



Legal Protection of Cultural Properties from Violations by Terrorist Groups

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Abstract:

Cultural properties are entitled to a legal framework that ensures appropriate protection against all forms of encroachment due to the outbreak of armed conflicts and internal wars caused by terrorism. It is the responsibility of the state to protect these properties because they constitute a heritage owned by humanity, and the existence of this heritage and the concern for its preservation are not solely linked to the state's policy, making it a civil ownership that concerns humanity and cannot be targeted in such conflicts.

Algeria is rich in monuments, ancient sites, They reflect the memory of peoples who settled in the country to build their civilizations amidst systematic wars, leaving behind all these artifacts that collectively represent the memory of humanity.

Given that wars and armed conflicts always pose a threat to human heritage, leading to its destruction or disappearance, Algeria experienced a period of armed civil war in the 1990s during which these artifacts and cultural properties were not spared from looting, destruction, and damage, in addition to diverting tourist routes that could attract visitors to the country. This prompted the need to establish a legal system aimed

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at protecting this heritage from destruction, exerting all efforts and resources to conserve cultural heritage and give legal status to its existence and protection.

Keywords: Cultural properties, terrorism, armed conflicts

Introduction:

Cultural properties are integral components of human identity and constitute part of the common heritage of humanity.

Cultural properties encompass both movable and immovable assets that bear witness to the traces of various civilizations, as well as those found in the subterranean layers of inland and national waters inherited from various civilizations spanning from prehistoric times to the present day. Additionally, they include arts, sciences, literature, and religions resulting from social interactions and the creative endeavors of individuals and groups from one era to another, extending from prehistory to successive historical periods until today¹. These properties hold historical and archaeological value².

Numerous activities focus on marketing artifacts and cultural properties internationally, regionally, and locally, indicating recognition of the various forms and types of cultural ownership shared by humanity as a whole. However, deviations in the performance of these activities have become obstacles to the significance of this market, especially when it targets purposes that contribute to funding terrorism. This significantly impacts museums, public and private classified collections, owners of archaeological pieces, and all cultural institutions and archaeological sites in various countries.

The dangers of illegal trafficking in cultural properties are not hidden, as they threaten to falsify and steal the values of these properties and distort their true existence. Therefore, most countries around the world make various efforts to combat this phenomenon. These efforts range from enacting strict domestic laws to concluding agreements and issuing international resolutions aimed at uniting the international community's stance with the ultimate goal of preserving a common heritage of humanity. This is because these cultural properties are not solely the concern of one nation, its people, territory, or sovereignty, but rather constitute a human heritage shared by all nations. Furthermore, illegal trafficking in cultural properties often involves cases aimed at financing terrorist groups.

¹ Article 02 of Law 98-04 of June 15, 1998 on the protection of cultural heritage, Official Gazette of the People's Democratic Republic of Algeria No. 44 of June 17, 1998, p. 03, defines cultural property.

² Magid Ragheb El Helou, *The Law of Environmental Protection*, University Press House, Alexandria, 1994, p. 20.

Algeria has taken a prominent stance in protecting cultural heritage and all cultural properties since 1967 with the issuance of Order No. 67-281 dated December 20, 1967, concerning excavations and the protection of historical and natural sites and monuments¹. This order was the first legal text issued in Algeria to protect properties and cultural heritage until it was repealed by Article 107 of Law No. 98-04 dated June 15, 1998, relating to the protection of cultural heritage.

The international community also paid particular attention to the protection of cultural property from illicit trafficking during armed conflicts, and paid particular attention to the conclusion of the 1954 Hague Convention and its Protocols. This Convention was considered the only international document that states rely on to protect cultural property during armed conflicts, whether they are armed occupations or internal armed terrorist conflicts, because all these conflicts are associated with acts of looting and illicit export of antiquities and cultural property from the territories affected by these armed conflicts².

Algeria has put in place a legal arsenal capable of protecting cultural property from all forms of aggression, looting and illicit trafficking. It follows the positions of the international community that considers this property an asset for the nation and humanity as a whole.

