

## Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It

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### ABSTRACT

Fifty years after the adoption of the 1970 UNESCO Convention, the illicit trade in cultural objects endures, with harmful consequences to local communities, knowledge acquisition, and archaeological landscapes and objects. In this article, we present a gap analysis to assess underperforming policy and practice. We argue that a poor understanding of how the trade is organized and operates and of how it might be regulated hinders effective policy formulation. Funding structures which encourage short-term ad hoc research and inhibit information sharing are in part responsible for some of the gaps. We conclude by suggesting how sustained theoretically informed, evidence-led collaborative analyses might help reduce or mitigate these problems, preventing another 50 years of illicit trade.

### KEYWORDS

cultural policy; antiquities trafficking; heritage crime; antiquities market; ethics; UNESCO

The United Nations Educational, Scientific and Cultural Organization's Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter, the UNESCO Convention), adopted on November 14, 1970, was designed to tackle the trade in cultural objects that are illicit in some way, be they illegally excavated, smuggled in contravention of existing law, or stolen from a heritage site or existing collection (Gerstenblith 2013; Prott 2012; O'Keefe 2017). We should emphasize here that although the terms "cultural property" used in the Convention and the now more usual "cultural objects" embrace a broad and varied category of cultural productions, in what follows we are restricting our usage to describe ancient and/or sacred objects. The illicit trade in such objects destroys cultural heritage, while simultaneously offering criminals profitable opportunities for theft, smuggling, and fraud (Mackenzie et al. 2020). The UNESCO Convention established an agreed-upon international policy response to this illicit trade, introducing a series of legal and normative principles and recommendations that continue to shape national and international policy. Yet, the illicit trade persists, even thrives, with continuing negative impact. In this paper, we discuss why, fifty years after the adoption of the UNESCO Convention, there is still an illicit trade in cultural objects and suggest what action might be taken to diminish it.

Our assertion of the tenacity of illicit trade is supported by statistics reporting law enforcement seizures of cultural objects and arrests during international Pandora operations: in 2017, Operations Athena I and Pandora II: 41,000 cultural objects seized, 53 people arrested, and 200 investigations opened in operations spanning 81 countries (Europol 2018); in 2018, Operation Pandora III: 18,000 objects seized and 59 people arrested in operations spanning 29 countries (Europol 2019); in 2020, Operations Athena II and Pandora IV: 19,000 cultural objects seized, together with €5.5 million

in cash, 101 people arrested, and 300 investigations opened in operations spanning 103 countries (Interpol 2020).

While these Pandora statistics evidence the commendable efforts law enforcement has made to confront illicit trade, when they are viewed instead as indicators of market strength, the results make for grim reading. Imagine these operations as annual sampling exercises undertaken to test the effectiveness of a clean-up campaign aimed at eliminating illicit pollutants from legitimate trade. The clean-up campaign would be judged ineffectual. The staggering numbers of cultural objects seized and the global reach of the networks involved (103 countries) provide tangible evidence of a global illicit trade that is prospering, not one that is well regulated, under control, or on the way to eradication. The reality is likely worse. Police, who are incentivized by various metrics to tout seizures as evidence of successful crackdowns in respect of transnational market-driven crimes more generally, will often privately acknowledge that the figures behind such official announcements serve only as outline indicators of vigorous continuing criminal trade (Mackenzie and Hamilton-Smith 2011). In fact, the majority of all criminal acts are acknowledged to comprise the so-called dark figure of crime—they go unrecorded and unreported and thus are not included in official statistics (Coleman and Moynihan 1996). There is little reason to suspect the Pandora statistics are an exception to this established pattern in other illicit markets. If the reported arrests and seizures are only the tip of a much larger dark criminal iceberg, then the indications are that the illicit trade in cultural objects is very poorly controlled.

The recent flurry of initiatives and actions aimed at curbing looting and illicit trade during the time of the COVID-19 pandemic is confirmation that the international community shares our opinion (Mercadier, Shiaa, and Guli 2020; Sharpe 2020; UNESCO 2020). Whenever public wellbeing is

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threatened by armed conflict (Brodie 2015; Davis and Mackenzie 2015; Greenland et al. 2019), major political or social instability (Yates 2014), serious economic downturn (Kersel 2007; Parcak et al. 2016), or natural disaster (Yates and Mackenzie 2018), some people turn to looting cultural objects, thereby offering fertile opportunities for the financial predation of criminals, terrorists, and other armed non-state actors (ANSAs). Cultural heritage is always vulnerable. We believe the reason for poorly controlled illicit trade is ill-informed, unrealistic, or unenforceable international policy. Here, we understand policy to be the process of deciding what actions would work best to regulate the trade in cultural objects to bring the illicit trade under control. When examined closely, the fabric of international policy is a thing of gaps, reactions, and piecemeal patches, knit together by the enduring threads of the UNESCO Convention. While there are areas of policy success, including improved museum acquisition policies and more efficient interagency cooperation (Prott 2012, 3; Torggler et al. 2014, 11), there are also clear shortfalls (see also Tsirogiannis [2021, 167] on support for the establishment of a center dedicated to research on illicit antiquities). As the Pandora statistics demonstrate, the current regulatory tool kit aimed at reducing the harmful consequences of the illicit trade in cultural objects is underperforming.

In this paper, we look closely at the reasons for policy underperformance and propose a pathway for diminishing or resolving identified inadequacies. Before proceeding, a few words on the scope of the paper are necessary. Elsewhere, we have all discussed the shortcomings of present policy aimed at curbing illicit trade; thus, we do not repeat the critique here (Brodie 2015; Yates 2015). Nor are we attempting to provide a coherent theoretical discussion of issues surrounding illicit trade, as we have also tackled this (Mackenzie et al. 2020). To recap, briefly: our focus is on demand. It is a criminological truism that “never in history has there been a black market defeated from the supply side” (Naylor 2002, 11). Almost 30 years ago, Rick Elia pointed to the decisive role of demand in looting and trafficking when he pronounced that “collectors are the real looters” (Elia 1993), reinforcing Joseph Alsop’s even earlier observation that “the art collecting-art history interaction has been the fundamental one in every art market the world has ever seen” (Alsop 1982, 139). Yet despite this cross-disciplinary consensus, international policy remains resolutely aimed at protecting cultural sites at source and disrupting supply-chains, while doing very little to reduce market demand through strong punitive, deterrent, or dissuasive actions against the malfasants dealers, collectors, restorers, academics, and curators that comprise it.

