



*First meeting of the EU subgroup of experts for dialogue with the art market in Brussels*  
*Vincent Geerling reports*



The first meeting of the EU Commission's Expert subgroup Dialogue with the Art Market, *shown above*, took place in Brussels on December 18 and 19. Within the EU, there are expert groups advising the Commission for most sectors, but until now there was no such group for the art market, resulting in a lack of understanding of how the art market functions and a painful lack of trust in its actors.

This summer, the Commission started the selection process to form a group of art market experts; approximately 45 candidates registered, from which 23 experts were selected, including Erika Bochereau (CINOA), Joanna van der Lande (ADA) and, as a representative for IADAA, myself.

The meeting started with a welcome speech by Georg Häusler, Director for Culture, Creativity and Sport, Directorate General of DG Education, Culture, Youth and Sport (DG EAC), European Commission. Participants were then asked to introduce themselves and express their expectations for the meeting.

When Catherine Magnant, head of the unit, summarized what she had heard, she noted that 'passion' was one of the key words when participants talked about their profession, as well as 'lack of evidence' when discussing topics such as illegal trade, the financing of terrorism and money laundering. Organized crime was also mentioned.

Mr Häusler concluded by asking the experts whether the EU had developed 'solutions' although there were no problems? Some participants clearly believed so.

The Commission made the following presentations:

1. The Action Plan against Trafficking in Cultural Goods and stocktaking of the 1st year – Presentation by Celine Chazelas-Baur (DG HOME)
2. EAC's activities under the Action Plan and Work Plan for Culture 2023-2026 – Presentation by Oscar Seguro Apostolo (DG EAC) followed by Q&A
3. Import and Export Regulations and upcoming developments – Presentation by Elena Maidou (DG TAXUD) followed by Q&A
4. FATF report on Money Laundering and Terrorist Financing in the Art and Antiquities Market – Presentation by Viktor Ivanov (DG FISMA) followed by Q&A

Participants asked many critical questions, highlighting the lack of reliable statistics and the dependence on fake news when it came to developing policy.

The need for a unified definition of “cultural goods” for specific reporting purposes was raised on several occasions, as very few cultural goods traded are “national treasures” nor are they “bric a brac”.

Questions about obstacles to the free movement of cultural goods from Italy revealed information about which the Commission was not aware.

Art Market participants and the DC EAC were positive about the exchanges during this first Expert Meeting.

The next dialogue with the Art Market experts will take place during BRAFA 2024. This High-level event aims to re-examine cooperation between institutional and market players in their shared mission to protect cultural heritage and combat illegal trafficking in the art market.

### **Culture Ministry: Netherlands to return Scythian gold from annexed Crimea to Ukraine**

The Kyiv Independent: November 22: A long-running dispute arising out of Russia’s annexing of the Crimea in 2014 has come to an end with a Dutch court ruling.

An outstanding collection of ancient Scythian gold artefacts on loan to the Netherlands was due to be returned to its home in the Crimea some time ago. However, returning it would have meant handing it to the occupying Russian force rather than the original Ukrainian owners, so the move was put on hold pending the legal ruling.

Several court rulings later and the Dutch Supreme Court has upheld an earlier decision that the artefacts should be returned to the Ukrainian authorities in Kyiv rather than to the Russians in Crimea.

### **German Art Collector Loses Bid to Keep Ancient Mask Looted From Egypt**

Artnet News: December 1: A prime example of the reversal of the burden of proof being enforced to deprive an owner of their property, this case involves the seizure of a 2,000-year-old Egyptian coffin mask and a 3,500-year-old brooch from a collector in Germany three years ago.

Despite the lack of evidence that the items had been stolen or illegally exported, “the Düsseldorf Administrative Court ruled Friday that the NRW Ministry of Culture was right to seize both items because it could not be ruled out that the objects were illegally obtained from Egypt”.

What is not in dispute is that the collector himself acquired the items at auction in the United States shortly before they were seized.

The court ruled that the objects could be considered national cultural assets of Egypt, making them subject to Germany’s 2016 Cultural Property law, with *Artnet News* reporting that the coffin “is believed to have been looted during excavations that took place between 2011 and 2017 before it was put up for auction in France in 2017, according to the DPA report”.

