

DISCUSSION PAPER N° IDB-DP-01084

# Cultural Property, Art and Money Laundering

## A Look at the Crime Behind the Canvas

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Inter-American Development Bank  
Institutional Capacity of the State Division  
Competitiveness, Technology and Innovation Division

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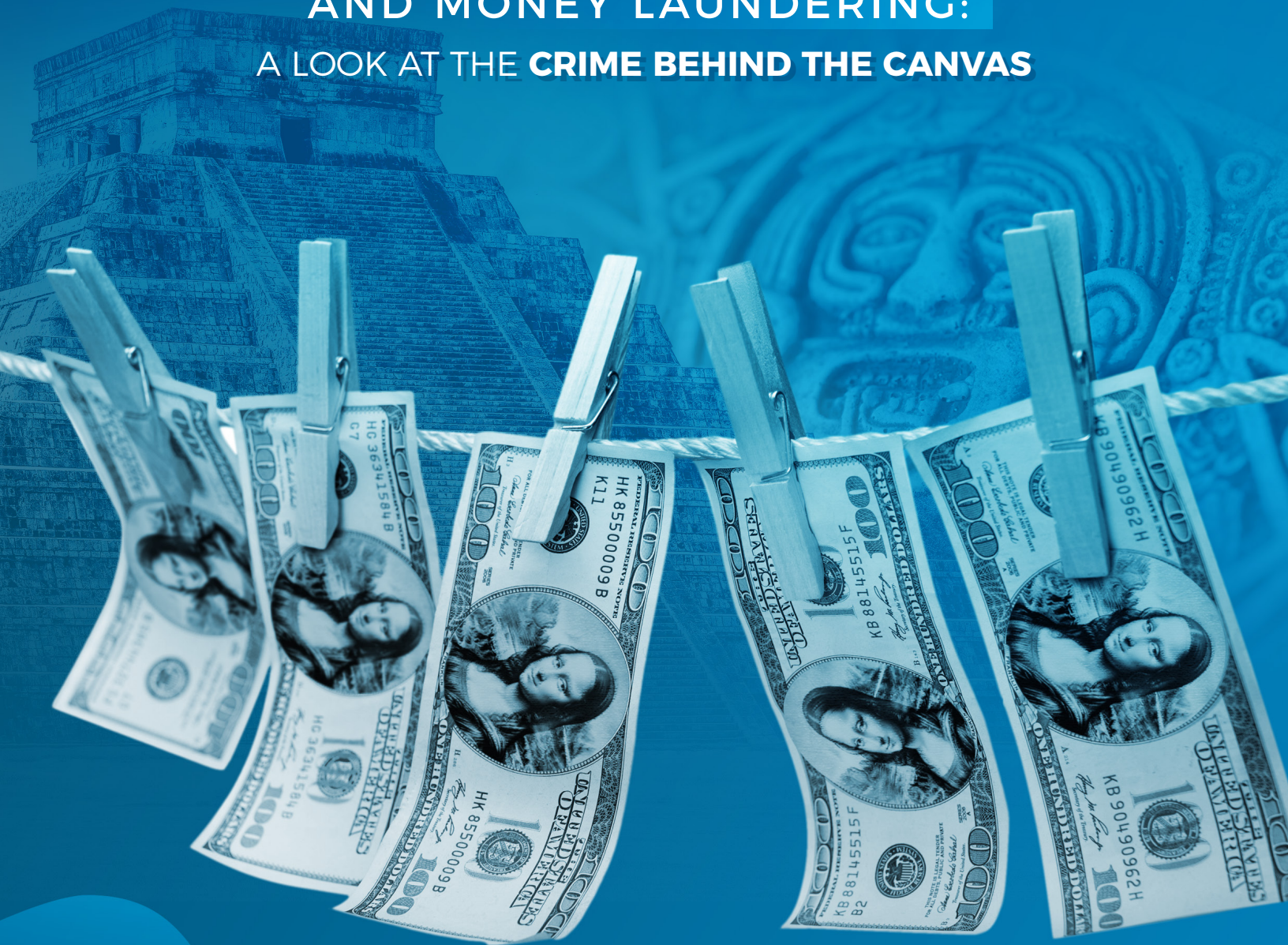
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# CULTURAL PROPERTY, ART

AND MONEY LAUNDERING:  
A LOOK AT THE **CRIME BEHIND THE CANVAS**



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# Cultural Property, Art and Money Laundering: A Look at the Crime Behind the Canvas

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**March 2025**

## **Abstract**

The art market and cultural heritage assets are vulnerable to money laundering and its predicate offenses, which compromises their integrity. Although this market is difficult to measure, it is possible to affirm that goods are traded at very significant values, creating opportunities for illicit activities by both individuals and criminal organizations. This study identifies that countries do not properly assess money laundering risks in these markets, nor do they consistently implement appropriate policies to mitigate them. The problem does not appear to lie in a significant regulatory deficit but rather in the lack of institutional capacity to effectively enforce existing rules. This challenge is compounded by the need to strengthen institutional coordination at the domestic level and international cooperation. Five areas of work are proposed to address the identified challenges: (i) improve knowledge of sector risks; (ii) adopt effective rules that respond to identified risks; (iii) strengthen institutional capacity and international cooperation; (iv) promote public-private partnerships to protect heritage and the market; and (v) leverage digital technologies as tools to support policy solutions.

**JEL Codes:** K11, K30, K42

**Keywords:** institutional capacity, estate regulation, cultural heritage, art market, money laundering, public-private coordination, international cooperation

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## List of Acronyms

**AML/CFT:** Anti-Money Laundering and Combating the Financing of Terrorism

**LAC:** Latin America and the Caribbean

**ANF:** Al-Nusra Front

**BSA:** Bank Secrecy Act

**ADA:** Art Dealers Association of America

**NRA:** National money laundering risk assessments

**FATF:** Financial Action Task Force

**ICOM:** International Council of Museums

**ISIL:** Islamic State of Iraq and the Levant

**MONDIACULT:** UNESCO World Conference on Cultural Policies and Sustainable Development

**MROS:** Money Laundering Reporting Office Switzerland

**NFT:** Non-Fungible Tokens

**OAS:** Organization of American States

**WCO:** World Customs Organization

**GDP:** Gross Domestic Product

**UNSCR:** United Nations Security Council Resolution

**FIU:** Financial Intelligence Unit

**UKFIU:** United Kingdom Financial Intelligence Unit

**UNESCO:** United Nations Educational, Scientific and Cultural Organization

**UNIDROIT:** International Institute for the Unification of Private Law

**UNODC:** United Nations Office on Drugs and Crime

## Executive Summary

The objective of this paper is to analyze the risks of money laundering and its predicate offenses in the art market, with special attention to cultural heritage and, specifically, tangible goods. This study examines similarities with other art markets, including transactions involving digital works. Additionally, it analyzes the role of the key public and private actors that interact with these assets and describes the different forms of transactions involving them.

The following pages also examine the set of international norms and standards in this area, as well as the institutions responsible for ensuring compliance with them.

There is a broad set of international treaties and rules that provide resources to prevent, detect, investigate, and punish crimes affecting these goods, the countries to which they belong, and the markets where they are traded. Among other norms, the following are considered: the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter "the UNESCO Convention"); the 2000 United Nations Convention against Transnational Organized Crime and its Protocols (hereinafter "the Palermo Convention"); and the Financial Action Task Force's International Standards on Combating Money Laundering, Terrorist Financing and the Financing of the Proliferation of Weapons of Mass Destruction (hereinafter "the FATF Standards")<sup>1</sup>. Also worth mentioning is the Declaration for Culture, signed within the framework of the MONDIACULT Conference organized by UNESCO in 2022, whose text declares that culture is a global

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<sup>1</sup> The Spanish version of the FATF Standards can be found at: <https://www.gafilat.org/index.php/es/las-40-recomendaciones/>.

public good and establishes a commitment by countries around a common roadmap to strengthen public policies in this area.

The main conclusions are the following. First, money laundering risks associated with art objects are often insufficiently assessed using empirical evidence. Consequently, policy responses are not always appropriate to the risks identified. Second, despite the existence of multiple international rules and standards, they do not always offer a systematic, coordinated, and comprehensive response to the problem. The absence of specific rules on the subject, as well as processes to ensure compliance, has undermined the homogeneity of criteria and the possibility of providing a coordinated approach among countries to ensure effective cooperation. Since money laundering and terrorist financing are transnational crimes, a coordinated international response is essential to achieve results.

The capacity of institutions responsible for enforcing these rules and protecting art objects from the risks to which they are exposed, including money laundering, is insufficient. This challenge is related to two closely linked aspects: (i) the capacity and resources of agencies with primary responsibility for the protection, regulation, and supervision of art objects; and (ii) insufficient coordination among agencies related to the prevention, detection, and prosecution of money laundering and its predicate offenses.

