

THE EXTENT OF ADMINISTRATIVE PROTECTION FOR ANTIQUITIES IN THE JORDANIAN LEGAL SYSTEM

Safaa' Mahmoud Al-Sweilmieen, Al-Yarmouk University
AbdulRa'ouf Ahmad Al-Kasasbeh, Mu'tah University

ABSTRACT

Antiquities are an important general manifestation of a civilization in that they express its history, evolution and development. Given the great importance of ruins, all legislations, including the Jordanian, provide antiquities with particular protection through established mechanisms. In the current study, we addressed the extent of the protection provided to ruins by the Jordanian legislator, and the extent of the care given to them. First, we distinguished the concept of antiquities from similar concepts, and determined the legal nature of antiquities more generally; second, we addressed the principles of administrative protection for antiquities, and the mechanisms for such protection during excavations or after the discovery of antiquities.

The study concludes that in Jordan no clear controls exist which determine the liability of those who grant permission for the excavation of antiquities, especially in such cases where these are devastated. There is also no clear control with regard to the management's authority to permit antiquities to be loaned or presented as gifts. The study recommends that clear controls are established for the protection of antiquities, especially during excavations and any determination of the extent of liability for their damage. We also recommend that more controls are placed on the management's authority with regard to lending or gifting antiquities.

Keywords: Antiquities, Administrative Protection, Protection, Legal System

INTRODUCTION

Antiquities, the science of silent records, or the science of human civilization, may be considered the real reflection of a nation and its memories, as they are related to their history and previous achievements. In Jordan, as elsewhere, antiquities have a considerable political, spiritual and financial importance, since they are generally public property, and there is legislation which protects them and criminalizes those who exploit or use antiquities illegally. However, in addition to a lack of local studies on legislative protection of Jordanian antiquities, there are also issues with the administrative domains. In this study, we not only focus on the lack of deterrent punitive policies and legislation and issues with the administrative mechanisms charged with protecting antiquities, we also consider the ambiguous difference between the concepts of antiquities and legacy, and on the authority in charge of protecting these public properties.

The study's importance lies in its identification of the most prominent administrative domains for the protection of antiquities, in order to identify which aspects are insufficient, and highlight the physical and spiritual value of antiquities. In this regard, first, we distinguish the concept of antiquities from similar concepts, and determine the legal nature of antiquities more generally. Then, we address the principles of administrative protection for antiquities, and the mechanisms for such protection during excavations or after the discovery of antiquities. We use a descriptive analytical approach for the legislative texts, and compared them in some parts of the study with other legislation, as required. The key questions which we sought to answer are:

1. Has the legislator set a clear and accurate age standard to determine what may be classed as an antiquity?
2. How protective are the antiquities controls set by the legislator, and what is the extent of their liability?

3. Has the legislator adopted clear mechanisms to distinguish between antiquities in terms of their importance, and the extent to which they can be circulated?
4. How effective are the legislations that govern dealing in antiquities, and are they rationed in one legislation or several legislations that may be in contradiction to the importance of antiquities?
5. Which authorities have been given the right to circulate, lend and/or deal with antiquities?

DEFINING ANTIQUITIES

Antiquities represent the culture, identity and civilization of nations. In this vein, the archaeologist, Franswa Botin, stated in the commemoration of the Hague Convention in 1954, that ‘protecting cultural properties doesn’t refer to protecting antiquities, but protecting people’s memories, collective consciousness and identity. It is nonsense to imagine Paris without Notre-Dame or to perceive Jerusalem without the Dome of the Rock; doesn’t that represent taking out a part of the identity of each of us’ (Bashar Kholaf Awad, 2008). In order to address the administrative protection of antiquities, we should, firstly, identify their definition and distinguish them from other similar terms. We should also consider the legal form of antiquities, how they are owned, their types, and other effects related to the type of property they represent. Accordingly, two requirements are considered: the first addresses the definition and types of antiquities, while the second addresses possession and its legal nature.

