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Late in March 2018, Spanish Police arrested J. B. and O. C. in Barcelona for their presumed participation in a criminal network which traded with Libyan antiquities used to finance the DAESH. It is the first police operation that demonstrates the direct financing of the terrorist group by looting archaeological pieces, although there were well-founded suspicions to believe that it was a usual source of income from the beginning of its activity all over the territories they controlled.

1. Context of War and Financing through Cultural Goods

Images of the destruction of religious symbols and irreplaceable cultural treasures of the regions declared World Heritage by UNESCO as Palmira, Hatra, Ninive, Nimrod or Timbuktu made the rounds of world TV newscasts. Since 2015, several media reported the illicit trafficking
of archaeological pieces as the leading sources of financing of the jihadist group,⁴ although it had not been demonstrated reliably. The greater presence of cultural goods from the territories occupied in the legal antique market was discreet. Often they were smaller pieces that attracted little attention,² although the main difficulty is the trade of objects unexcavated, which have not been recorded, and their legitimate origin when introduced into the international business markets have neither been identified nor certified. As reported by the UN, in mid-2016 there were 4,500 archaeological sites under the control of the DAESH, of which nine had been declared World Heritage by UNESCO. At that time, it was estimated that some 100,000 cultural objects were at their disposal and that the group obtained between 150 and 200 million dollars a year from their commercialisation.³

It should be borne in mind that this practice was commonplace centuries ago when an occupation force assumed control of new territories. A brief review of our recent history shows that cultural destruction was widespread, as it had a deep symbolic and propagandistic value. It is a physical act that demonstrates the defeat of the opponent and annihilates their historical and cultural identity so that in the future it will no longer be possible to remember the splendour and legacy of an entire civilisation. Together with this purpose, the looting and appropriation of treasures of the vanquished was another common and extended practice in most warlike conflicts. The questioning of where the limit should be in the uses of war when it comes to destroying the property of others started with the American Civil War with the well-known Lieber Code. These timid advances in restricting attack actions to respect the buildings of artistic and cultural value extended until they ended up fixed in the 1954 UNESCO Convention. Despite the broad international consensus on this, some devastating examples in the last 50 years question the operation of this instrument and raise awareness of the need to protect these assets, as in the case of the Bosnia-Herzegovina conflict, the Iraq war or the more recent jihadists acts, which have paralysed the international community.

Some of these acts were authentic staging, set up to film the destruction of replicas.⁴ In other cases, the pieces confiscated were counterfeits that smugglers placed among the authentic objects.⁵ However, the damage and demolition of many valuable cultural sites were real. Perhaps they thought it would be more advantageous to sell these works instead of destroying them. DAESH created an Antiquities Division within its Ministry of Natural Resources to issue official documents that would protect the management and exit of those assets from the occupied territories. Only those who had an authorisation of this division could excavate,

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⁴ Antiquities trade would be, after oil and taxes, the third source of financing. Vid. “ISIS diversifica sus fuentes de ingresos para superar la dependencia del crudo”, eldiario.es 12/12/2015.

⁵ “ISIS is making $200 million from stolen ancient artifacts”, Insider 06/04/2016.
extract and transfer the treasures found. It is not surprising that such licenses were granted to people loyal to the terrorist group. This way, along with a document authorising their export, the objects entered the ordinary stream of the international antique market.

According to a letter of complaint submitted to the UN Security Council by Russian UN Ambassador Vitaly Churkin on April 6th, 2016, the Turkish authorities helped legalise the illicit trafficking of these goods by issuing documents that laundered their origin so as to introduce them into the international market. A report by the US International Trade Commission revealed that between 2012 and 2013, when ISIS began its expansion, importation of antiquities declared to the United States from Iraq increased by 672% and from Syria by 133%.

<table>
<thead>
<tr>
<th>Country</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Percent change 2012-2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>15,979,030</td>
<td>17,553,638</td>
<td>19,257,308</td>
<td>9,7%</td>
</tr>
<tr>
<td>Egypt</td>
<td>16,793,409</td>
<td>13,817,236</td>
<td>19,043,410</td>
<td>37,8%</td>
</tr>
<tr>
<td>Syria</td>
<td>4,141,235</td>
<td>4,714,962</td>
<td>11,000,869</td>
<td>133,3%</td>
</tr>
<tr>
<td>Iraq</td>
<td>2,832,384</td>
<td>585,682</td>
<td>4,523,126</td>
<td>672,3%</td>
</tr>
<tr>
<td>Lebanon</td>
<td>708,461</td>
<td>1,392,005</td>
<td>2,218,073</td>
<td>59,3%</td>
</tr>
</tbody>
</table>

International awareness of the danger over the sites located in the occupied areas led UNESCO, under the auspices of the EU, to launch a project to safeguard the Syrian cultural heritage starting on March 1st, 2014 that would last three years. This project was followed by other international awareness campaigns at the initiative of this organisation, such as #Culture4Heritage.

The UN Security Council approved on February 12th, 2015, Resolution 2199 prohibiting the commercialisation, among other things, of antiquities from Syria and Iraq so as not to contribute to the financing of terrorist groups. In December of that same year, Resolution 2253 was adopted to urge member States to comply with the postulates of the previous resolution. In parallel, the European Parliament approved Resolution 2015/2649 of April 12th, 2015 on the

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6 Documentation found by the US armed forces in 2014 during an operation that ended with the death of a prominent DAESH officer and the registration of his base. During this registration, numerous antiquities and the documentation of this division were located, with excavation licenses and receipts. Vid. [https://2009-2017.state.gov/e/eb/rls/rm/2015/247610.htm](https://2009-2017.state.gov/e/eb/rls/rm/2015/247610.htm)
7 Vid. supra “ISIS is making $200 million from […]”
9 “Save our stones”, The Economist 13/06/2015
destruction of cultural heritage carried out by ISIS, calling on international cooperation to combat these practices.

Shortly after these resolutions, the International Criminal Court ruled its historic conviction of Al Mahdi for war crimes. Mahdi had ordered the destruction of several temples in Timbuktu belonging to the cultural heritage of Mali. This country was immersed in a bloody war in which several terrorist groups succeeded, the last one, the jihadist group led-up by the convicted. The immediate precedent of this judgement were the crimes committed in the former Yugoslavia, although the destruction of the heritage as a crime against humanity had not been assessed by itself, but in conjunction with other warlike actions. Now, the intentional attack on cultural treasures was considered an attack on human rights.

This international response, nevertheless, remained insufficient. Satellite images, and the analysis of the areas belonging to archaeological sites, showed that excavation and indiscriminate smuggling of cultural goods had been carried out. However, their tracking in the market does not match the volume of objects that must be in circulation. On March 24th, 2017, the UN approved a new resolution, 2347,\textsuperscript{13} which openly condemns the plundering of cultural heritage and urges all countries to adopt measures to combat, prevent and avoid it, with special emphasis on activities carried out by terrorist groups as a form of financing. The evidence about the looting is unquestionable. Not so the location of the pieces, their monitoring and the direct link between their illegal extraction and their commercialisation as a financing system.

\section*{2. Trade in Antiquities and Cultural Property from the Occupied Territories}

Even though the measures adopted in the international sphere placed particular emphasis on preventing and banning the commercialisation of objects from Syria, the territorial expansion of these terrorist groups had quickly reached the surrounding countries. Whilst direct connection between the trade of archaeological pieces and DAESH’s financing strategy is not demonstrated yet; indications about their activities in areas with sites seemed to point in this direction. Not only Syria was a target, but a vast territory full of protected sites with an unquestionable cultural wealth. Satellite images showed data on the deterioration and the indiscriminate excavations, with the extraction of many objects difficult to trace in the market in the absence of records and catalogues. Furthermore, the commercialisation attempts were likely protected

\footnote{\url{https://www.unodc.org/documents/organized-crime/mandates_on Trafficking_in_cultural_property/ resolution_2347/N1707909_S.pdf}}
on documentation issued by the Antiquities Division, whose political and administrative legitimacy, as an branch of action of the occupation force, is questionable. At other times, it would be a matter of laundering the origin of the goods with false or amended documentation in other countries they pass through in order to pretend legality in the trade.

