

# APPENDIX

Asmaa Mehdioui\*

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asmaa.mehdioui@icesco.org  
orcid.org/0009-0001-7841-2916  
Islamic World Educational, Scientific and Cultural Organization  
Avenue des Forces Armées Royales  
Rabat 2275 CP 10104  
Morocco

## Legislative Mechanisms to Combat Illicit Trafficking of Cultural Property in the Islamic World (Arab Region)

Cultural properties serve as living testaments to a nation's journey through time, illustrating its historical progress and civilizational development, and reflecting its collective memory, identity, and rich history. They form a strong bridge connecting the distant past with the vibrant traditions of the present, embodying the soul, culture, and narrative of a nation, and contributing to the elevation of universal human values and shared heritage.

In the Islamic world, where cultures are rich and diverse, the protection of cultural heritage is of paramount importance. However, the illicit trafficking of cultural property poses

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\* **Asmaa Mehdioui** is an expert in the Department of Legal Affairs and International Standards at the Islamic World Educational, Scientific and Cultural Organization (ICESCO). She holds a Ph.D. in Public Law and Political Sciences from Mohammed V University in Rabat, Morocco. Her expertise is centered around legal affairs, international standards, and public law, with a focus on the educational and cultural contexts within the Islamic world.

In 2024, Dr. Mehdioui participated in the International Law and Development Programme at the International Institute for the Unification of Private Law (UNIDROIT), where she further honed her skills in international legal frameworks, particularly in private law and development.

a significant threat, depriving the region's peoples of their heritage and eroding the cultural fabric that sustains societies. The illicit market for cultural property has grown into a multi-billion-dollar global industry, making it increasingly difficult to combat due to the complexity of the phenomenon and the diverse range of actors involved. This transnational crime is fueled by weak legal protections, political instability, and the economic challenges faced by many countries.

Consequently, the illicit trafficking of cultural property has become one of the most significant threats to cultural heritage worldwide, particularly in the Islamic world. The repercussions of this trade extend beyond just economic dimensions, penetrating deep into collective memory and directly impacting our profound understanding of the civilizations that have shaped the course of human history. Every artifact is a living witness, carrying within it the details of people's lives, their thoughts, and their creations.

In recent years, this phenomenon has witnessed an alarming escalation in its scale and scope, resulting from a complex interplay of factors such as armed conflicts, corruption, and rapid technological advancements that have created new markets. Moreover, it has become a source of funding for terrorist groups and transnational criminal networks. Therefore, there is an urgent need to raise public awareness of the importance of this heritage and to strengthen international cooperation in order to pool efforts and formulate effective strategies to counter this looming threat.

Recognizing the gravity of the illicit trafficking of cultural property, the Islamic World Educational, Scientific and Cultural Organization (ICESCO) is working to enhance efforts to combat it through a vision that takes into account the complexity and multifaceted nature of the phenomenon. Among these efforts is the development of ICESCO's strategy to combat the illicit trafficking of cultural property in the Islamic world, some aspects of which we explore in this article. Subsequently, we will delve into the study issued by ICESCO on the legal mechanisms for combating the illicit trafficking of cultural property in the Arab region.

## ICESCO's Strategy to Combat Illicit Trafficking of Cultural Property

ICESCO is working to develop a comprehensive strategy to combat illicit trafficking in cultural property in the Islamic world, as mandated by the 12th Conference of Ministers of Culture of the Islamic World, held in Doha, Qatar, in September 2023.

ICESCO aims through this strategy to strengthen regional and international cooperation, in accordance with international conventions and agreements and the 2030 Sustainable Development Goals, as well as to provide expertise and technical support to member states to combat the phenomenon of illicit trafficking in cultural property in the Islamic world, raising awareness of the direct and indirect

impacts of the threats to its heritage and introducing effective ways to manage and combat it, according to a participatory approach.

