

The conceptual rooting of cultural real estate in the light of international conventions and Algerian legislation.

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Abstract:

Every nation possesses a cultural heritage that reflects its civilization and history. Cultural properties hold significant importance for each people as a testament to their cultural legacy, representing their identity and the continuity of their past throughout various eras. This is commonly known as cultural heritage, encompassing both tangible aspects like artifacts, buildings, religious and historical sites, as well as intangible elements like customs, traditions, sciences, arts, and more, passed down from one generation to another. Numerous international conventions and comparative legislations have diligently worked towards safeguarding cultural heritage. Similarly, Algerian legislation, through Law No. 98/04 dated 15/06/1998, concerning the protection of cultural heritage, defines the various types of cultural properties. Among these, immovable cultural properties hold particular significance due to their unique legal ownership system, non-transferability, and their historical significance, cultural value, and specialized legal protection.

Certainly, the concept of immovable cultural properties raises questions about its intent, both within international conventions and national legislations, with a focus on how it is categorized by Algerian legislature. This study aims to address these inquiries by examining various definitions of the subject, both from an international and national perspective, and categorizing them according to Algerian law.

Keywords: Cultural Heritage, Immovable Cultural Properties, Algerian Legislation, International Conventions.

Introduction:

Cultural heritage stands as the essence of every nation, reflecting its historical journey over the years. From this heritage, customs and traditions have emerged, and within it lie the material constants that have embedded its ancestral interactions passed down through generations. It roots its existence and preserves its identity. Cultural heritage can take the form of intangible, non-material legacies or tangible, material legacies, which encompass both movable properties and immovable cultural properties. The latter category includes historical artifacts, sites, and landmarks that have endured for thousands of years, representing successive eras. When we gaze upon the pyramids, we think of the Egyptian people and their ancient Pharaonic civilization. Similarly, when we mention Iraq, we recall the Mesopotamian civilization. The petroglyphs in the Tassili region of Algeria reveal the lifestyle and nature of humans who lived during that period. Immovable cultural properties

play a pivotal role in cementing the nation's history, perpetuating its memory, and safeguarding its identity. Thus, it is imperative to protect them from any forms of erasure and theft, a goal pursued by the Algerian legislature through various national efforts, encompassing different fields such as urban planning and environmental laws. The most significant of these efforts is the enactment of Law No. 67/281 dated 20/12/1967, concerning excavations and the protection of historical and natural sites and artifacts, which was subsequently replaced by Law No. 98/04 dated 15/06/1998, related to the protection of cultural heritage. Internationally, numerous treaties, agreements, and protocols have been ratified concerning cultural heritage. Additionally, Algeria has joined international bodies dedicated to its preservation. From both the national and international perspectives, our research paper aims to shed light on a crucial aspect: the conceptual framework of immovable cultural properties. This form of public national property holds unique importance due to its historical and national significance. Its conceptual boundaries have expanded over time, and it encompasses classifications, even reaching a global classification. With this in mind, our study seeks to address the following question:

What is meant by immovable cultural properties within international conventions and national legislations? How has it been categorized by the Algerian legislature?

To answer this question, we will structure our plan into three components:

First: Defining Immovable Cultural Properties in International Conventions.

Second: Defining Immovable Cultural Properties in National Legislations.

Third: Categorizing Immovable Cultural Properties According to Law 98/04.

Despite the various definitions related to the concept of cultural properties in general, we will concentrate on the immovable aspect, both from the perspective of international law and national law (Law 98/04 related to the protection of cultural heritage). This will be addressed as follows:

First: Definition of Immovable Cultural Properties in International Conventions

The concept of cultural heritage has captured the attention of both international and national cultural entities, as the heritage of every nation constitutes its lasting asset, its immutable reserve, and its expression of the extent of progress it has achieved in various fields of civilization and culture¹. In this section, we will address the definition of cultural properties based on the 1954² Hague Convention. We will then delve into the definition provided by the 1970 Paris Convention, which pertains to measures necessary for prohibiting and preventing the import, export, and transfer of ownership of cultural properties. Furthermore, we will explore several definitions found across various international conventions, which we will present as follows:

