7: This report relates to the loan of artefacts to the Israel Museum by Michael Steinhardt (see newsletters passim), in particular the Heliodorus Stele.

What makes this article interesting is the manner in which – as with so many others – it fudges the legal status of what is being discussed.

The headline is clear: the stele is looted. The reasoning is that two pieces found in a recent dig “fit the limestone slab like a jigsaw puzzle”.

Work your way down the article, however, and the claims become less certain: “In addition to the Heliodorus Stele and two of the ancient masks, at least one other Steinhardt-owned artifact in the Israel Museum is of uncertain provenance.” So, not necessarily looted, just lacking paperwork.

Under attack, the museum announced it had followed due diligence, checking the provenance and documents demonstrating legal ownership and these had checked out, including with the Israel Antiquities Authority (IAA).

Next the article reports that Israel operated a licensed antiquities market in artefacts discovered before 1978, thereby opening up the possibility that the stele could have been discovered and traded on that basis.

Finally we are told that the Steinhardt artefacts under suspicion “are believed to have been plundered from West Bank sites”.

Whether the stele and other artefacts were looted, then, is not known, yet the headline, general tone and other content in the article preclude any doubt. On what basis? Firstly, because it makes a better headline and story than ‘maybe’. Secondly, because it is in the authorities’ interests to encourage this agenda to justify their policies. Thirdly, because pressure of resources means that journalists have little time or expertise to research and question these issues properly. If they did, they would discover that what is often driving seizures is not proof of crime but enforcement of bilateral agreements that prioritise reversing the burden of proof of ownership over personal property rights (*see below*).

Does it matter? Yes, because if the media consistently reinforces a false narrative on a widespread basis, it allows policy to be developed on the basis of prejudice rather than evidence, in breach of public trust. As cultural goods are well known as a highly useful tool in soft-power diplomacy, this exposes the culture sector to exploitation for serious and nefarious reasons by those who have no real interest in it, without fear of being checked.

News Concerns' report is just one of tens or even hundreds of thousands of articles contributing to this problem, upgrading claims and beliefs to facts on a daily basis. Several others make the same misjudgement on this issue, including Fox News.

Most bizarrely, The Times of Israel runs a headline alleging that Steinhardt himself looted the stele, something that even his harshest critics don't claim, nor does the article below it. The subject matter of these reports is very serious and news outlets should treat them in a more professional manner.

The first thing all of these news operations need to do is correct their headlines to better reflect their reports' content. Secondly, they need to be much clearer in distinguishing proven facts from beliefs, allegations and baseless claims.

Money Laundering Regs Too Unwieldy To Police Art Market

Law360: January 14: This analysis by Art Law Firm principal Alexandra Darraby accuses a US Senate subcommittee of deciding on "scant facts" that [s]ecrecy, anonymity and a lack of regulation create an environment ripe for laundering money and evading sanctions," while recommending that high-value art sales be added to US Bank Secrecy Act regulatory compliance.

Darraby is critical of further assumptions: "The Senate report emphasizes that the art market is largely unregulated. Unstated is the more important point that there is no one art market. The art market is actually multiple markets fragmented horizontally and vertically by diverse sellers, some capitalized, some with storefronts, others home-based or on e-Bay."

She goes on to note that many of the operators in these diverse markets are small sellers and sole proprietors who support "underrepresented talents and marginalized artists otherwise denied market access".

Darraby clearly thinks that compliance measures demanded under the BSA are unsuitable for the market: "The gallery scene is not a TSA clearing booth, nor is age-asking conducive or relevant to the sale of artworks and creative content," she argues.

However, she is at her most damning when it comes to the evidence supporting the proposals, stating that "even FinCEN presents a puzzling contradiction of detailed sales reports and data, simultaneously concluding that data is unavailable — hence regulation is needed — and that art sales are shrouded, buyers are camouflaged, and revenues are shielded by intermediary payoffs".

Refreshingly, Darraby asks the essential questions which no one else seems to have thought of asking before Congress heads down the BSA route for the art market. These she summarises as follows:

"Is the art trade in America a primary or substantial market for money laundering, or even a significant market for criminal activity?"

"Is there more effective deterrence of greater benefit to the public, museums, collectors and dealers, notwithstanding money laundering as a prosecutorial tool in other industries?"

"How would the confidentiality, privacy and security of art buyer's personal data be stored and maintained by the myriad of art sellers?"

"Is BSA regulation of the art trades merely a shifting of responsibility and obligation from those who are tasked with criminal enforcement?"

Hopefully someone influential in the Senate will read what she has to say and her concluding recommendation: "Congress is evaluating money laundering regulation of other industries like private equity firms. The arts are trying to recover from pandemic setbacks

that affect culture in different ways. A pause and a reset for the arts may be the cleanest implementation for 2022.”

Greece Extends Memorandum of Understanding

Numismatic News: January 17: This is an example of an article where the headline actually underplays the story, as the opening paragraph reveals: “Can you claim something is your cultural patrimony when your country didn’t even exist at the time the artifact or coin was produced? This minor detail isn’t an issue for Greece, which has recently extended its agreement with the United States through a Memorandum of Understanding to cover relics, art, and coins dating from the fourth century A.D. to 1830.”

It goes on to quote US lawyer and cultural property expert Peter Tompa, who has made a number of significant and enlightening interventions in recent months: “It [renewed MoU with Greece] was a bit of a surprise. We expect another one when there is an announcement of the import restrictions going with the renewed Egyptian MoU. That may be a bigger story in the larger world because it will probably include artifacts of the displaced Jewish minority.”