We are uncomfortably aware that in recent years, most policy-oriented scholarship has been focused upon documenting the damage caused to cultural heritage at source or describing the social and cultural worlds of in-country actors who are engaging in trade or harmed by it. There has been very little comparable work on the actions of collectors or dealers in our own home countries or on the failures of our governments and other institutions (including universities) to address the issue. This lack of reflexivity is concerning, particularly considering the well-documented scholarly propensity for othering (Said 1978; Fabian 1983). Aiming research and recommendations at countries suffering harm implicitly or explicitly projects liabilities of causation and

associations of blame. It is disconcerting that terms such as “capacity-building” and “awareness-raising,” with their implication that communities or countries have not yet achieved a normative international standard, are routinely and unquestionably deployed in policy-oriented scholarship and in funding calls. We know from experience that suggestions that capacity-building and awareness-raising might be better aimed at the inhabitants of the Manhattan collecting community are met with blank, uncomprehending stares. Capacity-building and awareness-raising are for “them,” not for “us.” Building on the work of scholars such as James Clifford (1988), Sally Price (2001), Rick Elia (1993), and David Gill and Christopher Chippindale (1993), alongside the theoretical priority awarded to demand reduction, we advocate for a more ethical stance that objectifies and problematizes our own cultural and scholarly practices as ultimate generators of harm.

“Public criminology” examines the variety of ways academic research on crime can interface with and promote public discourse and progressive social policy on matters related to crime and justice (Loader and Sparks 2010). It considers things like: the receptiveness or otherwise of the political landscape to emerging, and sometimes challenging, social science evidence; the networks of the people involved and how they support or diminish the prospects of evidence-based policy; and, the ways that the internal structure of the academic role at universities can be developed to promote external engagement and policy-facing work. Recent projects on the illicit trade in cultural objects are good examples of public criminology, and some have achieved significant impact. For example, Morag Kersel’s research identified a loophole in Israel’s 1978 Antiquities Law, which requires licensed dealers to provide an itemized registry of their holdings (Kersel 2006). Ethnographic interviews with dealers revealed the reuse of registry numbers after providing vague descriptors in individual inventories. In 2016, a new directive was enacted requiring antiquities dealers to register their artifacts in a central digital database maintained and monitored by the Israel Antiquities Authority (see Ben Zion 2016). Despite the success stories, various features of the policy assemblage make legal and practical change a sometimes slow and difficult process.

As we see it, one of the fundamental problems facing policy making is lack of knowledge. A poor understanding of how the trade is organized and operates and of how it might be regulated hinders effective policy formulation. There are other problems too, but there is beyond doubt an urgent need for more constructive and coordinated research into the mechanics of the trade and potential regulatory solutions. In the following gap analysis, we identify what we believe to be shortfalls in present policy and policy making and suggest how theoretically informed, evidenced, collaborative research might help mitigate them. The cumulative outcome of closing the gaps would be more effective policy and reduced illicit trade (Figure 1).

### Gaps and Shortfalls in Policy Making

Starting from the premise that parts of the international policy fabric are threadbare, we want to examine the policy-making process itself. To be more precise, we want to identify potential and actual policy makers and their interactions. There are at least six stakeholder groups with a vested

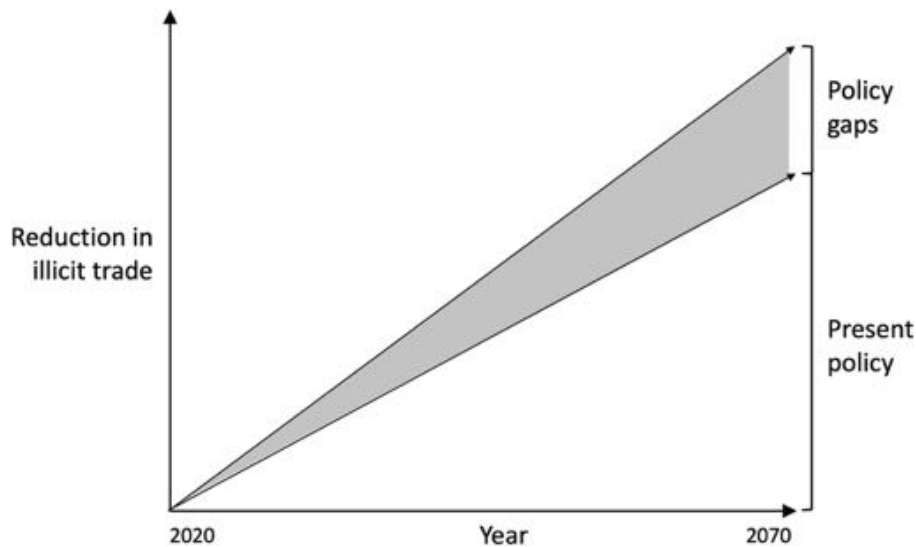


Figure 1. Policy gap analysis.

interest in trade regulation who could provide input into policy design and implementation: 1) intergovernmental organizations and international non-governmental organizations (IGOs and INGOs; e.g. UNESCO and ICOM); 2) international law enforcement organizations (e.g. WCO, Interpol, and Europol) and national law enforcement agencies (e.g. Carabinieri, Guardia Civil, and FBI); 3) the private sector (e.g. Art Loss Register and trade organizations); 4) civil society non-governmental organizations (NGOs, e.g. The Antiquities Coalition, Biladi, India Pride Project, and Safeguarding Archaeological Assets of Turkey) and other actors (e.g. journalists); 5) national governments (and supranational customs unions); and, 6) the academy (universities and equivalent research institutions, including some museums). In practice, however, the form and focus of international policy is largely determined by a small number of IGOs and INGOs (UNESCO n.d.; Torggler et al. 2014, 75–78); there is limited involvement of other stakeholder groups. Figure 2, for example, is taken from a public UNESCO presentation in 2017 depicting UNESCO’s vision of its coordinating role among international partners ICOM, UNIDROIT, Interpol, the WCO, the European Union, and UNODC (UNESCO 2017). Unfortunately, the IGOs and INGOs concerned are not always best suited to research the trade or to consider, develop, or suggest innovative policies, and it often falls outside of their mandate to do so. In our experience, they are under-staffed, under-resourced, and do not have the experience to conduct relevant research into the illegal movement of cultural objects. Nor do they have the propensity to engage with the results of emerging research that might feed into policy making, particularly research drawn from outside the limited field of cultural heritage law. Rather than cultivate expert in-house research capacity, they often hire one or more academic or private-sector researchers on short-term consultancy contracts to write key reports, whether or not the topic falls within the consultant researchers’ explicit area of expertise. The ad hoc arrangement of these short-term engagements often produces conclusions and recommendations that simply repeat those that have been produced before by other outsourced researchers. They pale in comparison to the deeper, more insightful, and independent analyses that would come from

collaborative academic teams dedicated to working on their own programs of specialized research.

