

# Cultural Property Crime

*An Overview and Analysis of Contemporary  
Perspectives and Trends*

*Edited by*

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**BRILL**

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## Forge and Export: The Trade in Fake Antiquities from China

*Toby Bull and Stefan Gruber*

This chapter explores aspects of the manufacturing, smuggling, trading, and identification of fake Chinese antiques, while focusing mostly on items originating from the region of South China. Art forgery is one of the most common forms of art crime committed to satisfy the never-decreasing demand for “new” antiques by the constantly growing and overheated international art market. South China plays a central role in those operations, as it not only hosts numerous workshops solely dedicated to producing high numbers of fake Chinese antiques of varying quality, but its location also provides multiple transportation routes for shipping the contraband abroad, for example via the Pearl River Delta or Hong Kong. In many cases, the forgers operate in organized manners and often produce fakes following precise instructions. While most copies of antiques are produced as replicas and sold as such, a high number of items is nevertheless produced with the sole purpose of cheating purchasers.<sup>1</sup>

Besides copies of less known or entirely fabricated pieces, copies of famous Chinese antiques can also be found on the market. For example, a Ming Dynasty “chicken cup” that was sold for \$38.5 million at an auction in Hong Kong in April 2014,<sup>2</sup> setting a new record for the most expensive Chinese porcelain, is at the same time one of the most reproduced pieces of Chinese art ever.<sup>3</sup> Copies can be found for sale at countless Chinese antique shops, some of which attempt to convince customers that they stumbled across a bargain. Demand and increasing prices in the art market combined with greed provide

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1 Stefan Gruber (2014), “Perspectives on the Investigation, Prosecution and Prevention of Art Crime in Asia,” in Saskia Hufnagel and Duncan Chappell (eds.), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime* (Ashgate).

2 “Chinese Ming-era ‘Chicken Cup’ Sells for Record \$38.5 Million,” *Australia Network News* (9 April 2014), <<http://www.abc.net.au/news/2014-04-09/an-chinese-ming-era-chicken-cup-sells-for-record-2436-mi/5376638>>.

3 “Rare Ming Dynasty Wine Cup Expected to Fetch \$38m at Auction,” *Australia Network News* (13 March 2014), <<http://www.abc.net.au/news/2014-03-13/an-china-rare-tea-cup-goes-to-auction/5317948>>.

excellent opportunities for forgers and fraudulent antique dealers alike, which leads to more fraud overall as a result. Either an irresistibly low price or the desire of a collector for a particular piece can help criminals to convince buyers that they are buying genuine pieces despite their suspicions that they are being offered a fake.<sup>4</sup>

### Mere Copies or Fake Antiques?

This chapter recognizes that there are many different interpretations of the term “fake” in relation to pieces that are not genuine. The concept of a genuine work and an imitation is by no means as clear-cut in China, and, as a result, art forgery in China has never carried the dark connotations that it does in the West.<sup>5</sup> In fact, the conservation of cultural heritage through copying and rebuilding has a long tradition in Chinese and other Asian cultures, which also reflects a different perception of originals and copies.<sup>6</sup> To copy masterpieces was, and remains, widely practiced to train artists and to pay homage to artists from previous generations. Historically, copying was as a stage in the learning process, giving value to the copyist; there was no demeaning the act of copying for a lack of imagination thereby making any copy a forgery. A forgery begins with the intention to deceive; of course, further problems arise when the copies made for the purpose of study and practice merge with the ones that intended to deceive.<sup>7</sup>

Striving for a definitive etymological definition of this term is beyond the scope and purpose of this work. Nevertheless, “fake” may be synonymous with “forgery,” but the word is also sometimes used to describe a copy or a reproduction. For the purpose of this chapter, the term “fake” is understood in the context of “counterfeit”—which implies that a piece is manufactured or altered deliberately to be later used as a tool for deception. One example of a definition of “counterfeit” as used in the international art market can be found in the conditions of sale by Sotheby’s:

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4 Kimberly Alderman (2014), “Art Crime,” in Gerben Bruinsma and David Weisburd (eds.), *Encyclopedia of Criminology and Criminal Justice* (Springer).