ICESCO's strategy to combat the illicit trafficking in cultural property focuses on three interrelated and interconnected axes:

- Firstly: Protective mechanisms, including the legal and legislative guarantees that must be adhered to.
- Secondly: Physical mechanisms, i.e., everything related to maintenance, restoration, protection, preservation, documentation, and conducting exploratory studies.
- Thirdly: International cooperation, whether in terms of issuing legal rules related to recovery, follow-up, and the prosecution of criminals, as well as assistance in the material dimension.

The strategy aims to enhance the knowledge and material capacities of stakeholders in the field of combating the illicit trafficking in cultural property, and to review the most important legal, operational, and institutional mechanisms governing the subject. This will form a knowledge base that enables various actors in the system of protecting cultural property in the Islamic world to engage in this strategy.

ICESCO also focuses on preventing future losses by urging countries to establish an electronic database in each country that includes pieces in museums, stores, and private collections (so that in the event of future theft, countries can recover them), thus avoiding the weaknesses associated with paper data, such as damage or theft, and working to establish a regional database of national and regional legislation; as well as another specific to stolen or smuggled cultural pieces in order to facilitate a comparison of what may be stolen, as well as to avoid alleged good faith on the part of those who buy such works.

All of this is aimed at deepening awareness of the importance of cultural property, as well as working towards unifying the definition of the concept of cultural property among member states in order to achieve justice in the field of combating illicit trafficking in cultural property and reaching a unified working agreement to describe cultural property, as well as to achieve an agreed-upon time factor for the concept of cultural property. The need for such actions is made evident in the study conducted by the Legal Affairs Department on national legislation related to combating illicit trafficking in cultural property in the Arab region.

ICESCO also seeks to enhance joint cooperation in the field of developing and improving legislation at the national and regional levels in order to facilitate the procedures for recovering cultural property, and to guide work in the field of heritage in the Islamic world.

ICESCO takes a participatory approach in its work by effectively involving the private sector, with a focus on forming and activating a personal interest in dealing with heritage in order to protect it on the part of the inhabitants of archaeological sites, thus ensuring their involvement in efforts to preserve cultural property.

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To achieve this goal, ICESCO has prepared an action plan that includes holding regional and international workshops on this topic and the commissioning of experts and specialists in the subject.

### ICESCO Study on Legislative Mechanisms to Combat Illicit Trafficking of Cultural Property

Within the framework of the first axis of ICESCO's strategy to combat illicit trafficking in cultural property in the Islamic world, ICESCO has issued a scientific study that sheds light on the legal legislations related to this phenomenon in Arab countries. This study, divided into an introduction and four chapters, addressed the legislations of 22 Arab countries.

The national laws related to the illicit trafficking of cultural heritage in these countries have been subjected to a thorough scrutiny, with the aim of identifying the strengths and weaknesses in each of the existing legal systems. The countries included in this study were **Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen.**

#### Definition and identification of cultural property

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict<sup>1</sup> defined cultural property in its first article as including movable and immovable property of great importance to the heritage of peoples, such as historical monuments, archaeological sites, works of art, manuscripts, and libraries; and it also includes buildings designated for the protection and display of such property, such as museums and libraries, in addition to “centers of monumental buildings” that contain large collections of such property. Everything mentioned in Article 1 of the Convention is considered cultural property regardless of its sources or owner, meaning that the basic consideration is the historical or artistic value of such property.

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>2</sup> defines cultural property as including a diverse range of elements of historical, artistic, or scientific importance. This property includes: rare collections and specimens of fauna, flora, and minerals; historical property related to science and technology;

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<sup>1</sup> 14 May 1954, 249 UNTS 240.

<sup>2</sup> 14 November 1970, 823 UNTS 213.

the results of archaeological excavations; as well as ancient artifacts, inscriptions, and coins and objects of ethnological and artistic importance, such as drawings and statues. It also includes rare manuscripts and old books, stamps, and audio-visual recordings, as well as pieces of furniture and musical instruments over 100 years old.<sup>3</sup> Here we find that the Convention combined both the criterion of historical or artistic value as well as temporal considerations in defining cultural property.