### **D.A. Bragg Announces Return of 30 Antiquities To The People of Greece**

Manhattan District Attorney media release: December 15: Another announcement of another return, this time of 30 antiquities, which the D.A.’s office says are worth \$3.7 million.

Listed among the highlights is a “Cycladic Marble Figure: originally illegally excavated from the Cycladic Islands in the Aegean Sea, this four-thousand-year-old marble figurine was seized from a storage unit belonging to a New York-based private collector by the ATU earlier this year”.

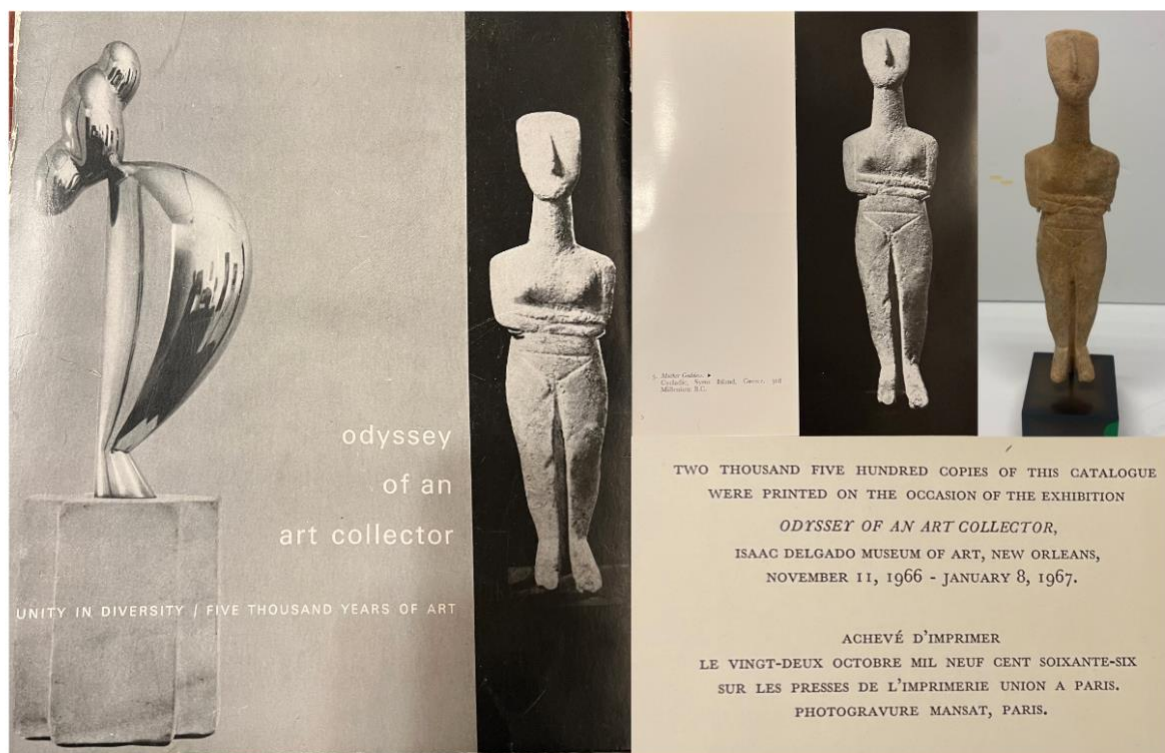
Evidence has come to light that calls into question the supposed illicit status of the figure. It is remarkably similar to a Cycladic idol published on the cover of a major collection in 1966 (the Stafford Collection). That idol was exhibited at the Fogg Museum of Harvard in

1954-55, and was originally from the collection of Alphonse Kahn, a prominent French art collector who died in 1948 (see attached photos from 1966 catalogue “Odyssey of an Art Collector”, 1966, *below*).

Specific details that match between the two idols are as follows: the breaks in the arms, the pubic triangle, the granular surface, the straight incision marking the upper right arm, and the proportions of the abdomen. Very slight differences in proportion are due to the differing camera angles.

If these are one and the same, as they appear to be, what is the basis for claiming this idol is looted given its very long and distinguished provenance?