5 H.C. Luce (2000), “Copying Chinese Paintings: Flattery or Forgery?” *IFAR Journal* (Spring): 10.

6 Stefan Gruber (2007), “Protecting China’s Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law,” *Asia Pacific Journal of Environmental Law* 10: 253.

7 Toby Bull (2009), “Lack of Due Diligence and Unregulated Markets: Trade in Illicit Antiquities and Fakes in Hong Kong” in Noah Charney (ed.), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger), 26, 28.

For these purposes, “counterfeit” means a lot that in Sotheby’s reasonable opinion is an imitation created to deceive as to authorship, origin, date, age, period, culture or source, where the correct description of such matters is not reflected by the description in the catalogue (taking into account any Glossary of Terms). No lot shall be considered a counterfeit by reason only of any damage and/or restoration and/or modification work of any kind (including repainting or over-painting).<sup>8</sup>

### Demand for Affordable Chinese Antiquities

Chinese antiques have increased in popularity on the international art market in recent decades and are often highly sought after by collectors and investors alike. Prices seem to be racing from one record to another. For example, a Qianlong porcelain bowl was sold at an auction in Hong Kong in 2006 for \$19.5 million, which was unprecedented for Asian porcelain.<sup>9</sup> However, this price was soon eclipsed at another auction in Hong Kong in 2010 with the sale of a Qianlong porcelain vase for \$32.4 million, and, most recently, by the above-mentioned sale of the Ming Dynasty “Chicken Cup.” While these are examples of extraordinary expensive art, the value of more reasonably priced Chinese antiquities is generally rising at a similar pace.

Regarding the international market for cultural heritage items generally and antiquities in particular, “source” nations and “market” nations are typically distinguished.<sup>10</sup> In this context, source nations are seen as countries “rich in cultural artifacts beyond any conceivable local use,” while richer market nations are countries where the demand for such items usually exceeds the supply, which encourages the export of cultural property from the—usually poorer—source nation.<sup>11</sup> While China has been a classic example of a source country since the opening of the trade routes to the West, it is also

8 This definition can be found in the conditions of sale in Sotheby’s catalogue for the auction “Collections,” held on 29 April 2014 in London, available at <<http://www.sothebys.com/content/dam/sothebys/PDFs/cob/L14304-COS.pdf>>.

9 Christie’s, “Auction Results, Imperial Chinese Ceramics from the Robert Chang Collection—Jade Shears and Shimmering Feathers, Lot 1309” (28 November 2006), <<http://www.christies.com/lotfinder/lot/a-fine-and-highly-important-imperial-familie-4823606-details.aspx?intObjectID=4823606>>.

10 Simon Mackenzie (2005), *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (Institute of Art and Law), 8.

11 John Henry Merryman (1986), “Two Ways of Thinking about Cultural Property,” *American Journal of International Law* 80: 831.

now becoming a market nation as many wealthy Chinese collectors and businessmen are involved in the repatriation of items that were once looted, thus reclaiming the cultural heritage of their country. The ongoing export of cultural items from China, particularly over the last 150 years, through looting and legal export, and the loss of items through destruction, most notably during the Cultural Revolution, has created an increasing shortage in items available to the art market.

Generally, antiquities sold on the open market fall into the three categories of licit, grey area, and illicit items.<sup>12</sup> This chapter focuses on fakes as a fourth category, which includes modern creations or reproductions of Chinese art, which masquerade as antiquities. Fakes might masquerade as artifacts from all the other three categories, as they are not exclusively sold on the open market. In fact, it might in many cases be easier to sell fakes to buyers of potentially illegally exported items, or at least artifacts with dubious provenance, as they might hope to have encountered a once-in-a-lifetime chance or bargain, and they cannot check the authenticity of the item as thoroughly as they could a licit artifact.

### Chinese Fake Antiquities in the International Art Market

Unsurprisingly, the high profits and prices achieved through the sale of Chinese antiquities also attract criminals who try to take their share of the market. While the most destructive forms of crime related to antiquities relates to looting and the illegal export of cultural artifacts, this chapter focuses exclusively on the manufacture and sale of fakes. However, they are inexorably linked, as they are in many cases committed by the same groups of criminals and are usually targeted at the same group of potential purchasers constantly competing with others on the search for a bargain in the ever-growing Chinese art market. Looted antiquities and fakes emanating from China both serve the same purpose of sating a seemingly incessant demand for Chinese cultural artifacts: the former type illegally excavated, whilst the latter created to deceive.