1-The definition according to the 1954 Hague Convention:

Article 1 of the 1954 Convention defines cultural properties, regardless of their origin or ownership, as follows:

A. Movable or immovable property of great importance to the cultural heritage of nations,

such as architectural or artistic works, whether religious or secular, historical or contemporary, and archaeological sites. This includes groups of buildings which, by virtue of their historical or artistic significance, acquire value, as well as artistic masterpieces, manuscripts, books, and other objects possessing historical or artistic value. It also encompasses scientific collections, important collections of books, archives, and reproductions of the aforementioned cultural properties.

B. Buildings primarily and effectively dedicated to the protection and presentation of the movable cultural properties listed under paragraph A, such as museums, major libraries, archives, as well as repositories designed for safeguarding the movable cultural properties mentioned in paragraph A.

C. Centers containing a large number of the cultural properties specified in paragraphs A and B, which are referred to as "monumental centers"³.

The above definition illustrates that the convention divides cultural properties into three categories: The first group encompasses movable or immovable properties of major importance to the cultural heritage of peoples (paragraph A). The second group includes buildings primarily designated for the protection and display of movable cultural properties (paragraph B). As for the third and final group, it provides protection for what is referred to as "memorial buildings and centers" (paragraph C).

The Second Additional Protocol to the Hague Convention, signed on March 26, 1999, maintains the same definition of cultural properties as stipulated in the original convention. Paragraph (B) of Article 1 of the Protocol reaffirms that the intended meaning of cultural properties is the same as defined by Article 1 of the 1954 Hague Convention.

The preparatory work for the Second Protocol in 1999 witnessed an attempt to introduce amendments to the definition of cultural properties. Some individuals justified the necessity for modifying the definition of cultural properties to align with the definition provided in the two Additional Protocols of the 1977 Geneva⁴ Conventions, signed on June 8, 1977. Articles 16 and 53 of these protocols covered the definition of cultural properties, which encompassed historical artifacts, artistic works, and places of worship. However, this attempt was unsuccessful as some participants rejected these efforts. They protested against any alteration to the definition of cultural properties stipulated in the Hague Convention, fearing that such changes might negatively impact the effectiveness of the protection established for these properties in the manner prescribed by the 1954 Hague Convention. Some even suggested that progressing with attempts to amend the definition of cultural properties could impede the consensus reached for adopting the protocol.

It appears that the 1954 Hague Convention and its Second Protocol aimed to establish a comprehensive concept of cultural properties due to their significant importance for humanity, irrespective of their monetary value. The concept of cultural properties encompasses archaeological, historical, artistic, and religious fixed sites, whether publicly or privately owned. Additionally, the concept encompasses movable items such as art pieces, archives, historical and scientific books, regardless of their original location. The protection extends to buildings and centers housing these properties, whether movable or immovable. The Convention's scope of protection also encompasses the three previously mentioned religious groups, and further expands to include transportation means used for transferring

cultural properties, both domestically and internationally, aiming to safeguard them from acts of aggression (Article 12 of the 1954 Hague Convention). Furthermore, the Convention provides protection for individuals entrusted with safeguarding these properties (Article 15 of the 1954 Hague Convention). In addition to the definition of cultural properties as stipulated in the 1954 Hague Convention, Article 53 of the First Protocol of 1977 and Article 16 of the Second Protocol of 1977 defined cultural properties as "historical artifacts, artistic works, and places of worship that constitute the cultural or spiritual heritage of peoples."

In the special rules concerning the respect for the laws and customs of land warfare, annexed to the 1907 Hague Convention IV, dated October 18, 1907, a definition of cultural properties that must be protected in times of armed conflict was included. Article 56 of these rules refers to various categories of such properties, including works of art, archaeological and historical sites, as well as buildings designated for charitable purposes, regardless of ownership⁵.