MoUs are gathering pace, not just between the US and countries like Libya, Greece, Turkey and Italy, but also between other countries, such as Egypt and South Korea, who also signed theirs in January. In effect they will restrict the movement of art, antiques and antiquities considerably, gradually shutting down the legitimate international market and private ownership by stealth.

Egypt is spending billions to preserve and promote its cultural heritage, minister says

MENA: January 19: “Egypt has spent billions of pounds opening new museums, restoring archaeological sites and putting on two spectacular parades in a bid to preserve and promote its cultural heritage, its tourism and antiquities minister has said.”

As can be seen from the plethora of news stories coming out of Cairo in the past few years, this is undoubtedly true. Think of the grand parade of Pharaohs in gold coffins last year.

As is also reported here, travel restrictions and lockdowns wiped out \$17.6 billion from the Egyptian economy in 2020, according to the World Travel and Tourism Council. That constitutes 12% of Egypt’s GDP.

“But the government is counting on its greatest asset to cancel out these losses: a priceless treasure trove of antiquities.”

As one of the Middle East’s most indebted countries, Egypt’s economy has been recovering well over the past five years, but as of October 2021 external debt has quadrupled to nearly \$138 billion (around 90% of GDP) since 2010.

According to Daily News Egypt, \$50 billion of the country’s external debt is distributed between international institutions such as the IMF, \$24.3 billion among Arab countries, just over \$10 billion with Paris Club countries (UK, Germany, Japan, France and the US) and \$7.7 billion with China.

The 2016 currency devaluation encouraged foreign investors to pile in to Egypt. However, in September 2021, Bloomberg reported on Egypt’s reliance on foreign inflows and how this made it vulnerable to an investor exodus under US Federal reserve pandemic stimulus tapering. Servicing its debt is likely to become more expensive and inflation likely to rise even higher when it already outstrips dozens of other countries.

Goldman Sachs has recently assessed the Egyptian pound as “moderately overvalued”, with policymakers committed to a strong exchange rate. This risks making the country’s

exports less competitive, which in turn will pile more pressure on to the tourist industry and its reliance on cultural heritage, to perform well for the economy.

Is the art marketplace misunderstood?

MACE: January 20: This Brussels-based political magazine commissioned a series of articles about the trade in cultural property from the ADA and IADAA. Written by Joanna van der Lande who chairs the ADA, IADAA chairman Vincent Geerling and Ivan Macquisten, adviser to both associations, the article draw attention to key considerations in the debate over facts, policy, legislation and the wider implications of what is happening to the art market. MACE is a platform for sparking EU debate on important topics and is influential in engaging politicians, civil servants, NGOs and other people of note.

The screenshot shows the MACE website interface. At the top, there is a search bar and navigation links for 'LOGIN' and 'SUBSCRIBE'. Below the navigation bar, the main content area is organized into a grid of article teasers. The central and largest teaser is for the article 'Envisioning The End Time' by Bruno Maçães, featuring a vibrant night-time photograph of the Shanghai skyline. To its left, there are teasers for 'The Ambassador: Markus Leitner' (with a mountain image) and 'Fine Words From Defra Butters No Parsnips' (with a field image). To its right, there is a teaser for 'Back To The Future' (with an open book image) and 'An MEP On: The EU-US Approach To Artificial Intelligence' (with a blue digital head image). Below these, there are four more teasers in a row: 'All Is Not Quiet On The Eastern Front' (with a soldier in a snowy forest), 'Dolitics: Breaking The Prison Cycle' (with three men in a workshop), 'Sustaining The Palm Oil Debate' (with palm trees), and 'The Bigger Picture: Arts Under Attack' (with an art installation).

The US and Nigeria sign cultural property agreement

The Art Newspaper: January 28: Another in an increasing list of bi-lateral agreements established between the United States and source countries that wish to reclaim their cultural patrimony.

“The move signals intent to work together on tackling the illicit trafficking of items, namely archaeological and ethnological material dated between 1500BCE and 1770CE,” the report explains.

However, what it does not reveal, as with other Memoranda of Understanding, is the way in which this agreement will be used to bypass the US Constitution, human rights conventions and even the UNESCO Convention as Nigeria sets about repatriating objects.

The irony is that, as this article explains, the US has been implementing these MoUs “as part of its commitment to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property”. However, the terms of the MoU allow source countries to ignore their commitments under UNESCO.

The key element of the MoU is Article 1, which reverses the burden of proof on the ownership of items. What this means is that unless the holder/owner of items sold and exported legally decades or even generations ago can provide documentation demonstrating original legal export from the source country under the local laws of the time, the item will be deemed illicit, seized and sent back there.

As has been explained countless times through these newsletters and elsewhere, such documentation is almost never extant (if it ever existed) and for very good reasons, not least the lack of requirement, even now, to retain export licences once they have been used.

The only other solution is to apply to the source country for official confirmation that they are satisfied that the item was exported legally at the time. As these countries are trying to reclaim anything of interest or potential value, they inevitably will refuse to provide such confirmation.

It is extraordinary that the official US/Nigerian release announcing the MoU celebrates its power to ignore due process: “The agreement ensures that artefacts covered under the understanding will require appropriate export licences, with failure to do so resulting in seizure, “without Nigeria going through the labyrinth of judicial and diplomatic processes which most of the time [are] costly and time consuming”, adds Mohammed.”