The recommendations of this study point to five areas of work: (i) improve knowledge of sector risks to enhance prevention; (ii) review existing legal norms and ensure the adoption of effective rules that respond to identified risks; (iii) strengthen institutional capacity and international coordination to underpin the effectiveness of the prevention and sanction regime; (iv) analyze the potential for public-private partnerships to protect assets and the market; and (v) leverage digital technologies to support policy solutions.

This study is aimed at various audiences, particularly those in the public sector who have responsibilities in matters of artistic heritage, art in general, and the prevention of money laundering. For this reason, it presents some policy

proposals, ideas for political and technical dialogue, as well as ideas for a research agenda that responds to these challenges and deepens the discussion.

We thank Paula Acosta, Trinidad Zaldívar Peralta, Cecilia Alvarez Bollea, Martin Inthamoussu, Marcela Duque Penagos, and Beltrán Gambier for their valuable comments.

## I. Artistic Assets and Their Valuation

There are various approaches to answering the question of how a work of art is valued and how that valuation is constructed.

One approach suggests that valuation can be defined based on three possible mechanisms: (i) market selection, (ii) peer selection, or (iii) expert selection (Wijnberg and Gemser, 2000). Other authors, considering the mechanisms of price formation in art markets and the economic valuation of cultural heritage, focus on the idea that "value is a social construct that derives from individuals' reactions to the work of art" (Throsby, 2012).

A recent publication on the valuation of works of art states that "promoting art and culture also means promoting ex ante the industry and the cultural economy, which facilitates and, ultimately, enables the right to culture and its enjoyment" (Veiga Copo, 2022).

Without delving into theoretical debates, the different positions on art valuation should not detract from the idea that these are objects that can have great economic value, in addition to their cultural, historical, and aesthetic significance. This value makes them attractive not only to legitimate collectors, but also to individuals and organizations engaged in illegal activities related to money laundering or the financing of terrorist activities.

The 2022 UNESCO MONDIACULT World Conference held in Mexico agreed on a declaration signed by authorities from more than 150 countries, which, in addition to highlighting the central value of art in the lives of individuals and

societies, warns of the growing risks facing cultural heritage. These include various criminal activities involving theft and illicit commercialization<sup>2</sup>.

There are many ways of categorizing assets, so some authors suggest that it may be useful to handle a generic and simplified distinction to discuss the money laundering of art-related assets: (i) art assets in general and (ii) antiquities. The former can be legally traded, provided they have been obtained legitimately. Additionally, in some cases, there may be regulations on their cross-border transactions. On the other hand, antiquities are objects obtained from archaeological sites or monuments, and treaties and legislation unanimously prohibit their commercialization (Brodie and Yates, 2022).

In practice, distinctions between cultural heritage, antiquities, and art objects are less uniform. Countries—including those in Latin America and the Caribbean (LAC)—work from categories defined by international treaties and national laws reflecting such agreements. In general, definitions are not homogeneous. As will be seen in Chapter II, there are differences in how each country's law incorporates international treaties. There is also the challenge of equipping institutions responsible for protecting these assets with the necessary means to effectively fulfill their role of guarding, regulating, and supervising national and international transactions.

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<sup>2</sup> See UNESCO MONDIACULT Declaration, 2022, particularly section 16: "We underline our commitment to fight against illicit trafficking in cultural property by ensuring the effective implementation of the 1970 UNESCO Convention and its related mechanisms and strengthening international cooperation with all relevant partners, such as Interpol, the World Customs Organization (WCO), UNIDROIT, the International Council of Museums (ICOM) and the United Nations Office on Drugs and Crime (UNODC), as well as with the art market. We request UNESCO to intensify its response at the global level by: (i) strengthening advocacy and work on the impact of illicit trafficking on people's memory, identity and future; (ii) encouraging the introduction of criminal or administrative sanctions in national legislation; (iii) promoting the development of national and local capacities in all countries; (iv) encouraging effective and closer cooperation with art market actors, especially regarding strengthening codification of certificates of origin for cultural property and preventing the acquisition of objects of unspecified provenance, for museums and private collectors; and (v) ensuring the engagement, mobilization and coordination of all stakeholders, as well as the general public, particularly through digital technologies and online platforms, taking into account the increase in online trade in cultural property, and supporting awareness-raising." The full statement is available at: <https://www.unesco.org/en/mondiacult2022>.

The value of these goods—in any of their categories—generates interest among individuals and groups dedicated to illegal activities and money laundering. Illicit trafficking is significant, in addition to the illegal extraction of objects and the trafficking of pieces and works, includes their commercialization within the same territory or in other jurisdictions.

The jurisdictions where these goods are traded and collected tend to have more developed markets and greater financial and economic capacity than those where the goods originate. As several authors point out, these jurisdictions are importers through transnational operations (see Renold or Brodie and Yates).

The illicit transit of goods may be due to various reasons. In many cases, it results from the ineffectiveness and complacency of officials in both exporting and importing countries. On other occasions, it stems from a lack of knowledge about the values involved or a lack of capacity to prevent such events. In addition to the lack of institutional capacity to protect these goods and to adequately regulate and supervise local markets, there is sometimes collusion through bribery, falsification of export documents, and other illicit maneuvers.

When objects of artistic value are stolen in a country—whether they are in public or private hands—a chain of illicit acts typically follows. These include the destruction of archaeological sites or artifacts and money laundering. For example, illicit trafficking of cultural property resulting from theft from museums, private collections, or temples leads in practically all cases to "the irremediable looting and destruction of archaeological sites and the pillage of buildings and monuments" (Bator, 1982).

When archaeological sites are involved, in addition to direct damage, other crimes are often present. Recent studies on Central America show a growing relationship between drug trafficking activities, expropriation and trafficking of archaeological artifacts, and environmental crimes (Devine et al., 2021). Profits derived from these crimes materialize in both legal and illegal markets.

Money laundering usually appears as the final link in the criminal cycle, preceded by theft, looting, destruction of cultural heritage, or counterfeiting of works. When activities include cross-border transit, crimes involving the

falsification of transit documents, customs forms, and declarations about the type of goods are added.

These crimes are carried out by individuals but, increasingly, by organizations. Occasionally, objects reach markets through individual and isolated transactions. For example, when a person finds an item in their area of residence, possibly unaware of its heritage value and the restrictions upon it. In many cases, the links in this chain are legal organizations, such as galleries or auction houses. In other cases, they are criminal organizations. This distinction is important because, as will be seen below, one of the most effective ways to protect these goods is to safeguard formal and legal markets.

Many of the criminal activities against cultural heritage are committed by criminal organizations that are aware of their illegality. The money laundering of assets by these groups to obscure resources of illicit origin is sometimes used to finance new illicit activities, whether in the field of artistic assets or in other sectors.

As the Financial Action Task Force report notes, "this market has attracted criminals, organized criminal groups and terrorist groups seeking to launder the proceeds of crime and finance their activities. The use of cash, intermediaries, shell companies and complex corporate structures in high-value transactions represents relevant illicit financial activities."

These problems require a public policy response to protect these assets, whether they belong to the public or private sector, and especially to address the money laundering risk arising from these activities.

This study focuses on three specific categories of artistic assets: those related to cultural heritage, antiquities, and art pieces or objects. It also makes a brief reference to new technologies used to produce pieces, generically called digital art or crypto art. These categories have their own aspects and others in common regarding their valuation, the public and private institutions involved in their protection, the rules that apply to the different actors that deal with these goods, and even the rules relating to money laundering related to illicit activities, especially in commercialization.

The first set of properties of interest in this study is cultural heritage. Within this category, the UNESCO Convention distinguishes between tangible and intangible cultural heritage. The former includes architectural works, sculptures, monumental paintings, archaeological pieces, constructions, and works of humans or the combined works of nature and humans, including archaeological sites—all of which must possess outstanding universal value from the historical, aesthetic, ethnological, or anthropological perspective<sup>3</sup>. On the other hand, intangible cultural heritage refers, among other practices, to "the totality of cultural manifestations and traditions that are transmitted between generations" and is regulated by another international instrument<sup>4</sup>.

The universe of objects catalogued as tangible property is extremely varied. They may be monuments, ornaments, statues, clothing, costumes, jewelry, coins, correspondence, official documents, weapons, paintings, pottery, and other objects of the widest and most varied origins.

The set of objects and properties in this category is also dynamic and evolves over time. The mere fact that there are regular archaeological and anthropological activities ensures that this heritage grows and changes as new objects are identified. At the same time, there are other elements that affect the value of these objects. As indicated in this study, subjective factors and market trends affect the valuation and, in certain cases, attract the attention of those who seek to illicitly appropriate these objects.

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<sup>3</sup> Article 1 of the Convention defines cultural heritage as: "(i) monuments: architectural works, works of sculpture or painting of monumental character, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; (ii) groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; (iii) sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view."