Several factors are aggravating the situation. Amongst them is a lack of due diligence and in some cases fraudulent conduct by some auctioneers and antique dealers. One recent example that highlights the level of unscrupulousness of some involved in the market relates to the sale of a set of two pieces labelled as a stool and dressing table carved from jade during the Han dynasty.<sup>13</sup>

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12 For definitions of these categories, see Mackenzie, *supra* note 10, at 4.

13 206 BC to 220 AD.



Both items were sold at auction in Beijing for \$33 million in 2011. Once historians questioned the authenticity of the pieces by pointing out that the Chinese sat on the floor and did not use chairs during that era, representatives from the jade industry in Pizhou in Jiangsu Province confirmed that they had been manufactured by local craftsmen in 2010, but stressed that it was only the art dealers who decided to offer them as antiquities on the Chinese art market.<sup>14</sup> Fakes of various quality have been flooding the market for Chinese art and antiquities for years, which is also damaging the general faith of customers in the authenticity of objects and potentially harming the market long-term. While buyers can generally demand compensation under the Auction Law of the People's Republic of China of 1996 if items turn out to be fakes after the auction<sup>15</sup> and most of the large Western auction houses offer a buy-back guaranty in such cases, buyers nevertheless risk a significant financial loss if they accidentally purchase an expensive fake item.<sup>16</sup> Many auctioneers will usually rather invest resources in proving that the item was genuine than acknowledging own faults and refunding the customer.

As one of the major players in China's art market, the president and director of the auction house China Guardian, Wang Yannan, was quoted stating "[t]his is the challenge right now . . . in the mind of every Chinese, the first question is whether it's fake."<sup>17</sup> Such concerns coincide with an increasing number of failed transactions, where the buyer refuses to pay. This is a problem not exclusive to China, although it is occurring there much more frequently. A porcelain vase allegedly made for the Qianlong Emperor during the eighteenth century was auctioned by Bainbridge's in London in 2010 for a record price of \$83 million. However, the Beijing-based bidder refused to pay, and, after a settlement could not be reached, the vase was sold in a private transaction to another Asian collector for slightly less than half the original bid in early 2013.<sup>18</sup> It is

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14 David Barboza, Graham Bowley and Amanda Cox (2013), "A Culture of Bidding: Forging an Art Market in China," *The New York Times* (28 October), <<http://www.nytimes.com/projects/2013/china-art-fraud/>>.

15 Auction Law of the People's Republic of China of 1996, Article 61.

16 Generally regarding the protection of buyers and authenticity of art, see Carolyn Olsburgh (2005), *Authenticity in the Art Market: A Comparative Study of Swiss, French and English Contract Law* (Institute of Art and Law).

17 Ibid.

18 Scott Reyburn (2013), "Chinese Vase Resold for Less Than Half \$83 Million Record," *Bloomberg* (15 January), <<http://www.bloomberg.com/news/2013-01-14/chinese-vase-resold-for-less-than-half-83-million-record.html>>.

interesting to note that a BBC expert had reportedly declared the vase a “very clever reproduction” forty years ago.<sup>19</sup>

Closely connected to the issue of authenticity is that of provenance, which is of great importance when selling pieces as genuine. Impeccable provenance along with a solid and verifiable sales record history will also ensure higher prices as such pieces are much less likely fakes. However, provenance can also be faked.<sup>20</sup> For example, in 2013, an item was sold as an eighteenth-century Chinese vase for \$1.7 million by an auctioneer in Norwood, MA. However, the same vase had been sold by a different auctioneer in Iowa as a twentieth-century replica for only \$3,840 in 2012.<sup>21</sup> The seller of the vase claimed that it had last been auctioned by Christie’s in England in 1989 and even attached a sticker from Christie’s with an auction number on the bottom of the vase as proof. None of these claims were checked by the auctioneer before the sale.<sup>22</sup> While records of previous sales generally increase the price of an item as they provide provenance, such records should be examined thoroughly. This particularly applies to records from overseas that cannot easily be verified, as, for example, some reports suggest that many reported sales in China did actually not take place at all.<sup>23</sup>