Insofar as concerns the national laws of Arab countries with respect to the definition of cultural property, there are differences from one country to another, reflecting the diversity of legal and cultural contexts, as shown in Figs. 1 and 2; where it is noted that the Arab countries of North Africa adopted the criterion of cultural, scientific, historical, artistic, traditional, or aesthetic value; with the exception of Libya and Egypt, which adopted the temporal criterion, like the rest of the Arab countries, despite the differences in the time periods adopted from one country to another.

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<sup>3</sup> Article 1 of the 1970 UNESCO Convention states: "For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
  - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - (ii) original works of statuary art and sculpture in any material;
  - (iii) original engravings, prints and lithographs;
  - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments".

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Fig. 1

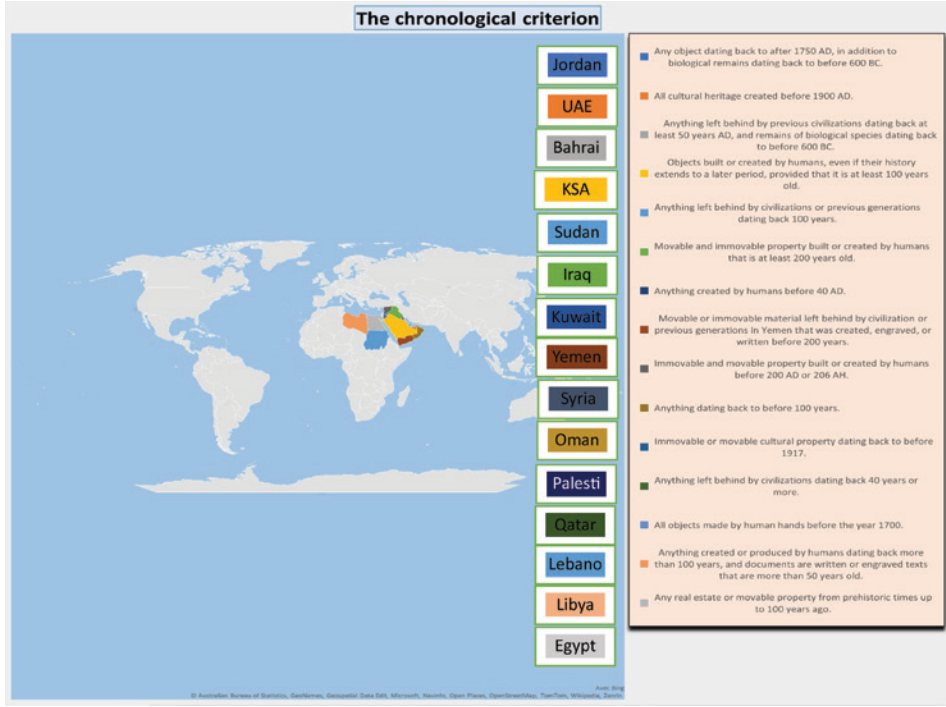
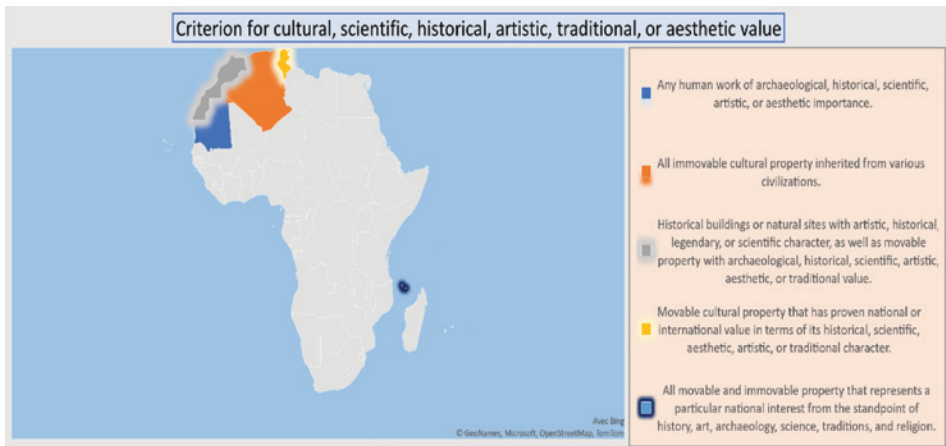