The Legislative Meaning of Antiquities

To achieve the study objectives, we should first define antiquities and their types, and distinguish them from other similar concepts. Linguistically, an antique refers to the remaining parts of something (Abu AlFadilAlMasri, 1990). In philological terms, and antique is defined as ‘each facility that has a specific architectural and historical value, and is over 100 years old, which means that over time a large number of buildings are considered within the group of antiquities or historical places’. This definition may be linked to the concept of antiquities with what was performed by human beings, regardless of natural events, for around 100 years. Indeed, the researcher suggests that such a definition interferes with the concept of heritage buildings mentioned in Article 2 of the System of Buildings and Organization in the City of Amman, which states that, ‘the architectural buildings and facilities that have certain cultural, historical and architectural characteristics, which tell the story of certain events, are included in the record of architectural heritage’¹.

The Jordanian Antiquities Law defines Antiquities in Article 2 as

- a) Any portable or non-portable object, that was constructed, made, written, engraved, constructed, discovered or modified by man, prior to 1750 AD, including caves, inscriptions, coins, pottery and manuscripts as well as all manmade objects that demonstrate the onset, evolution and development of science, arts, products, religions and certain traditions of earlier civilizations or any part added to that object or reconstructed after that date;
- b) Any portable or non-portable object, as enshrined in Section (a) of this definition, that dates back to the year 1750AD and after, and is announced by the minister to be antique, based on a declaration published in the official newspaper;
- c) Human, animal and botanical remains that date back to earlier than the year 600 AD.²

The legislator has also defined historical places in the same Article 2 as, ‘any region in the Kingdom [of Jordan] considered a historical place based on the previous laws, or any other area that the minister proposes as including antiquities or is related to important historical events, and the minister’s decision should be declared *via* the official newspaper’. As for non-portable antiquities, the legislator defines ‘fixed antiquities [as those] that are attached to the ground, either constructed above the ground or existing underground; they include the objects beneath the internal and regional water’. Portable antiquities are not fixed to the ground, and their location

can be changed without causing any harm to other antiquities relating to them or to the place where they were found (for more see. Unesco, 1979).

In relation to the Jordanian legislator's definition of antiquities, the objects that should be considered antiquities should date back to longer periods of time, in that they should cover and reflect extended historical periods relevant to the culture of nations and groups, and not be limited to short time periods. This study does not consider objects of shorter time periods than the date previously determined in the legislative text above, so that objects eligible for consideration as an antique related to a country and its history are not lost. In this context, it is better to seek a collective standard for what constitutes an antiquity, and not just specify a certain age for such. It is worth noting that the definition does not imply that the antiquities should exist on the grounds of the Kingdom of Jordan or reflect a civilization established upon it.³ Indeed, this is congruent with the idea of national sovereignty, as the legislator has not adopted the idea of localizing antiquities.⁴ Moreover, the definition includes human, animal and botanical remains as antiquities, even though humans have no role in maintaining these; as such, the definition may be referring to fossils or mummies, in that nature and humans have played a role, and it may be that the reference to natural and scientific methods is in regard to the maintenance of such remains.⁵

The legislator also views manuscripts as antiquities, even though these are not defined as such, in line with the Unified Law of Arab Antiquities, the latter defines them as:

- 1) what has been documented by hand, regardless of its language or writing type and is 50 years of age or older;
- 2) the original copy of documents, images, inscriptions, tables and maps, which are 50 years of age or older;
- 3) the original copy of each contemporary scientific, artistic, literary or intellectual product that was produced by Arabs, either as published or unpublished.