<sup>4</sup> See the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

The UNESCO Convention imposes a series of obligations on States with respect to this heritage, including "identifying, protecting, conserving, rehabilitating and transmitting to future generations" and ensuring that financial and human resources are available to guarantee "effective protection and conservation" of this heritage. As can be seen from this treaty and other similar instruments, the availability of resources—in the broadest sense—by States is a determining factor in ensuring the effective protection of properties.

For this reason, "protection by public authorities cannot be absent or even neutral to the flows and exchanges of the art market, above all, due to the nature and entity of the works. Their cataloguing, attribution to a category, legal protection, knowledge of trafficking operations, permits, etc., are a further manifestation of the duty of conservation and protection, but also of enhancing the value of art. It must also have an impact on the supervision of the art market" (Veiga Copo, 2022).

As will be seen in Chapter II, cultural heritage properties are better regulated by international agreements, such as the aforementioned UNESCO Convention, and the protection laws enacted by each country.

A second group of goods of interest does not form part of cultural heritage and includes an enormous range of objects that are the product of artistic creativity. The most obvious are paintings, sculptures, tapestries, furniture, stamps, jewelry, coins, and, in general, objects that have artistic value because of their design, provenance, or authorship.

Here, the limits are not precise either. Not only because of the diversity of the objects, but also because, to a large extent, these are works that are the product of recent artistic creation.

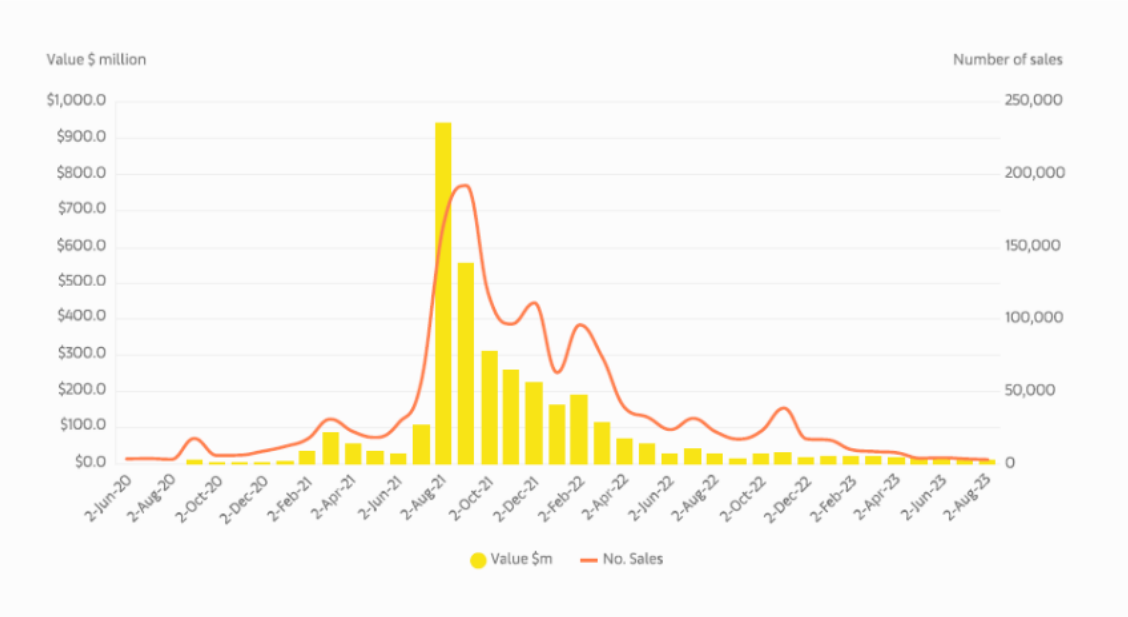
This analysis takes into account a third group of assets: antiquities. The limits of this category are also imprecise. There are authors who organize the enumeration and description of definitions commonly used by countries, private museums, and marketing channels. These authors point out the difficulties caused by the lack of a univocal criterion. The 1995 UNESCO Convention on Stolen or Illegally Exported Cultural Objects, which complements the 1970

Convention, contains an annex with a list of objects and goods and stipulates that one of the conditions for some of these objects is that they are more than 100 years old. For other objects, the 1995 Convention does not include this temporal criterion (Vachon, 2017).

Finally, a more recent category is digital art, crypto art, or non-fungible tokens (NFTs). Crypto art pieces use blockchain technology, just as cryptocurrencies do. But unlike cryptocurrencies, crypto art or NFTs create objects that are unique, indivisible, and capable of demonstrating their scarcity, based on the technology on which they are created. Despite their recent emergence as artistic assets, it is noteworthy that there are already cases in which NFTs are being used for fraud and consequent money laundering. As can be seen in Figure 1, this market has limited historical data and is quite volatile in valuations.

Figure 1. NFT Sales Related to Art Between 2019 and 2023

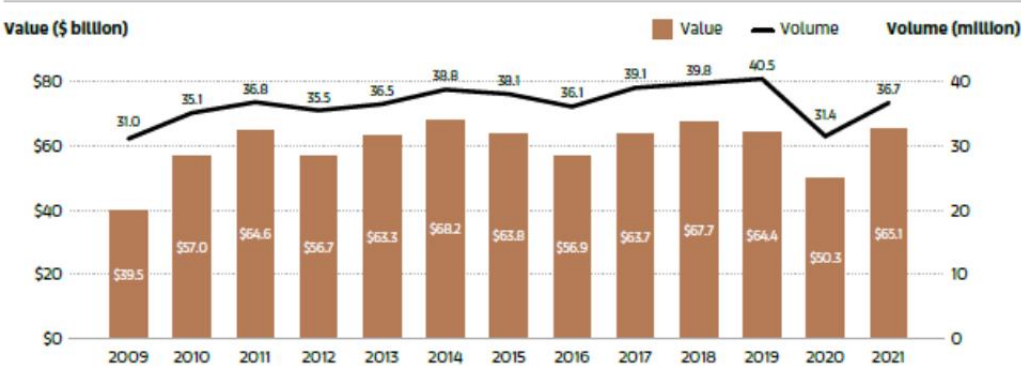
[Source: McAndrew, Clare]



a. Volume of the Regulated and Illicit Art Market

As in other areas of the economy, accurate market figures are not easy to obtain. On one hand, there is a formal and relatively regulated market whose volume can be estimated. One of the most widely consulted sources for such calculations is the annual Art Basel and UBS report<sup>5</sup>. The 2023 edition of this publication indicates that the formal market reached a historic level of more than US\$60 billion, combining imports and exports.

Figure 2. Sales in the Global Art Market 2009-2021



[Source: Arts Economics, 2022]

This report highlights that year-over-year growth in some jurisdictions where the main transactions take place has been significant. For example, Hong Kong grew by 50%, the United Kingdom by 38%, and the United States by 15%.

These figures do not imply that the actual owners of the works acquired are individuals or legal entities of these nationalities or domiciled in these

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<sup>5</sup> The Survey of Global Collecting 2023 A report published by Art Basel & UBS Prepared by Dr. Clare McAndrew, Arts Economics, 2003. The TEFAF 2020 report states that "A large majority of the art world donates time, expertise or financial resources to arts initiatives: according to a survey of 541 people within the art market in general, 78% of respondents said they regularly supported charitable and non-commercial organizations, arts organizations and initiatives. The difference is small between age groups. Among those under 55, both 77% of millennials (under 35) as well as 78% of Generation X (ages 35-55) said they support the arts, while this view was shared by 85% of baby boomers who said they regularly support the arts, which is likely a combination of more time and greater financial means to support their passion."

jurisdictions. Rather, as noted above, these countries have developed exchange markets of sufficient sophistication to attract global investors.

The 2022 edition of the report prepared by Art Basel and UBS indicates that almost 90% of these transactions take place through two channels: art galleries and auction houses. These figures are higher than the GDP of some Latin American and Caribbean countries, even though they reflect only transactions that are recorded through formal and identified channels.

What about the so-called NFTs? A recent Deloitte report<sup>6</sup> estimates that the total volume of the NFT market in 2022 was close to US\$7 billion. This is a relatively recent market. In fact, the report only contains figures as of 2021, a year when values and the number of transactions were low. Deloitte also highlights the volatility and declining values of this market.

If these are figures for formal and regulated markets in the more developed economies, what is the figure for the illicit market? Estimates vary widely, as this market tends to be hidden and is difficult to measure, although in all approximations the volumes are always significant (Dornbierer, 2023).

For Interpol (Interpol, 2021), this is a growing market. This organization highlighted that in 2020 "854,742 cultural goods were seized, including numismatic objects (coins, money or medals), paintings, sculptures, archaeological objects and library materials." According to the report, more than half of these goods are traded in European countries, which are among the main importing markets. It is likely this situation is due to two factors: (i) those seeking to sell these objects look for markets where they fetch higher values; and (ii) the effectiveness of police units specialized in crimes against cultural property, which are present in most countries in the region and have the capacity to identify and prevent these crimes.

