

Fighting Criminal Associations Trafficking in Cultural and Artistic Goods

Practitioner's insight

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Paolo Giorgio Ferri*

Abstract: Art crime has received relatively little attention among scholars of organised crime. Often mistakenly considered an innocuous crime, the international black market in cultural and artistic goods is believed to be worth billions a year. Because of the lucre it offers, trafficking in cultural and artistic goods is often perpetrated by and exhibits traits of organised crime. This contribution describes the evolution of art crime and offers a first-hand insight into the law enforcement investigation of Giacomo Medici, an Italian art dealer convicted in 2004 of dealing in stolen ancient artefacts. It concludes with practical suggestions as to how trafficking in cultural and artistic goods could be reduced.

Keywords: Trafficking in Cultural Goods and Artefacts; Transnational Organised Crime; Cross-border Police and Judicial Cooperation; Tombaroli

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Trafficking in cultural and artistic goods and the Palermo Convention

Art crime is frequently indicated as an emerging form of crime, often committed by transnational organised groups. Certainly, art crime is not a new type of offence, but the increasing attention paid to this phenomenon reflects the acknowledgment of its growing importance and the need for international cooperation in fighting it. In this piece, a reflection is offered about how trafficking in cultural and artistic goods needs to be seriously considered as a form of “transnational organised

crime”.

During the 1960s, there was a transformation in the trafficking of cultural and artistic goods from single offenders towards organized criminal groups. The latter received an additional operative capacity from the internationalisation of the markets and the liberalisation of trade. Transnational organised crime is now a key player in the art market. Criminal groups operating in this domain are highly specialised and range from *tombaroli*,^[1] thieves and intermediaries to customs officials and art dealers work together. Although criminal groups involved in the illicit trade in cultural and artistic goods generally operate as flexible networks, they often adopt a pyramidal structure in their country of origin. It is only when moving to foreign territories, especially in the destination countries, international dealers and intermediaries tend to be organised in looser networks of associates.

These criminal groups are usually engaged into various activities. For example, they may be involved in the illegal acquisition of cultural goods and their transportation from the country of origin to the destination. Their expertise is also used to raise the prices and facilitate the “laundering” of illicit antiquities into legitimate artworks. Alongside this, the trade in cultural items is also a tool for criminal groups to launder illicit proceeds obtained from other illegal activities. The use of legal companies plays an important role in art crimes, which are often materially committed through them or under their coverage^[2].

It should also be emphasised that investigation of art crimes often requires the comanagement of investigation and prosecution, the so-called “prolonged coordination”, referring to the international law enforcement approach that is formally coordinated between border countries or between countries having common cultural heritage. It is characterised by a continuous exchange of intelligence and/or sharing of investigative data. The generalised and systematic aggression against cultural heritage we face today comes from transnational organised crime—groups of perpetrators with a resilient organisational structure, impressive human resources and sophisticated logistical means. Moreover, punishment for art crime in many countries is lenient if compared with that applicable to other crimes. Trafficking in cultural items and artistic goods— often considered as a less important offence—presents low risks for motivated perpetrators.

Criminal association offences can be an essential legal basis for law enforcement and public prosecution offices to more effectively respond to trafficking in cultural and artistic goods. These offences are very useful for investigators because through them it is possible to assert the proportionality and reciprocity principles that different legal systems might require in order to give “effective” international assistance. In addition, these crimes may help solve jurisdictional problems that could arise in investigating transnational organised crime, particularly the offence of “participating in activities of a transnational organised criminal group” and at times the “conspiracy to commit a crime” can be key areas of entrance in all of the national legal systems that have ratified the 2000 United Nations Convention against Transnational Organised Crime (the Palermo Convention).