Thus, answering this problem requires studying the most important violations that threaten the existence of cultural property, especially illicit trafficking in this property aimed at financing terrorist groups, which has an impact on undermining local

First Section: Combatting Illegal Trafficking in Cultural Properties: How Effective in Curtailing Terrorism Financing

Algeria is considered one of the most culturally rich countries, with a diverse heritage comprising real estate, movable assets, and intangible cultural properties. Its legal framework, as indicated in Article 3 of Law No. 98-04 concerning the protection of cultural heritage, acknowledges this diversity. Article 2 of this law considers all cultural properties as cultural heritage of the nation, while Article 64 prohibits these properties from being subject to commercial transactions.

Algeria is dedicated to protecting cultural properties from all forms of violations that threaten their existence or the values they represent. Therefore, it has imposed a ban on marketing and trading these properties except under license from the Minister responsible for culture. It has also established multiple mechanisms aimed at detecting

¹ Order No. 67-281, dated December 20, 1967, concerning excavations and the protection of historical and natural places and monuments, Official Gazette of the People's Democratic Republic of Algeria No. 07, issued on January 23, 1968, p. 70.

² Hamado Fatima, "International Protection of Antiquities from Illicit Trafficking", Journal of Law and Political Science, University of Khenchela, No. 08, Part 02, June 2017, p. 913.

and investigating violations that may affect cultural heritage, along with imposing strict penalties and punishments for these violations.

Algeria's stance in combating such violations stems from its recognition of the dangers they pose, particularly to cultural heritage connected to the nation's values and authenticity. These dangers are closely linked to the financing of terrorist groups, making the fight against these violations part of counterterrorism efforts.

Thus, this section necessitates studying the combat against illegal trafficking in cultural properties as a means of combating terrorism financing. This involves elucidating the legal mechanisms and means available for this purpose, highlighting the punitive provisions capable of effectively safeguarding cultural properties.

First Demand: Legal Mechanisms for Combating Illegal Trafficking in Cultural Properties

Cultural properties in Algerian law are protected upon their registration in the additional inventory list, classification, and establishment in the form of reserved sectors. The state can extend protection to cultural properties by registering them in the general inventory list, expropriating them for public benefit, and exercising the right of administrative intervention by imposing administrative agreements aimed at realizing this protection¹.

Article 7 of Law No. 98-04 concerning the protection of cultural heritage stipulates the role of the Ministry of Culture in preparing a general inventory of classified cultural properties, registered in the additional inventory list, or newly established as reserved sectors. The purpose of this is to delineate the boundaries defining what constitutes cultural properties, thereby determining the scope of supervision and the extent of protection necessary to preserve cultural properties.

Article 62 of Law No. 98-04 concerning the protection of cultural heritage prohibits the export of protected movable cultural properties from the national territory, except for those exchanged within the scope of cultural or scientific exchanges or for participation in global research. Exportation, under any circumstances, requires permission from the Minister responsible for culture.

Additionally, Article 63 of the same law states that trafficking in cultural properties that are not protected, not classified, or inventoried constitutes a regulated profession subject to legal supervision. The Algerian state imposes conditions and procedures to regulate its practice to prevent encroachment on national identity due to the relationship these properties have with national identity.

¹ Law No. 98-04 of June 15, 1998, concerning the protection of cultural heritage, contains several provisions, including Articles 05, 07, 8/2, 10, 61, 62, 63, 64 and 65.

Furthermore, Article 64 of the same law prohibits and prevents the trafficking of archaeological cultural properties, making them ineligible for commercial transactions as they are considered properties belonging to national assets.

The Algerian legislator has established a National Committee for Cultural Properties tasked with expressing its opinion on all matters referred to it by the Minister responsible for culture related to the implementation of the provisions of Law No. 98-04, as well as discussing regulations and proposals for protecting movable and real cultural properties and the establishment of reserved sectors for cultural properties¹. Additionally, a committee was established under the Minister responsible for culture to acquire cultural properties dedicated to enriching national collections, and another committee tasked with expropriating cultural properties². Furthermore, a committee was assigned at the level of each province for cultural properties to study any requests for classification and the establishment of reserved sectors or registration of cultural properties in the additional inventory list, proposing them to the National Committee for Cultural Properties³.

