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“Art Law, Cultural Loss, Organised Crime and the Digital Marketplace”: a look at Libertas Chambers’ Latest Webinar

October 2022

On 27th October 2022, Dr Felicity Gerry KC and Fahrid Chishty presented “Art Law, Cultural Loss, Organised Crime and the Digital Marketplace” in partnership with Professor Jonathan Harris, Director of the Doctoral College at the University for the Creative Arts (UCA). The webinar presented the research of Professor Harris from his recent edited collection, *Terrorism and the Arts: Practices and Critiques in Contemporary Cultural Production* [Routledge: 2021], as well as critical reflections from our members on the law governing the destruction of cultural heritage and the nexus between art and antiquities trafficking and organised crime, in particular in light of the changing nature of the digital marketplace.

Professor Harris’ presentation interrogated the relationship between terrorism and the arts, surveying the various modalities and perspectives implicated in this understudied yet important area of research. In particular, he situated the subject in its social, historical and contemporary contexts, contemplating the role of ideological conflicts, resistance and state and non-state terrorism in shaping the debate. Professor Harris highlighted how the question of terrorism and the arts is closely connected to policy positions assumed by governments and non-state actors alike and has profound implications for grassroots communities, artists and the legal profession.

Fahrid Chishty presented a picture of recent developments in the international law governing cultural heritage protection. He focussed his discussion on two discrete case studies – the ICJ Armenia -v- Azerbaijan case and the ICC Investigation into the Situation in Ukraine – demonstrating the trends and trajectories in this area in the two most important international judicial fora.

Fahrid assessed the ICJ's Indication of Provisional Measures in Armenia -v- Azerbaijan in light of criticism that the decision contrived rights into the Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD) without sound basis. He also deliberated whether the ICC investigation into the situation in Ukraine will lead to charges being brought against Russian officials in connection with acts of alleged cultural destruction, including under Article 8 of the Rome Statute 1998, committed since February 2022.

This was followed by an exposition of the domestic law governing crimes involving art, antiquities and cultural goods by Dr Gerry KC. Dr Gerry KC has appeared in numerous cases in the Courts of England and Wales having an art law dimension and is currently instructed as Defence Counsel on behalf of Mr Al-Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, who faces charges of War Crimes and Crimes Against Humanity, inter alia, at the ICC. Dr Gerry KC surveyed the legal and regulatory regime in England and Wales relating to money laundering, terrorism financing and trafficking in cultural property, assessing key questions regarding art market participants, the legislative scheme and risk-based approaches. Dr Gerry KC then deconstructed the debate in terms of the digital marketplace, providing an assessment of the fraud landscape in light of the challenges associated with the advent of cryptocurrencies and non-fungible tokens (NFTs) and the integration of digital assets within the broader matrix of international transacting and transnational crime.

In sum, the Webinar drew on the expertise of Professor Harris and two of our own practitioners to canvass a range of criminal law issues that potentially embrace cultural heritage protection and the international art market. Terrorism, war and black markets have opened up new vectors for the illicit transmission and trade of art, antiquities, artefacts and cultural goods. Armenia, Ukraine and Afghanistan are hotspots of risk where cultural heritage is in danger of destruction, deconstruction or pillage, and it remains to be seen how the judiciaries of the ICJ and the ICC will develop their case law in relation to breaches of international law directed against cultural property. Meanwhile, the digital marketplace continues to revolutionise its commercial practices and platforms of exchange, giving rise to unprecedented opportunities and novel challenges. As such, we anticipate a greater need for criminal law practitioners

to provide advisory and advocacy services in this niche area as the need for sophisticated and original solutions grows.

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