Cultural Property News (CPN), which covered the story, noted the following: “The eight-inch-high sculpture seized from the storage space of the former spouse of a longtime private collector didn’t fit the DA’s favorite narrative about returning stolen objects or righting wrongs. Instead, its return to Greece appears to be an example of high-pressure tactics directed by the DA against an innocent owner – in which the DA seized private property where there was no actual evidence of any crime. If there was any evidence of wrongdoing, the DA did not make it public. And in this case, the Cycladic idol had a published, U.S. exhibition history going back to the 1950s and an ownership record and provenance decades older.”



*Above: Top right, the idol from the exhibition catalogue of the 1960s and, next to it, the idol seized in New York.*

### **More questions for – and silence from – the Manhattan D.A.’s office over antiquities seizures**

Antiquities Forum: December 12: The Antiquities Forum, a joint initiative between IADAA and the UK-based Antiquities Dealers’ Association, has conducted a close analysis of the Manhattan District Attorney’s Antiquities Trafficking Unit’s (ATU) claims regarding the value of antiquities it has seized and returned. The figures don’t add up.

Across nine media releases from December 2022 to October 2023 detailing its activities, the D.A.’s office included summary totals for the number of antiquities recovered and returned

by the ATU, together with the number of countries affected and the value of the antiquities in question.

In at least two places, the totals appear to reverse, while others yoyo as the months go by, as the graphs pictured above demonstrate.

The D.A.'s December 14, 2022 release, headlined [D.A. Bragg Announces return of Antiquities Looted from the Iraqi Museum](#), states: "Since its founding, the Antiquities Trafficking Unit has returned over 2,400 antiquities, valued at over \$200 million, to 22 countries."

However, by February 2, 2023, in a release headed [D.A. Bragg Returns 14 Stolen Antiquities to Italy](#), while the number of countries from whom the pieces had been stolen was listed as 23, the total value of returned antiquities had fallen to "more than \$180 million".

Another anomaly arises in references to figures relating to D.A. Alvin Bragg's tenure (the ATU was active prior to his being voted into office in November 2021).

A March 21, 2023 release, headed [D.A. Bragg Returns 29 Antiquities to Greece](#), states: "During District Attorney Bragg's tenure, the ATU has recovered more than 750 antiquities stolen from 26 countries and valued at more than \$130 million."

However, another release, just over five weeks later on April 28, headed [D.A. Bragg Announces Three Antiquities Repatriated to Yemen](#), claims that while the total has risen to more than 800 recovered antiquities worth over \$155 million, the number of countries from whom they had been stolen had fallen to 24.

Further inconsistencies apply to figures relating to D.A. Bragg's tenure.

In the February 2, 2023, media release, the total value of recovered antiquities since the ATU started its work is given as more than \$300 million, over \$90 million of which had come during D.A. Bragg's tenure. That leaves a fixed figure of around \$210 million for antiquities recovered prior to him taking office.

As the subsequent media releases show, however, this \$210 million figures expands and contracts considerably and with no clear pattern. In the March 21, 2023, release it is shown to be roughly \$230 million, while the April 28 release indicates that it is around \$220 million. By the July 14 release, it has become \$225 million, and by August 8 it is back to \$220 million. On September 7, the figure remains \$220 million, while the final release on October 10 shows it to be back up to \$225 million.

The series of anomalies raises further questions over the reliability of information coming out of the D.A.'s office regarding the ATU and its activities. In October 2023, the Antiquities Dealers' Association challenged the \$19 million valuation claimed by the D.A. in relation to 19 antiquities returned to Italy, saying the figures just didn't add up according to their expert dealer valuers.

When *Antiques Trade Gazette* asked the D.A.'s office how it came by its valuations, it replied: "We have experts assess the objects at the time of each repatriation based on the legal definition of value under the law."

The Antiquities Forum has already called for more transparency from the D.A.'s office over the ATU and the claims, writing: "Who these experts are and how they arrived at such an overblown valuation remains a mystery.