There exists a common opinion that the definition of “transnational organised crime” in line of the Palermo Convention ensures that its scope is wide enough to encompass traditional, emerging, and future forms of crime. Even if the proposal of several delegations favouring a list approach—which included, among others, trafficking in cultural and artistic objects—was refused, the Palermo Convention offers an unparalleled basis for international cooperation, extradition, mutual legal assistance, and international confiscation also for trafficking in cultural and artistic goods offences. It is also important to reflect on the fact that, when international assistance is required, the State in question does not have the same power of assessment as that of the foreign authority carrying out inquiries; and moreover that it is necessary when dealing with letters of request (rogatory letters), to examine more material than that would ultimately constitute evidence at any trial. When one is speaking of “evidence” in the context of a criminal investigation, there is some flexibility regarding this concept. Therefore, it should be allowed by the requested authority that, during the investigative phase, evidence is *in fieri*, especially with regard to elements that have to be proved in order to charge the crime of participation in an organised criminal group/conspiracy. In this regard, Article 18 of the Palermo Convention goes further in so far as it states that

Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention ... where the requesting State Party has reasonable grounds to suspect that the offence ... involves an organised criminal group.

Thus, the requested authority should rely on the assessments of the requesting authority whose grounds to suspect are robust enough to ask for international assistance and for collection of evidence. In addition, the Palermo Convention does not necessarily require that the defendant has to be prosecuted for his/her participation in an organised group, as it is sufficient that the criminal phenomenon under investigation “involves an organised criminal group”.

Italy’s colossal cultural patrimony has always been a target for criminals interested in arts. To counter this phenomenon, Italy has demonstrated willingness to fight art crimes by promptly ratifying and implementing all the relevant conventions concerning offences against movable and immovable heritage, and by creating a policing body as well as a pool of public prosecutors trained and specialised in responding to art crimes. Furthermore, the Italian government is currently reviewing the penal legislation with regards to illicit trafficking in cultural and artistic goods. Offences in this field will be more severely punished than those who committed traditional property crimes.

During the 1990s, Italy launched a campaign aimed to recover some of the artefacts illegally excavated and/or exported abroad and assemble efforts to repatriate those artefacts on a cultural heritage basis first and then through the traditional penal procedure. Before the 1990s, a very relaxed *laissez-faire* approach prevailed in Italy. During that period, *tombatori*, traffickers, unscrupulous experts, and art dealers generated colossal illicit revenues and caused a widespread pillaging of archaeological sites.

One of the most prominent cases, in which a complex organised criminal group was revealed, is that of the investigation of art dealers Giacomo Medici and Gianfranco Becchina. Medici and Becchina^[1] illicitly traded more than 30,000 objects, some of which are of enormous cultural as well as economic value (each estimated to be worth over USD 100,000). Some of the artworks sold by Medici and Becchina were bought by world-leading museums. Huge damages were inflicted to archaeological areas: according to Professor Richard Elia of Boston University, one must excavate ten tombs to find objects of value as the ones seized in the Medici and Becchina case.

The investigation against Giacomo Medici started in 1995 by the Swiss authorities that seized thousands of archaeological objects, many of which still had Sotheby's tags indicating the pertinent sales from Medici at Geneva Free Port. In June 2000, the Swiss authorities handed over the proceedings (which had been also opened in Switzerland) to the Italian authorities and transmitted all the objects seized (almost 4000 items) and photographic documentation gathered in Geneva. Italian technician-archaeologists immediately began working on the material: the objective of the examination was to unravel the events concerning some of the most important objects, since it was not possible to trace them all. The examination of evidence revealed details about a tight network of dealers, shippers, mediators, and restorers of archaeological material operating throughout the world. The evidence gathered brought about a series of rogatory letters with assistance requests in multiple locations including but not limited to Switzerland, France, UK, USA, Japan, Denmark, Germany, and Australia. Both the Italian Carabinieri and technicians from the Italian Cultural Ministry actively collaborated in this monumental investigation. Rogatory letters also resulted in further acquisitions in Switzerland and elsewhere, with new seizures of objects and documentation, both against Medici himself as well as against Phoenix A.A. and Tecafin Fiduciarie companies of Geneva; against Fritz Burki and his son Harry in Zurich; and against Gianfranco Becchina. In France, there was a particularly significant raid on Robert Emanuel Hecht, resulting in the seizure of objects as well as paper and photographic documentation, and a sort of "memoir" of his illicit dealings in his home. Marion True, one of the curators for the J. Paul Getty Museum purchases, was interrogated. The statements by Pietro Casasanta, Walter Guarini, Frederique Marie Tchacos Nussberger, Jiri Frel, and Robert Hecht have had a huge impact on the success of the investigation of the Medici and Becchina case.