Fig. 2



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## Ownership of cultural property

The study of Arab legislation on the protection of cultural heritage reveals a clear trend toward assigning the ownership of cultural property to the state. Most countries (Bahrain, Comoros, Jordan, Sudan, Yemen, Qatar, UAE) consider all cultural property to be public property of the state; while others, such as Saudi Arabia, Iraq, Kuwait, Tunisia, and Syria recognize state ownership, but with exceptions or special cases where individuals may own such property provided that ownership can be proven.

Some Arab countries also regulate the transfer of ownership of classified heritage buildings and cultural sites from the state to individuals or private entities. Most countries regulate the issue of land ownership; the right to dispose of antiquities; and excavation via a general principle that discovered antiquities are considered the property of the state, whether discovered by chance or through excavation activities.<sup>4</sup>

## Virtual market regulation

With the advent of technology and the proliferation of the internet and social media, cultural property has faced significant threats to its safety. Digital platforms have facilitated the uncontrolled buying and selling of cultural artifacts, exacerbating the challenges of combating illegal trafficking. This situation demands concerted efforts to develop effective legal frameworks.

A study analyzing the legal frameworks of Arab countries reveals a complete absence of legislation regulating the digital virtual market, despite the flourishing of illegal trafficking activities on various digital platforms. In contrast, many European countries have implemented effective measures to regulate the electronic market, including strict rules to reduce opportunities for illegal trafficking. These measures involve the monitoring of electronic markets and establishing agreements with major platforms like eBay and Facebook in order to enhance the protection of cultural heritage.

The absence of similar agreements between Arab countries and major electronic platforms hinders efforts to prevent illegal trafficking, particularly through social media and mobile phone applications. The urgent need for legal frameworks addressing the digital market is of paramount importance in confronting the new challenges in cultural property protection.

International cooperation and the exchange of experiences between Arab countries and other nations are essential in order to benefit from successful models for controlling electronic markets and strengthening deterrent laws that safeguard cultural heritage from hi-tech thefts and illegal trafficking.

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<sup>4</sup> See Chapter III of the *Study on Legislative Mechanisms to Combat Illicit Trafficking in Cultural Property in the Arab Region*, MS, pp. 102-105.

## Regulation of the field of import and export

Arab countries' efforts to control the import and export of cultural property are significant, but they are hindered by gaps in existing legislation. These gaps facilitate illicit trafficking and reflect the inadequacy of the current laws when it comes to benefiting from international conventions, such as the 1970 UNESCO Convention. The divergence in legal frameworks among states exacerbates this issue, creating opportunities for exploitation and increasing the risks of illicit trafficking.

The harmonization of national legislations on import and export with international standards is of imperative importance. The lack of clear information on regulated procedures poses a major obstacle which hinders efforts to combat illicit trafficking. Many countries lack the use of internationally approved models, such as those provided by UNESCO and the World Customs Organization, contributing to a lack of transparency and reliability in trading processes.

Exported and imported cultural property must be accompanied by accurate documentation, including import, ownership, and source documents; all in accordance with international standards. These documents serve as safeguards that reflect states' obligations to protect their cultural heritage. They clarify the history, source, and methods of obtaining the cultural object, enabling tracking and facilitating accounting procedures.

Strengthened cooperation among Arab countries and the adoption of a legal framework to improve import and export procedures are essential. This includes exchanging experiences and best practices, as well as training specialized personnel on handling cultural property in accordance with international standards. Given the shared challenges in protecting cultural heritage, cooperation is not an option but a necessity.