In the absence of innovative research, policy formation has become path-dependent (Klein and Marmor 2006, 902), guided and constrained by long-established institutional interests and inherited understandings of both trade and regulation. Policy development builds on what is already established or becomes a process of “patch-and-mend,” which is not always bad, but is not conducive to new ways of thinking or doing that might offer more to the policy repertoire. Compounding the problem, the involvement of several institutions in policy making can provide a context in which any single institutional path departure can be seriously constrained by the expectations of partner institutions. What might emerge then is a kind of policy equilibrium, where balance and predictability is valued, and disruptive change is received as unwelcome and threatening.

Thus, we are faced with a situation where policy making is path-dependent, and the knowledge needed to inform new, effective policy development is often unavailable, insufficient, at times unreliable, or simply repetitive, providing few new insights. An inadequate understanding of the trade and an unfamiliarity with innovative forms of regulation combine to create questionable policy. In answer to Prott’s (2012, 5) request, we need to remedy weaknesses and build on strengths of presently established policy. To do this requires coherent and cumulative research rather than haphazard consultancy engagements. A more dedicated commitment to the ongoing analysis of the trade and fewer one-off reports commissioned to address specific current events will equip policy makers with more effective data and enable implementable programs.

### Gaps and Shortfalls in Quantifying the Trade

Presently, what appear to be simple questions relating to the size of the illicit trade cannot be answered. We require accurate statistics about the size (material volume and monetary value) of the trade and the physical damage it causes in order to assess its harmfulness, prioritize it in terms of resource allocation, and measure the effectiveness of any regulatory responses. One of the first questions asked by policy makers,





**Figure 2.** International cooperation against the illicit trade in cultural objects as presented by UNESCO (UNESCO 2017).

the media, and members of the public is “How much is the trade worth?” The prevailing perception is that the destructive potential of the trade can be measured in financial terms. A trade valued at millions of dollars annually is seen to be more damaging and more demanding of regulation than one valued only at thousands of dollars annually. Although price tags have strong cultural salience, it remains true that cultural and local loss cannot be quantified solely in monetary terms. But the question of financial worth is not altogether an irrelevant one. The monetary value of a stolen object determines how law enforcement agencies select cases for investigation, whether a crime is thoroughly investigated or not, or whether a transaction is reported to tax or anti-money laundering authorities (Gerstenblith 2007). In most

jurisdictions, the seriousness of a financial or property-related crime is judged by the sums of money involved. If a conviction is secured, sentencing is also reduced for “low-value,” presumed less harmful crimes (St Hilaire 2012). There are also very real concerns about the scale of criminal profits which feed into policy making and law enforcement. For the international community, a multi-million-dollar crime problem is more pressing for attention than a multi-thousand-dollar one.

Two recent reports have produced ball-park approximations of the size of the trade (Brodie et al. 2019, 87–96; Sargent et al. 2020, 69–85), though they are markedly imprecise and tinged with uncertainty. Both sampled only a small selection of all possible cultural objects and restricted their



**Figure 3.** Trenches and pockmarked landscapes from looting at A) Tell Shiek Hamed, B) Tell Sura, C) Tell Swihat in Syria (photographs by Ristam Abdo), and at D) Fifa, Jordan (photograph by Austin “Chad” Hill, courtesy of Landscapes of the Dead Project).

data-gathering to open-source information. More accurate and precise statistics could be obtained, but it would require an unprecedented input of time and energy. Quantifying the trade is not the straightforward exercise so often supposed. In the absence of good, reliable assessments of market size, strange and sensational numbers and claims of extreme value start churning around in the media, prompting public and political concern and creating demand for urgent policy response. There is, for example, the vexatious claim that the illicit trade in cultural objects is valued at billions of dollars annually and ranks with drugs and arms as one of the three most serious illicit trades (e.g. EC 2017, 10; Kouroupas 1998). The claim has been refuted many times (Brodie, Doole, and Watson 2000, 23–25; Fitz Gibbon 2005; Brodie et al. 2019, 78–79; Sargent et al. 2020, 84–85) but never seems to go away (Bardon 2020, 5). Da'esh was said to be making tens or hundreds of millions of dollars from the trade to bankroll its activities, and the policy makers were listening (e.g. Jenrick 2015; Smith and Neubert 2015; Gramer 2017). But again, it has been impossible to verify these figures (van Lit 2016, 63–64; Brodie et al. 2019, 113–115; Sargent et al. 2020, 9–12).

Unreliable media reporting provides a treacherous foundation for policy development. Any new policy initiatives developed in an atmosphere of media hype and based on poor-quality data are likely to fail. Not only do the misleading statistics of an insecure evidence base not support good policy making, they also actively undermine it by allowing the intrusion of persistent outlandish and unproven narratives. Time and resources are wasted countering both the unsupportable media claims of “extreme harm” and the equally unsupportable trade claims of “minimal harm,” while at the same time explaining and demonstrating why the issue still matters despite the absence of accurate numbers. The true value of cultural heritage and the tangible and intangible harms caused by the trade are lost in the discussion.

The focus on monetary value should be complemented by assessments of material damage. Cratered archaeological sites (see Figure 3) and mutilated temples demand attention in a way that the occasional looter's hole does not. Quantitative assessments of material damage are certainly possible. Satellite imagery is increasingly being used to quantify looting damage on the ground (Stone 2008, 2015; Contreras and Brodie 2010; Parcak et al. 2016; Casana and Laugier 2017; Masini and Lasaponara 2020). There are good estimates of the potential market value of a looted site (Brodie and Contreras 2012; Greenland et al. 2019; Kersel and Hill 2020). But these are not enough. There is an urgent need for additional and sustained quantitative assessments of this type from across the globe. Materially and visibly, they reflect the real but less obvious losses inflicted upon communities and societies. In effect, material damage offers a tangible indicator of harder-to-measure intangible social and cultural harms, and we should not lose sight of that fact (see Kersel 2007, 2012).

