

**Swiss Freeports and the Art Market:
Some Legal Aspects**

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Ali Baba's Cave?



Fernandel, *Ali Baba et les Quarante Voleurs*, 1954

Outline

- I. The new picture in Switzerland
- II. From old scandals to new rules and regulations
- III. Art in transit
- IV. The non extra-territorial nature of freeports
- V. Customs and cultural property law issues
- VI. The future

I. The New Picture in Switzerland



The Geneva Freeport,
since 1854

I. The (Very) New Picture



The Roman Sarcophagus case
(object looted form Turkey)

The presentation at the MAH, Geneva
(object looted from Syria)



II. From *Old Scandals* to ...



The Medici and Becchina affairs

II. ...New Rules

- **2003:** New legislation on the international transfer of cultural goods:
- **2005:** Cultural goods stored in freeports are considered to be «*Sensitive goods*» and must therefore be listed on an inventory, which customs may check;
- **April 14, 2014:** Audit by the Swiss federal control agency suggesting that stricter controls should be established by customs;
- **November 2015:** the Geneva freeport announces it will set up stricter controls, in particular on antiquities.

II. ... and Regulations

September 2016



BREAKING NEWS - CONTROL OF ARCHAEOLOGICAL OBJECTS

Commencing 19th September 2016,
for anyone wishing to store an archaeological object at Geneva Free Ports,
it is imperative to have **previously announced** its arrival for approval.
The control of its acceptability will be carried out
by a neutral monitoring company.

 **GENEVA FREE PORTS
& WAREHOUSES LTD**

III. Art in Transit

- The common sense answer
- The legal answer:

Article 101 Swiss Private International Law Act (1987)

Goods in transit:

*“The acquisition and loss, through legal transactions, of property rights on **goods in transit** are governed by the law of the state of destination.”*

Kanakaria Mosaics (Cyprus) -
Autocephalous Greek Orthodox
Church of Cyprus v. Peg Goldberg
(1988-89)



*Kanakaria Mosaics (Cyprus) -
Autocephalous Greek Orthodox
Church of Cyprus v. Peg
Goldberg (1988-89)*



IV. The non extraterritorial status of freeports

Art. 19(3) Cultural Property Transfer Act 2003:

„Storing cultural property in a freeport is considered an import in terms of this Act.“

V. Customs and Cultural Property Law Issues

- Art. 24 International Cultural Property Transfer Act 2003 makes it **criminal** to

«Import, sell, distribute, procure or export stolen cultural goods (...) or illegally import cultural goods or to make an incorrect customs declaration upon the import or transit of such goods.»
- e.g. filing the wrong customs statistical key in customs forms («*any cultural object*»:999 instead of «*antiquities*»:912)

VI. The Future

- The end of freeports? **No**
- More regulation? **Quite certainly**
- Professional rules of conduct? The **Responsible Art Market (RAM)** Initiative

<http://responsibleartmarket.org>

Big brother
is watching
you!