One of the main characteristics of the illicit trade in cultural goods, archaeological objects and antiques, is that this type of activity requires making the leap to the regulated market to obtain the maximum benefits. Unlike contraband of other kinds of goods, such as drugs, weapons, animals, human beings ... that always move under cover, with cultural assets the highest prices come in open bids. Pre-closed sales or smuggling by order does not guarantee high rates. Rare is the occasion when a single thief obsessed by a particular piece hides behind a crime of this magnitude. This would only make sense if he wanted the artwork for personal enjoyment since the public market would be vetoed entirely unless we talk about the theft of a famous painting in order to ask for a ransom for returning the object without damage.

Apart from these cases, gangs that traffic with cultural goods try to whitewash the illicit origin of the objects placing at the end of the chain line dealers with a solid reputation who will sell at good prices. Often, the problem lies in being able to demonstrate the connection between the extraction of pieces at the source and their introduction into the regulated market. To do so, it is necessary to blur the tracks as much as possible, through numerous intermediaries; the transfer to other countries, and the faking of import procedures from third countries and also with false documentation.

In the case of DAESH, its modus operandi seems to combine both practices. In some cases, they try to make an antiquities-distribution chain by laundering the illicit origin of the goods, and in others, they try to place the pieces, and the higher the volume, the better, to private buyers with whom they have reached a prior agreement.

A recent example along these lines is that of Hobby Lobby, a US art and crafts company that began a collection of tablets with cuneiform writing in 2009. The activity of the company concurred with its mission in defence of Evangelical Christianity; therefore, the fact of starting a collection that brought together pieces with biblical content or, because of its historical character, linked with the origin of Christianity was coherent. The objects purchased came from the area of the Fertile Crescent, directly from three dealers from Israel and the Arab Emirates who claimed to have acquired the pieces legally years ago and were authorised to sell and export them. In 2010, an expert lawyer pointed out that the pieces could have an illicit origin,
taking into account their nature and place of origin, a warning that was ignored. Although the case was surfaced in 2011 after confiscating several shipments made through FedEx from Israel and the United Arab Emirates to Hobby Lobby in three different locations in the country, it was not until July 2017 when the United States filed a *civil complaint in rem* against the corporation in which 3,450 pieces were claimed, among tablets labelled tiles (with cuneiform writing and cylinder seals.) Throughout the process, the modus operandi of this network was demonstrated, making customs declarations for a value much lower than the real one trying to avoid its inspection, falsely describing the imported goods, sending shipments from different countries and with different addresses, attaching false invoices and splitting shipments to prevent any suspicion. Hobby Lobby declared to be unaware of the illicit origin of the antiquities, and the matter was settled with a fine of 3 million dollars, the delivery of the goods to the authorities and the commitment of the corporation to modify its practices in the purchasing of antiques in the future. Perhaps it is not an exemplary judicial sentence to dissuade others from committing this type of crime. After all, if five of the eight FedEx shipments blocked at customs had not been retained for inspection, the goods would have reached the buyer without anyone having noticed it.

Hobby Lobby's example has enormous significance because of the huge volume of pieces plundered. Cases detected little by little in the market usually affect isolated objects or, at least, smaller bulks. Despite the fact that the agents of the regulated business state that illicit trade network has not yet come to light in the western market, the few cases already detected make us suspect that we are only at the tip of the iceberg and that the background of this phenomenon is immense.

The Wall Street Journal published on August 7th, 2017 an interview with Mr Al-Hassan and Omar Al-Jumaa, two Syrian art dealers. They revealed how DAESH proceed to get and commercialise stolen antiquities. The control group coerces individuals with some knowledge of archaeology and history, trained to locate the pieces within the sites and prepare reports on their characteristics. The ministerial structure itself seems designed to fuel this machinery so that locals are granted official authorisations to excavate the sites. Initially, the licenses were free, in exchange for fidelity to the group and the payment of 20% of the profits. Later on, this practice changed, so that the smugglers are forced to sell the pieces to the DAESH with a 20% discount on the estimated value, and then the group is responsible for reselling them. Next, a network of intermediaries buys the artifacts from DAESH and takes them outside of Syria and Iraq, often camouflaged in convoys of humanitarian aid, in transports of exported goods or even hidden by women, who are rarely searched for reasons of religious morality. After, those intermediaries sell the objects to dealers, like Mr Al-Hassan or Al-Jumaa, who introduce them in the western market, looking for every single buyer particularly. According to their own statements, the business is going well, and there is always a dealer willing to buy a piece for a client, and there are no differences: the objects end up in Moscow or London.

According to statements by these smugglers, the goal is to locate small pieces of high value. The smaller the dimensions, the easier to move and cross borders. For this reason, jewels and coins

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are the most coveted objects, for which looters usually rely on metal detectors; also small statues, carved stones or sculpted heads. One must add to the equation the modernisation of the techniques of the trade, which also take advantage of the anonymity and speed that Internet provides. As some media inform, stolen pieces were offered on platforms such as eBay or facebook.¹⁷

This story matches the testimony of another middleman, Mohammed, interviewed by Simon Cox, in February 2015, who describes the chain of distribution of antiquities in very similar terms. This dealer assures us, in addition, that the revenues are substantial and that DAESH uses the contacts they have abroad to sell the pieces, distributing them through dealers from countries such as Turkey, where access to Western Europe is easily available.¹⁸ According to Dr Maamoun Abdulkarim, the archaeologist in charge of the Syrian Antiquities Department of Damascus, the countries of destination are Switzerland, Germany, United Kingdom and Gulf countries such as Dubai and Qatar. However, no one has been arrested in relation to these distribution networks yet. In this regard, Vernon Rapley, current head of security of the Victoria and Albert Museum in London, and former director of the Art and Antiques squad of Scotland Yard, points out that the pieces are very often confiscated upon entry to the United Kingdom, but getting enough evidence to file criminal charges is hard, so cases go unnoticed by the press and the general public. When this happens, police work focuses on investigating the pieces, trying to identify and keep them for future restitution to the country of origin.¹⁹

According to many press sources, European and American authorities explain that the pieces are taken out of the country through Turkey and Lebanon, in most cases. Smugglers are said to use the same routes already established for other goods, and there are dealers who have been doing this for a long time, even before the war, so it is not only DAESH who obtains

¹⁷ “Antiquities looted by Islamic State turn up on eBay” The Times 14/03/2015
¹⁸ “The men who smuggle the loot that funds IS” BBC News 17/02/2015
¹⁹ “Islamic State: Looting for Terror” report by Simon Cox on File on 4 of the BBC Radio 4, broadcast on 17/02/2015.

Source: The Economist

Cities and archaeological sites under threat

[Map of cities and archaeological sites under threat]
benefits from this business but also the rebels, the Kurdish militia or the regime itself. From there, they pass to Eastern European countries, such as Bulgaria and Romania, before launching them to Western Europe, to countries such as Germany or Switzerland. Also, another route of commercialisation more and more habitual, is through Asian countries, Thailand, Singapore, from where they are imported to Europe more easily due to commercial agreements and the flexibility in the circulation of merchandise. According to a report by the Bulgarian authorities, there are about 20 European antique dealers on the spotlight for dealing with Syrian and Iraqi archaeological objects. Interestingly, the buyers most tempted by these treasures are individuals with a personal history linked in some way to the groups that DAESH seeks to destroy and who reside in the United States and Western Europe. Arthur Brand, a researcher based in Amsterdam specialised in the black market of antiques, points out that the main marketing centers are located in these countries, because the largest collectors of antiques are there, to which recently new wealthy people from the Middle East men are added.

Therefore, it seems that the pieces arrive in the aforementioned countries, but often the trace is lost once they cross the border. This is the most hidden part of the matter, because it harms the image of professionals and puts the business at risk in antique shops, auction houses and antique fairs. Whilst in intermediate steps it is relatively easy to find a frontier dealer in Turkey or Lebanon, who offers objects without too much reluctance, when goods enter Europe, the demands for reputation and professional trust require to work more cautiously. It is in the last stretch of the trade chain that the business becomes really murky. The art and antique market is based on generally self-imposed good practice standards that are not ruled by specific regulations. It is a non-regulated deontological code, which supports the professionalism, reputation, recognition and tradition of business often inherited by generations of dealers.