### Gaps and Shortfalls in Understanding the Trade

While it is important to investigate the size of the trade and the damage it causes, there are other major unresolved questions relating to the nature of the trade—its organization and operation. We need to answer those questions to be able to

design more appropriate regulation and target more effective law enforcement actions, all the while making best use of available resources. Many existing models are based on decades-old cases that do not always reflect the realities of present-day illicit trade. Press headlines often focus upon a trade in monetarily expensive objects of great cultural worth, so-called “ancient treasures” or “masterpieces,” sold at prestigious galleries and auction houses for the delectation of wealthy collectors. At the high end of the trade, it is true that objects of dubious origins are identified within and removed from nearly every major public auction or art fair offering ancient material (e.g. Tsirogiannis 2015; Alberge 2020; ANP 2020; Brussels Times 2020), but these objects have not necessarily been recently stolen or looted. Many of them have been in circulation for decades but are not recognized until most evidence of the crime has evaporated. That is not to say they should be left to circulate and not recovered for their dispossessed owners, but it must be understood that the presence of such objects on the market is not always an indicator of present-day illicit trade. The initial moment of harm and criminal profit might have long since passed.

The reality now is often more mundane—a trade in small, inexpensive objects aimed at the limited pockets of collectors interested in relics or curios as much as treasures (though ancient manuscripts and coins retain their cerebral appeal) (e.g. Ilan, Dahari, and Avni 1989; Topçuoğlu and Vorderstrasse 2019). Since 2000, internet and cellular communication technologies, along with metal detectors, have fundamentally changed the nature and scale of illicit trade in ways that our existing policy framework does not fully address (Brodie 2017). The internet has allowed for the creation of a nearly infinite number of storefronts for cultural objects, across all imaginable jurisdictions, while cutting out many of the key intermediaries that were once vital to the functioning of this market. Platforms like Instagram and Facebook facilitate direct communication between looters, intermediaries, and buyers (Huffer and Graham 2017; Al-Azm and Paul 2019; Sargent et al. 2020, 52–62). Messaging apps such as WhatsApp and Telegram allow secure transactions (Moos 2020). The internet has also transformed the types of cultural objects being marketed. Small, relatively inexpensive, and easily portable cultural objects such as coins currently make up the bulk of both online sales and police seizures (Petkova 2004; Campbell 2013; Brodie 2016). On-the-ground reporting also emphasizes the search for coins and other small objects (Brodie and Sabine 2018; Kersel 2019; Topçuoğlu and Vorderstrasse 2019). The organization of the trade seems to have changed along with the nature of material traded, with more dispersed, opportunistic, and less-specialized criminal networks coming to work alongside the more traditionally organized high-value supply chains headed up by well-connected dealers (Kersel 2007, 2019; Mackenzie 2011; Campbell 2013; Mackenzie and Davis 2014; Brodie 2019a; Kersel and Hill 2019). The existing regulatory framework does not appropriately address low-value but high-volume cross-jurisdictional internet transactions. Small objects fall through the regulatory cracks or are not even considered important enough for regulatory action. Relevant European Union Regulations, for example, incorporate value judgements or thresholds that exclude low-value objects from their control measures (EC 2008, 2019). EU Regulation 2019/880 on the import of cultural goods,

which is intended to control the import of cultural objects into the European Union, was drafted with a view to reducing financing extracted by terrorist groups from the illicit trade in countries such as Syria (Brodie 2020a). It specifically excludes coins valued at less than €18,000 EUR from any control requirements. Yet most studies of looting and trafficking inside Syria have emphasized the importance of coins (Brodie and Sabrine 2018; Al-Azm and Paul 2019). If policy makers do not have access to reliable information about the nature of the trade, they cannot be expected to draft an appropriate regulatory response.

There are other unanswered questions about the illicit trade that have important ramifications for public policy and law enforcement. Most obviously, there is the existence of emerging markets in the Gulf states, Russia, eastern Asia, and beyond. Referenced often, little concrete research exists on the nature of these markets, largely because there are very few researchers with the necessary linguistic and cultural expertise. These markets might now comprise the major destinations for high value objects, but it is hard to know for certain. How do trades in different types of material differ materially and organizationally? Has the internet, for example, transformed the trade of objects from south and southeast Asia in the same way as it has the trade of objects from the Mediterranean region? The financial aspects of the trade remain underexamined and insufficiently understood. There is a growing body of work looking at prices and the determinants of prices (e.g. Beltrametti and Marrone 2016; Brodie 2019b; Mackenzie et al. 2020, 94–114), but it is focused on the objects being transacted, and virtually nothing is known about the financing of the trade and profit making. Important questions relating to issues of money transfer and laundering remain unanswered. The use of cultural objects for money laundering has been the subject of a small number of studies (e.g. Woodman 2020), but the limited scope of this research does not reflect the increasingly central role that financial crime investigation now plays as a tool for law enforcement.

Scholarly research into the trade predominantly concerns its material characteristics: what is traded, what it is worth, and what physical damage is caused by its movement. This focus is not surprising, given the cultural significance of the material being traded and the fact that many researchers are material culture specialists such as archaeologists, art historians, or ancillary scholars, alongside legal researchers who have focused on questions related to property ownership, with an added sprinkling of criminologists. There is little involvement of scholars with experience in researching the socioeconomic and cultural contexts of markets, criminal or otherwise. This lack of diverse disciplinary backgrounds among researchers creates critical gaps in our knowledge. Currently, there is a fundamental lack of basic interdisciplinary research conducted by scholars with the necessary expertise into even the most elementary aspects of the illicit trade, which seriously hinders productive policy formation.

### Gaps and Shortfalls in Legislative and Normative Means of Regulation

While the nature and scale of illicit trade are poorly understood, our comprehension of possible means of regulation is worse. At the present time, management of the trade in cultural objects hinges primarily on national and

international legislative efforts, informed by principles and practices introduced by the UNESCO Convention and a subsequent series of clarifying and strengthening laws and normative recommendations (Prott 2012, 3). In this way, the UNESCO Convention has been of central importance for the development of international public policy (O’Keefe 2017). Yet, while law enforcement might have slightly reduced the illicit trade in cultural objects, it has not succeeded in eradicating it completely or even substantially. The illicit trade endures. Criminals can navigate profitably through the jurisdictional discontinuities that have developed between determinations of property ownership, statutes of limitation, concepts of good faith purchase, due diligence, and monetary thresholds, among other issues.