Faking and forgery is hardly a new phenomenon in the art world, and China has a rich history in this area. This has been going on for so long that some experts suggest that 70–80 percent of the antiquities sold in China are fake.<sup>24</sup> While such claims are very difficult to prove due to a lack of sufficient data, one of the authors of this chapter carried out an experiment in 2013 to test the hypothesis. He purchased an “antiquity” for sale from a gallery on Hollywood Road in Hong Kong—chosen for its location in one of the city’s hot spots for

19 Peter Dominiczak (2010), “BBC Antiques Expert Said £53Million Chinese Vase Was a ‘Very Clever Fake,’” *London Evening Standard* (12 November), <<http://www.standard.co.uk/news/bbc-antiques-expert-said-53million-chinese-vase-was-a-very-clever-fake-6535652.html>>.

20 Kenneth Polk and Duncan Chappell (2009), “Fakes and Deception: Examining Fraud in the Art Market,” in Noah Charney (ed.), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger), 74, 76.

21 Sean P. Murphy and Andrea Estes (2013), “Vase that Drew \$1.7m Bid also Drawing Federal Scrutiny: Antique and Invaluable or New and suspect?” *Boston Globe* (12 May), available at <<http://www.bostonglobe.com/metro/massachusetts/2013/05/11/real-replica-norwood-art-auctioneers-defend-value-chinese-sold-for-stunning-million/GXyFnnL5BatTuDPRE4OzhP/story.html>>.

22 Ibid.

23 Barboza, Bowley, and Cox, *supra* note 14.

24 Ibid.; Murphy and Estes, *supra* note 21.

the trade in Chinese antiquities, its average size, and ceramic items on display for sale—and then subjected the piece to forensic testing. The authors were able to compare the “sales patter” of the dealer and the provided gallery certificate with the actual results from an independent testing laboratory. Although such random samples are not necessarily representative of the overall numbers of fake antiquities being in circulation, the experiment provided some interesting insights.

The item was sold with a “Certificate of Guaranty” (sic) with the following description: “One pc. of very fine quality antique painted pottery figure of a warrior horse. Circa: 618–906 A.D. 10th Century. Tang Dynasty. From: Luoyang, China. We hereby certify to the best of our knowledge that the one piece of painted pottery figure is a genuine antique.” The certificate contains a photograph of the antiquity purchased and is signed by the gallery owner. The object is aesthetically pleasing, looks old, and has a cold, clammy feel to it. There are even some bits of dirt stuck within the small nooks and crannies. Its stylistic features certainly made it look like a Tang Dynasty horse, although its long caparisoned saddle can also sometimes be seen on pieces from the Northern Qi period (550–557). All this made it an ideal item for independent testing.

The horse was taken to the Hong Kong agent of Oxford Authentication Ltd (UK), one of the world’s leading testing facilities, for a Thermoluminescence (TL) Analysis. This test measures the radiation level emitted by a tiny sample (weighing about 100 milligrams) drilled from the object. When heated, the powder emits a faint light signal, which can indicate when the pottery was last fired in a kiln. If the measurements are consistent with the reported age of the antique, a certificate of authentication will be issued. Evidently, the test itself is a destructive one, as it requires the samples (usually at least two) to be extracted from the object. However, most owners will not want a sample drilled from an area that would be clearly seen on the object and might spoil its aesthetic and monetary value. Consequently, owners often only ask for samples to be taken from the base of the piece, or inside a rim, or near the blowing hole in order to leave no marks visible when on display. But this is a fact the manufacturers of fakes know only too well and use to their advantage. In many cases, they work old shards, usually collected from around the area of the old imperial kiln sites, such as those at Jingdezhen, into the objects during the manufacturing stage. For the purpose of the experiment, the two samples were deliberately taken from under the head of the horse and from the left buttock area. The samples were taken under laboratory conditions—in red light—, placed in a vial, sealed in an envelope, and couriered to the main testing laboratory in Oxford in Great Britain. The results were delivered one month later. The one-page report stated what the object was presumed to be (a painted

pottery horse from the Tang dynasty), where the samples were taken from, by whom, and included a statement concluding “[u]sing standard methods and techniques it was estimated that the date of last firing was: Less than 100 years ago. Note: Both samples yielded a similar result. INCONSISTENT with the suggested period of manufacture.” The report is signed by the owner and founder of Oxford Authentication.