"This matters because:

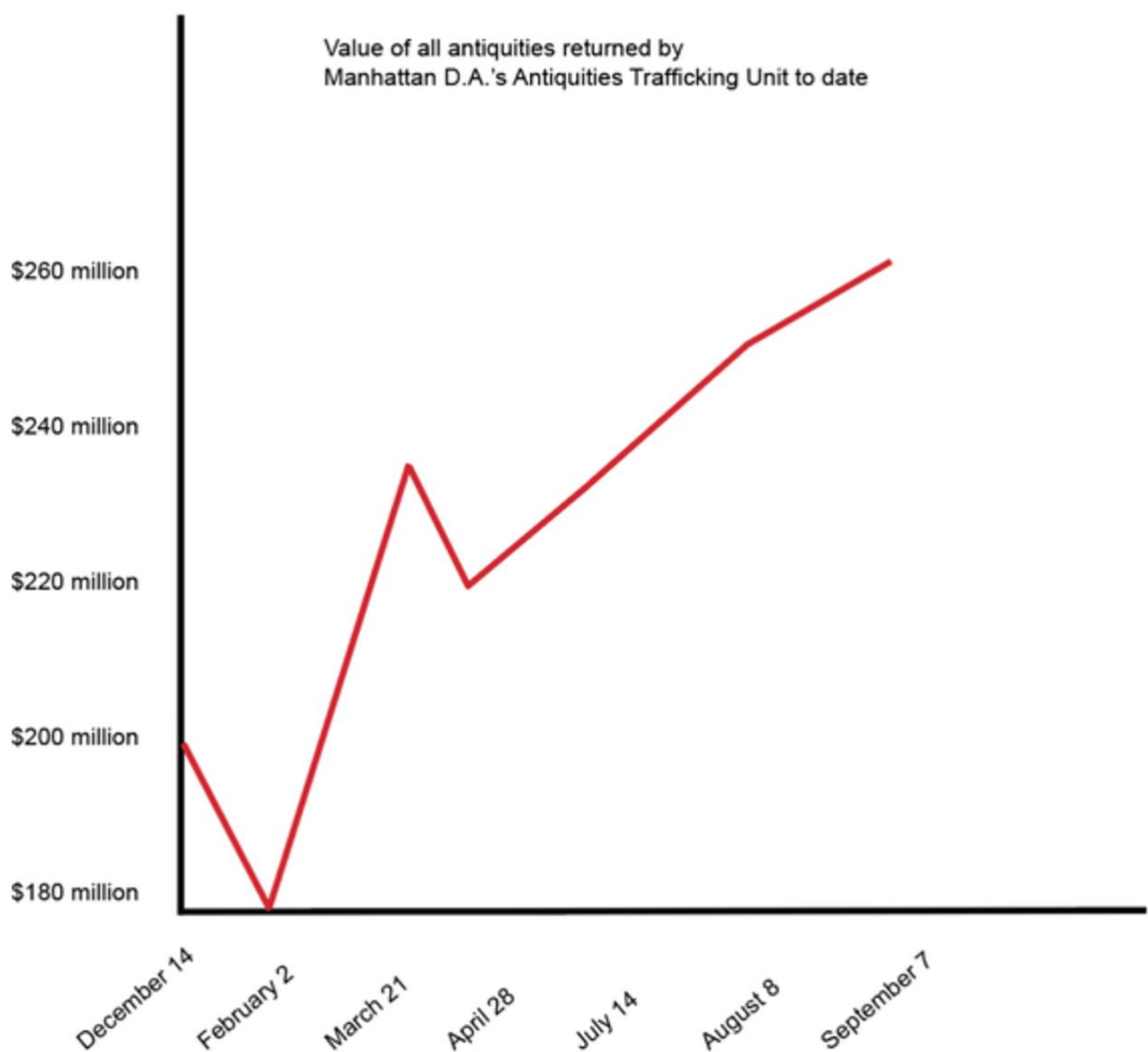
- What appears to be a gross exaggeration of value feeds into the inaccurate narrative of a huge international illicit trade in artefacts.
- It also boosts the public standing of the antiquities unit, which in turn makes its unquestioned position all the more unassailable at a time when serious questions regarding its activities need to be asked.
- The unit's activities are funded from the public purse, so the public is entitled to accurate reporting and transparency."