These steps are not merely administrative measures but are crucial for protecting cultural heritage and guaranteeing property rights. This commitment reinforces a collective understanding of the importance of preserving cultural heritage for future generations. The protection of cultural property is not merely a question of regulating *objects* moved from place to place, but of protecting symbols of our identity and history. It requires collective efforts to ensure its continuity and protection from threats.

## Illicit trafficking

Illicit trafficking in cultural property remains a significant challenge for Arab countries. While most cultural heritage protection laws criminalize such acts and impose penalties, the severity of these penalties varies widely. Some countries impose severe punishments like death or life imprisonment, while others may only impose minor financial penalties, highlighting the disparity in legal effectiveness.



Furthermore, the laws of some states have yet to address the issue of the smuggling of cultural property. Smuggling necessitates a comprehensive legal framework that addresses the return of smuggled antiquities to their countries of origin, reciprocity conditions, and the rights of bona fide buyers.

Governments must also receive urgent assistance in controlling the exit points and border crossings which are vulnerable to smuggling activities. Regional and international cooperation is essential to address the financial and human resource challenges and combat the corruption which hinders these efforts. Bilateral cooperation among Arab states can strengthen border control and ensure their efficiency in combating smuggling and confiscating cultural property which does not have legal clearance.

Prioritizing the safeguarding of archaeological sites is also crucial, as a lack of human resources hinders the protection of cultural heritage from looting and vandalism. Some Arab states have demonstrated a commitment to protecting their cultural heritage by establishing specialized units comprised of representatives of archaeological authorities, police, and customs. These units have trained security forces to combat illicit trafficking. In this context, unifying the legal powers of antiquities officers is essential, as some states have granted them judicial police officer powers while others lack such provisions.

### National inventories of cultural property

A comparison of Arab countries' laws demonstrates a consensus when it comes to assigning competent authorities to prepare comprehensive inventories of cultural property. These inventories, including documented artifacts, are crucial tools for establishing ownership; identifying lost or stolen goods; and providing a legal basis for restitution requests. International laws often protect stolen property only when it is registered and the state has proof of ownership.

To effectively recover stolen artifacts, national databases containing accurate information on lost items must be established based on museum, excavation, and academic records. Linking these databases to international platforms like INTERPOL enhances the chances of identifying and retrieving lost items. Adopting international standards for creating these inventories – such as Object ID, ICOM Red Lists, and the World Customs Organization's Model Export Certificate – is crucial. While all Arab countries' cultural property protection laws address this aspect, its practical implementation faces challenges due to economic issues and resource constraints.

Insofar as regards the protection of heritage sites, there is an urgent need to inventory these sites and create comprehensive maps using modern technologies like satellite imagery to monitor illegal excavations. This measure would help protect cultural heritage from threats and help mitigate the risks posed by urbanization and random construction. Effective coordination among stakeholders is essential to ensure the protection of cultural heritage sites for future generations.

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A comparison of antiquities protection laws in Arab countries reveals the importance of education and information dissemination in promoting the awareness of cultural property's significance and fostering a sense of belonging and ownership. Despite efforts being made, much remains to be done to raise awareness among all segments of society about effective participation in combating illicit trafficking. Innovative methods like producing animated films and organizing awareness campaigns can contribute to this goal.

Joint action is crucial in addressing the challenges facing cultural property. A comparison of antiquities protection laws in Arab countries highlights the increasing focus on education and information dissemination. ICESCO's efforts, including its contribution to collective coordination and regional cooperation, are a positive sign. Two studies being prepared on the Asian and African regions reflect ICESCO's commitment to expanding knowledge and exchanging experiences. Through these initiatives, ICESCO aims to provide effective tools to combat illicit trafficking and strengthen local laws to safeguard cultural heritage.

Employing innovative methods like producing short films for all age groups and organizing awareness campaigns is essential. Unifying and adapting the laws in Arab countries, in collaboration with regional and international organizations, will create a protective shield for this rich cultural heritage. This will ensure its preservation as a living landmark that embodies our identity and history for future generations.