2-The term "historical and cultural heritage" was used in Article 8 of the Rome Statute of the International Criminal Court in 1998 to refer to cultural properties protected during times of armed conflict, where attacks against such properties constitute a war crime⁶.

3-According to the preamble and Article 1 of the Roerich Pact signed on April 15, 1935, in Washington, D.C. by American states:

"Artistic, historical⁷, and cultural monuments, as well as museums and institutions of educational, artistic, scientific, and cultural character, are under the protection and safeguard of the population of the respective countries and should be considered as neutral⁸".

4-As per the Unified Arab Antiquities Law issued in Baghdad in 1981, following the Arab Ministers of Culture Conference:

"In its first chapter, the cultural property is introduced under the term 'antiquities.' It is considered an antiquity, any object left behind by civilizations and previous generations, whether it is an immovable property or a movable one, related to arts, sciences, literature, ethics, beliefs, daily life, general events, or others. Its history dates back at least two hundred years, provided that it possesses artistic or historical value⁹".

5-The definition of natural heritage was provided in Article 2 of the International Convention concerning the Protection of the World Cultural and Natural Heritage,:

adopted by UNESCO on November¹⁰ 23, 1972. The convention aims to safeguard the cultural and natural heritage of the world and encompasses 83 articles. Article 2 of the convention defines natural heritage as physical or biological formations, or groups of such formations, that hold exceptional universal value in terms of aesthetic, scientific, geological, or physiographical significance. This includes precisely defined areas that are habitats for endangered species of animals or plants, holding outstanding universal value from a scientific, conservation, or natural beauty perspective. Additionally, the definition extends to natural sites or precisely delineated natural areas that possess exceptional universal value from the perspectives of science, conservation, or natural beauty. The same article also mentions that cultural heritage refers to:

- **"Archaeological sites"**: This term includes architectural works, sculptures, and paintings

on buildings, as well as archaeological elements, inscriptions, caves, and collections of landmarks that possess exceptional universal value from a historical, artistic, or scientific perspective.

- **"Complexes"**: Refers to either isolated or interconnected groups of buildings distinguished by their architecture, coherence, or integration into a natural landscape, holding outstanding universal value due to historical, artistic, or scientific significance.

- **"Sites"**: Encompasses human-made works or joint natural-human creations, as well as areas such as archaeological sites, possessing exceptional global value from historical or aesthetic viewpoints¹¹.

The convention additionally defines a **"site"** as: "The combination of structures, spaces, and their context. This includes archaeological sites that constitute human settlements within urban or rural environments. Acknowledged for their archaeological, architectural, historical, aesthetic, social, or cultural importance, these sites must be protected against tampering and damage¹²".

6-The 1970 UNESCO Convention: The term "cultural property" within the context of this convention refers to properties that each state designates, for religious or secular reasons, as having importance for archaeology, prehistory, history, literature, art, or science, falling into one of the following categories:

A. Rare specimens and models of plant, animal, mineral, or anatomical specimens with paleontological significance;

B. Properties related to history, including the history of science, technology, military, social history, the lives of national leaders, thinkers, scientists, artists, and significant national events;

C. Results of archaeological excavations (legal or illegal) and archaeological discoveries;

D. Parts of artistic or historical monuments or archaeological sites;

E. Antiquities over a hundred years old, such as engravings, coins, and engraved seals;

F. Objects of ethnological interest;

G. Properties of artistic significance, including:

1. Handmade paintings, drawings, and engravings regardless of the materials used (excluding industrial drawings and mass-produced decorative art);

2. Original sculptures and carvings, regardless of the materials used;

3. Original engravings, drawings, or prints on stone;

4. Original ensembles or compositions, regardless of the materials used;

H. Rare manuscripts, early printed books, books, documents, and old prints of special significance (historical, artistic, scientific, literary, etc.), whether singular or in collections;

- I. Stamps, revenue stamps, and similar items, singularly or in collections;
- J. Archives, including sound, photographic, and cinematographic archives;
- K. Furniture over a hundred years old and ancient musical instruments.