Added to this is the practice of intermediate buyers and dealers, who rarely make sure of the legal origin of the goods or are satisfied with a statement from the vendor that is not documented. The restraint measures adopted by the international community can produce a deterrent effect of temporary effectiveness, which have to be reinforced with an awareness-raising work of great importance for the whole world to see the execrable damage caused to the cultural heritage. Otherwise, smuggling will continue as long as there is a way to benefit

21 “Inside the Underground Trade to Sell Off Syria’s History” by Mike Giglio, BuzzFeed News 30/07/2015 and “ISIS Is Selling Syria’s Antiquities to the West” video of The Wall Street Journal 31/05/2017.
22 Vid. supra “The Men Who Trade ISIS Loot” (WSJ)
23 Vid. supra “Islamic State: Looting for Terror” (BBC Radio 4)
24 Journalist Mike Giglio said he was offered several antiques for sale while working on his report “Inside the Underground Trade to Sell Off Syria’s History” for BuzzFeed News.
25 The same thing happened to Simon Cox while he was in Lebanon, recording his report “Islamic State: Looting for Terror”, for the BBC Radio 4.
26 In the public consultation carried out by the European Commission in the review of Directive 93/7/EEC that led to the new Directive 2014/60/EU on the restitution of cultural property, only 12% of professionals declare to request a certificate of origin of the pieces they acquire, compared to 78% who trust in a mere declaration and 10% who do not check the origin of the objects. Vid. Marta González-Suárez “Restitution of Cultural Heritage in the European Directives: Towars and Enlargement of the Concept of ‘Cultural Goods’”, Art, Artiquity and Law, no. 1, 2018.
27 As Leila Amineddoleh points out, it is about educating collectors on the need for supporting a licit trade and understanding the impact of a lack of due diligence in this market. Vid. “How western art collectors are helping to fund Isis”, The Guardian 26/02/2016.
from it, as Tom Keatinge, Director of the Centre for Financial Crime and Security Studies at RUSI, the Royal United Services Institute, reflects on.  

3. Summary and Considerations on Illicit Trafficking.

However, the news should be taken with caution. The report "Cultural Property War Crimes and Islamic State" by the War Crimes Unit of the Dutch police in 2016 echoes the news circulating on the net on this issue, many repeated and interrelated to each other. The document tries to shed some light and seeks the maximum possible objectivity in a slippery field. For this reason, it contrasts several sources before concluding that, in fact, it can be affirmed that DAESH is involved in the illicit traffic of cultural goods, although it is not possible to determine the degree of extension of said practice, nor to what extent constitutes a source of regular and substantial funding. Moreover, the group is probably inheriting behaviours already established much before the conflict, since the trafficking of antiquities from this region is long, previous to the establishment of the Caliphate, self-proclaimed in June 2014. In that sense, it is very likely that smuggling impacts more in the inner territory of the country, or occupied countries, than beyond its limits, where markets will be sensitive to this type of pieces with shady origin.

In this sense, the fact that cases appearing in the western markets are scarce seems to support the idea that the sale of these pieces is previously agreed with particular buyers and that the characteristics of the objects fit certain conditions to be discreetly delivered in an easy-to-transport-and-hide way, such as coins, jewellery and small items. In fact, the reaction of the international community skyrocketed when DAESH began attacking the World Heritage Sites, which did not hide an evident propaganda objective in order to attract world attention. Likewise, it should be kept in mind that this terrorist group works with well-organised structures and that it aspires to achieve a succession in power. Therefore, as soon as the Caliphate was declared, it proceeded to establish its administrative and political bureaucracy, which mostly absorbed the staff and the civil servants who worked in the previous administration, even if it was under threat.

One of the first measures adopted by the Caliphate was the ministerial restructuring and the creation of a specific department on natural resources, focused on the management of the resources found in the soil to obtain benefits, including, of course, oil and gas, but also antiquities, through specific units within the ministry. However, the existence of documentation trying to establish an order in the practices and the need to have licenses for the excavation does not fit with the idea that DAESH has proceeded to indiscriminate pillage. The documents obtained by the investigators and by the military forces draw a structured panorama in which the extraction of archaeological objects requires prior permission, as well as the export of those pieces outside the territory of the Caliphate. Aymenn Jawad Al-Tamimi, researcher of Intel Jihad, within the Middle East Forum, has provided invaluable information on the administrative functioning of this group and highlights a document issued at the time of the

28 Vid. supra “Islamic State: Looting for Terror” (BBC Radio 4).
occupation of Palmira, in which the Ministry of Natural Resources prohibits the extraction and commercialisation of all kinds of objects of historical value found in the site.\textsuperscript{32} The report of the Dutch police herein said mentions similar documents about the municipalities of Homs and Aleppo. According to the Syrian archaeologist Amr al-Azm, of Shawnee State University, what DAESH has done is to "institutionalise" the smuggling networks that existed previously.\textsuperscript{33}

After gathering some comments from professionals in the antique market, academics and specialists in the study of the Arab cultural heritage and particularly the Syrian one, the truth is that it is not possible to determine, even in an approximate way, the volume of income that illegal trade can provide.\textsuperscript{34} The Dutch police report mentions several of these publications to show the disparity in the valuation of estimated earnings (up to 200 million dollars), and finally refers to the research project MANTIS, on illicit trafficking of Syrian and Iraqi goods, carried out by the University of Chicago. The outcomes of this project suggests that DAESH hardly obtains income from this source, mostly within its own territories and that the allegations that the media echoes are not supported by evidence.\textsuperscript{35}

On the other hand, many pieces have turned out to be false. Moreover, the amount of objects supposed to be in the market today is questioned. The whole sector is aware of the sensitivity of the issue and would not risk trading with pieces from a region without reliable evidence of their legal origin. The prestigious antique dealers should not fall into that mistake and ruin their professional reputation.

The testimony of the middlemen interviewed refers to countries of final destination of the pieces, such as France, Germany, United Kingdom, Switzerland, the US... but the representatives of the antique market sector of these countries declare that there is no record of the supposed emergence of a black market as it should be, in the light of the massive excavations detected by satellite. This is how Christopher Marinello, director of Art Recovery Group, expressed himself. In his opinion, the idea that there is a Western market willing to buy the pieces is what encourages dealers in the East to feed the contraband network, but there is little evidence that European markets are being fuelled by the smuggling of Syrian objects.\textsuperscript{36} However, in another interview by Simon Cox for BBC Radio 4, Marinello relates the case of an English dealer involved in a lawsuit about a 19th century painting who wanted to negotiate the settlement of the case by offering his collaboration to locate some pieces clearly plundered from Syria, and stated that there is, in fact, a market for these pieces in Europe, because this is where the main collectors and places of business are.

For other experts, the trade of these pieces is only possible when there are no previous records and, therefore, the absence of inventories allows the building of false origin for antiquities, according to Mark Altaweel, an archaeologist at University College London.\textsuperscript{37} This idea is also

\textsuperscript{32} Vid. "The Archivist: 26 Unseen Islamic State Administrative Documents: Overview, Translation & Analysis" by Aymenn Jawad Al-Tamimi, 24/08/2015.

\textsuperscript{33} " Looted in Syria – and sold in London: the British antiques shops dealing in artefacts smuggled by Isis", The Guardian 31/07/2015.

\textsuperscript{34} Only as a reference, we can mention the income detailed in the documentation seized by the US Army after killing Abu Sayyaf, in which 24 million pounds are said to come from the sale of antiquities. Vid. supra "Islamic State: Looting for Terror" (BBC Radio 4).

\textsuperscript{35} “Inside ISIS’ looted antiquities trade”, posted The Conversation 31/06/2016.

\textsuperscript{36} Vid. supra “Inside the Underground Trade to Sell Off Syria’s History” (BuzzFeed News).

\textsuperscript{37} Vid. supra “Inside the Underground Trade to Sell Off Syria’s History” (BuzzFeed News).
expressed in the Wall Street Journal report posted in May 2017, which explains that many of these pieces are stored in free port warehouses, like in Geneva or Dubai, and pass from one to another until the object’s origin is blurred enough to create a new and false one. In this sense, Cristina Menegazzi, the UNESCO official in Lebanon, states that they cannot provide accurate business figures on the trafficking of cultural property, although there is evidence that such traffic exists and that pieces have been confiscated at the borders, which, however, do not come up to light in the market. In her opinion, those objects are likely to emerge in five, ten, twenty years or even more; that is why efforts must be focused now on blocking those possible sales.