One obvious problem is that the UNESCO Convention is not self-executing, and implementations vary widely from State Party to State Party. Some align to already existing national law and are open to reservations (Gerstenblith 2007; Prott 2012, 4; Torggler et al. 2014, 21–34). In theory, it would be possible to pursue more rigorous implementations, such as that achieved by Germany with its 2016 Kulturgutschutzgesetz (Cultural Property Protection Act). But the art dealing lobby in many countries discourages the adoption of what it argues to be market-restricting measures that will damage legitimate and profitable economic activity. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was designed to rectify some of the problems of the UNESCO Convention (Prott 1997), but again, successful lobbying has prevented its adoption by the most important market states. In these countries, international calls to develop national policy by the adoption or more rigorous implementation of international conventions is akin to doing nothing, a lost opportunity at best, an abdication of leadership at worst. The strengthening and harmonization of the various implementations of international conventions and of national laws more generally is an important long-term goal, but in the meantime, at the national level, something more is needed. In the short-to-medium term, the effectiveness and political acceptability of other regulatory options should be researched and assessed.

The presently established regulatory framework ushered in by the UNESCO Convention might be characterized as a system of command-and-control regulation incorporating legal and ethical disincentives to crime (Baldwin, Cave, and Lodge 2010, 8–9). First, as is the norm in the criminal justice system generally, this system attempts to deter criminal and otherwise illicit activity by diminishing incentives through punitive sanctions for those caught engaging in theft and illicit trade. Energetic law enforcement in places like Italy (Somers Cocks 2018), Spain (Muñoz and Morcillo 2018a, 2018b), and New York (SDNY 2020) has certainly been effective. But in too many market countries, the threat posed to lawbreaking traders by punitive sanctions is known to be minimal. It does not pose a realistic deterrent because of the jurisdictional gaps and fractures that impede international action. The international policy response is to call upon national governments to increase law enforcement capacity. But again, such initiatives are opposed by the art dealing lobby, particularly in the absence of any reliable assessments of the size and harmfulness of the trade. The supporting strategy has been to encourage trade self-regulation through the development of ethical codes of conduct, which does enjoy



the endorsement of the art dealing lobby, though the evidence shows such codes to be often opaque and ineffectual (Mackenzie et al. 2020, 118–121). Guidelines are vague, and there is no external oversight. There are many documented infractions, though there do not appear to be any attendant penalties (e.g. Tsirogiannis 2020).

In the years since 1970, many innovative, non-legislative schemes for controlling socially or environmentally harmful trades and hazardous businesses have been introduced which are not and could not have been included in the regulatory vision set out by the UNESCO Convention. Since then, a more nuanced body of regulatory theory and practice has developed, incorporating social and economic strategies of crime control that address the market dynamics underpinning illicit trade, treating people as responsible citizens to be “steered” rather than as criminal offenders to be alienated. They include strategies encouraging good behavior, as well as discouraging harmful acts. Persuasion and negotiation might have a greater pragmatic deterrent effect than the minimal threat of punishment (see Figure 4; Ayres and Braithwaite 1992; Mackenzie 2005; Jennings and Rand 2008; Baldwin, Cave, and Lodge 2010). And when we refer here to persuasion, we are not simply advocating for more awareness-raising or ethical guidance. Rather, we are seeking to explore stronger regulatory systems aimed at reducing demand for illicit objects by encouraging or rewarding responsible collecting and trading. One way forward might be to explore the possibilities of an externally monitored, ethical consumption market (Mackenzie et al. 2020, 122–126). Developing the Good Collector concept (McIntosh, Togola, and McIntosh 1995), Kersel (2021) recently articulated a set of criteria for Smart(er) Collectors: more responsible individuals and institutions who note red flags, ask questions about ownership history, check relevant databases, report anything suspicious, return artifacts, and contact representatives of museums and ministries of culture in the country of origin about any potential purchases. It has been suggested that UNESCO should develop such innovative means of regulation and adopt a role as external monitor (Prott 2012, 8), though there has been no discernible progress in that direction.

There is fertile ground here for comparative research into other illicit trades or harmful enterprises that might suggest policy options complementary to those already in place (e.g. Mackenzie 2015; Mackenzie and Yates 2016). Again, this work needs to be interdisciplinary and conducted by individuals, or preferably teams, possessing a good, in-depth understanding of the trade in cultural objects as it currently exists, together, as appropriate, with knowledge of comparative trades or businesses. We should emphasize once again that in calling for the development and application of novel regulatory solutions, we are not arguing for the disregard of established governing regimes, nor that efforts to achieve more rigorous and harmonized implementations of national and international law should be abandoned. Far from it. We are suggesting short-to-medium term additions to the long-term and perhaps even unattainable policy goals of legal harmonization and enhanced law enforcement.

### Gaps and Shortfalls in Expectations

We know from formal interviews and informal conversations, research, and personal experience that, as well as

providing assessments of the nature and scale of the trade and the damage it causes, IGOs, INGOs, and some (but not all) law enforcement agencies would like scholars to monitor the market for illicitly traded objects. These agencies report that this expectation is rarely achieved. Most university-based archaeologists and anthropologists do not monitor the market for illicitly traded objects, whether it is because they do not have the time, they do not consider it to be part of their job, or they do not know how. University employees are paid to teach and/or to carry out research and are not rewarded with tenure, promotion, or funding for monitoring the market during work time unless it contributes directly to contractual obligations. The alternative, and often the expectation, is that academics should conduct this work in the evenings or weekends after work, offering their services free of charge out of altruistic love for their subject matter. Some do exactly that and receive little academic credit in return. We think the expectation of unpaid scholarly labor is not much more than a cheap performative policy ploy, offering the appearance of action while failing to fund and develop something more substantial, sustainable, and effective. In any case, monitoring the market is not as easy as it might appear. It does not take long to find suspicious-looking objects for sale on the internet and to notify the police, but the police are unlikely to act unless there is strong evidence of wrongdoing, which is much more difficult to obtain. Researchers must have the expertise to recognize objects with a high probability of having been recently traded illegally, to understand what kind of evidence is necessary to enable police action, and to know how to obtain it. This is a unique combination of expertise not typically available within the scholarly community, and to act without it runs the risk of wasting police time.