At the end of this extremely complex investigation of this criminal phenomenon that lasted over a period of almost thirty years (the actions of the criminals lasted continuously, without downturn, for this length of time and more), one can maintain with certainty that the examination of the voluminous documentation has allowed us to verify and prove most of the suppositions both in relation to the objects seized, as well as with those not found, of which there are unmistakable photographs. For example, objects are frequently depicted in Polaroid pictures taken on sight of archaeological excavations, in fragments and/or still dirty with earth. The Polaroid technique has also been used by *tombaroli* so as to avoid diffusion, beyond a circle of people known to them. This technique, as testified by many, has never been used in scientific circles.

Furthermore, we must also recall the practice of "laundering" objects—an activity in which Medici

and Becchina were very efficient. These practices frequently consisted in the attribution of provenance, known to be false, from collections or from auction houses which were the subjects taking care of the transit of artistic goods. Switzerland had to appear the country of provenance of the objects, even when these had recently been illicitly excavated, taken out of Italy and sent abroad thanks to Giacomo Medici and to Gianfranco Becchina. From Switzerland the goods were then fictitiously attributed as being property of many companies, which acted as clearing and laundering-houses, and then sent to the UK, Germany, the United States and even Japan and Australia. The brokering and triangulation had only one aim—to render the purchases credible and unchallengeable for the buyers. At times the Art Loss Register (a database for stolen goods similar to that of the Italian Carabinieri, evidently never double-checked) was consulted, so to be able to vaunt good faith. However, since most objects had been illegally excavated, they were never catalogued or inventoried in the Art Loss Register.

With regards to the evidence collected for the incrimination of conspiracy in this case, we must recall the following specific circumstances. First, in the course of a raid carried out on Pasquale Camera, a well-known trafficker of Italian archaeological objects, a paper was found with an organigram of people in Italy involved in illicit trafficking of objects. Medici, Becchina and Hecht occupied an important position in this chart. Second, the interrogation of Mrs. Felicity Mary June Nicholson, responsible for the Antiquities Department of Sotheby's London auction house, revealed that some of Sotheby's personnel were, in different ways, involved in trafficking in goods of artistic, historical and archaeological interest, illicitly originating from Italy; be it through handling or because they had been illicitly exported and held in violation of Italian laws. In the course of his interrogation, Walter Guarini (another well-known Italian trafficker), indicated Medici as being amongst the people interested and in contact with Italian and foreign traffickers. Frederique Marie Tchacos Nussberger (a Swiss dealer) described Guarini as the person who had supplied Medici with archaeological objects and particularly items coming from southern Italy. In the course of his interrogation, Pietro Casasanta (a well-known Italian *tombarolo*) confirmed that there were several groups that competed for the change to smuggle cultural objects out of Italy. These groups were headed by Gianfranco Becchina and Giacomo Medici. Becchina and Medici had divided Italy into two areas of influence and became millionaires from nothing. He also added that everybody in the milieu of traffickers in archaeological goods knew that Giacomo Medici was the boss who managed all items excavated in Northern Italy, while Gianfranco Becchina held the reins over archaeological sites in southern Italy. It was known that Hecht, Medici and Becchina were partners since the 1960s. Any criminal group that revialled them in business or in any other way that threatened their activities were immediately reported to the authorities.