The definition adopted by the 1970 Paris Convention aimed to provide a comprehensive delineation by explicitly naming everything that could fall under the term "cultural property." This was done to address the gaps left by the Hague Convention and to mitigate interpretations that were exploited for the trading of cultural property¹³.

Some experts in international law have noted that the definition of cultural property as outlined earlier, as well as that found in the additional protocols to the 1977 Geneva Conventions and the foundational statutes of the International Criminal Court, is broader in scope than the definition in the 1954 Hague Convention and its second protocol. As a result, some legal scholars have suggested that potential disputes and variations between these definitions could be avoided by determining which of these international agreements should be applied in each specific case or conflict. Consequently, the nature of cultural property according to the applicable convention would be determined on a case-by-case basis, independently of other cases.

Despite the clarity of the definition provided by the 1954 Hague Convention regarding cultural property, legal scholars in the field of international law have raised questions about the entity entrusted with determining whether a specific heritage should be considered to possess cultural, artistic, historical, or archaeological value as stipulated in Article 1 of the 1954 Hague Convention. They have also questioned the criteria that should be followed in making such determinations. Additionally, there is debate over whether this responsibility lies solely with the contracting states on whose territories these properties are located, or if there needs to be a general agreement to recognize cultural properties with such global artistic or historical value¹⁴.

Secondly: The Definition of Cultural Properties in Algerian Legislation.

the definition of cultural property in Algerian legislation aligns with the jurisprudential perspective. It encompasses everything left behind by civilizations or passed down by previous generations. This includes anything discovered on land or at sea that is related to arts, sciences, beliefs, traditions, daily life, public events, and more. This encompasses both prehistoric and historical periods, wherein the value can be proven to be of national or global significance. The concept covers both tangible aspects, such as immovable property like sites, monuments, archaeological and historical buildings, as well as movable objects like artifacts. Additionally, intangible heritage elements are also included¹⁵. "Cultural property" also refers to the "spiritual cultural heritage" of nations, which constitutes the foundations of civilized society, aiming to protect and preserve it. These cultural properties are safeguarded by a legal framework for their protection. Additionally, the term also encompasses "tangible and intangible objects of artistic and/or historical significance," whether they belong to a specific entity or a public institution¹⁶.

Some argue that immovable cultural properties are those objects, landmarks, or sites that are situated within a specific geographical space and cannot be easily moved due to their nature. They are fixed and attached to the land unless their characteristics change. Examples include

ancient ruins, palaces, mosques, temples, castles, ancient military structures, stone engravings, and natural landmarks¹⁷. Immovable cultural properties fall within the category of tangible cultural properties, encompassing everything that past civilizations have created in terms of architecture, buildings, sites, historical artifacts, and all fixed real estate components. These properties constitute the cultural and civilizational architectural heritage of a nation¹⁸.

Given the significance of these properties, their protection in Algeria is enshrined at the highest and foundational level, which is the constitution itself. According to Article 76 of the latest constitutional amendment of 2020¹⁹, it states the following: "The state protects the national cultural heritage, both tangible and intangible, and works to preserve it." Immovable cultural properties fall within the category of tangible cultural heritage. Moreover, this extends beyond protection to encompass their preservation, valorization, maintenance, restoration, and rehabilitation as well.

In texts and legislative systems within the field of historical archaeology, the term has been used in multiple instances. One such instance is in Decree No. 67/281 dated 02/12/1967 concerning excavations, historical and natural sites, and monuments. Article 1 of this decree states: "Movable and immovable property..."

The Algerian legislator defined cultural heritage through Article 2 of Law No. 98/04 dated 20/06/1998²⁰ (which repealed all provisions of Decree 281/67 dated 20 December 1967 concerning excavations and the protection of historical and natural sites and monuments). The definition goes as follows: "In the context of this law, cultural heritage for the nation includes all tangible and immovable cultural property and specifically designated real estate. It also includes movable property located on the land of national properties, owned by natural and legal persons subject to special law, as well as property found within the underground strata of national internal and territorial waters inherited from various successive civilizations since prehistoric times until today."