As we said at the beginning of this article, the Spanish police arrested J. B. and O. C. P. for being presumably involved in a gang of distribution of antiquities plundered in Libya to finance DAESH. This is the first case that directly demonstrates the connection between the traffic of cultural goods and the financing of the terrorist group. In spite of the numerous intermediaries and the efforts to hide the origin of the goods, both the tracking of the money and the goods allow this operation to be linked with ISIS without any doubt.

The case at stake is very similar to that of Phoenix Ancient Art, an antique sale house with offices in Geneva and New York, run by the Aboutaam brothers, who inherited the family business founded by their father in Beirut in the 1960s. Surprisingly, both brothers were already implicated in an alleged pillage of cultural property in 2003, which the federal court of New York settled with a fine of $ 5,000 after the defendants admitted having forged the documents to import the pieces. In 2004 Egypt issued an international arrest warrant and convicted the brothers, absent from the trial, to 15 years in prison for smuggling Egyptian antiquities into Switzerland. In the current case, some archaeological objects from Syria raised a red flag. One of them was identified after a routine vehicle inspection in Geneva in March 2017. They found in the car an old lamp from which the driver, a worker of Ali Aboutaam, could not justify the origin. No charges have been filed against Phoenix Ancient, but these dealers are among the names on a list of 15 that the French authorities keep under surveillance as they investigate the possible trade of stolen Syrian pieces. Belgium maintains a parallel investigation that includes these dealers. Hicham Aboutaam, head of the New York office, has sued The Wall Street Journal for defamation after publishing an article reporting on this open case.

It is an issue in which the investigation is triggered by a chance finding or the union of several isolated clues that only make sense when they are put together. Something similar has happened in the Spanish case.

J. B. was a renowned antiquarian in Barcelona. He ran an office in the heart of the art district of Barcelona, where numerous art galleries are together. He had built his own reputation as an expert in Egyptian and Middle East art, so he had been invited several times to give lectures on these topics. He is considered an expert in ancient art and several media interviewed him for being a well reputed cultural goods merchant. He has also participated in different academic

38 Vid. supra “ISIS Is Selling Syria’s Antiquities to the West” (WSJ)
39 Vid. supra “Islamic State: Looting for Terror” (BBC Radio 4).
41 Vid. supra “Antiquities Dealer Sues Wall Street Journal Over ISIS Article” (NYT)
forums that dealt with the destruction of the historical heritage of the Middle East carried out by the Islamic State.

In this investigation, the warning of Morgan Belzic was a key factor. He is a French historian who was undergoing his PhD studies on the heritage of Cyrene ("Les sculptures funéraires de Cyrénaïque"), within a work team of the École Pratique des Hautes Études.\(^\text{42}\) His work, in cooperation with the French archaeological mission and the Libyan heritage protection authorities, consisted in documenting the antiquities and funerary pieces of the northern region of the country in Shahat (Cyrene), Susa (Apollonia), Tulmaytha (Ptolemais), Tocra (Taucheira), and Benghazi (Euesperides/Berenike). In the course of his work, he could verify that the tombs of the area had suffered numerous looting in the last 20 years, and especially in the last decade. Belzic was alarmed when he checked that several pieces offered for sale in the European market came unequivocally from this region, and particularly from the Cyrenaic area.\(^\text{43}\) There seemed to be a correlation between the increasing destruction of funerary monuments in the region and the appearance of more pieces on the market.

Belzic identified several items offered for sale by J. B. at an antique fair in Belgium. There was no doubt about their origin. Although goods were not previously catalogued, and no inventories could be checked (what can only indicate that they came from an illegal excavation), the funeral pieces of this area have a distinct characteristic that makes possible their identification. The artworks of this region gather a series of sculptural characteristics that make them


\(^{43}\) “Illegal chains which mirror legal ones and function in the penumbra of the legal ones”, ARCA blog 30/03/2018.
unmistakable and easier to identify. One of the typical elements of the area is the representation of the silphium plant. It was supposed to have medicinal properties and believed to be linked to prosperity and well-being.\textsuperscript{44} The veneration was such that art developed in the area included vegetal ornamentation reproducing the image of the plant in practically all the decorative elements and even in the coins themselves minted in the place. Currently, it is the image of the official coat of arms of Cyrene. Only the antiques coins and terracotta pieces produced in this region can include this representation of the silphium in their decorations. The plant, now extinct possibly due to overexploitation, was endemic to the area, in addition to being highly coveted and widely known for its features, so the contemporary documentation records numerous references to it.

Cyrene is a Greek city located on the Mediterranean coast of Libya, founded in the 7th century BC, which lasted until the 4th century AD when an earthquake partially destroyed it and was abandoned. Then, with the passage of time, it was buried in sand and forgotten until its discovery in the 18th century. It was a hugely prosperous site. It is thought to have had about 100,000 inhabitants and had numerous buildings and monuments, including a temple dedicated to Zeus, almost equal in size to the Pantheon, and another dedicated to Apollo. Today it is estimated that only 20\% of the total area of this ancient settlement has been unburied. Cyrene was declared a World Heritage Site in 1982 and included in the list of cultural heritage in danger in 2016.\textsuperscript{45}

Belzic managed to track several objects offered for sale in different parts of Europe. A total of 105 funerary sculptures, representing between 15\% and 20\% of all known so far, which suggests that very likely many more are available on the black market of whom we do not have news. The historian identifies several pieces, also available in auction houses and other antique sales houses, but in the specific case of J. B. he points out and describes eight objects, not previously documented, whose origin is unequivocal. Some of them were already sold in 2014. In his opinion, the merchant knew for sure the nature of the goods and set up their origin with vague references to private collections before 1970. He came even to use these treasures to illustrate their catalogues at the Brafa fair, one of the most reputable events in the sale of antiques, which takes place in Brussels.

The investigation took a new momentum when the Spanish police received a request for cooperation from the Italian police. "They asked us for information about a sarcophagus that could have been sold for contraband in Belgium, passing through Spain and through the hands

\textsuperscript{44} “Silfio: el enigma de la planta "milagrosa" que sedujo a griegos y romanos y desapareció sin dejar rastro”, BBC Mundo 09/12/2017.
\textsuperscript{45} https://whc.UNESCO.org/en/list/190/
of the arrested J. B.,” said Fernando Porcel, head of the Historical Heritage Squad of the Spanish National Police.  

Although the police investigation began three years ago, recent finds led to the arrest of these two antiquarians on March 27th, 2018. They face charges of jihadist terrorist financing crimes, unlawful possession, documentary falsification and contraband. Prior to their arrest, the Central of the General Commissariat of the Judicial Police and the General Commissariat of Information carried out five meticulous searches in the Argentona and Barcelona venues owned by the antiquarians. The operation involved about 50 agents. Numerous archaeological objects were seized, as well as computer equipment and abundant documentation.  

The Central Court of Instruction Number 6 supervised the investigation in coordination with the Office of the Prosecutor of the National Court. Likewise, they counted on the support and collaboration of the General Prosecutor’s Office of Libya and the Embassy of Libya in Spain. After being brought to justice, the Judge of the Audiencia Nacional Diego de Egea has agreed to release him with charges and bail of 12,000 euros, with the obligation of regular appearances before the courts and the prohibition to leave Spain.  

66 “Jaume Bagot, el anticuario del expolio libio descubierto por un estudiante belga”, Cadena Ser 28/03/2018.  
67 “La Policía desmantela una red que comerciaba con obras de arte expoliadas en Libia que servían para financiar el terrorismo yihadista”, the Official Website of the Ministry of Interior of Spain, 28/03/2018.  
68 “Jaque a las antigüedades de sangre”, ABC, 01/04/2018.
The Historical Heritage Squad press release does not include a list of the confiscated objects. It has been leaked to the press that, among the pieces found during the searches, there are seven sarcophaguses, and several mosaics and pieces of Egyptian and Libyan origin. Their market price ranged between 30,000 and more than 250,000 euros. 49

After paying his bail and being released, J. B. said in an interview 50 that he did not know that the pieces had an illicit origin and that all his acquisitions were made in good faith and through renowned merchants. He also stated that he never bought from Libyan, Syrian or Iraqi dealers, that the pieces had a legal origin and that he could provide documentation in this regard. In this interview, he said he did not know the final list of objects seized, but through the media, he saw the head of a sculpture, of which he showed the invoice, that was bought in Bonhams in February of this same year. On the other hand, J. B. indicated that he had declared before the Historical Heritage Department of the Ministry of Culture of all imports made, providing the respective purchase invoices and descriptive sheets. This declaration, protected under art. 32 of the Law of Spanish Historical Heritage presents a series of tax and commercial advantages, which in the field of antique trade is crucial. In the opinion of the antiquarian, the case has been initiated by a misinterpretation of these statements, and he will justify the origin and acquisition of the confiscated works. Nevertheless, he admits "There are objects that we buy in public establishments and from known merchants who make sure where the objects come from. I cannot assure one hundred percent that one or two of the 4,000 objects that I have do not come from a robbery, but in no case is it intentional. I do not have access to the documents, I do not know if they are stolen or not. I have to suppose they are not." In effect, the volume of import requests was one of the ends from which the investigation continued to develop, as we will explain later.