Fritz Burki, interrogated by the Swiss authorities in December 1997 and October 2001 admitted that at times he acted as a front man in buying and selling objects for, amongst others, Medici and Hecht. Hecht himself had to admit that he had been a frontman for sales to the J.P. Getty Museum, suggesting that the Museum could not or would not buy directly from Medici. In his memoir Hecht later wrote about Medici:

In spite of this, G.M. (Giacomo Medici) was loyal. He appeared at our (of Hecht and his wife) apt. (apartment) in Villa Pepoli (Rome) with Polaroids of a Kr (Krater) signed by Euphr (Euphronios). I could not believe my eyes... took the train to Lugano (Switzerland) where G.M. (Giacomo Medici) had the Krater in a safe deposit box. The negotiation did not take long. We agreed on 1,500,000 S.F. (Swiss Francs)... That same evening I went on to Zu (Zurich), left the Kr (Krater) to F.B. (Fritz Burki). G.M. became more prosperous, selling mainly to me... he sold me a... kilix, which I put at auction at Sotheby's. F.N. (Felicity Nicholson, head of Antiquities Department in Sotheby's London). He called me... said that Scotland Yard was inquiring about the kilix at the request of Italy. G.M. at that time was the man of E.B. (Elia Borowski, a well-known art collector)... this prompted G.M. to go to E.B. with the excuse that the (Italian) police were after the cup... so, in the evening on the Lungotevere (Rome), in front of the palace of Justice, in my car... L. (Luzzi, a well-known dealer in close contact with Giacomo Medici)... G.M. (Giacomo Medici) showed me the cup....

With regards to the *omertà*, the code of silence, surrounding the relations between the criminal associates and their ties with museum institutions, it is worth recalling the following excerpt from Hecht's memoir:

H.C. (Herbert Cahn, a well-known Swiss antiquarian) did not realise or did not want to realise that he was dealing in contraband... that in this activity it is ignoble to inform against your collaborators... So I went into exile, not even permitted to return to Italy. My friends were loyal during this period and brought to me such fine objects as the Attic r/f Kilix now in Munich (Museum). I read off a list of museums I had sold to including the B.M. (British Museum), Louvre, Glyptothek Munich, Glypt. Copenhagen, M. of A. (Museum of Art) Boston, Toledo, Cleveland, Harvard Univ. (University)... and the Campbell Soup Museum.

Of significant value are also statements by Marion True and Frederique Marie Tchacos Nussberger. Both depict Medici as a talented art dealer who has had the knowledge and ambition to monopolise a certain segment of the art market. He bought objects at very high prices at auctions (in fact he was buying the objects he himself had put on sale, thus "laundering" the object and raising its commercial value in a field where prices are obviously not pre-set). Tchacos said that in the organisation there were two groups: the first includes Robert Hecht, Giacomo Medici and Robin Symes (an English dealer of antiquities operating through nine companies connected to Medici) and the second, in which Hecht is also implicated, encompasses, amongst others, Gianfranco Becchina and Raffaele Monticelli (a well-known dealer operating in Southern Italy).

Medici and Becchina preferred the Free Ports of Geneva and Basel, where it was possible to obtain the archaeological objects just excavated far from prying eyes, as venues for their activities. They evidently felt safe at warehouses inside the Free Ports, where an imposing amount of photographic documentation of archaeological objects of inestimable value (some of which were put on sale and then re-purchased by the same people through auction houses) was found. Archaeological objects found were covered in soil, packed in fruit boxes coming from Italy or wrapped in newspapers. Sometimes, even when illicitly excavated, archaeological objects were

found intact, they would be deliberately fragmented, or, if found in fragments, deliberately left apart. Many of the photographs seized from Medici and to Becchina in Geneva and Basel notes on them indicating the destination of items (e.g., via Robert Hecht, via Robin Symes).

Due to the documentation collected, a group of archaeologists, art historians and museum curators who were in touch with Medici and Becchina and had offered expertise to them notwithstanding a clear illicit provenance of the items they inspected, was also revealed. Considering the confidential relations and meetings, which took place in Italy, between Giacomo Medici and Marion True (there are very friendly letters and photographs depicting them in convivial attitudes), it would undoubtedly have been more cost-effective for Marion True (and through her for the Getty Museum) to buy directly from Medici instead of going through complex triangulations and intermediations, which, being illicit, were kept secret with agreements on the version to be upheld when any inconvenience or “accident along the way” took place.