Similar fakes can also be found in well-known public collections. For example, it was revealed in early 2014 more than three quarters of the Chinese paintings from the Ming and Qing dynasties owned the Victoria and Albert Museum in London have been identified as not genuine and are therefore not on public display.<sup>25</sup> An even more dramatic case led to the closure of a private museum in Hebei province in 2013 after it was found that almost all of the 40,000 pieces on exhibit were in fact fakes.<sup>26</sup>

### The Manufacturing of Chinese Fake Art

Southern China is amongst the world’s hotspots for mass-produced works of art. For example, a large part of the international supply of cheap oil paintings are produced in Dafen Village at Shenzhen. Its hundreds of galleries and workshops export millions of paintings each year. Most of the paintings produced in that city are copies of famous masterpieces; the most experienced painters can produce thirty such copies per day.<sup>27</sup> While the majority of those paintings could never be mistaken for genuine masterpieces, this industry affords opportunities for unscrupulous fakers to use the services of some of the most skilled painters in Dafen, who earn meager salaries despite some being graduates from China’s most renowned art schools.<sup>28</sup> And copying is not just for classical painting; modern art from China and other Asian countries is being copied the most frequently. For every authentic work on display in the city’s galleries,

25 Richard Brooks (2014), “Merciless Ming Swamps V&A with Forgeries,” *The Sunday Times* (2 February), <[http://www.thesundaytimes.co.uk/sto/news/uk\\_news/Arts/article1370672.ece](http://www.thesundaytimes.co.uk/sto/news/uk_news/Arts/article1370672.ece)>.

26 Chris Luo (2013), “Hebei Museum Mocked Online over Fake ‘National Treasures’,” *South China Morning Post* (9 July), <<http://www.scmp.com/news/china/article/1278836/hebei-museum-mocked-online-over-fake-national-treasures>>.

27 Martin Praetsch (2006), “Van Gogh from the Sweatshop,” *Spiegel Online* (23 August), <<http://www.spiegel.de/international/0,1518,433134,00.html>>.

28 Ibid.

hundreds of reproductions are being churned out by artists who have almost perfected the centuries-old Asian tradition of faithfully copying their masters.<sup>29</sup>

For example, Dao Hai Phong (born 1965) is a Vietnamese contemporary artist who graduated from the Hanoi College of Fine Art in 1987. He specializes in village scenes and depictions of Hanoi streets, which are executed in oils in his trademark primary colours. He has held exhibits across Asia, Europe, and the United States. His work is sold for thousands of dollars. As an established Asian contemporary artist, his style is being copied and peddled at the street stalls of Dafen as well in Hong Kong. “Fishing Boats,” which was painted in 2002 and is one of his most seminal works, is also one of the most-copied ones. Almost before the paint had dried on the original, renditions of this work were already readily available. Indeed, one version of it—signed by the copyist’s own hand—was seen by one of the authors on sale for less than \$50 soon after the original was painted. Notwithstanding the intellectual property issues involved in this subterfuge, it would not be too difficult for an art dealer or gallery worker of less than perfect repute to offer such a copy as an original to a naïve art buyer just starting a collection. The situation has worsened since then, with even more replicas and forgeries of better quality copying many of the region’s most famous contemporary artists available on the market.

Meanwhile, the Chinese authorities are attempting to tackle the most blatant of cases of “art piracy” and copyright infringements with establishment of the Dafen Intellectual Property (IP) Office in 2007,<sup>30</sup> whose area of responsibility is to investigate and prosecute copyright violations. Despite efforts to obtain data, the authors have been unable to verify the number of cases it has flagged which led to prosecutions. Nevertheless, the mere existence of such an organization shows the intentions to at least attempt to alleviate the problem.