Despite J. B.’s explanations, clues seem to point to the existence of an illegal trafficking net of cultural goods from Libya entering the European market with a wide profit margin. Recall that, according to the identification of pieces carried out by Belzic, this network is not limited exclusively to the Barcelona antiquarian, but also affected other places, including auction houses, museums and antique fairs. The alarming point of the case in point is that, apparently, the link between the smuggling of these objects and the financing of the DAESH has been finally established. In this regard, Porcel indicates that it has not been easy to follow the money or track the trail of the pieces to reconstruct those links. Throughout this time of work, they have managed to identify the source of the goods as well as four regular middlemen that also supplied other European dealers. 51

This case matches perfectly the pattern of behaviour described in other cases, in which it is tough to track the distribution route through the numerous intermediaries that move the objects through third countries to cover the import path. It is a network that laundered goods since the purpose is to create a flow of supply not possible to achieve with isolated and pre-agreed sales. The goal was to make the leap to legal trade and offer the objects in the most prestigious markets to obtain the best prices. On the other hand, serious traders and collectors do not want to play with fire. It is necessary to cleanse the origin of the goods to avoid suspicion about it. Some of the pieces seized came from the regions of Albaida, Apolonia and Cyrene,

49 “El «niño prodigio» del arte antiguo que financió a Daesh”, ABC, 01/04/2018.
50 “Nunca en la vida he comprado piezas de Irak, Libia o Siria”, Crónica Global, 30/03/2018.
51 “De los anticuarios de lujo a las arcas del terrorismo islamista”, El País, 04/05/2018.
deposits located north of Libya. For its identification, the police had the collaboration of the Libyan authorities at all times, channelled through its embassy. As the head of business of the Libyan Embassy in Spain, Walid Abuabdalla recently declared, "We estimate that there are between 19 and 23 pieces that are in Europe and more than half, in Spain."

These areas were under DAESH control from 2011 to 2016. Although Libya was not a country with a high demand for its archaeological treasures, what deterred smugglers was the lack of potential buyers, the impact of an armed conflict caused a change in this situation. During the period of occupation, social and political instability had severe consequences for the preservation of the main deposits, located mostly in the area close to the coast, with significant deterioration not only due to war disasters. In fact, acts of occupation of the land and use of the land by local people were reported, and the total neglect of archaeological sites. In this context, there are thefts and looting, difficult to quantify and prosecute by the Libyan national authorities, not only for lack of greater means, given the context of armed confrontation at the time, but also for the impossibility of tracking pieces with neither records, inventories nor photographs after having been excavated illegally.

Some of the sculptures of Greek and Roman heads and bodies seized at J. B. came from Cyrene. During the search, police verified that some of these objects still conserved sand from the place of the extraction. The excavations were hurried and carried out without any care. The works presented significant deteriorations, blows and imperfections, primarily due to their accelerated withdrawal, so they had to undergo a restoration process before putting them into circulation. The arrested devoted the deposit they had in Argentona to this task.

4.1. Modus Operandi
The detainees had several intermediaries who helped them in the tasks of locating, extracting and shipping the pieces. A Lebanese merchant and an Egyptian merchant acted as middlemen and served as a liaison between the looters, the material authors of the excavations, and the recipients in Spain, who bought the pieces from these merchants. This chain of command worked smoothly, so the objects arrived at the gallery for commercialisation in a very short time. We have news of objects unearthed in May 2017 that were already on sale four months later, as well as other plunders in January offered to the public just two months later.

The other part of the process, and perhaps the hardest one, had to do with the transfer of the pieces. The objects were imported to Spain from third countries, to hide their true origin. They entered our country through two main routes:

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52 Vid. supra "De los anticuarios de lujo […]" (El País).
54 Vid. supra “El «niño prodigio» del arte antiguo que financió a Daesh” (ABC).
55 Vid. supra “La Policía desmantela una red que comerciaba con obras de arte […]”.
56 Vid. supra “Jaque a las antigüedades de sangre” (ABC).
- **Route through the Middle East:** the goods were moved to Egypt or Jordan, from where they were shipped by sea to the Arab Emirates. They then entered Europe, with a stopover in Germany, before they arrived in Barcelona.
- **Route through Asia:** goods moved to Thailand and from there imported to Europe.

The contraband routes across the Middle East were already common. The looting of archaeological objects in recent years did nothing but take advantage of clandestine distribution and trade networks that were previously used both for weapons and for cultural goods of another origin, Egyptian or Iraqi pieces, which used to be laundered in Lebanon or Turkey, as we have already seen. However, the awareness and international alert in this regard, particularly since the convulsive episodes during the Arab Spring, and the numerous conflicts that surfaced in several countries of the region, began to discourage the use of these same routes. The regulations of these countries prohibit the exit of historical treasures from their territories, as we shall see later on, so that setting up a whole mechanism of transport routes, false documents and certificates of origin became increasingly complicated. For this reason, the transit of the pieces through Asia began to be increasingly frequent, since trade agreements with Europe made the laundering easier.

The increase in the number of import declarations to Spain of Greek and Roman artworks from the same region raised many suspicions. The analysis of these documents raised many doubts pointing to a single direction: smuggling. The goods often entered under false categories, described as decorative objects with a derisory value to lower customs fees and avoid inspections. On other occasions, the origin of the goods and the place of issuance of the invoices did not match. Invoices from Turkey or Egypt were provided for goods brought from Asia. It was also surprising the quantity of objects imported from countries, including Libya, where the export of archaeological treasures is banned. All this led to think that the invoices and records were false.

The declared provenance of these pieces caught the attention of the Historical Heritage squad of the Spanish Police because the legislation of the indicated countries does not allow the export of cultural goods. We will review this legislation to understand the reason for this form of action and the reason why the importation processes raised suspicions.

The laws of Libya, Egypt and Turkey are very similar regarding the level of protection applicable to their cultural assets and the export prohibitions. Here below, we extract the main provisions in this regard.

**A. Libya:**

Law No. 3 of 1424 P.B. (1994) for the Protection of Antiquities, Museums, Old Cities and Historical Buildings (29 August 1994)\(^57\)

**Article 8**

A) It is prohibited to destroy or damage monuments or movable property, to write or dig on them, to change its features, to separate parts of them, to paste advertisements or to place signs on them.

\(^57\) [http://www.UNESCO.org/culture/natlaws/media/pdf/libye/libya_cltherlaw_94_arorof](http://www.UNESCO.org/culture/natlaws/media/pdf/libye/libya_cltherlaw_94_arorof). We offer here an illustrative translation, given the difficulty to find an official translation of the law in English, French or Spanish.
It is also forbidden to photograph them for commercial purposes, or for the purpose of
publishing them, except with the approval of the competent authority, in return for a fee
determined by the General People’s Committee for Quality.

B) It is prohibited to destroy, distort, damage or separate part of the documents along to
prevent their export or trade.
C) It is prohibited to destroy traditional industries of an archaeological nature along to prevent
their export or smelting.

**Article 25**

No one may carry archaeological excavations without a permit from the competent authority,
even if he is the owner of the place where the excavation takes place.

Archaeological excavations are not permitted except for archaeologists and archaeological
missions, which are formed by associations, institutes and scientific institutions, pursuant to the
conditions specified by the executive regulations.

**Article 26**

All the effects discovered by the licensee of the excavations shall be the property of the State.
The licensee shall, after the written approval of the competent authority, have the following
rights:

A) Taking plaster or similar copies of the discovered artefacts, provided that such effects do not
harm them.
B) Take some pictures, drawings and maps needed for the detected effects.