It is also important to recognize that university-based research is constrained by ethical and legal requirements to “do no harm” (AAA 2012). We say that because we believe there is an emerging opinion among IGOs and INGOs that market monitoring should be used for unravelling trafficking networks and identifying criminals; to function, in fact, as surrogate police work. Such work is invaluable in several contexts, and not only when the request comes from a country whose heritage is at risk. But when this type of activity is conducted in university settings, it is subject to human rights, privacy, and data-sharing laws and broader ethical injunctions about the protection of research subjects. Researcher openness and research subject anonymity are key. Article 17(b) of the American Society of Criminology (ASC) Code of Ethics, for example, proscribes undercover or other deceptive methods of research when it requires that researchers “do not mislead respondents to purposes for which research is being conducted” (ASC n.d.). Article 18 of the same code requires that “ASC members do not use their positions as professionals, researchers or faculty, as a pretext for gathering intelligence for any organizations (including consulting firms and non-profit groups) or governments” (ASC n.d.). Compiling and sharing evidence about criminal actions with organizations and governments, including law enforcement agencies, can have real, iniquitous consequences. In some jurisdictions, due process and a fair trial cannot be guaranteed. Nor can fair sentencing be assumed for convicted offenders. It was reported from Saddam Hussein’s Iraq, for example, that in 1998, six people were executed for stealing the head of an Assyrian winged

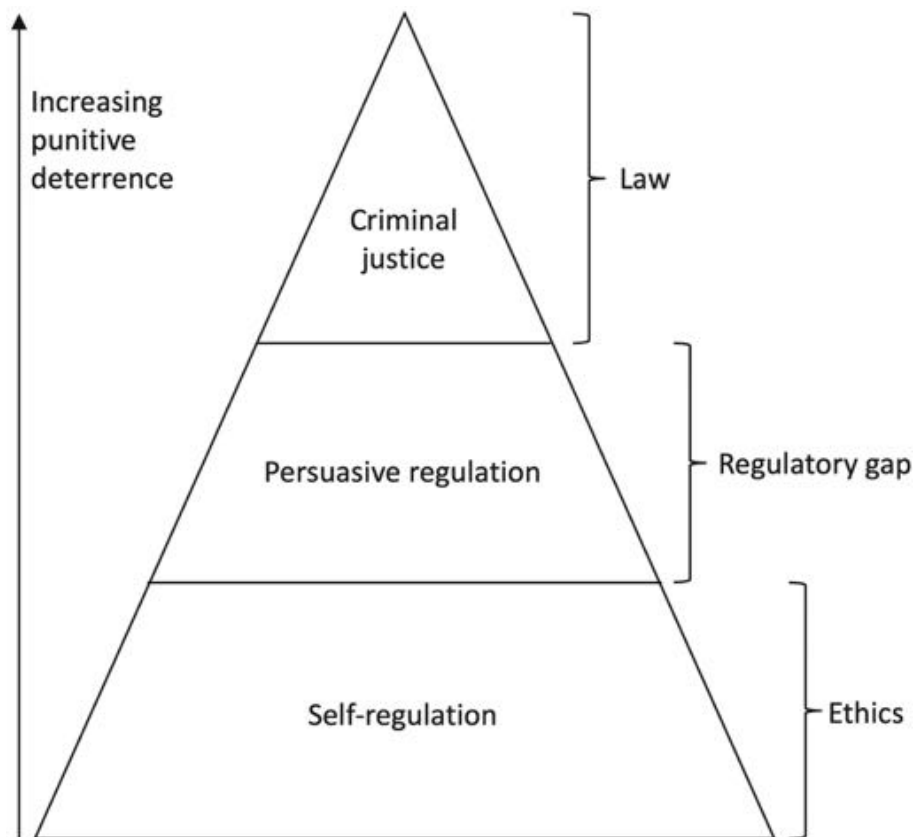


Figure 4. The regulatory gap between law and ethics.

bull from Khorsabad (Crossette 1998). At the time, it was believed that Saddam's brother-in-law Arshad Yashin was centrally involved in the smuggling of antiquities out of Iraq, before being told to desist by Saddam (Sandler 2004). He is presently believed to be alive and well in Qatar. In authoritarian regimes, justice is a malleable concept, often protecting the powerful and victimizing the weak. Information sharing with law enforcement agencies cannot be countenanced in such circumstances.

Having said all that, we commonly do report sightings of illicitly traded objects on the market, often raising provenance issues (e.g. Brodie 2020b; Yates 2020). These reports may assist in the recovery of stolen objects but might also attract the attention of law enforcement and further their criminal investigations. Is there an ethical line to be drawn between the long-accepted academic practice of provenance research, which almost by definition depends upon personal identifications, and the publication of personal information about suspect actors or known criminals? Where exactly that dividing line should be drawn remains to be established. Given the increasing internet availability of open-source intelligence (OSINT) and accessibility of Deepnet sites, concerns about the ethical propriety of deceptive or undercover research and the nature of information sharing will only become more acute. There are crosscutting legal and ethical issues here that we cannot adequately address in this paper but which certainly warrant discussion and resolution for any prospective or established university-based market monitoring schemes. But for the time being, it is enough to know that understanding why and how a crime is committed, the nature and harmful consequences of that crime, and how regulatory interventions might reduce crime, can

be of far more critical benefit to policy development, and thus diminishment of illicit trade, than working with law enforcement to apprehend a limited number of criminals.

### Gaps and Shortfalls in Communication and Information Sharing

Two of us (Brodie and Yates) were among the authors of a recent European Commission (EC) report on the illicit trade in cultural objects (Brodie et al. 2019). While preparing the report, we struggled to access any reliable information concerning the trade, either through literature review or stakeholder survey and interview. There was a dearth of trustworthy evidence for answering even basic questions about the size of the trade. In the report, we explored reasons why such information is not available, concluding that ineffective data collection by law enforcement and criminal justice agencies, poor intra- and inter-agency collaboration, and poor information sharing between those agencies and the public comprise some roots of the problem. In our introduction to this paper, for example, we noted 213 arrests made during three international Pandora operations, yet we struggled to find any follow-up reporting. Were the arrested people convicted or allowed to go free? How were they moving and marketing material? What were the financial arrangements? We have no answers to any of those questions. Similarly, while sometimes the return of confiscated objects is legally mandated, often it is the result of diplomatic and other behind-the-scenes negotiations which obscure rather than make transparent the criminal activities underwriting their illicit trade (see Luke and Kersel 2013 for a discussion of objects as agents of diplomacy). In this context,



the actions of New York authorities in making publicly available the detailed documentation of their arrest and seizure warrants shine out like transformative beams of illuminating light (e.g. New York 2019). We wish other agencies would follow their example.

Aimed primarily at criminal justice and law enforcement, the EC report also identified problems of communication and information sharing within academia. A good information source may be crucial to a scholar's research, reputation, and employability and will be closely guarded in consequence. Collegial researchers who are interested in this topic and willing to share information are physically dispersed or face institutional barriers to ongoing digital collaboration, particularly when such work is not the primary focus of their academic job. Research is generally presented at one-off conferences and workshops and published in academic journals or edited volumes, where it fails to reach researchers in other disciplines or policy makers who could benefit from it. It is scattered among book chapters and non-open-access academic journal papers, typically written in English. It is housed on poorly maintained websites and on academics' hard drives at unconnected institutions around the world. It suffers from not being linked together in any meaningful way to enable a local, regional, or global understanding of this issue. There is no central repository of information accessible to other researchers, law enforcement, local governments, etc. Meanwhile, this information is aging. Databases and websites are not maintained; they are falling out of date, and updates are both logistically and financially impossible. With limited access to this material, policy makers and their bought-in researchers fall back on media reporting and open-access or OSINT materials, which, by excluding what might be good though not easily accessible information, cannot in themselves provide a complete view of the problem.