Modern technology has enabled objects to be reproduced with far greater accuracy. For the last twenty years, copies of various art forms have appeared from China of a previously unseen quality, particularly in porcelain and pottery.<sup>31</sup> However, while the top forgers seemingly master many stylistic traits, know how to fool a wide range of potential buyers, and produce “antique” items to pass a TL test in the way described above, it is nevertheless very difficult to

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29 Bull, *supra* note 7, 29.

30 Evan Osnos (2007), “Chinese Village Paints by Incredible Numbers,” *Chicago Tribune* (13 February), <[http://articles.chicagotribune.com/2007-02-13/news/0702130004\\_1\\_oil-paintings-chinese-village-mao-tse-tung](http://articles.chicagotribune.com/2007-02-13/news/0702130004_1_oil-paintings-chinese-village-mao-tse-tung)>.

31 Bull, *supra* note 7, 29.

produce pieces of such detail to fool the experts working in the top auction houses or galleries with their years of academic training and experience.<sup>32</sup>

Jingdezhen, a leading centre of pottery, where Ming porcelain was produced in the fourteenth and seventeenth centuries,<sup>33</sup> has now developed into an international art centre similar to Dafen Village. In addition to well-known Chinese artists, such as the controversial Ai Wei Wei, creating, firing, and glazing their works,<sup>34</sup> many forgers are producing thousands upon thousands of copies of seemingly genuine pottery items with great skill and sophistication.<sup>35</sup> However, it is the modern pieces designed to deceive and made to order, with potters copying pieces straight out of the auction catalogues, which pose danger to the art market. These items not only look convincing, but can pass the industry standard scientific TL test (as described above), which is the most commonly used method in dating porcelain and pottery. Another method for testing items, though not an industry norm and much more expensive than a TL test, is the use of Computed Tomography (CT) scans. This is a medical imaging method using special x-ray equipment to obtain cross-sectional and three-dimensional pictures of an object, allowing better visualization of the inner state of the piece.<sup>36</sup> This is not a dating test, but can show how a work of art was made, giving vital clues as to the various stages of manufacture. This is a very expensive test and therefore hardly used; the testing of a 50cm piece or smaller costing around \$1350, increasing by \$250 for each additional 30cm to be tested. Neither the TL test nor the CT scan option are widely offered by galleries to those purchasing artifacts, as enlarging the knowledge of a prospective buyer might in some cases be rather counter-productive. Certainly, no possibility of any type of forensic testing was mentioned during the buying process of the author's "Tang-dynasty horse." Nevertheless, many art galleries on Hollywood Road in Hong Kong have TL certificates attached to some of their pieces on sale and give great prominence in the display.<sup>37</sup> However, it should be noted that all the TL test pertains to is that the sample examined is of a certain age and not that the piece itself is genuine. It may well be genuine, but buyers are advised to be cautious about the validity of such certificates.

32 Ron Gluckman (2002), "Remade in China," *Destinasian* (June), <<http://www.gluckman.com/ChinaFraud.html>>.

33 Bull, *supra* note 7, 29.

34 Kristina Kleutghen (2010), "Ai Wei Wei, Sun Flower Seeds," *Modern Art Asia* 5: <<http://modernartasia.com/ai-wei-wei-sunflower-seeds-5/>>.

35 See further, Gluckman, *supra* note 32.

36 See, e.g., the website of Antique Authentication Ltd., <[http://www.antiqueauthentication.com/home\\_eng.html](http://www.antiqueauthentication.com/home_eng.html)>.

37 Bull, *supra* note 7, 29.

### Fake Antiques, Organized Crime and the Role of Hong Kong

The issues related to the manufacture, movement, and sale of fake Chinese antiques should not be looked at in isolation from other forms of art crime, as these pieces are created to satisfy the international demand for Chinese antiquities and art in a similar way as the trade in illicitly exported items. It is generally fair to claim that the trade in and production of fake antiquities on an industrial scale is tied to organized crime in a similar way as the large-scale trade in illicitly exported antiquities. There are many similarities between both criminal activities in terms of their *modi operandi*, transportation, organization, and the ways in which the items are introduced into the art market. Hong Kong, as an ideally located transit hub and free port, has been playing a central role in the smuggling and sale of genuine, illicitly looted antiquities and their modern-day doppelgängers. Looted antiquities are typically smuggled across the porous borders between Mainland China and its Special Administrative Region, often acquiring fictitious provenance along the way. Documents claiming false authenticity and providing assurances that the items have not been looted are also common practice.