Article 3 of the same law further categorizes cultural properties into: "immovable, movable, and intangible²¹".

It's notable that the Algerian legislator did not provide a specific legal definition for cultural properties under Law 98/04. However, it is possible to define them based on the legal definition of immovable property according to general principles. Article 683 of the Algerian Civil Code states: "Anything stable within its area and firmly attached to it that cannot be removed from it without damage is considered real property."

The previously mentioned repealed text, Decree 67/281 concerning excavations and the protection of historical and natural sites and monuments, defined historical artifacts in Article 20, paragraph 2: "Historical artifacts are considered isolated real property, whether built or not built, as a whole or in part, as well as the subterranean areas belonging to them, or specifically designated real property in whole or in part that involves the national interest specified in Article 19 above."

Additionally, Article 4 of Law 90/30 dated 21/12/1990, which amends and completes the National Properties Law, states: "Among the contents of public artificial national properties are public artifacts, museums, and archaeological sites."

From the aforementioned, the legal nature of cultural immovable properties is that they are part of the public national properties belonging to the state. As such, they are not subject to disposal, are immune from acquisition by prescription, and cannot be subject to seizure. These cultural properties could also be owned by private individuals²².

Thirdly: Division of Cultural Immovable Properties according to Law 98/04.

As previously mentioned, Article 3 of the aforementioned law states that cultural properties, according to it, include "movable cultural properties, immovable cultural properties, and intangible cultural properties." Subsequently, Article 08 of the same law outlines the components of immovable cultural properties, where the Algerian legislator categorizes them as follows:

1. Historical Monuments: These are protected through one of the following methods, depending on their nature and category:

- Registration in the supplementary inventory list,
- Classification,
- Designation as preserved sectors.

A. Historical Monuments:

A historical monument is a building or immovable entity that has a dedicated legal framework for its protection. Its importance extends beyond its historical, artistic, or architectural significance; it also holds technical and scientific value²³. Historical monuments encompass architectural structures, individual or collective, that bear witness to a specific civilization, significant development, or historical event. The Algerian legislator provided a definition for historical monuments in Article 17 of Law 98/04, defining them as "any architectural structure, individual or collective, that bears witness to a specific civilization, significant development, or historical event".

These monuments include major architectural achievements, drawings, engravings, decorative art, Arabic calligraphy, grand religious, military, civilian, agricultural, and industrial buildings or complexes. They also encompass prehistoric structures, funerary monuments or tombs, caves, paintings, rock engravings, commemorative monuments, and isolated structures or elements related to significant historical events²⁴.

Historical monuments serve as evidence of the achievements of previous civilizations in the fields of architecture, architectural art, and human creativity in the organization and management of ancient cities²⁵.

B. Archaeological Sites:

The Algerian legislator defined archaeological sites in Article 28 of Law 98/04 as: "Built or unbuilt areas without active function that bear witness to human activities or interactions with nature, including the subsurface connected to them. These sites hold historical, archaeological, religious, artistic, scientific, ethnological, anthropological, and entomological value. Specifically, this includes archaeological sites, including protected archaeological reserves and cultural heritage sites²⁶".

Archaeological sites also include protected archaeological reserves and cultural heritage sites:

Protected archaeological reserves consist of areas that have not undergone exploration or excavation operations and may include unidentified sites and features. These reserves may store artifacts and contain exposed archaeological structures. The boundaries of the archaeological reserve are established and defined by a decision issued by the Minister responsible for culture, following consultation with the National Committee for Cultural Properties²⁷.

1-Cultural heritage sites, encompass the remains of ancient human civilizations from prehistoric times, reflecting their social, cultural, and industrial levels. These sites serve as open-air museums that showcase humanity's past. They are categorized as cultural heritage sites when they predominantly contain or hold significant cultural properties and are inseparable from their natural surroundings.