IGOs and INGOs are not exempt from this criticism. We have experienced what could be called claim-staking or territoriality among IGOs and INGOs that are ostensibly concerned with deciding or guiding policy but which appear to be more interested in protecting their own perceived mandates or attracting funding to support their ongoing activities. This is understandable, as we are all vying for financial support of our work. Certain IGOs and INGOs assert competence and authority in trade-related issues within the public and policy spheres, claiming that other stakeholder groups should accept their policy guidance or be excluded from the policy-making process. In our experience, the competence of an IGO or INGO reflects the competence of its individual officers, which sometimes is excellent but other times falls short. Some of these IGOs and INGOs seem to view other stakeholder groups more as competitors than as colleagues, sometimes siloing information from each other and from other stakeholders to the detriment of collaboration and innovation. Meanwhile, their claims to "know best" can act to divert funding away from the type of research initiatives that could improve the policy landscape.

Due to poor communication, we see projects continually re-inventing the wheel: they spend time and money asking the same questions, developing the same methods, chasing the same information, conducting the same analyses, and producing the same conclusions as previous or parallel projects. It encourages the policy path dependency we identified earlier and wastes time and money. The general lack of good

quality data sources discourages researchers from entering the field in the first place, and, inasmuch as research follows information, research questions come to be structured around what information is available, an exercise in what is achievable rather than what is needed or would be most productive and useful.

### Gaps and Shortfalls in Funding

Current funding models supporting research into the illicit trade in cultural objects are woefully inadequate in terms both of accessibility and sustainability. Generally speaking, we see funding to be channeled through two types of agencies: what we characterize as academic-sector agencies (e.g. European Research Council [ERC] and National Endowment for the Humanities), with funding directed towards research in universities and comparable institutions of higher learning, and humanitarian agencies (e.g. ALIPH and the UK's Cultural Protection Fund), with funding directed towards practical action aimed at public education, training, technical development or assessment, networking, etc. Academic-sector agencies do not fund applied research of the type that we believe is needed and are advocating here. Humanitarian agencies rarely fund research of any sort. Neither type of agency is a source of sustainable funding.

Competitive funding offered by academic-sector agencies generally requires research projects to possess a sophisticated theoretical framework or to be methodologically innovative—what the ERC, for example, terms "frontier research." In our experience, it is rare that an academic funding body will support what it would consider to be applied research aimed at answering simple questions about the trade in cultural objects unless it is embedded within a larger project aimed at producing novel understandings of the problem or innovative solutions. Several of the quantitative assessments we referenced earlier, for example, were conducted as exercises demonstrating the methodological utility of a novel algorithm or technology that was not then deployed for further applied research. The funding was to support the development of the methodology, not to investigate a real-world problem. Applied research of the type needed is generally poorly regarded in universities (Brodie 2018, 726–728).

By and large, humanitarian agencies do not believe it to be within their remit to fund primary research. We believe this to be short-sighted. Without a secure understanding of problems and solutions obtained through research, these agencies cannot guarantee or even judge the suitability or success of projects they do fund. There is surely room here for hybrid projects incorporating research as a component of practical action, perhaps through the agency of civil society NGOs. We believe the failure to countenance such projects is a missed opportunity.

Particularly in the case of funding from academic-sector agencies, true and meaningful research collaboration with local in-country experts and authorities is either not required, is indirectly discouraged, or is rendered impossible by the intricacies of grant awarding and payment conditions. As we have already observed, there remains a strong sense that research is conducted "on" people from countries where illicit cultural objects originate, not "with" them. Although grantees usually must display some commitment

to “knowledge sharing,” this rarely involves knowledge co-creation and usually takes the form of one-off training exercises or the equivalent. Researchers who do wish to include meaningful and equitable local collaborations in their research are often prevented from doing so by barriers to paying salaries to experts working outside of European and North American institutions or by local payment processes and informal economies that do not conform to the needs of European/North American financial accounting procedures. Funding bodies that do require local collaboration often accept token representation rather than requiring strong evidence of meaningful partnership. Humanitarian agencies are more proactive in fostering meaningful partnerships, but they do not fund research. They are also likely to respond to immediate heritage crises, with limited consideration of the sustainability of the work supported and cross-cultural applicability of any data that is gathered. Altogether, the situation is nothing short of disastrous. Local in-country universities and NGOs can conduct crucial research (Cunliffe 2016; Sabrine and Cunliffe *forthcoming*), but the necessary funding is either not structured appropriately or is not available.

The short-termism of much research funding is another problem. Researchers sometimes secure competitive funding, but for discretely defined “frontier” projects that do not always address the current concerns or requirements of policy makers. These projects generate a short burst of activity, training students and new researchers and developing research capacity, but then fade away once the funding expires. Training and then dismissing and dispersing researchers is not how research capacity is built. Most major funders explicitly decline to consider applications for follow-on funding other than for specific spinning-off activities in relation to the key findings of the main funded program of research, such as a brief burst of post-project impact work. Rather than fund what they consider to be more of the same, most large funders view their first investment in a project team to be also their last, hoping that they are pump-priming a program of activity that will prove successful and somehow sustainable. Unfortunately, this amounts to structural obsolescence for most research teams. This is demonstrated by the fact that the majority of funded projects end after their fixed term of initial funding runs out, with the temporarily employed researchers heading off to other jobs while the permanent staff turn their focus to other projects that hold prospects of new funding income streams. Funding models should be reconfigured to include money aimed at supporting the implementation of the results of the originally supported research. Even where scholars with a personal research interest in the trade in cultural objects and who have permanent or faculty positions do exist, they are not replaced by similarly interested scholars upon retirement. There is no continuity of expertise, resulting in very little institutional memory on which to build. The information decay due to deteriorating websites and databases we noted in the previous section is also attributable to the expiration of time-limited funding that enabled their construction in the first place.