Such a report on these procedures constitutes legal mechanisms that enhance the protection of cultural heritage and reduce the chances of its use in illegitimate areas that may reach the financing of terrorist groups, affecting the values of cultural property and the historical, religious, scientific, and literary social considerations of the nation.

Second Demand: Criminal Provisions Ensuring the Enforcement of Cultural Property Protection

Law No. 98-04 concerning the protection of cultural heritage includes criminal provisions aimed at protecting cultural properties from various violations that diminish their value or lead to their eradication, especially illegal trafficking in such properties. This trafficking poses evident risks when directed towards financing terrorism, which results in negative and severe consequences affecting local, national, and international peace and security in general. The legislator considers such violations as crimes, describing them as misdemeanors and subjecting them to specific criminal penalties⁴.

Article 95 of Law No. 98-04 specifies penalties of up to five (05) years imprisonment and fines ranging from 100,000 DZD to 200,000 DZD imposed on anyone who sells items resulting from excavation or exploration, discovered accidentally or during licensed archaeological research or research conducted

¹ See Article 79 of Law 98-04 on the Protection of Cultural Heritage, Previous reference.

² See Article 81 of Law 98-04 on the Protection of Cultural Heritage, Same reference.

³ See Article 80 of Law 98-04 on the Protection of Cultural Heritage, Same reference.

⁴ Khawadjia Samiha Hanian, "The Protection of Archaeological Properties under the Cultural Heritage Law", Politics and Law Notebooks, Kassidi Merbah University, Ouergla, No. 15, June 2016, p. 81.

underwater, and all other cultural properties resulting from their cutting or division, due to the potential implications for terrorist group financing.

Furthermore, Article 97 of the same law stipulates punishment for anyone who manages, without prior authorization, real or movable cultural property classified or registered in the additional inventory list. The trade and management of such properties without prior authorization according to this law represent a form of smuggling cultural properties that could contribute to financing terrorist groups.

From the analysis presented in the first section, it becomes apparent that illegal trafficking and management of cultural properties constitute one of the most dangerous violations targeting cultural heritage. This threat not only affects the existence of heritage or the preservation of its historical, literary, social, and religious values but also poses risks to local, national, and international peace and security when aimed at financing terrorist groups. Consequently, the Algerian legislator has established legal provisions in Law No. 98-04 concerning the protection of cultural heritage to combat such actions and their relationship to terrorism financing effectively.

Second section: Impact of Armed Conflicts on the Existence of Cultural Properties

Responsibility for the violation of cultural properties is considered a collective responsibility due to the belonging of these properties to the common heritage of humanity.

The effects resulting from the violation of cultural properties, especially due to the outbreak of local, regional, or international armed conflicts, are numerous. These properties often face attacks targeting their existence, looting, seizure, or unauthorized disposal, leading to the loss of their archaeological value and their exploitation for purposes unrelated to their original intent, including financing terrorist activities within the context of armed conflicts.

Thus, a strong and interconnected relationship emerges between the protection of cultural properties, particularly in armed conflicts, and the maintenance of peace and security within each country or at the regional and international levels. Therefore, the necessity of exploring this relationship within the framework of domestic law (the first demand) and international law (in the second demand) is of significant importance to understand the degree of impact of armed conflicts on the existence of cultural properties.

First Demand: Relationship between Protecting Cultural Properties and Maintaining Internal Peace and Security

Some armed conflicts may be triggered by targeting cultural properties through looting, seizure, confiscation, distortion, destruction, and violation. The destructive

tendency that fuels armed conflicts may be programmed to demolish and distort cultural properties, which embody the identity and heritage of nations in their historical, scientific, cultural, literary, and religious aspects. These landmarks often serve as the foundation for the outbreak of armed conflicts, aiming to eliminate that identity by eradicating cultural properties.