In Libya, the legislation declares all archaeological findings as State property and establishes
export restrictions. Excavations are only possible after obtaining a compulsory license.

**B. Egypt:**

Law No. 117 of the year 1983 concerning the Issuance of Antiquities Protection Law:

**Article 6**

All antiquities are considered public property except the wakfs. The possession or ownership or
transfer of such is not permitted except in the terms and conditions stipulated in said law and
the decrees implementing it.

**Article 9 (1st par.)**

The possessor of the antiquity may dispose of such any form of disposal after getting a written
approval from the authority in accordance with the procedures and rules of which a decree by
the competent minister in cultural affairs is issued provided that such disposal does not result in
transfering said antiquity outside the country.

**Article 41**

Whoever smuggles an antiquity outside the Republic or participate in such act shall be punished
by temporary hard labor or by a mulct not less than 5,000 Egyptian pounds and not more than

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50,000 Egyptian pounds. In this case the antiquity, object of the crime, shall be confiscated together with sets, instruments, machinery, and cars used in said crime on behalf of the authority.

It should also be noted that Egypt has signed several bilateral agreements to combat the illicit trafficking of cultural goods and facilitate their rapid restitution, with Peru (2005), Cuba (2008), Ecuador (2008), Italy (2008), Switzerland (2010), China (2010) and Jordan (2015). These agreements based on the commitments made by the States parties after ratifying the 1970 UNESCO Convention and reflect a desire for international cooperation to allow the quick return of unlawful pieces to their country of origin. It should be borne in mind that in many cases, these agreements try to reach where the big conventions cannot, since the treaties require a high degree of consensus in which the scope must be sacrificed to make it viable.

C. Turkey:

Law on the Conservation of Cultural and Natural Property no. 2863, published on 23/07/1983

**Prohibition to take abroad**

**Article 32**

Movable cultural and natural property to be protected in the country cannot be taken abroad. However, on the condition that, foreign officials provide guarantee and insurance against the possibility of all kinds of damage, loss, threat or violations, and in respect of national interests, the Council of Ministers shall make decision on a temporary exhibition abroad and the return of the property following the decision of the scientific council composed of the heads of archaeology and art history departments of higher education institutions and the proposal of the Ministry of Culture and Tourism.

Members of the diplomatic corps in Turkey can take abroad cultural property of foreign origin they brought with them, which was declared upon entry into the country.

The principles for transporting cultural and natural property for temporary exhibition abroad, procedures to apply at the entry and exit of property that is brought by the diplomatic corps to Turkey, documents requested and all other relating issues shall be specified in a regulation to be jointly prepared by the Ministry of Culture and Tourism, the Ministry of National Defence and the Ministry of Foreign Affairs.

**Bringing property into the country**

**Article 33**

Cultural property can be freely brought into the country.

Turkish legislation follows a protectionist pattern of its cultural heritage that is widely shared by recent regulations worldwide, especially those enacted after the entry into force of the 1970 UNESCO Convention. This treaty was a declaration of principles more programmatic than practical but forced many member states to approve or update their laws regarding the protection of their cultural treasures. It is striking, however, that art. 33 of the Turkish law establishes that cultural goods can be freely introduced into the country, something that also happens in many legal systems, although the wording is usually less explicit. Given this type of

[59](http://www.UNESCO.org/culture/natlaws/media/pdf/turkey/turkey_lawconservationculturalnaturalproperty_1_entof)
provisions, it is evident that the control of this entry of goods in the country rests on the customs authorities, because the article does not seek to favour illicit trafficking, but to enrich the national cultural heritage with goods brought (legally) from abroad.

C. Thailand:
Unlike the regulations of the countries we have just described, Thai cultural heritage legislation does not prohibit the export of archaeological goods, antiquities and works of art. As pointed out by Susan Kane, director of the project "Cyrenaica Archaeological Project", of the Oberlin University of Ohio,\(^\text{60}\) this circumstance is being exploited by traffickers to create new distribution routes for stolen objects, especially those from the Middle East. In fact, the Act on Ancient Monuments, Antiques, Objects of Art and National Museums, B.E.2504 (1961),\(^\text{61}\) does not ban the export of cultural property, it only requires to get a previous license of activity, either for objects already registered or not. In addition, it contains detailed provisions on obtaining such permits and the fees to be paid by those engaged in the trade of these objects, as well as those who manage their transit through the country. In the chapter on penalties, it has provisions in the event of goods being removed from the country without the compulsory license (sections 38 and 39). Likewise, it establishes that if the government already has enough representative pieces of a certain tradition, style or era, it might agree its use for other purposes, including trade.

Under the Thai legal system, cultural property may be held either as private ownership or as public property, but there is no provision declaring these objects as belonging to a national cultural heritage or that archaeological objects discoveries are State property, but belongs to whoever finds them. There is a system of registration of "ancient monuments", in terms of the law, and of "antiques and objects of art", although in the latter case it is limited to those objects considered of special value for the State for its historical, artistic or archaeological interest (section 14). Regarding these registered personal property, the following should be taken into account:

**Section 18**
Antiques or objects of art which are State's property and under custody and care of the Department of Fine Arts are inalienable, except by virtue of law. However, if the number of certain similar antiques or objects of art is in excess of need, the Director-General may, subject to the approval of the Minister, transfer them by means of sale or exchange for the benefit of national museums or give them to the excavators as rewards or as consideration for their service.

Likewise, there is a system of communications to the Ministry in the case of transfer of the goods, need of repair or alteration and construction permits, but it is much more flexible when it refers to movable property. On the other hand, the performance of professional tasks linked to these objects such as marketing or transit through the territory must also be communicated. The essential characteristic of this system is that all these activities are not banned, and they

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\(^{60}\) "Libia: a rischio anche decine di tesori archeologici, stilata la «red list»", Corriere della Sera 04/03/2016.

\(^{61}\) [http://www.UNESCO.org/culture/natlaws/media/pdf/thailande/thai_actcltmon_61_entof](http://www.UNESCO.org/culture/natlaws/media/pdf/thailande/thai_actcltmon_61_entof)
only require a prior license. Moreover, in the event that the activity license is denied, the applicant can resort to the Ministry (section 19).

Section 22

No person shall export or take out of the Kingdom any antique or object of art irrespective of whether it is registered or not, unless a licence has been obtained from the Director-General.

The application for a licence and the grant thereof shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

The provisions of paragraph one shall not apply to object of art which are not more than five years old and have not been registered and the bringing of antiques or objects of art in transit.

Section 23

Any person being desirous of temporarily dispatching antique or object of art out of the Kingdom shall apply to the Director-General for a licence. In case the Director-General gives the order refusing to grant the application. the applicant is entitled to lodge an appeal against such order of refusal to the Minister within thirty days from the date of his being aware of such order. The decision of the Minister shall be final.

In case the Director-General deems appropriate or the Minister decides that a licence be issued to the applicant for temporarily dispatching antique or object of art out of the Kingdom, and the applicant has agreed to comply with the conditions, methods and requirements on deposit of security money and/or payment of penalties as prescribed in the Ministerial Regulation relating thereto, the Director-General shall accordingly issue a temporary licence to the applicant.

The content of Ministerial Regulation No. 362 that develops part of the provisions of the rule on the applicable fees for export licenses, is also indicative because there are no restrictions on the nature or importance of the goods and only set different amounts according to antiquity and size:

The licensee for exporting or taking antiques or objects of art out of the Kingdom shall pay fees at the following rates:

1) antiques or objects of art which the Department of Fine Arts deems as dated from Sri Vichai and Thawarawadi (D’arul’ali) as well as earlier periods, two hundred baht per piece;

2) antiques or objects of art which the Department of Fine Arts deems as dated in Lopburi, Chieng Saen, U - thong or Sukhothai period, one hundred and fifty baht per piece;

3) antiques or objects of art which the Department of Fine Arts deems as dated in Ayudhya period, one hundred baht per piece;

4) antiques or objects of art which the Department of Fine Arts deems as dated in the period later than Ayudhya period:

   a) those produced in Ratanakanosin (Bangkok) period from the reign of King Rama I to King Rama V, fifty baht per piece;

   b) those produced in Ratanakanosin (Bangkok) period from the reign of King Rama VI downwards, five baht per piece;

5) antiques or objects of art of the size of not exceeding three centimetres wide and of not exceeding five centimetres long, which the Department of Fine Arts deems as dated in the

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period later than Ayudhya period and to be of lesser value in the field of art, history or archaeology, one baht per piece;

6) fractions of antiques or objects of art of whatever period which the Department of Fine Arts deems to be of lesser value in the field of art, history or archaeology, one baht per piece.