Bowman Proulx (2013) attempted a qualitative approach to the illicit trade in artifacts and goods obtained from archaeological sites. This study looked at the beginning of the chain and asked experts and archaeologists globally about

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<sup>6</sup> Art & Finance Report 2023, 8th Edition, Deloitte, 2023.

direct experiences and evidence of looting of archaeological sites, which is one of the main sources of the illicit market. The conclusion of the study is that it is a global, growing, and sustained phenomenon, practiced not only by individuals but increasingly by organizations using even advanced technological means.

Fisman and Wei (2007) explain that this market is undoubtedly significant: "As with other activities of dubious legality, it has been difficult to provide a precise figure on the total extent of trafficking in cultural property. For the trade in antiquities (objects from ancient times unearthed), which constitutes only one component of the total illegal trade in cultural objects, estimates range between US\$300 and 6,000 million per year." These authors also point out that illicit trade can be explained by regulatory differences in the way cultural objects are traded. While many countries prohibit the export of cultural property and historical heritage objects, importing jurisdictions may have lower standards.

Yates and Brodie (2023a) have emphasized the importance of being cautious when quoting a figure for the illicit market. Their contribution to the debate is to criticize the estimates used by some international organizations, to the point of categorically recommending that these figures should no longer be quoted ("This claim is dangerous. Please stop making it") because of the inherent difficulty of objectively measuring the problem. At the same time, they advocate for the need to rescue "the idea that the seriousness of crime should not be measured in comparative terms by monetary measures of value rather than harm to society. We do not need to make an economic classification of illicit trade to recognize that the social damage it causes is more serious." This approach suggests that the protection of the sector and of goods should not depend on the volume or value of transactions, but that they deserve protection because these goods are unique, irreplaceable, and part of the culture of a people or a nation.

Notwithstanding Yates and Brodie's critique of the sources currently cited, it is important to explore how the problem can be quantified to provide commensurate policy responses. One possibility is to use individual cases as a benchmark. For example, some recent episodes detected by control and prosecution agencies yield figures that give a possible indication of the wealth

that may be in the hands of those at the other end of the transaction. For instance, the U.S. Department of Justice concluded in 2020 an investigation into a collection of 180 artifacts and works of art in the possession of a collector worth more than US\$70 million. The objects in the collection came from 11 countries, and several were acquired through art galleries. A recent case reported by Interpol describes a joint operation in Spain and Ukraine that resulted in the seizure of 11 objects valued at around 60 million euros<sup>7</sup>. Chapter II presents more examples that help to get a sense of the values involved in illicit maneuvers.

Why is it so difficult to assign a magnitude to illicit trafficking, and what explains these differences in value determinations? On one hand, when it comes to illicit activities, as the University of Geneva Art Center study points out, the individuals and organizations engaged in these activities are not particularly interested in accurate measurements of their business. By their very nature, all illicit activities try to remain hidden and leave no records that would allow accurate measurements or traceability of goods.

On the other hand, artistic goods in general are subject to the rules of an imperfect market. Subjective elements, trends, the appearance of fashions, or the recognition of certain types of works or artists are some of the reasons why the values of the goods and objects traded can fluctuate significantly. This is precisely one of the characteristics that make these goods attractive to those who seek to make exaggerated profits as proceeds of crime. But it is not the only one.

For example, in the case of paintings, Brodie and Yates (2022) argue that "they are an attractive target for money laundering. They are transportable goods that can be sold in many jurisdictions worldwide, have a significant and manipulable monetary value and are generally perfectly legal to buy and sell, and the confidentiality practices of these markets can conceal information about ownership, the chain of trade and respective transactions." The same is true for

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<sup>7</sup> See details of the case at <https://www.bbc.com/news/world-europe-67195215>.

other objects: coins, historical correspondence, ornaments, sculptures, ceramics, etc.

With a similar approach, authors such as Roma Valdes (2023) point out that "the legitimate art market can be exploited by criminal organizations, in some cases to channel stolen or plundered objects, in others to take advantage of some of its qualities to facilitate the economic profitability of any other serious form of organized crime."

## **b. Money Laundering Risks in the Market for Cultural and Artistic Goods**

Cultural and artistic assets, like any valuable object, are subject to money laundering risks. In this matter, the provisions issued by the FATF are particularly followed. The member countries of this organization have adopted a set of rules—the FATF Standards—as well as a methodology to determine the degree of technical compliance and effectiveness of countries in implementing them. Regarding the subject of this study, the FATF Standards and the *FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment* are two of the main references. In addition, the FATF recently issued a specific report on money laundering in the art and antiques markets, mentioned above<sup>8</sup>.

The FATF Standards were recently updated with the risk-based approach in mind<sup>9</sup>. This approach allows for the adoption of policy measures that are

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<sup>8</sup> FATF (2023), op. cit.

<sup>9</sup> Recommendation 1 is explicit: Countries should identify, assess and understand their money laundering/terrorist financing risks, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources to ensure that risks are effectively mitigated. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are proportionate to the risks identified. This approach should form an essential foundation for the effective allocation of resources across the anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures in all FATF Recommendations. Where countries identify higher risks, they should ensure that their respective AML/CFT regimes adequately address such risks. Where countries identify lower risks, they may choose to allow simplified measures for some FATF Recommendations under certain conditions.

commensurate with the risks identified, seeking the greatest efficiency in the use of resources, in order to achieve greater effectiveness.

For the FATF, a risk is a function of threats, vulnerabilities, and impact. The identification of the country's risk is carried out particularly through national risk assessments and sectoral risk assessments. These assessments are fundamental tools for defining a national risk management plan that provides a measurable response to the risks. The quality of the assessments depends to a large extent on having statistical information that allows for the creation of a risk map.

What types of risks can be identified in the field of artistic and cultural property? Cultural objects or goods, when they are part of heritage, must be registered, inventoried, and catalogued. According to the law, they cannot be legally traded by private individuals or can be traded only under very exceptional conditions and under strict regulations. This is a reasonably simple situation in which the mechanisms provided for by treaties and the legislation of most LAC countries work. These are goods that are inalienable and, therefore, under these conditions would be exposed to low risk.

But the reality is more complex, especially when dealing with transactions involving antiquities or artistic objects of historical value in general. Or in the case of inalienable goods, when they are illegally appropriated, transferred to private individuals or public institutions, often in a jurisdiction other than the one where the good or object was located (Inthamosou and Zaldívar, 2022).

Artistic assets in the hands of private parties who are legal and legitimate owners can and are traded in many ways and markets of all kinds: donations, inheritances, onerous transactions between individuals, through auctions or over the Internet. In principle, according to the FATF Standards, the payment of these transactions is subject to the same due diligence principles that apply to other transactions. Here, the chain of transactions does not involve the illicit acquisition of the object or item. For example, the person has it by tradition or acquired it in good faith.

This situation reflects one of the main points of this study. There are no specific rules to determine the money laundering risk affecting this sector.

Consequently, there are no adequate rules to determine which subjects should be obliged to report and collaborate with the effort to protect the market.

The risk may arise when the transaction begins with an illicit origin and the person who obtained the object attempts to use a formal, regulated market—for example, an auction house—to sell the item and ultimately legitimize the money obtained. Depending on the qualities of the market—especially regulation and supervision—there may be greater guarantees of detecting the maneuver and eventually preventing the illicit transaction.

The situation of most interest here is when there is a chain of transactions in which all or almost all activities in the chain of transmission of an item are illicit. For example, a person steals or has illegal access to an object, transits this object in an illegal market, and, finally, tries to recycle or launder those resources. In principle, these are the most difficult situations to prevent, since none of these operations are subject to the controls that characterize formal markets.

In turn, each of these possible scenarios—especially those involving illicit elements—may be carried out by individuals, organizations, or a combination of both. For example, the illicit procurement of an item may be carried out by a criminal organization, but the objective is to sell it to an individual buyer directly.

As Gálvez Bravo (2017) argues, it is important to distinguish between organizational crime and organized crime: "Organizational crime consists of crimes committed by legal organizations; as opposed to organized crime, which are crimes committed by illicit organizations." It is necessary to recognize that there is no homogeneous definition of organized crime and that differences at the legal level can be important.

In the same sense, Renold (2018) adds that there is sufficient evidence that "illicit trafficking in cultural property is a complex criminal conduct that often has a transnational dimension, which requires some degree of organization on the part of those who commit these crimes. This does not mean that all groups engaged in these activities have a complex type of organization, with hierarchies and a stable organizational structure" (Renold, 2018).

While these criminal activities may be committed by individuals, there is consensus that it is increasingly a phenomenon involving organizations. A recent study indicates that "like all trafficking offenses, illicit trafficking in cultural property is an organized crime that manifests itself differently in the different countries involved in the organized activities of certain criminal groups. However, beyond the nuances that can be observed, the common denominator is given by its development through networks made up of individuals who participate in the different stages of trafficking, from the initial looting of the piece to its final destination. The individuals involved can be grouped successively into looters, local intermediaries, exporters, foreign middlemen of various status and collectors in different places" (El Pacto, Calaza, 2020).