A strong relationship emerges between the endeavor to protect cultural properties and maintaining peace and security within each state. This relationship necessitates invoking a level of responsibility that emphasizes the importance of preserving cultural heritage. Recognizing this importance entails the need for establishing legal protection, both domestically and internationally, for this heritage. This was articulated in the United Nations Charter¹, particularly in Article 55 (b), which explicitly states that “tackling economic, social, health problems and related issues and enhancing international cooperation in cultural and educational matters are responsibilities of all members individually or collectively.”

Armed conflicts often target cultural heritage with the aim of cultural genocide and purging populations of their values and heritage. Therefore, states include stringent provisions in their domestic laws to protect and preserve this heritage. Additionally, various international treaties and conventions call for strong condemnation of any acts of violation, desecration, destruction, or trafficking of cultural heritage, particularly during armed conflicts, considering them war crimes.

Article 96 of Law No. 98-04 on the protection of cultural heritage stipulates penalties for anyone who intentionally damages or distorts a cultural property, whether movable or immovable, proposed for classification or already classified or registered in the supplementary inventory. Such penalties include imprisonment ranging from two (02) to five (05) years and a fine ranging from 20,000 DZD to 200,000 DZD, without prejudice to the right to compensation for the resulting damage. The same penalties apply to anyone who intentionally damages, destroys, or distorts objects discovered during archaeological research.

Thus, the Algerian legislator's position on protecting cultural properties from all violations, destruction, sabotage, and distortion, particularly armed or unarmed terrorist acts, imposes penalties to preserve these properties on the one hand, and to maintain peace and security on the other hand.

¹ Hamidi Aicha, "The Protection of Cultural Property during Armed Conflict in the Context of the Maintenance of International Peace and Security: Towards enshrining the right to cultural intervention", *Journal of Legal Studies*, Yahya Fares University of Medea, Algeria, Issue 02, Volume 08, June 2022, p. 871.

Second Demand: Relationship between Protecting Cultural Properties and Maintaining International Peace and Security

The United Nations Charter emphasizes the necessity for the Security Council to contribute to maintaining international peace and security¹ when there is a threat to peace, its disruption, or acts of aggression. Aggression targeting cultural properties represents one of the most prominent cases leading to international armed conflicts, which the United Nations Security Council addresses in many of its resolutions, owing to the cohesive relationship between protecting these properties and establishing international peace and security.

One of the notable resolutions in highlighting this relationship is the decision taken on February 22, 1993, which established the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, particularly those violations targeting the destruction of cultural properties. Under this decision, **“Pavle Strugal”** was prosecuted for his attacks by sea, land, and air in 1991 and 1992 on the historical monuments in the city of Dubrovnik, Croatia, causing significant damage to the city. He was sentenced to eight (08) years in prison².

Another resolution by the United Nations Security Council in this context emphasized that terrorism in all its forms and manifestations poses a threat to international peace and security. It asserted that terrorism not only destroys human lives but also extends its aggression to historical and archaeological landmarks to undermine the identity of peoples. Therefore, it remains a security and humanitarian imperative to preserve cultural properties from such aggression to ensure peace and security for these peoples³.

Thus, from studying this topic, it becomes evident that cultural heritage is affected by security crises experienced by human entities. Every effort to preserve international peace and security is essentially an endeavor to safeguard cultural properties because contemporary international terrorism targets not only lives but also the identity of peoples, seeking to erase and destroy it.

Conclusion:

Indeed, cultural properties hold immense importance in both domestic and international legal frameworks, bearing collective responsibility for their preservation and protection due to their connection to the identity of peoples and the heritage of

¹ Hammaid Aicha, Previous reference, p. 872.

² Hammaid Aicha, Previous reference, p. 873.

³ Hammaid Aicha, Previous reference, p. 875.

nations resulting from social, cognitive, religious, cultural, scientific, and literary interactions throughout various ages of human existence.

The regulatory path of legal protection for cultural properties in Algeria demonstrates a deliberate intent by the legislator to valorize cultural heritage and make it a shared heritage of the nation, while linking the regulation of its existence and defense to the preservation and protection of national assets. This is affirmed by the provisions of Law No. 98-04 concerning the protection of cultural heritage. The legislator has devised several mechanisms and means within the context of achieving effective protection, making this protection a priority pursued by the state under the executive supervision of the Minister responsible for culture.

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