In 2000, Thailand signed a bilateral agreement with Cambodia to combat the illicit traffic of cultural goods and encourage restitution. It is the only country with which Thailand has signed such an agreement, but it makes sense if we recall that both are neighbour States and that before their current border delimitation, Cambodia and Thailand constituted the Kingdom of Siam, until the expansion of French colonialism in the 18th century, which occupied part of the territories of the current Cambodia, Vietnam and Laos.

4.3. Legislation on Cultural Heritage and Free Trade Agreements

An analysis of the Thai legislation shows that, indeed, this country does not ban the export of its own cultural assets, and that it provides much help for objects in transit through its territory. To this fact are added the free trade agreements signed between the EU and the ASEAN (Association of Southeast Asian Nations, of which Thailand has been part since its constitution in 1967). Both organisations signed a cooperation agreement in 1980 regarding the removal of boundaries on free trade, especially customs barriers. The Partnership and Cooperation Agreement (PCA) signed in 2013 is still awaiting ratification due to the coup that took place in Thailand in 2014. Thailand is a member of the WTO since its creation in 1995.

Although promotions of trade is one of the international relations main objectives through multilateral agreements that favor trade and reduce or eliminate customs fees, the degree of extension of these agreements varies substantially from one country to another. Thus, while these practices were already well consolidated between Europe and Asia, particularly with ASEAN, the situation is different with the countries of the eastern Mediterranean basin.

There are negotiations and understanding agreements between the EU and countries such as Egypt, Turkey (which aspires to join the Union), Lebanon or Jordan; but they are still pending, among other reasons because it is essential that the country is part of the WTO to sign it down, and not all belong to the organisation (for example, Lebanon, which requested entry in 1999).

Egypt, in particular, has signed trade agreements with EFTA, in force since 2007, and is part of the "Union for the Mediterranean" process, which seeks the trade association between the EU and the rest of the countries of the Mediterranean basin, a context preceded by some agreements, such as the one signed between Egypt and the EU in 2001 and the agricultural agreement of 2010. For its part, the Arab Emirates is a member of the Gulf Cooperation Council (GCC), with which the EU signed a free trade agreement in 1989. One of the key points in these relations is the application to the GCC countries of the Generalised Scheme of Preferences (GSP) according to which products from this region enter the Union under privileged conditions. The Arab Emirates benefited from these licenses until 2012, when the Regulation (EU) 978/2012 was approved, and the application of the GSP was updated in favour

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64 Generalised Scheme of Preferences (GSP)
of developing countries, excluding the nations qualified as high income by the World Bank. Consequently, at present, none of the GCC countries, all of them considered high income, benefit from the GSP, but we must remember that this system refers to the elimination of customs costs, not to the trade flows consolidated all over the years between the EU and the GCC. However, there is no such process with Libya, a country with which so far the negotiations of recent years with the EU have focused on addressing the refugee crisis.

We must also bear in mind the commercial association between the member states of GAFTA, the Greater Arab Free Trade Zone, which includes Egypt, Jordan, Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar, Morocco, Syria, Lebanon, Iraq, Palestine, Kuwait, Tunisia, Libya, Algeria, Sudan and Yemen. The commercial interest aims to remove barriers to the free movement of products and services. Customs controls are not entirely removed yet, although there is a commitment towards their progressive reduction and suppression.

In this sense, and in regard to smuggling routes of cultural goods, taking objects from Libya straight to Egypt is easier, because they share a border, or to Jordan, and from there ship them by sea to the United Arab Emirates. Later, taking advantage of the customs privileges of this CCG country, they would be imported to Europe under favourable conditions. However, as we have seen, these conditions of benefit or customs exemption have changed in recent years, and that is the reason why antique dealers began to explore other routes of distribution that pass through Asia, as in the present case.

All this outlines a global panorama that smugglers know very well and that they try to take advantage of to facilitate illegal trafficking. However, mistakes continue to accumulate in the documents attached to the import declarations, something that can only be detected by experts and after a detailed investigation. As Fernando Porcel points out, these are “hot pieces”, taken from territories in conflict, in which neither the prestigious merchant nor the collector wants to be involved. Therefore, the final buyer of these objects is totally unaware of this reality. Not so the unscrupulous dealer who is at the end of the chain of contraband, who actively participates in the network and launders the origin of the goods under the guise of professionalism and commercial seriousness. As Arthur Brand, an investigator who helps to recover stolen antiques, explains, the ease of the dealers in offering pieces is impressive. The illicit traffic dresses in a formal business appearance, with offices and business cards. The connection between looters and dealers is the truly dark and murky part of the business, he says.

4.4. But Why Spain?

For those who know the Law of Spanish Historical Heritage 16/1985 of June 25th (LPHE), Spain does not seem to be the ideal country to commercialise looted cultural goods, since the legislation deploys a highly protectionist system it puts many obstacles to its trade, and more to its export, in many occasions strictly banned. However, it is necessary to know the regulation

67 Vid. supra “El «niño prodigio» del arte antiguo que financió a Daesh” (ABC).
68 Vid. supra “The men who smuggle the loot that funds IS” (BBC News).
well to find the tricks it hides, as well as fully understand the national normative system of Roman tradition that also has its advantages.

It is worth to recall that the Spanish legal system protects purchasers in good faith against third-party claims, and that it designs a system of acquisitive prescription of private property that, even in cases of bad faith, is fulfilled after 6 years, a considerably short term. It should be taken into account here that the crime of receptación (receiving stolen goods) or the participation of an encubridor (who knowingly hides a crime), which extends these terms of usucapion (arts. 1955 and 1956 Spanish Civil Code). This legal tradition differs from the common law system, which follows the maxim *nemo dat quod non habet*, so that the essential vice in the transmission prevents the acquisition or transfer of property. However, it must be borne in mind that in these illegal trade schemes, traffickers make real efforts to cover the origin of the goods, precisely to make their buyers believe that the object has a lawful origin. In this way, the piece is transferred to a buyer in good faith and its property is consolidated after three years of public, uninterrupted and peaceful possession. It is a manner to make the subsequent claims fail since our legal system protects the purchaser in good faith.

This is one of the reasons why traffickers tend to introduce goods into the market through countries whose regulations protect the buyer in good faith, such as Italy or Spain since, this way, the chain of title is cleansed making its subsequent commercialisation possible.

But a sale within Spain is a danger in itself, because if the artefact comes from abroad, the State may be interested in keeping it in our territory due to its artistic, historical or archaeological qualities. The State has the power to officially initiate the procedure to declare an object as a Cultural Interest Good, which implies, in addition to registering and inventing it, that it becomes non-exportable. This system seeks to preserve the national treasures within our borders and avoid the loss of wealth, so devastating in previous times. Nevertheless, it triggers consequences: goods can only be sold to buyers within Spain, which causes a devaluation of prices and the Spanish art and antiques market to be weak and uncompetitive.

However, there is no need for a first transfer within the country for dealers to take advantage of the legal tricks of the law. The LPHE itself grants the possibility of declaring the importation of cultural goods from abroad. It is a facultative declaration with some advantages: the general rule does not apply for ten years (extendable, upon request) to that object (Article 32.3 LPHE). Consequently, the asset cannot be declared as a Cultural Interest Good and, therefore, export will be possible. The rights of preemption and repurchase that State holds in case of sale of the property do not work either. The only condition is to comply with the import declaration requirement since if, after having entered the good in our country, an export permit is requested and its entrance cannot be demonstrated faithfully, the license could be denied.

Article 32

1. Movable property that has been imported legally and is duly documented so that the imported property is fully identified may not be declared of cultural interest in a period of ten years after the date on which it was imported.

2. Such property may be exported with a permit from the State administration to be granted provided that the application meets the requirements of current legislation, and no right of pre-emption may be exerted on it. After the period of ten years, such property shall be subject to the general terms of this Law, unless its possessors request that the State Administration extend this
situación para otro período igual y se otorga después de un juicio de la Junta de Certificación, Valoración y Exportación de Bienes Inmuebles de la Corona de Castilla.

[...]