There are factors that facilitate the work of those involved in the illicit trafficking of artistic property, and one of the main ones, according to Fisman and Wei (2007), is "the corruption of customs officials to look the other way. Thus, illegal or unreported export of cultural objects is relatively easy in countries where a corrupt bureaucracy facilitates such transactions." In this case, as is often the case, corruption acts as a catalyst for other crimes.

These criminal situations can vary significantly depending on the geographical context and the presence of the State to protect cultural heritage, antiquities, and other artistic property, according to Renold (2018). In some countries, it may be the case that it is a criminal activity in addition to others of the same nature. For example, there may be individuals or organizations engaged in drug trafficking, illegal mining, or human trafficking as their main business and find interest in applying the same model of cross-border criminality with objects that are part of cultural heritage or antiquities, and possibly works of art.

Two interrelated factors seem to play a role in the increase in looting and pillaging of this type. On one hand, the State's presence in the territory is low or irregular—for example, at the beginning of an excavation, although to a lesser extent when the main work has been completed. On the other hand, when territorial control is predominantly under the control of criminal organizations with different "social objects." Such is the case of unexplored or partially explored ruins preserved by the State. The crimes of looting or plundering of

ancient objects and cultural property also increase to the extent that extreme conditions exist, such as armed conflicts, and have been used to finance terrorist organizations.

As Interpol notes, "political instability and armed conflicts in some areas of the world create a profitable environment for individual criminals and organized groups willing to destroy an essential part of their heritage. In addition, the illicit trafficking of cultural goods from conflict zones, particularly the Middle East, has been linked on several occasions to the financing of terrorist activities." In LAC, Interpol recently reported a nearly 200% increase in illicit excavations (Devine et al., 2021).

Another aspect to bear in mind is that these individuals and criminal groups will try to reduce the probability of being detected and, at the same time, ensure that they can obtain a return—laundered—from their illicit activity. In this sense, they do not act in a way that is dissimilar to the opportunity structure that is present in other criminal activities such as smuggling, bribery, or counterfeiting of brands and merchandise. As Bowman Proulx (2013) points out, it is no coincidence that those who carry out illicit activities are not very willing to let the world know how they conduct their business.

Many authors agree that there are exporter countries and importer countries of cultural goods and antiquities. The latter include larger economies, with more and better museums where, in addition, the art market is more developed and fueled by people willing to invest in the sector, either for aesthetic considerations or for economic advantages derived from the appreciation of the pieces in the market.

The main actors involved in these processes may be from the public or private sector. In the public sector are, on one hand, the agencies responsible for archaeological activities (cataloguing, preservation, conservation, and exhibition of heritage), which are usually related to the areas of culture and national museums. On the other hand, there is a group of institutions in charge of preventing and prosecuting criminal activities, including security forces,

customs, tax agencies, the public prosecutor's office and financial intelligence units, which are playing an increasingly important role.

Private actors are, on one hand, the people who acquire and trade goods in the market—gallerists, auction houses and auctioneers—and those who acquire them to incorporate them into their patrimony. There are also museums exhibiting private collections, which are becoming increasingly important. Many of these are constituted as non-profit entities. It is also important to mention those companies that have bonded warehouses for special purposes—such as the storage of works of art—and security companies dedicated to the transport of cash and valuables locally or internationally by any means, which often move the pieces and objects. On the other hand, another important group is that of those persons who exercise professions directly related to art and heritage: archaeologists, anthropologists, restorers and appraisers, to mention some of the most relevant.

Public sector actors are subject to international treaties and standards, as well as the legislation of each country, which define duties and obligations for the protection of artistic assets. But also—and this is a more recent phenomenon—to protect the market from illicit transactions with these goods, including money laundering or the financing of terrorism.

Calaza's study (2020) provides an exhaustive catalog of the laws, regulations, memoranda of understanding and agreements that countries have adopted for the protection of cultural property.

Private actors are also covered by these rules. On one hand, they may be obliged to report suspicious maneuvers. They can also play a very important role in protecting their market and act under a collective action scheme. Collective action is necessary when the interests of an individual or certain members of a group may not be aligned with the common interest of the group as a whole. A collective action approach would allow private actors to coordinate to ensure that the market is better able to react to those who wish to act illegally<sup>10</sup>. Finally,

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<sup>10</sup> There are a number of sectoral examples that have adopted a collective action approach. See, for example, "Collective Action: Innovative Strategies to Prevent Corruption." Mark Pieth Editor,

they can complement public obligations with self-regulatory actions that preserve the conditions of integrity of the sector<sup>11</sup>.

Given the variety of public-private actors and regulation already in place, this report argues that the challenge may not lie in adopting more laws and regulations. Rather, the agenda should aim at better identifying risks, strategically ordering the state effort, and building the necessary institutional capacity in order to improve the efficiency and effectiveness of the system, including the effective coordination of public agencies. It also requires endowing key public and private actors with sufficient means to respond to the identified problem. There is also an opportunity to create public-private mechanisms to help adopt better policy responses.

## II. The Public Policy Response

Public policy responses to these problems have been multiple and varied: from the adoption of global and regional multilateral conventions, UN Security Council resolutions, or the development of best practices, to the approval of international declarations in favor of integrity in art or the creation of specialized programs, institutions or units.

There are many organizations and private associations internationally that have addressed the issue of integrity in art. There are also numerous cases that illustrate the complex and evolving nature of money laundering in the art market, involving various schemes, individuals and jurisdictions.

However, the absence of international standards in this area, as well as processes to ensure their compliance, has hindered the homogeneity of criteria and the possibility of providing a coordinated approach among countries to ensure effective cooperation. Since money laundering and terrorist financing are

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Basel Governance Institute, 2012. More recently, Pyman, M. and Heywood, P., "Sector-Based Action Against Corruption: A Guide for Organizations and Professionals." Palgrave MacMillan, 2024.

<sup>11</sup> See, for example, Virginia Haufler, "A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy." Carnegie Endowment for International Peace, 2001.

transnational crimes, the need for a coordinated international response is essential to achieve results.

#### **a. The Response of International Organizations**

While several international organizations have been dedicated to promoting the integrity of art and the fight against illicit trafficking in cultural property, none has yet addressed in depth the issue of financial crime through the art, antiquities, or cultural heritage market for money laundering or terrorist financing purposes.

Notwithstanding this, it is worth highlighting the work of UNESCO which, with its 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, laid the foundations for the promotion of cultural heritage and for addressing the challenges posed by the illicit trafficking of such property. The MONDIACULT declaration of 2022, cited in the previous section, updated these foundations and reaffirmed the international community's commitment to strengthening public policies in this area.

The United Nations Office on Drugs and Crime (UNODC) has also been actively involved in initiatives addressing integrity in the art market and combating illicit trafficking in cultural property. It has done so through broad programs, such as the Global Anti-Money Laundering Program, and specific ones, such as UNODC's global program for the implementation of the 2015 Doha Declaration, which includes promoting international cooperation, developing legal frameworks, and enhancing state-level capacities in relation to these markets.

The international police organization Interpol also plays an important role and, given its global network and experience, makes a vital contribution to protecting the integrity of cultural heritage. Interpol has established a works of art unit specialized in combating the illicit trade in cultural property and stolen and looted art. It has also created a database of stolen works of art and has taken initiatives and designed specialized working groups to combat such crimes, coordinating tasks with the specialized units of the national police that make up the organization.

The World Customs Organization (WCO) plays a crucial role in this area and contributes with initiatives to combat the illicit trade in cultural property, training customs officials, and promoting the exchange of information and strengthening of effective border controls.

The Financial Action Task Force (FATF) issued a report in 2023 focused on money laundering and terrorist financing in the art, antiques, and other cultural property markets. This report represents a first step in addressing the risks in these markets, although it does not propose the creation of specific standards on the matter (FATF, 2023). However, it does highlight that jurisdictions need to improve their knowledge and understanding of the risks associated with these markets and provides guidance on how to mitigate the vulnerabilities identified. It is important to note that an understanding of risk is always the starting point for the development of effective strategies and public policies, as it allows for logical prioritization and efficient allocation of resources and burden of effort.

The report also describes typical methods of money laundering in the sector, which include concealing or transferring illicit profits by disguising the identity of the true buyer, under/overvaluation of works, and the use of fake sales or fake auctions. The report also identifies a number of profit-generating crimes that occur within these markets, including art forgery, fraud, theft, and illegal trafficking.

The report highlights the importance of quickly identifying and tracing objects involved in money laundering and terrorist financing to assist in their seizure and confiscation, as well as any associated illicit proceeds. Asset recovery is one of the most important objectives in the fight against these crimes, as it aims to strip criminals of the very purpose of the crime, be it profit or the financing of an illicit activity. It encourages cooperation with market participants, including by providing training, guidelines, and codes of ethics. Finally, the report includes a list of risk indicators that can help sector entities identify suspicious activities with links to cultural property.