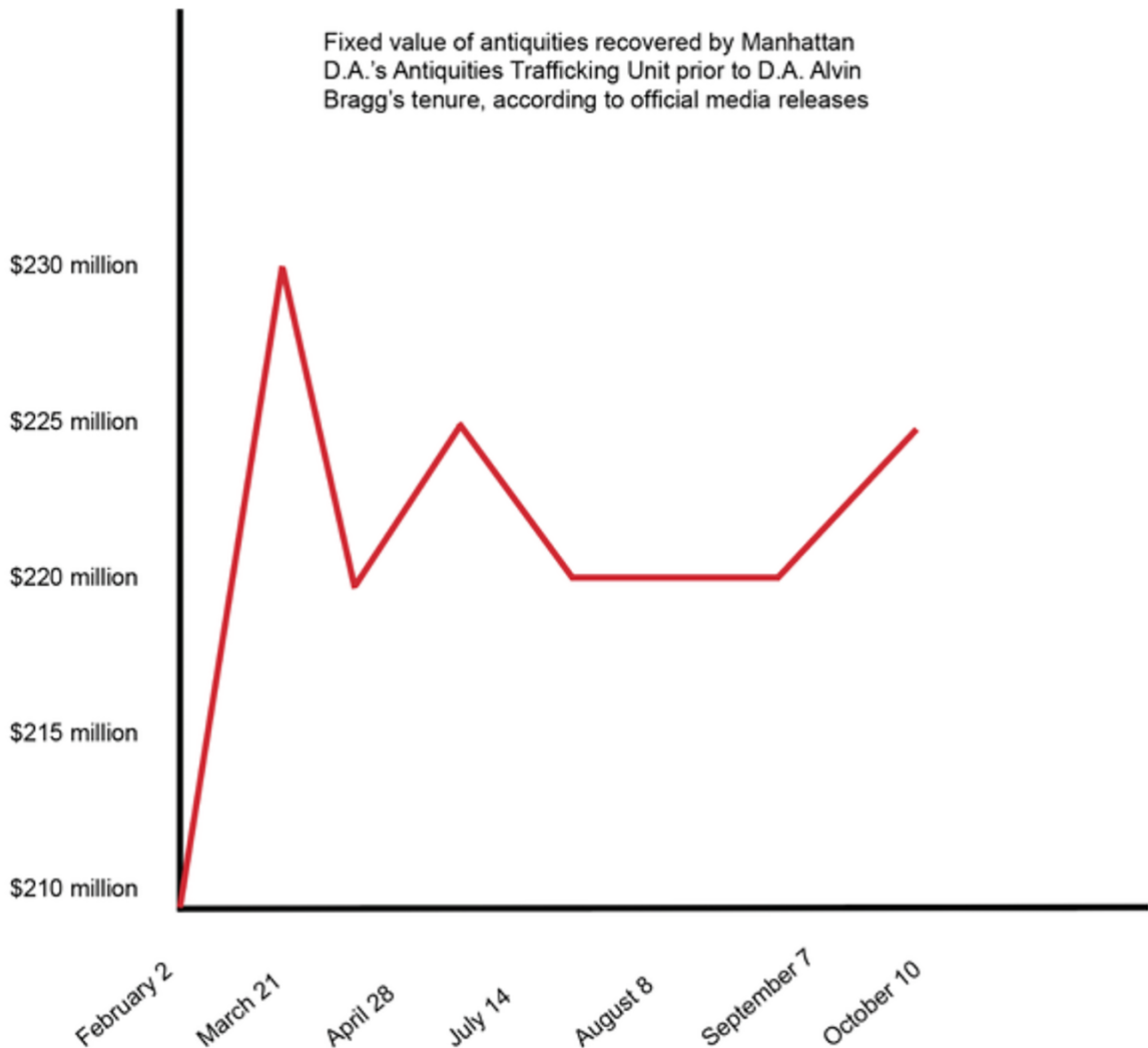


With so many anomalies in its official media releases [as the graphs below illustrate], the question arises as to how much care the D.A.'s office takes when it comes to the accuracy of its claims, and just how far the public is being misled.