Organized criminals have been increasingly diversifying their operations and are often involved in several criminal activities simultaneously. A recent report by the Australian Crime Commission confirmed that “[o]rganised criminals who may once have been involved in traditional illicit markets, such as drugs, are now expanding their interests—often across a range of illicit activities or sectors—in order to maximize their profits.”<sup>38</sup> The same applies to organized structures in art crime, which has been an increasing focus of research generally<sup>39</sup> and of research in Asia.<sup>40</sup> Illicit art trafficking and the trade in looted antiquities is often used for laundering profits from other illegal activities due

38 Australian Crime Commission, “Organised Crime in Australia 2013” (Commonwealth of Australia: 2013), 7; <https://www.crimecommission.gov.au/sites/default/files/ACC%20OCA%202013-1.pdf>.

39 Duncan Chappell and Kenneth Polk (2011), “Unraveling the ‘Cordata’: Just How Organized is the International Traffic in Cultural Objects?” in Stefano Manacorda and Duncan Chappell (eds.), *Crime in the Art and Antiquities World* (Springer), 99; Simon Mackenzie (2011), “The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market,” in: Stefano Manacorda and Duncan Chappell (eds.), *Crime in the Art and Antiquities World* (Springer) 69; Jessica Dietzler (2013), “On ‘Organized Crime’ in the Illicit Antiquities Trade: Moving beyond the Definitional Debate,” *Trends in Organized Crime* 16: 329.

40 Christine Alder, Duncan Chappell and Kenneth Polk (2009), “Perspectives on the Organization and Control of the Illicit Traffic in Antiquities in South East Asia,” in Stefano Manacorda (ed.), *Organized Crime in Art and Antiquities* (International Scientific and

to the high profits from organized crime.<sup>41</sup> Also, the transportation routes used for smuggling one particular kind of illegal good can usually also be utilized for moving other contraband once the mechanisms for bribing officials at the port of call and border crossings, falsifying documents, and modes of transportation are in place. This also applies to smuggling operations across the Hong Kong border, which have become increasingly efficient and sophisticated due to the long experience of drug trafficking and smuggling of other goods by the local criminal organizations. In December 2013, Chinese customs officers discovered a forty-meter underground tunnel with a rail track and wagon crossing the border between Shenzhen and Hong Kong, which could be used for smuggling an unlimited variety of contraband.<sup>42</sup>

On 18 June 2011, a 20" container bound for Taiwan arrived at the River Trade Terminal in Tuen Mun, Hong Kong. It had been loaded in Huangpu in the Pearl River Delta, and its cargo was described as Tupperware and plastic items. However, a random check disclosed that the container was packed with thousands of fake Chinese antiques, including ceramics, paintings, scrolls, and stoneware. The fakers even developed false provenance for the items and placed them in artificially aged crates bearing labels identifying them as part of a shipment of treasures taken from the Palace Museum in Beijing by the Kuomintang forces. Some of those shipments were reportedly lost when the Kuomintang fled Mainland China in 1949. Experts would have been able to notice the difference from the real crates, boxes, and packaging that were used to transport treasures from the Forbidden City to Taiwan, as they were manufactured with an impressive quality of craftsmanship with cushioned silk linings inside and cutouts of perfect proportions to house the revered and treasured antiquities. However, the items intercepted in Tuen Mun were manufactured for the quick sale, to produce large margins, and above all to exploit the greed of the purchaser. The fake provenance was aimed at adding to the mystery surrounding the items and convincing prospective collectors that they had the once-in-a-lifetime opportunity to get their hands on the bargain of the century. If the container had not been selected for random inspection, these

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Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme), 119.

41 Stefan Gruber (2013), "The Fight against the Illicit Trade in Asian Cultural Artefacts: Connecting Domestic Strategies, Regional Cooperation, and International Agreements," *Asian Journal of International Law* 3: 341, 347.