**Figure 3. Actors Involved in Integrity in the Art Market**

**Promotion of Integrity in the Art Market**

## *International Organizations*

### **UNESCO**

- 1970 Convention on cultural property
- MONDIACULT 2022 strengthens international commitment

### **UNODC**

- Global Anti-Money Laundering Program
- Promotion of international cooperation

### **INTERPOL**

- Works of Art Unit: combats illicit trade
- Stolen Works of Art Database

### **WCO**

- Training for customs officials
- Promotes information exchange

### **FATF (2023)**

- Money laundering and illicit financing report
- Improved understanding of risks

*Source: Authors' elaboration*

## **b. The International Legal Framework**

From a legal standpoint, there is no established uniform legal framework for the purpose of integrity and combating money laundering or the financing of terrorism in the art, antiquities, and cultural heritage markets. The lack of an international convention on the specific subject of financial crime through these markets hinders the standardization of policies and strategies and international cooperation.

Nonetheless, there are several instruments, such as international conventions and UN Security Council resolutions, which establish obligations aimed primarily at protecting cultural heritage and cultural property through international cooperation, and at condemning the destruction of and illicit trafficking in cultural heritage by terrorist organizations<sup>12</sup>.

Regarding conventions, by way of example, the following may be mentioned: the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954); the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); the Inter-American Convention on the Illicit Traffic in Cultural Property (1970); the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995); and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003).

As for UN Security Council resolutions: UNSCR 2253 (2015), which condemns the destruction of cultural heritage in Iraq and Syria, particularly by extremist groups such as the Islamic State of Iraq and the Levant (ISIL) and the Al-Nusra Front (ANF); UNSCR 2199 (2015), which imposes obligations on member states to prohibit the import, export or trade of cultural property from Iraq and Syria; UNSCR 2322 (2016), which urges states to develop comprehensive law enforcement and judicial cooperation to prevent and combat trafficking in cultural property and related offenses that benefit or may benefit terrorists or terrorist groups; UNSCR 2347 (2017), which condemns the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, particularly by terrorist groups; and UNSCR 2462 (2019), which explicitly identifies illicit trade and trafficking in cultural property as one of the means used by terrorists and terrorist groups to raise funds.

These instruments are also complemented by international declarations that, while not specifically focused on the integrity of art, underscore the broader

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<sup>12</sup> The study by Valeria Calaza cited here, in addition to listing the main legal instruments, provides the list of specialized investigative bodies in the field.

importance of cultural heritage, including art, and advocate its protection, preservation and promotion in the international arena.

These include the Brasilia Declaration, adopted in 2010 during the Ibero-American Summit of Heads of State and Government in Brasilia, Brazil; the Florence Declaration on Culture, adopted in 2014 at the European Culture Forum in Florence, Italy; the Nicosia Declaration on the Value of Cultural Heritage for Society, adopted in 2017 at the European Cultural Heritage Summit in Nicosia, Cyprus; The Valletta Declaration on Cultural Heritage, adopted in 2017 during the European Year of Cultural Heritage; the Berlin Call to Action on Cultural Heritage, adopted in 2018 at the European Cultural Heritage Summit in Berlin, Germany; and the Declaration of San Salvador on the Protection of Cultural Property in the Event of Armed Conflict, adopted in 2017 during the 47th General Assembly of the Organization of American States (OAS). More recently, the aforementioned MONDIACULT declaration, adopted in 2023 within the framework of UNESCO.

### c. Specific Legal Framework for AML/CFT

Even in the absence of international conventions and standards specifically related to financial illegality through these markets, some countries have begun to recognize the risks associated with money laundering and terrorist financing through the art, antiquities, and cultural heritage markets, and have issued laws with preventive obligations to manage and mitigate them. The following are some examples.

At the European Union level, Regulation (EU) 2019/880, also known as the Regulation on the introduction and importation of cultural goods, aims to prevent the illicit trafficking of cultural goods within the European Union (EU). It provides for stricter controls, due diligence obligations for market operators, and promotes cooperation among member states to safeguard cultural heritage and combat illicit trafficking<sup>13</sup>.

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<sup>13</sup> See, furthermore, EU Directive 2018/843.

For its part, the United States has implemented several anti-money laundering regulations that apply to the art market. The Bank Secrecy Act (BSA) and its implementing regulations require art dealers, auction houses, and other art market participants to comply with preventive obligations, including reporting suspicious transactions and maintaining adequate records.

In the UK, regulations have been implemented to combat money laundering through art. The Money Laundering Regulations 2019 extend preventive obligations to art market participants, including galleries, dealers, and auction houses. They require conducting customer due diligence, reporting suspicious activity and implementing internal controls.

Switzerland has implemented preventive laws and regulations that apply to the art market. Art dealers and intermediaries are subject to due diligence requirements and transactions in excess of specified thresholds are subject to reporting obligations to the Swiss Financial Intelligence Unit (FIU) (MROS).

Also, in Italy, art dealers and intermediaries are subject to customer due diligence, record-keeping, and suspicious transaction reporting obligations under the Italian legislative framework.

In LAC, there is still no extensive development of regulations related to the prevention of money laundering and the financing of terrorism in this sector. This is notwithstanding the risks identified in the national risk assessments of several countries and the decision of some of them to designate certain players in the art and antiques market as subjects obliged to report suspicious transactions to the financial intelligence units.

#### **d. Guidance Guidelines**

While there are not yet specific international standards dedicated exclusively to art integrity, as mentioned above, in February 2023, the Financial Action Task Force (FATF) issued a report focused on money laundering and terrorist financing in the art, antiquities, and other cultural property market. This report highlights that jurisdictions need to improve their knowledge and

understanding of the risks associated with these markets and provides guidance on how to mitigate the vulnerabilities identified.

There are also guides, codes of ethics and recommendations issued by public and private entities aimed at guiding the relevant actors in the art, antiquities, and cultural heritage market in compliance with integrity principles. These include *The International Code of Ethics for Dealers in Cultural Property* issued by UNESCO in 1999, the 2004 *Code of Ethics for Museums* of the International Council of Museums, the 2012 *Basel Guidelines for the Art Trade*, and the *Responsible Art Market Guidelines* issued in 2015, among others.

In the case of paintings, there are ownership registers (called *provenance*<sup>14</sup>) in which the history of ownership of a work of art is recorded, from its creation to its acquisition by a museum. This registry ensures legitimate ownership, reveals historical and cultural contexts, and prevents the acquisition of stolen art. In addition, there are the *catalogues raisonnés*<sup>15</sup>, which are exhaustive listings of all known works by an artist, providing details about each piece. This help verify authenticity and provenance, preventing fraud.

Both registries are tools that can help prevent money laundering by ensuring that each art transaction is traceable and legitimate, avoiding the use of works of art for illicit purposes.

#### **e. Public Bodies and Special Agencies**

The creation of specialized public bodies and agencies dedicated to combating illegality in the art market is increasing. However, there are still few that have assigned specific competencies to agencies specialized in the prevention of money laundering and the financing of terrorism.

At the international level, Interpol has an art and antiquities unit that focuses on combating the illicit trade in cultural property. It coordinates international

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<sup>14</sup> Glossary, The National Gallery. Available at:

<https://www.nationalgallery.org.uk/paintings/glossary/provenance>

<sup>15</sup> New York Public Library. Available at: <https://www.nypl.org/about/divisions/wallach-division/art-architecture-collection/catalogue-raisonne>

operations and shares information and experiences with member countries on the investigation and recovery of stolen or trafficked works of art. This unit has also developed an application called ID-ART that allows for the rapid identification of these pieces. For its part, the U.S. FBI has developed a database for reporting illicitly appropriated art and cultural property. This database, like others, contains a simple system for reporting these crimes<sup>16</sup>.

On the other hand, several countries have created specialized units within their security forces. For example, in the U.S., the FBI has dedicated special teams to investigate and combat theft, looting, fraud, and illicit trafficking of works of art. In Italy, the cultural heritage protection unit of the Carabinieri, known as Carabinieri TPC (*Tutela Patrimonio Culturale*), specializes in the enforcement of the law dedicated to protecting cultural heritage. In the United Kingdom, the London Metropolitan Police has an art and antiques unit focused on combating art-related crime. For its part, the French National Gendarmerie has a cultural heritage protection brigade dedicated to cases related to art theft, trafficking, and protection of cultural heritage, among others.