It is important to stress that Marion True should have been aware of the illicit provenance of the objects dealt and often acquired through photos, depicting their illegal excavations. In this respect, it is worthwhile recalling the letter Hecht wrote to True:

... Am sending photographs of Corinthian pots... that might be interesting as documents.... My friend called me + said that since the Carabinieri were looking for the pelike with the arms of Achilles he abandoned negotiations. So I will not have it. Perhaps others may acquire it. Sorry. Another letter Hecht sent to True unveils similar contents: I hope to have this (it was obviously sent a photo of the object) when you receive the letter. Found near Cumae. Maybe Turnus!

Medici's activities were performed through several companies, such as Edition Service, Fiduciarie Tecafin, Xoilan Trade (all three with the same legal address at No. 7 Avenue Krieg in Geneva), Arts Franc, Mat Securitas) (with legal address at Free Port in Geneva), and Hydra Gallery. These companies were run by Medici through third parties, fronts or pseudonyms (C. Boursaud, S. Vilbert, J. Albert and “Guido's”, the latter probably a pseudonym for Medici himself, seeing that the writing of the signature would appear to belong to Medici)^[1]. Moreover, Medici associated himself with other companies such as Robin Symes Ltd in London (as well as the other eight companies, which referred to Robin Symes), and Atlantis Antiquities and Athena Galleries, both in New York, and the Summa Gallery in Los Angeles, California. In other cases the companies had client/shipper or landlord/tenant relations amongst themselves, such as

Arts Franc, Edition Service, Mat Securitas and Fiduciarie Tecafin. The companies could play the role of sellers (Editions Service) and buyers (Art Franc) for the same material put on sale at Sotheby's. They were all used as addresses for Medici or for shipping archaeological material dealt by Medici.

These connections were discovered thanks to the documentation seized in Geneva and in Basel. Important details were also revealed following the questioning of witnesses and defendants and

due to photos seized, which at times showed interiors that were easy to spot as appertaining to the other associates. Report by experts that highlighted a constant flow of money within all these companies also contributed to the investigation.

Some final thoughts

Before concluding, it is important to stress that the money laundering operations carried out—which mainly took place through British and U.S. auction houses, and through certain private collections—were only possible due to the transnational nature of this complex organisation. Up to a few years ago, it was almost impossible to obtain assistance from foreign authorities to investigate this kind of crimes. Today, international cooperation has improved. In this regard, it is useful to recall resolutions 48/15, 58/17, 61/52, 64/78, and 66/180 adopted on 2 November 1993, on 3 December 2003, on 4 December 2006, on 7 December 2009 and on 19 December 2011 respectively, by the United Nations General Assembly on the “Return and Restitution of Cultural Property”^[1]. In one of the most recent resolutions, E/RES/2013/31, the U.N. General Assembly:

Alarmed at the growing involvement of organised criminal groups in all forms and aspects of trafficking in cultural property and related offences, and observing that cultural property is increasingly being sold through markets, including in auctions, in particular over the Internet, and that such property is being unlawfully excavated and illicitly exported or imported, with the facilitation of modern and sophisticated technologies (p.5).

It also calls upon States to (1) protect cultural property and (2) prevent trafficking in such property by introducing appropriate legislation. In particular, it is important to adopt procedures for its seizure, recovery and return as well as strengthening crime prevention and criminal justice responses to protect cultural property. It is necessary to criminalise “activities related to all forms and aspects of trafficking in cultural property and related offences—theft, looting, damage, removal, pillage and destruction of cultural property—by using a broad definition that can be applied to all stolen, looted, unlawfully excavated and illicitly exported or imported cultural property, as well as take all appropriate steps and effective measures to strengthen legislative and administrative measures aimed at countering the illicit trade in cultural property” (E/RES/2011/42). The international community should further advance international cooperation in countering trafficking in cultural and artistic goods, harmonise national legislations and strictly apply the country of origin rule, under which stolen artworks are to be repatriated.