42 "Smugglers Built Secret Tunnel Leading to Hong Kong, Border Official Discovers," *South China Morning Post* (25 December 2013), <<http://www.scmp.com/news/hong-kong/article/1389781/smugglers-built-secret-tunnel-leading-hong-kong-border-officials>>.



items would then have acquired their export certificates and been shipped to Taiwan and beyond, with many of the best pieces entering the art market with their provenance showing that they had come from a private collection in Hong Kong. The amount of items, sophisticated fake provenance, and method of smuggling clearly indicates that this was not the work of a small group of perpetrators, but clearly links it to organized crime.

In fact, the trade in antiquities, be they real or fake, is part of highly organized criminal enterprise structures. For example, tomb robbing in China involving diggers, equipment, and middleman to sell the objects requires a multi-layered network, just as the manufacture and movement of fakes. Unlike other type of trafficking, the criminals involved face far less harsh penalties if caught than those with drugs, for example, while those orchestrating those operations are hardly ever caught or prosecuted at all.<sup>43</sup> The problem is exacerbated by a lack of awareness and resources assigned by the authorities to combatting illegal trade via Hong Kong. For example, the officers of the Hong Kong Customs and Excise Department (HK C&E) can only carry out random checks on 1% of the containers shipped via the Port of Hong Kong. According to information provided by the authorities to the authors on request, the value of antiquities seized by HK C&E and returned to China between 1992 and 1996, approaching the end of British rule on 1 July 1997, was HK\$15 million. In the following ten years (1997–2006) the value decreased to HK\$2.3 million, and between 2007 and 2012 there were no recorded cases at all.

In 1997, many art dealers fled Hong Kong fearing the change of sovereignty, believing the harsh and strict export embargos of the Chinese system would be applied to Hong Kong and kill the trade in Hong Kong.<sup>44</sup> Once the announcement was made that Chinese laws on the protection of cultural relics would not be applied to Hong Kong, business carried on unabated, and the reputation of Hong Kong as the place to buy Chinese artifacts and antiquities solidified. Of particular importance in this context is Hong Kong's status as a transport hub, and particularly as a free port. If a cultural artifact is not proven to be stolen, it can be legally exported, changing the status from illicit to licit. Once entered into auction catalogues, the object is often described as part of a private collection in Hong Kong. That is certainly the story for many illicitly smuggled—and poorly provenanced—antiquities, with the best fakes often passing muster and following this same path. However, as the due diligence provided by Western auction houses is generally significantly higher than in China, where more and

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43 Gruber, *supra* note 6, 296.

44 Todd Crowell (1997), "A Farewell to Antiques," *Asiaweek*, <<http://www-cgi.cnn.com/ASIANOW/asiaweek/97/0509/nat4.html>>.

more auction houses are opening for business. It is therefore far easier for a fake to gain a record of sale and, therefore, a provenance through a local sale.

The question needs to be asked whether or not greater due diligence or some form of regulation amongst the local art dealers in Hong Kong could be introduced to help diminish and eventually stop the trade in illicit antiquities and their modern equivalent pieces, recently manufactured to defraud buyers and sate the ever-increasing demand. The authors conducted their own original research on the success of a self-regulatory approach for the Hong Kong market: twenty-five mainstream art galleries in the main antiques area of Hollywood Road in Hong Kong were asked to complete a questionnaire with fourteen questions about the level of fakes in the market, as well as questions about looting and whether greater due diligence and a degree of self-regulation could help quell the problems experienced in the market. Only four galleries returned the questionnaire, and even those four that did answer did so with rather spurious replies. These results seem to indicate that there is little interest from the art trade to self-regulate, nor is there any lead from the government to tackle, or even recognize, the problem. It appears that there is simply too much money at stake. The Hong Kong Government is planning to make the city an “art hub,” as seen in the recent arrival of the mega Art Basel exhibition in May 2013. The acknowledgment of a high number of fakes being traded in Hong Kong is seen as jeopardizing this plan. Nevertheless, there is a real danger that more genuine smuggled pieces and the fakes that always follow will find their way into Hong Kong and from there into the international art market. This is a very dangerous path, as the high amount of fakes and illegally exported items in circulation does not only cause serious damage to China’s cultural heritage, but also destroys trust and confidence in the art market.

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