There are several cultural heritage protection authorities in LAC that have implemented art integrity initiatives to protect and preserve cultural property and combat illicit activities in the art sector. Examples include Mexico's *Instituto Nacional de Antropología e Historia*, Brazil's *Instituto do Patrimônio Histórico e Artístico Nacional*, Peru's *Dirección de Patrimonio Cultural* and Colombia's *Instituto Colombiano de Antropología e Historia*, among others. In addition, several law enforcement agencies are actively involved in the implementation of art integrity initiatives, including specialized units in the Attorney General's Office of the Republic and the Federal Police of Mexico, the Federal Police of Brazil, or the Cultural Heritage Protection Department of the National Police of Peru, among others.

Financial Intelligence Units (FIUs), in many cases have also recognized the importance of addressing the issue of art integrity, particularly in relation to money laundering and illicit financial activities. FIUs play a crucial role in global

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<sup>16</sup> See National Stolen Art File, available at: [www.artcrime.fbi.gov](http://www.artcrime.fbi.gov)

efforts to prevent and detect financial crimes, including those related to the art market. In addition, in several cases, they have issued guidance or warnings on the risks of money laundering and terrorist financing in this sector. Such is the case, for example, of the US (FinCEN) and UK (UKFIU) FIUs, which in 2020 issued warnings to regulated entities emphasizing the risks of money laundering and terrorist financing in the art market.

In LAC, however, there are few jurisdictions whose FIUs have addressed this issue. An example of this is the FIUs of Brazil, Colombia and Mexico, which have recognized the risks of money laundering and terrorist financing in these markets and implemented certain measures to address them, mainly related to suspicious transaction reporting.

#### **f. Private Organizations and Associations**

There are numerous organizations and private associations globally that have launched initiatives aimed at fostering a culture of integrity and accountability within the art and antiques dealer community. Many of them have promoted the adoption of codes of ethics that set standards for their member associations and affiliated dealers, and have issued guidelines to promote due diligence practices among their members.

Some of them organize educational programs, seminars and workshops to raise awareness among their members and the art community at large on issues such as provenance research, protection of cultural property and responsible art trading. Some also promote the exchange of information and knowledge related to art integrity, as well as collaboration with public entities and regulators to develop smart strategies to combat art crime.

At the international level, examples include the Federation of Art and Antiques Dealers Associations, the Art Dealers Association of America (ADA), the Society of London Art Dealers and the Antique Art Dealers Association.

In LAC, it is worth mentioning the Association of Art Museums of Latin America, which has addressed the issue of art integrity through various initiatives and

guidelines aimed at promoting ethical practices and preserving cultural heritage.

Likewise, several countries in the region have their own associations, such as the Argentine Association of Art Galleries or ArteBa in Argentina; in Brazil , the Institute of Contemporary Art or the Brazilian Institute of Museums; in Chile, the Association of Contemporary Art Galleries; in Colombia, the Chamber of Commerce of Art; in Ecuador, the Ecuadorian Association of Art Galleries; in Mexico, the Mexican Association of Art Galleries; or in Peru, the Peruvian Association of Art Galleries and the Association of Antique Dealers and Art Galleries of Peru.

#### **g. Relevant Cases**

Finally, even in the absence of key norms and standards that encourage international cooperation, there are numerous cases that illustrate the complex and evolving nature of money laundering in the art market, involving various schemes, individuals and jurisdictions. It is important to keep in mind that each case has its own unique circumstances and legal outcomes, and the implications may extend beyond money laundering to include issues of fraud, counterfeiting and illicit trade, among other predicate offenses.

To cite just a few examples:

**NFT (2022):** The Deloitte report states that "because the NFT market is still experimental and regulations are vague or lax it has attracted criminals and fraudsters. Around US\$100 million in NFT was reported stolen as a result of a digital scam perpetrated between July 2021 and July 2022"<sup>17</sup>.

**Operation Zeus, Brazil (2020):** Brazilian authorities launched Operation Zeus, targeting an international criminal organization involved in the trafficking of cultural heritage and art objects. The operation resulted in the recovery of

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<sup>17</sup> See, in addition to the aforementioned Deloitte report, Elliptic NFT Report: "NFT and Financial Crime: Money Laundering, Market Manipulation, Scams & Sanctions Risks in Non-Fungible Tokens." Elliptic, 2022 Edition.

several stolen artifacts, including pre-Columbian ceramics and colonial religious objects.

**Operation Varsity Blues (2019):** This case, also known as the college admissions scandal, involved wealthy parents who allegedly bribed college officials and cheated on standardized tests to secure their children's admission to colleges. As part of the scheme, artwork was used to launder assets and disguise illicit payments.

**The Panama Papers (2016):** Although not specifically focused on the art market, the 2016 Panama Papers leak revealed extensive evidence of offshore companies being used to hide assets, including works of art. The leaked documents shed light on how individuals and entities exploited the art market as part of broader money laundering activities.

**Bouvier Affair (2015):** this high-profile case involved Swiss art dealer Yves Bouvier, who was accused of inflating the prices of artworks sold to Russian billionaire Dimitry Rybolovlev, leading to accusations of money laundering. The case highlighted the potential for overvaluation of works of art as a means of moving funds.

**Operation Car Wash (Lava Jato) in Brazil (2014):** Although not focused solely on art, it was a corruption investigation in Brazil that uncovered a network of illicit activities, including money laundering. Works of art, luxury goods and real estate were among the assets seized from individuals involved in the corruption scheme.

**Operation Emperor (2012):** was a police operation led by the Anti-Corruption Prosecutor's Office and the National Court of Spain against the so-called Chinese mafia, involved in cases of money laundering and tax fraud, as well as smuggling, crimes against public finances and the use of an art gallery to launder assets<sup>18</sup>.

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<sup>18</sup> The Spanish newspaper El País reported that "The owner was Gao Ping, one of those arrested in Operation Emperor and alleged ringleader of the organized crime network—or networks—that have laundered hundreds of millions of euros in recent years. Gao not only owned that

**Peru Heritage Case (2001):** A prominent art dealer named Leonardo Patterson was convicted for his involvement in the smuggling and sale of archaeological artifacts looted from Peru. The case involved the illegal excavation and export of thousands of pre-Columbian artifacts, including ceramics, textiles, and gold objects.

### III. Conclusions and Recommendations

The public policy response to the threat posed by financial illegality through the art, antiquities, and cultural heritage markets has been varied and not always adequately coordinated within each jurisdiction, as well as at the regional and international levels.

The conclusions drawn from this study are presented under general themes, without prejudice to the fact that conceptually and in practice there are relationships between them and the recommendations. However, these are not all the possible conclusions.

In turn, the recommendations attempt to offer a minimum catalog of policy responses that can certainly be expanded and improved as a result of discussion among the public sector, the private sector, and people from academia and professions related to the sector.

### Conclusions

#### i. Determining Money Laundering Risk

The more general issue, which is of fundamental importance when thinking about policy responses, relates to national money laundering risk assessments (NRAs). These exercises are, for the Financial Action Task Force (FATF), the cornerstone on which the policy response is built based on the risks identified.

While some countries have included art and heritage assets in their NRAs for money laundering and terrorist financing, in many cases there is limited

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gallery. He was a well-known promoter of Chinese art in Spain and Spanish art in China with all the doors open in both countries."

understanding of how these markets work, the importance of the transnational aspect, and the challenges of separating the licit from illicit areas.

This is due, on one hand, to the absence of norms and standards that make it necessary to analyze the specific threats of this sector and the vulnerabilities that can be exploited by those who commit financial crimes.

On the other hand, there is no good methodology to measure the dimension of the problem. Although it is known that the trade in art, antiquities and cultural artifacts is a multibillion-dollar industry, there are no good measurements at either the regional or national level in LAC countries that would allow us to understand the magnitude of the illicit phenomenon. As has been seen previously, there is consensus that the value is high, but there are differences in quantification methodologies.

The lack of properly organized and updated registries and catalogs makes the task of finding accurate figures even more difficult. This leaves, in many cases, the option of using individual cases as indicators or other proxies.

Added to this panorama is the phenomenon of digital art. As noted, this market is attractive to financial criminals because of the vulnerabilities inherent to the sector, such as price volatility and subjectivity, the use of cash and cryptocurrencies to pay for transactions, the transnational nature, the lack of homogeneity in regulations between countries, and a certain culture of privacy and discretion in the sector's operations.

## **ii. Better Rules**

Although there is an important international and national legal and regulatory framework, it is not always complete or consistent. For example, notwithstanding the initiatives promoted by some countries, there is currently no global norm or standard requiring the definition of parties obliged to report suspicious transactions in these markets. This shortcoming has generated a wide diversity of legal frameworks at the international level that are exploited by those who commit crimes and wish to launder the illicit resources obtained.

The position adopted by the European Union, in the sense of extending the scope of the AML/CFT regime to the art, antiquities, and cultural goods market, is an option to be considered<sup>19</sup>. This implies defining new regulated entities, as well as imposing preventive obligations requiring compliance with customer due diligence measures, identification of beneficial owners of legal persons, record-keeping, and reporting of suspicious transactions to the FIU.