Having ducked the transparency issue when confronted with it in the past few weeks, the D.A.'s office needs to show the public that pays for it some respect and come clean. So far it has failed to respond to any approach on this matter from representatives of the Antiquities Forum.

Meanwhile, *CPN* raises the alarm further over the validity of ATU seizures and claims: "Unbeknownst to their [the seized antiquities] current owners, a recent claim by a source country or a find of a photograph in closed police records of past investigations in Italy or Greece is enough to trigger issuance of a warrant from a NY judge."





**[The Deputy Director Who Overlooked Thefts at the British Museum Has Stepped Down](#)**

Artnet News: December 14: British Museum Deputy Director Jonathan Williams, who came in for significant criticism in relation to the theft scandal, has stepped down permanently from his post.

Williams was the chief focus of accusations of mishandling of evidence supplied by whistleblower Dr Ittai Gradel, whose alerts to the thefts were effectively disregarded until he bypassed the management to approach chairman George Osborne.

As this article notes, Gradel first presented Williams with his findings in February 2021. However, instead of taking him seriously, the deputy director told him that no crime had taken place.

“It was immediately obvious to any observer that he had displayed incompetence in handling this,” Gradel told the BBC about Williams, adding that “the only appropriate response should be that he should lose his position.”

Meanwhile, the debate over whether the BM should agree loans of the Marbles to Greece continued, with [Greek Culture Minister Lina Mendoni](#) saying that her country would be

prepared to arrange rotating loan exhibits of Greek treasures to "fill the void", should the Marbles be returned.

Ending the year in defence of keeping the Marbles in the BM was an article in *The Spectator* by Nigel Biggar, Regius Professor of Moral and Pastoral Theology at the University of Oxford. Biggar writes about how the Marbles were initially devastated when a gunpowder store exploded during Ottoman rule, with the authorities so careless of the shattered pieces that they were still littering the ground a century later when Lord Elgin arrived. At the same time, Ottoman soldiers were prizing out the lead clamps holding the rest in place to make bullets. Biggar argues that the care, process and time undertaken to remove the Marbles and ship them back to England shows that Elgin rescued rather than looted them.

### *Cross-border claims to looted art*

Study requested by the JURI committee of the European Parliament (submitted October 2023): Produced by a law professor from the University of Leiden, this 75-page report constitutes an extraordinary assault on democratic rights in the pursuit of tackling crime. It sets out its purpose in a brief abstract as follows: "This study addresses cross-border restitution claims to looted art, considering Nazi-looted art and colonial takings, but also more recent cultural losses resulting from illicit trafficking. Although these categories differ considerably, commonalities exist. The study highlights blind spots in the legal and policy frameworks and formulates recommendations on how these could be bridged."

The trouble starts in the Executive Summary. It notes that "Restitution of looted cultural objects, therefore, is not merely a matter of ownership and (domestic) private law but a matter of global policy and fundamental rights." A reasonable statement, it is however a prequel to a report that proposes to largely do away with private ownership rights.

As with every debate on this subject, at the heart of the problem is the issue of 'orphan objects', items that have changed hands often multiple times over long periods of time, but without an unbroken written record of their history from the point of discovery.

In summary – and in common with a growing trend – the report proposes to reverse the burden of proof in direct opposition to basic global legal principles, establishing a presumption of guilt unless proven innocent.

It also proposes compulsory registration for those wishing to trade in cultural property, mandatory due diligence standards for the trade, and the establishment of an EU Agency to license and police trade.

It goes further, advising that EU Member States should accede to the Nicosia Convention – a move that would sublimate their own sovereign laws.

One proposal, for a transparency register to prevent unprovenanced cultural objects going 'underground' focuses solely on supporting the return of items or removing them to safe havens. Although this is proposed "to avoid stagnation of the art market", it is difficult to see how it would do anything but destroy the market.

As with the rest of the report, there appears to be little to no understanding of how the market works, what its needs are, or the practicality of measures being demanded.

Potential costs in terms of time and money are ignored, while no consideration seems to be given to the level of expertise required for those individuals and bodies expected to supervise such a regime. As the soon-to-be-enforced EU import regulations have already demonstrated, practical solutions have been overlooked, and little confidence remains in Customs' ability to properly assess what they might be handling. Similar problems with AML enforcement teams in the UK have already arisen.