Algerian legislation emphasizes that cultural heritage sites are formed by areas dominated by existing or significant cultural properties that are intricately linked to their natural environment. The establishment and delineation of cultural heritage sites are determined by a decree issued based on a joint report between ministers responsible for culture, local communities, environment, urban planning, and forestry, following consultation with the National Committee for Cultural Properties²⁸. This is stipulated by Articles 38 and 39 of Law No. 98/04.

The cultural reserve, in accordance with the concept defined in Article 02 of Executive Decree 12/291, which outlines the fundamental law of the National Office of Cultural Heritage and Archaeology, is a space that does not distinguish between the natural and the cultural. It is observed and understood from an environmental and cultural perspective as a cultural tool and a collective achievement in the ongoing recreation of a historical product representing shared relationships between inhabitants, their activities, mental perceptions, and the environment they share. It serves as a place where administrative and historical regions overlap and where past cultural traditions persist²⁹.

2-Urban or rural architectural complexes:

Article 41 of Law 98/04 stipulates that "Urban or rural architectural complexes, such as towns, cities, palaces, villages, and distinctive traditional residential complexes dominated by their residential areas and characterized by architectural and aesthetic homogeneity and unity, are established as preserved sectors. They hold historical, architectural, artistic, or traditional significance that justifies their protection, restoration, rehabilitation, and valorization³⁰. As for the method of their establishment, they are created and their boundaries are defined by a decree based on a joint report between the ministers responsible for culture, interior, local communities, environment, urban development, and architecture. Local communities and grassroots organizations can propose them to the minister responsible for culture. The preserved sectors are established following consultation with the National Committee for Cultural Properties³¹. Preserved sectors are also equipped with a permanent protection and rehabilitation plan that replaces the land use plan³².

conclusion:

we can deduce that all these definitions included in the entirety of the legal texts we have reviewed, whether at the international or national level, did not reach a clear and comprehensive definition to be adopted in identifying the concept of cultural property. As we have seen, despite the clarity of the definition provided by the 1954 Hague Convention on Cultural Property, this has not prevented questions from arising among experts in international law regarding the entity responsible for determining whether a specific heritage should be considered of cultural, artistic, historical, or archaeological value, as stated in Article 1 of the 1954 Hague Convention. What are the criteria that must be adhered to in order to reach such a determination? Is this matter left to the parties to the convention who have these properties within their territories alone, or is a general agreement necessary to attribute such artistic or historical value with a universal character to cultural properties?

Considering the significance of these properties, Algeria has devoted its protection under the principal and foundational text, namely the constitution, as per Article 76 of the recent constitutional amendment of 2020.

We have found that the Algerian legislator did not provide a legal definition for cultural properties according to Law 98/04. Instead, it relied on the contents of cultural real estate, dividing them into historical landmarks, archaeological sites, and urban or rural complexes. These properties are subject to one of the protection systems according to their nature and category, encompassing registration on the supplementary inventory list, classification, and establishment in the form of preserved sectors. However, they can be defined based on the legal definition of real estate according to the general principles of the civil law³³ (Article 683), in addition to Law 90/30 concerning amended and supplementary national properties³⁴.

The Algerian legislator also considers historical landmarks as evidence of what previous civilizations achieved in the fields of architecture, architectural art, and human creativity in organizing and managing ancient cities. Archaeological sites encompass archaeological reserves and cultural repositories. Similarly, urban or rural real estate complexes can also be established in the form of preserved sectors.

In conclusion, the legal nature of cultural real estate properties is characterized as national public properties belonging to the state. They are subject to specific procedures in their inventory and classification processes.

It was expected that the Algerian legislator would update the law related to the protection of cultural heritage, Law 98/04. If possible, a separate law could have been dedicated to all matters concerning cultural real estate, detailing its provisions from its definition to its classification and protection methods, thereby distinguishing it from other types of cultural properties that do not possess the same specificity.

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