This option would require a legal framework and a set of resolutions and specific guidance guidelines, accompanied by training and awareness-raising efforts leading to the development of a compliance culture in the sector.

The FATF report on money laundering in the field of art and cultural property seems to point in that direction. It provides guidelines and also concrete indicators of suspicious activity, which should be useful for competent authorities such as FIUs and for regulated entities. It also ratifies the importance of adopting a risk-based approach to sector management, in order to emphasize and allocate greater resources to higher risk sectors.

At the regulatory level, a closer international dialogue is expected in the coming years, with the aim of seeking consensus to strengthen cooperation between countries to combat financial crime in these markets and recover stolen assets.

### **iii. Institutional Capacity and Coordination**

The money laundering prevention regime is only as strong as its weakest link. This is the reasoning of those who launder the proceeds of illicit activities. This analysis leads to the conclusion that there are two challenges in this regard. On one hand, the agencies involved in the supervision of the sector do not always have sufficient institutional capacity—human and material resources, etc.—to respond to the magnitude of the problem. Secondly, there is room for

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<sup>19</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU.

improvement in inter-institutional coordination to strengthen the preventive capacity of the weakest links in the chain.

For example, the strategic analysis carried out by financial intelligence units could provide good inputs to understand the patterns, trends, and typologies of money laundering and terrorist financing that compromise these markets. Such information could be used by FIUs and other competent authorities to refine their understanding of money laundering and terrorist financing threats and vulnerabilities, and to establish risk-based public policies.

In this aspect, a practical contribution can be made with simple mechanisms to achieve two results. The first is to improve knowledge of the risks jointly by the agencies with primary responsibility (ministries of culture, museums, cultural heritage agencies) in the regulation and supervision of the sector. The second is to improve the effectiveness of the agencies responsible for the detection, analysis, and repression of money laundering and its predicate crimes (financial intelligence units, customs, tax agencies, police, public prosecutors)<sup>20</sup>.

In short, the approach proposed by the FATF Standards is that the technical quality of the rules is a fundamental factor in improving the likelihood of their efficiency and effectiveness.

#### **iv. Strengthening the System Based on Public-Private Dialogue**

There is valuable knowledge in the private sector, both in the professional, civil society, and academic sectors, that can strengthen and protect this market.

Public-private alliances, which are becoming a trend in the fight against financial crime, both from a strategic and operational point of view, would seem to offer an efficient working model to achieve a better joint understanding of risk and a more coordinated and effective definition of strategies and public policies to mitigate them.

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<sup>20</sup> The European Union's PACcTO program for Assistance against Transnational Organized Crime is a good practice in this direction.

This report cites a series of studies resulting from joint efforts between the private sector and academia, including those private actors who have an interest in a transparent and reliable market that protects transactions. These experiences are an example of the value of public-private synergies.

Another conclusion is that public regulation is a necessary but perhaps not sufficient condition. There is an important aspect related to collective action and self-regulation. Artists' associations, gallerists, exhibitors, and auction houses can work together to adopt standards that protect their sector and build stronger bridges of collaboration between the public and private sectors.

For example, once a better understanding of the risks affecting the sector has been achieved, it would also be advisable for the development of public policies in this area to be carried out with a strategic approach. To this end, and in order to organize government efforts efficiently, these policies should be incorporated into each country's national strategy against money laundering and financing of terrorism. Said strategy should be the result of inter-institutional, public-private work, aimed at generating consensus and commitments in the fight against financial crime in this sector.

A particularly important issue is that these actions take into account the characteristics of the market in each country, so as not to create costly and ineffective regulations.

In particular, it is important to involve the private sector in order to ensure that the policy response does not have an undesirable effect on artistic creativity and the trade of works. The policy must fundamentally ensure a market that protects both the works and those who create, disseminate, and market them.

## **v. Leveraging Digital Technologies**

The way in which technology can collaborate in the identification, registration, and custody of art objects has also been analyzed, especially the inventory and digitization of these items, in order to homogenize taxonomy and labeling, thus facilitating the exchange of information. There are both public and private registries, which is a step forward that broadens the field of investigation and

prevention. The experiences of Interpol and the Guardia di Finanza are practical examples to consider. It is also important to highlight the use of technology in the georeferencing of archaeological sites. This significantly reduces monitoring and inspection costs<sup>21</sup>.

Based on these preliminary conclusions, some recommendations are presented, with a view to continuing the dialogue on this agenda.

## Recommendations

### i. Improve Knowledge of Risks to Improve Prevention

- **Promote the inclusion of the risks of money laundering and terrorist financing through the art, antiquities, and cultural objects market** in the upcoming series of national risk assessments that countries develop.
- **Encourage the deepening of understanding of threats and vulnerabilities** in the art market through sectoral assessments, strategic analysis tasks and the support of specialized actors.
- **Promote the development of strategic analysis activities** by financial intelligence units with the objective of identifying patterns, trends, and typologies of money laundering and terrorist financing that compromise these markets.
- **Promote through national strategies against money laundering and terrorist financing the inclusion of public policies** aimed at managing and mitigating the risks of money laundering and terrorist financing identified in the market for art, antiquities, and cultural objects.

### ii. Better Rules

- **Promote the search for international consensus within the FATF framework**, based on existing conventions around definitions and basic concepts, such as art, antiquities, or cultural objects.

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<sup>21</sup> The use of georeferenced digital technologies for archaeological site surveying has great potential for custody and preservation. See M. Mura and J. Giraud (2022) and Gino Gaspari (2022).

- **Promote the modification of the FATF international standard to include art, antiquities, and cultural objects market operators in the list of subjects obligated as a new non-financial activity and profession designated (DNFBP).**
- **Promote the standardization and development of specific legal and regulatory frameworks** in line with existing conventions and international standards that are agreed upon to prevent and combat money laundering and terrorist financing in the market for art, antiquities, and cultural objects.
- **Promote the issuance of guidance and guidelines for risk assessment and the implementation of preventive obligations in the market for art, antiquities, and cultural objects (including customer due diligence measures, identification of beneficial owners of legal persons, record-keeping, and reporting of suspicious transactions to the FIU).**

### **iii. Strengthen Institutional Capacity and International Cooperation**

- **Strengthen dialogue and collaboration mechanisms between agencies with primary responsibility (ministries of culture, museums, and cultural heritage agencies) in the regulation and supervision of the sector and agencies responsible for the detection, analysis, and repression of money laundering, its predicate crimes and terrorist financing (financial intelligence units, customs, tax agencies, police, and public ministry).**
- **Promote the development of supervision and monitoring capabilities for compliance with preventive obligations in the market for art, antiquities, and cultural objects, with a risk-based approach; including training and development of strategies, cycles, structures, and standardized supervision tools that facilitate international cooperation among supervisors.**
- **Create rotation programs for state agency personnel with market supervision responsibilities so that they acquire in practice the knowledge and skills that allow them to strengthen coordination and the general effectiveness of the system.**

- **Promote cooperation between countries to combat financial crime** in the art, antiquities, and cultural objects market with the aim of strengthening criminal prosecution and recovery of stolen goods.
- **Carry out awareness and training tasks to disseminate** understanding of the risks of money laundering and terrorist financing in the market for art, antiquities, and cultural objects, and promote the development of a culture of compliance in the sector.
- **Implement regional policy dialogues to identify what type of regional public goods are required**, and at the same time keep countries in the region updated on the latest advances at the regional and global level in the management of money laundering and terrorist financing risks in the market for art, antiquities, and cultural objects.

#### iv. Public-Private Alliances

- **Promote the implementation of public-private alliances as an efficient working model** to achieve a better joint understanding between the public sector and the private sector on the risk of money laundering and terrorist financing in the market for art, antiquities, and cultural objects, and a more coordinated and effective definition of strategies and public policies aimed at mitigating them.
- **Promote the adoption of codes of ethics and guidelines** that establish standards for their member associations and affiliated dealers, and issue guidelines to promote due diligence practices among their members.

#### v. Use of Digital Technologies

- **Promote the use of digital technologies for the creation of records and identification and custody of artistic objects**, especially inventories in order to standardize taxonomy and labeling, thus facilitating the exchange of information.
- **Use georeferenced digital platforms to map archaeological sites and areas of interest**, which also include interactive functions that allow recording improper activities and filing complaints.

In conclusion, addressing the threats of money laundering and terrorist financing in the art, antiquities, and cultural property market requires a comprehensive approach that combines regulatory strategies, institutional strengthening, international cooperation, and public-private dialogue. The recommendations presented aim to improve understanding of the risks, harmonize regulatory frameworks, build institutional capacities, and take advantage of digital technologies as key tools for prevention and mitigation. However, this challenge also demands a sustained commitment among public, private, and academic actors to generate an effective system that safeguards both the integrity of markets and the global cultural heritage. Only by consolidating collaborative efforts will it be possible to guarantee a secure, transparent, and resilient environment in the face of the illicit dynamics that threaten this sector.

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