Mandatory due diligence, as proposed here, includes "making transactions dependent on minimum standards of documentation". However, this ignores the fact that the overwhelming bulk of antiquities, let alone other artefacts, have little or no paperwork

demonstrating clear provenance back to the point of discovery, purchase or export – and for perfectly understandable reasons. To introduce the standard suggested here would immediately outlaw them.

Another startling departure is the proposal to retroactively enforce April 24, 1972, as a cut-off date for adherence to the 1970 UNESCO Convention, regardless of the current legal status of Member States, whose obligations stem only from the date on which they officially acceded to or ratified the Convention's terms. The report defines the lag time between the 1972 date and the adoption date as a 'blind spot'.

Where the market would agree is that "solutions need to be found" to the problem of orphan works, and that "to retroactively declare the lawfully acquired ownership title of a new possessor invalid is problematic". Where it would not agree is the proposed solution in this report: "...to limit their tradability in the future by making transactions dependent on minimum standards of documentation on their lawful provenance, by introducing mandatory due diligence standards".

Fundamentally then, the argument in this report has not moved on. What we have here is a binary choice: innocent until proven guilty or guilty until proven innocent. The report proposes the latter.

### **Fight illicit trafficking, return & restitution of cultural property**

UNESCO: December 20: Signalling that it appears to have learnt nothing when it comes to the importance of accurate claims and data, UNESCO draws attention once more to its fraudulent 2020 campaign against the art market with this celebration of its work.

In two of the five highlights it singles out here, UNESCO celebrates the disgraceful *The Real Price of Art* campaign. As subscribers will know, [IADAA exposed the initial campaign](#) as fraudulent for lifting images from the archives of the Metropolitan Museum of Art in New York (without the latter's permission) and pretending they represented looted artefacts, including detailed descriptions about how each had been stolen, trafficked and funded terrorism. All this was aimed specifically at damaging the art market.

Having been caught out, UNESCO issued a 'Clarification' regretting the use of the MET images and the causing of 'any misunderstanding'.

The clarification also unwittingly revealed what was really behind the campaign: not a focus on crime but a political move against the private ownership of cultural artefacts, as this explanation shows: "UNESCO's intention was to alert the general public by depicting objects of high cultural value, which should be on display in museums, presented in luxurious private interiors."

Despite being caught out, UNESCO offered no apology to either the art market or the public, whose money it had spent on this shameful exercise. It went as far as to claim "Only three magazines had already been printed. The digital versions of these publications were modified." This ignored the viral campaign that had already taken place via the internet and social media.

Having removed the offending images, UNESCO then replaced them with others, which it stated were of genuinely looted items. Except they weren't, [as IADAA went on to show](#).

In one case, under the headline *Supporting an armed conflict has never been so decorative*, a detailed caption accompanied a grossly out-of-scale image of a 4,500-year-old figurine, said to have been stolen from the National Museum of Aleppo "when the fighting was at its peak in 2014, before being smuggled into the European market. Illicit trade in antiquities is one of the main sources of funding of armed groups."

Apart from there being evidence to show that the final claim here about funding is untrue, it soon became apparent that the figurine had not been stolen when video footage of the 2019 re-opening of the museum showed it clearly on display in a sealed cabinet.



As shameful as this embarrassing episode continued to be, UNESCO proceeded as shamelessly as before, simply adjusting the caption to the same image so that it read: “A priceless antiquity similar to this...” before completing the same caption. UNESCO has never apologised to the public or the art market for these persistent calumnies; the senior officials who oversaw the campaign are still in post and have never been publicly reprimanded; no public inquiry has ever taken place to review the use of public money in this way; and UNESCO continues to promote this campaign instead of burying it. UNESCO has frequently stated that it wants to engage with art market, while endlessly attacking it – as it continues to do, here – often using false data and claims to do so. Its reprising of this disgraceful campaign from 2020 as an example of the efforts it is making is the ultimate exercise in cynicism and lets the market know exactly how it will be treated.