On the other hand, declaring the importation of cultural goods also presents tax advantages. Pursuant to art. 30.B).1. the goods imported in the terms of art. 32 are exempt from paying the fee for the export permit, that is, the export of the objects whose importation had been duly declared. In this way, declaring the import assures the dealer that he will be able to take the good out of the country and that he will not have to pay a fee to obtain the required export license.

This system of exception leans on the very essence of the LPHE: it tries to protect the monuments and objects that have been in the collections and museums of the country for a long time and are already seen as part of the national cultural heritage. The term of ten years is set to generate a minimum temporal relationship with our territory before understanding that the good can be classified as part of our cultural heritage. One must recall that these goods do not have to be linked to the history of Spain or created in Spain or made by Spanish artists. For this reason, many dealers make these declarations, with the aim of enabling an easy exit when they want to sell them abroad, which is usual, given the good health of some antique markets of European countries compared to our national one. This is undoubtedly the case of J. B. and his tactics, taking the works to fairs such as Brafa, where they attract the interest of numerous foreign buyers who raise the price of the bid.

The analysis of these import declarations and their increase narrowed suspicions around this antiquarian. The shortage of legal pieces from Cirene available on the market does not fit the number of applications submitted. In addition, inconsistency between the country of origin declared and the place of issuance of the invoices, added to the fact that the legislation of these countries bans the export of cultural goods, also helped. Despite these indications, J. B. reaffirms his innocence and good faith. He states that he acquired the pieces from serious and respected traders and that he cannot guarantee the legal provenance of everything they include in their files and inventories, but that he trusts their veracity.

This professional praxis is one of the characteristics that define the art market. It poses serious problems in the fight against the antiquities plundering. We must recall that most dealers do not request documentary evidence of the origin of the objects they buy from their suppliers. However, this behavior goes against the new demands of the market. International treaties on restitution require qualified diligence of buyers to demonstrate actual good faith, and Directive 2014/60/EU reverses the burden of proof, so now the purchaser must prove that he or she has put all possible diligence to ascertain the legality of the piece. Among the elements taken into account to assess due diligence and good faith are the consultations of public databases of stolen or endangered works, or the comparison of market prices for similar objects that do not arouse well-founded suspicions about an unlawful provenance. In this regard, Walid Abuabdalla, head of business of the Libyan embassy in Spain, points out that it is not likely that a reputable antiquarian like J. B. believe that a 3,000-year-old piece can be offered for only $ 2,000, or that he is no alarmed by the marks of a hasty and forced extraction so evident.

70 Vid. supra “Nunca en la vida he comprado piezas de Irak, Libia o Siria” (Crónica Global).
71 Vid. supra “De los anticuarios de lujo a las arcas del terrorismo islamista”, (El País)
5. Motivation for Cultural Property Looting

Everyone is aware that smuggling seeks to obtain economic benefits through trade in products prohibited by law. Enrichment is the primary motivation for illicit trafficking, whether of antiquities and artworks, whether weapons or drugs. Nonetheless, other factors that foster this type of behaviour tend to appear in the illegal trade of cultural goods.

First of all, the destructive and annihilating effect of the identity of a collective through the appropriation and devastation of its cultural expressions. This is one of the most obvious cause when we talk about armed conflicts where the attack on the opponent’s heritage is systematised, and it is one of the reasons proclaimed by the DAESH. According to their own statements, they are acts of struggle against idolatry and a way of reinstating the religious order contained in the sacred texts, which ban human representations and the trivialisation of spiritual life. In their actions, broadcast worldwide, they seek a propagandistic effect. That is why it is said that their acts of destruction are programmed and orchestrated for greater impact at an international level than if they only attack local sites.72

Most likely this purpose is fuelled by the situation of insecurity, instability and scarcity resulting from a bloody armed confrontation. As all looters and intermediaries who worked or work indirectly for DAESH state in the interviews herein referred to: need has led them to become involved in these practices. Thus, some may find in the antiquities a way of subsistence and of obtaining resources; and others, a mechanism to guarantee their lives and exit the country using the pieces as safe-conduct. The Lebanese authorities have come to find pieces hidden in the caravans of refugees, carried by people who may have acquired the commitment to take those goods across the border to save their lives.

On other occasions, trafficking is used as an exchange element to obtain more coveted products for war purposes. In Autumn 2016, it was found out that the Italian mafia sold weapons to DAESH in exchange for antiquities, taking them directly to Italy from the Libyan coast.73

Finally, we can point out the destruction for hiding purposes. After the illegal excavations, they try to camouflage their tracks causing more considerable damage. This type of harmful actions is totally irreparable, because not only do they take away the pieces from their place, but also destroy the archaeological context to which they belong, preventing further study.

6. What We Know and Do Not Know about the Antiquities Trade by the DAESH: Conclusions.

Although there are many business figures disseminated in the media, lists of plundered sites and looted objects and the assertion that the traffic of cultural goods is one of the main sources of financing for this terrorist group, there are voices that ask for caution over these data while waiting for more clues.

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72 “¿Por qué ISIS está destruyendo el patrimonio histórico de la humanidad?”, United Explanations 22/04/2016
73 “Arte antica in cambio di armi, affari d’oro in Italia per l’asse fra Isis e ‘ndrangheta”, La Stampa 16/10/2016.
In the Spanish case, Fernando Porcel indicated that tracking the money was not easy. There are cash and income payments in accounts apparently linked to ISIS, but the investigation should still draw more results.

According to the dealers supposed to work for DAESH, the group is financed by charging a fee for the granting of excavation licenses. This seems to agree with the official documents issued by the Department of Natural Resources and its Antiquities Division, of the self-proclaimed Caliphate, which forbids the exportation of archaeological and historical goods and requires obtaining a license to excavate the sites. Also, it fits with the data contained in the documentation seized from Abu Sayyaf, recording $ 260,000 income from taxes related to antiquities, as indicated in the report of the Dutch police. The report itself estimates that there is not yet enough evidence to consider this connection proven.

On the other hand, some academics point out that illicit traffic of cultural goods already existed in many territories before DAESH and that its spread cannot be attributed exclusively to its presence in the place. In their article "Who Pays for ISIS in Libya?" J. Roslington and J. Pack state that, although the Western media have reported it, there is not enough evidence to support that DAESH funds itself through the commercialisation of archaeological objects. Vandalism and looting in Libya existed before the group entered the region and occupied Sabratha in December 2015, and there is no evidence that they have invaded other sites. Along this same line, the MANTIS group of the University of Chicago, herein mentioned, develops its research. Finally, we bring up the considerations of Morgan Belzic. He insists that it is up to investigators to establish this connection between the antiquities trade and terrorist financing, but in his opinion, it would be a mistake to stick exclusively to this aspect, because DAESH is no longer in Libya, nor in Iran, and, nevertheless, illicit trafficking still goes on.

However, it should be kept in mind that according to the testimony of the looters and dealers that were interviewed, DAESH mechanism to obtain resources has changed. Although initially they earned income from the fees for the granting of licenses of excavation, it seems that later on they bought the pieces from the looters to manage the sales themselves. This change of practice apparently coincides with the time when their forces are strongly hit, and they have to retreat. Perhaps at this point, they began to use antiquities as an element of exchange to obtain weapons and ammunition, something that may also be due to the initiative of a particular unit and in a specific area, because of its singular international connections.

We will wait for the investigation in Spain to yield conclusive results in this regard and allow to establish or not a direct link between the traffic of cultural goods and the financing of terrorism. While awaiting, it seems that the looting of antiquities is, as it has always been, a deplorable practice that takes advantage of the favourable conditions that the historical, social and political context offers at a given time. As for DAESH, it is evident that instability and scarcity of economic resources are the best fuel to boost illegal behaviour to gain benefits. But it is also paradigmatic that all the people interviewed point to the terrorist group responsible for the plunder, but none of them belongs to the organisation. Could it be that the pre-established networks have only changed leaders and jump on the bandwagon? Are we facing a simple

74 Vid. supra “Cultural Property War Crimes and Islamic State”.
75 “Who Pays for ISIS in Libya?” Hate Speech 24/08/2016
76 “Trafic d’art démantelé en Espagne: «Mes recherches m’ont convaincu que j’étais face à un trafic»”, Paris Match 29/03/2018.
continuity of inherited practices? Something like that would be much more consistent with the documents and testimonies collected so far.

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