We are yet to see the development of a critical mass of experienced and active researchers who are ready and able to conduct good quality research. And this is not a trivial problem. There are serious methodological, logistical, and

ethical difficulties in conducting empirical research into the illicit trade in cultural objects (Mackenzie 2019). Information is scattered, inaccessible, and often risky to obtain. Risks range from threats of physical violence through to legal action. Intimidation is a feature of the field and can act to misdirect or dilute research. When combined with the problems of information siloing and decay already discussed, there is an inducement for inexperienced researchers to veer off into safer channels of research and to avoid what in policy terms might be more productive and desirable possibilities. We note the increasing, and to our minds regrettable, tendency for insufficiently supervised early career researchers to circulate questionnaires canvassing the opinions of more experienced researchers, a practice which flirts dangerously close to plagiarism and is often ethically insecure, calling into question the competence of erstwhile supervisors. It is not useable research.

These problems are not insuperable. Research into illicit markets more generally faces a similar set of discouraging obstacles, but methodologies and techniques have been devised to overcome them. Experienced researchers can provide advice and mentoring. Unfortunately, in the context of time-limited projects, the necessary experience is not always on hand. Even when targeted funding is made available for projects to answer specific questions about the trade, there are not enough suitably experienced researchers to answer the call. The funding then gravitates towards organizations, particularly private-sector ones, with the competence necessary to conduct basic research through accessing media reports and open-access materials. As we have noted, that type of research is unlikely to increase specialized research capacity or to break new ground or suggest anything innovative. Once more, there is the ever-present danger of reinventing the wheel that will convey us further down the same old policy path.

### **Closing (Some of) the Gaps: A Permanent Research Group**

We have described what we see to be a series of gaps and shortfalls in current policy and policy making. A potential solution may be the creation of one or more permanently established collaborative groups conducting theoretically informed, evidence-based research into the trade in cultural objects that would provide the ongoing platform needed to close these gaps and make up shortfalls. Such a group or groups would provide governments, INGOs, and IGOs with the knowledge and understandings necessary to develop and implement more effective policy. The group or groups would ideally be distributed among one or more universities or equivalent research institutions around the world and spread across different disciplines and would include in-country co-creators. The group or groups would serve to consolidate expertise on this topic and would: conduct research into the trade in cultural objects and its regulation; be available to answer specific calls for research, advice, or information from policy makers; develop sustainable strategies of collaboration and coordination between different groups of stakeholders (including the private sector, NGOs, and other civil society actors); develop sustainable and equitable working relationships with in-country researchers and other interested stakeholders (including NGOs and other civil society actors); promote information

gathering and exchange by developing institutional repositories, including sustainable databases and websites; build research capacity through teaching and training (including expert supervision and mentoring for postgraduate students); develop ethically justifiable programs of market monitoring; and, attract further financial support for the above-listed activities.

To support the establishment and ongoing work of such a group or groups, we need a sustainable strategy of resource allocation to end the short-termism of time-limited, sometimes reactive project funding. This statement may appear to be special pleading, in that all research scholars are operating within the same competitive funding environments. But we are not asking for additional funding to be made available. Funding for research into the trade is not always wisely distributed, and it could be utilized more effectively. We have witnessed literally tens-of-millions of pounds/dollars/euros poured into projects ostensibly aimed at diminishing the illicit trade in cultural objects; targeted and short-term funding that we believe has not always produced useful results. These sums of money are of a magnitude far surpassing anything being directed towards the subject matter of many other disciplines. We suggest that some of the current funding for time-limited projects should be used instead for the endowment of permanent positions or institutions that can then act over the long-term to anchor and provide sustainability for the broader group(s) and to guarantee the necessary institutional support. Though most of us are affiliated to the Trafficking Culture research consortium (Trafficking Culture n.d., <https://traffickingculture.org/>), working together with Heritage for Peace (Heritage for Peace n.d., <https://www.heritageforpeace.org/>), we make no prior claim to be that group, or even part of it. Our call is for the creation and reliable funding of a research architecture more rooted in stability and sustainability than current arrangements allow. We are making the case here for a collaborative academic center of gravity, not for any particular people to be involved.

The primary research agenda of such a group would be interdisciplinary and comparative, global in scope, drawing upon research conducted into other illicit trades and hazardous businesses, and promoting engagement with new competency areas, both inside and outside academia. The most obvious disciplinary starting points for the group(s) would reflect those represented by the authors of this paper and by other scholars we are aware of in law, archaeology/anthropology, sociology, and criminology. As we have argued, though, other disciplines would need to be involved, such as economics, organizational studies, political science, international relations, etc.

Sharp-eyed readers will notice the inclusion of the ILLICID Project on the UNESCO diagram of international collaboration reproduced as [Figure 2](#). This inclusion confirms our criticism of time-limited project funding. The ILLICID Project ran from 2015–2019 to assess the size of the illicit trade in cultural objects through Germany. Its final report was published (Hemeier and Hilgert 2019), and then the project was disbanded. In August 2021, as this paper was going to press, the German government announced the three-year follow-up NEXUD Project (Hickley 2021). The announcement came a few months after the more dispiriting February 2021 announcement that the Circulating Artefacts (CircArt) project at the British Museum had also ended. One project

ends and another starts up. We hope the NEXUD Project leads to something more permanent, though we are not optimistic. But by including the ILLICID Project in its international collaboration, UNESCO demonstrates its desire to establish credible research partnerships. Various UNESCO publications back through time list other research partners that have also faded from view as funding has expired (e.g. Torggler et al. 2014, 80; UNESCO n.d). In 1997, Patrick O’Keefe argued similarly for the need of what he termed a “resource center” (O’Keefe 1997, 104–105), but nothing much has happened since then. UNESCO can only partner with what is available, and we confidently expect that UNESCO would welcome a permanently established and internationally recognized research group into its policy-making family.

It is now 50 years since the adoption of the UNESCO Convention, and regardless of international policy development since then, the illicit trade in cultural objects endures. We still lack the basic understandings needed to craft an effective policy response. To some extent, new public policy that is being developed and implemented may be focused on the wrong problem (due to an anachronistic understanding of the trade) and applying the incorrect solution (due to a poor understanding of regulatory options). One or more permanently established interdisciplinary research groups committed to local inclusion and collaboration would help prevent another 50 years of disarticulated research, short-term projects, information siloing, and poor research capacity building and go some way towards making good the consequent policy gaps and shortfalls we have identified. We are not so naive as to suppose such a research group would eradicate illicit trade. No doubt one of its first recommendations would be for the establishment of a parallel and perhaps interacting international law enforcement grouping, perhaps building on and structured around the work of Interpol. But fifty years on from the UNESCO Convention, in policy terms, we do not just need more of the same. It is high time we started thinking about something new and more effective for tackling the illicit trade in cultural objects.

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