### *Careful Collector No. 22 – Your Tax Dollars at Work*

Cultural Property News: December 28: Collector and cultural property lawyer Peter Tompa continues his enlightening series of articles on collecting and the world of cultural property with this detailed assessment of how funding issues can be harnessed to promote propaganda-influenced policy in the United States.

Lack of funding for archaeologists has forced many of them to earn a living doing something else, he notes. “Thanks to government largess, however, lucrative new opportunities have arisen for a select few archaeologists working with State Department bureaucrats to help justify cultural property Memorandums of Understanding (MOUs) or “emergency import restrictions.”

For many, this is an easy choice to make: “Not surprisingly, such work often draws those most committed to the view that cultural artifacts should be clawed back from U.S. collectors and museums for the benefit of countries that have been victimized in the past by Western colonialism. Most collectors, dealers and museum curators have no idea about all the State Department money that is funding this jihad against the private ownership of cultural goods in the U.S.”

The harnessing of such bilateral agreements for geopolitical gain – with art traders and private citizens paying the price – has long been a subject of concern in these newsletters, but despite being one of the most important issues of the day for the international art market, the market’s media continues to ignore it completely.

Bearing in mind its implications for the rights of the private citizen, it is equally perplexing that the mainstream media pays it no heed.

Tompa looks at who is running what he describes as a “cottage industry”.

“The U.S. State Department Bureau of Educational and Cultural Affairs (ECA) and its Cultural Heritage Center have done more than anyone to grow this new cottage industry through grants and contracts as part of their ‘soft power’ efforts that seek to make hostile third world governments ‘like us more’,” he writes.

He also explains how the State Department circumvents restrictions imposed by Congress on the former’s ability to exploit MoUs for its own ends.

As always, following the money provides a clearer picture. The State Department needs better evidence of looting and trafficking to justify MoUs. It also needs to show that recipient source countries have appropriate controls in place to protect their cultural patrimony. Tompa notes that critics have asked how much of an incentive those being funded have to come up with what the State Department wants. He describes the long-established American Society of Overseas Research (ASOR) as a major grant recipient and “evidence maker” for some of the most difficult to justify MOUs and cites examples of how those receiving hundreds of thousands of dollars in funding may be creating false narratives to suit the State Department’s purposes.

This is explosive stuff and a potentially dream investigation for any curious journalist worth their salt, involving, as it does, vast sums of money, Washington insiders and international policy that favours countries with questionable human rights records. So far, though, both the mainstream and leading art market media outlets have remained silent, leaving experts like Tompa to do all the heavy lifting. This is curious when one considers how frequently and keenly the widespread media reports any example (alleged or actual) of crime involving cultural property. Tompa's article provides much more detail and raises considerably more questions than are listed here. It warrants a close read.

### *The trouble with the United Nations' fringe organisations*

Spectator: January 1: Professor of Law Andrew Tettenborn argues that the UN has moved far beyond its founding purpose and principles, stretching tentacles via its subordinate fringe organisations to interfere in policy and law where it has no business doing so. "Since 1945, we have seen significant mission creep away from its core function of peacekeeping," he writes.

He is not wholly critical, pointing out that some of these activities do much good. Once you go beyond this, though, he believes hard questions need to be asked, citing UNESCO as his prime example. Tettenborn criticises UNESCO for interfering in policy and decision-making that countries are perfectly capable of making themselves, dismissing it as impertinent: "Only last year the UK was similarly ordered to think again about the Stonehenge tunnel. Is this game really worth the candle?"

Just as challenging are its conventions, he argues, with the devil in the detail: "All these instruments are fairly open-ended and vague and allow UN appointees to put forward their own (invariably progressive) interpretations as reasons for demands for action. These demands are invariably couched in the language of 'international law requires' and hence sit rather ill with the decision-making powers of state governments." This echoes loudly for those in the art market regularly faced with policy decisions on how they should behave handed down by UNESCO without any meaningful consultation or understanding of the practicalities involved.

Professor Tettenborn concludes: "What is unacceptable is that these treaties should, on much the same lines as the European Convention on Human Rights in the hands of an activist Strasbourg court, be gradually expanded by a process of fairly subjective interpretation into instruments requiring states to disregard their electors' wishes and enact ever more progressive measures in line with the world views of the UN commentariat."