However, from our perspective, under such terms it is difficult to view manuscripts as being within the concept of antiquities, as specific text should be created for these, even though the Jordanian legislator has determined the time period as pre-1750. The Jordanian definition also differs from Article 3 of the Unified Law of Arab Antiquities, which states that the term antiquities refers to anything from a previous generation or civilization, whether it is a building or a portable object related to arts, science, literature, customs, doctrines, daily life or general events dating back to 100 years, provided that it has a technical or historical value. It may also be noted that the time period for viewing something as an antique is, in the Unified Law of Arab Antiquities, much shorter than in the Jordanian definition, and is also linked to technical or historical values. Therefore, we suggest that a specific committee should be assigned to review more precise definitions and terms for what is considered an antique. Furthermore, the definition provided by the Arab Antiquities Law views literature, customs and doctrines as antiquities, whereas these may be more correctly considered part of heritage.

Distinguishing Antiquities from Similar Objects

The concept of antiquities may be confusingly conflated with other concepts, such as heritage but there are similarities and differences between them. Even though the general Arabic definition of heritage has some overlap with that of antiquities, linguistically, heritage refers to a property bequeath (Lama Mahmoud). In philological terms, the concept focuses more on human products, such as objects of religious, historical, scientific, literary or artistic impression or value, without being specific as to a certain time period.⁶ Antiquities differ from heritage in that time is a pre-requisite with the former; the concept of heritage is also an umbrella term which includes antiquities, where as the reverse is not true.⁷ Regarding the blurred definitions of the concepts of heritage and antiques, we believe that the standard for assigning a date requires constant intervention by the Jordanian legislator, to modify it according to changes in terms of what should be considered antiquities. Rather, a certain period, such as 200 years, could be

applied to defining an antique, without excluding the period prior to 1750, as stated in Article 2 of the Antiquities Law.⁸

Concerning the difference between antiquities and treasure (troves), the linguistic definition of treasure refers to storing and saving a trove, for example of coins, with the intention of competitive affairs. In this context, money may be gathered and buried underground.⁹ Article 1078(1) of the Jordanian Civil Law states that ‘treasures, minerals or other objects found in an area possessed by a certain individual belong to that individual except for one fifth that is given to the state.’¹⁰ In Article 4 of the same law, the legislator implies that specific laws deal with issues relating to treasure. Antiquities are similar to treasures in terms of their financial importance, which, in turn, makes them sought out. For this reason, specific legislation should be enacted to protect both under all conditions and circumstances and to criminalize those attempting to misuse them, since such an act represents a crime under antiquities law and penalties law; here, we notice a plurality of crimes.¹¹

The Legal Nature of Antiquities Acquisition

Antiquities are considered portable property since they can be possessed, either privately or as public property. This section deals with these points in turn.

Antiquities as a Public Property

Article 5 of the Jordanian Civil Code²³ states that antiquities have the characteristics of public property, and so the rules on public property also apply in terms of protection and generality; however, they may be treated as private property according to certain protections set in private laws. This civil law limits the possession of non-portable property to the state, but portable antiquities can be privately owned without contradicting the public interest (Abdul Razzaq Al-Sanhouri, 1991); this is normal outcome, considering that antiquities are a reflection of a nation’s history and heritage, as well as a feature of its civilization that links past and present. Antiquities are also viewed as rich resources for the nation as they enhance its attraction to tourists (Rafat Al-Hallaq, 2003).

However, describing antiquities as public property evokes a philological question about the nature of this property, for several reasons. First, although public property is dedicated to the public interest or specified by laws which identify its nature, it can be sold as soon as its description changes, by considering it as private property for the state. However, antiquities cannot be sold and can only be displayed in museums and provide a source of income to the state. Even if antiquities were the private property of individuals —as permitted by legislation —they remain a nation’s property but are registered in the name of their owners. Second, the civil law concerning public property does not distinguish between portable properties and estates but does distinguish between portable and non-portable antiquities. Third, the Jordanian legislator stated clearly that public property antiquities, regardless of their state and original site, include those above or below the ground, and underwater (Suleiman Abbas, 2015 as cited in Article 5. This situation is similar to that of the French legislator after the French revolution, where the legislator adopted the idea of maintaining antiquities by retaining them as public property for all. Such an idea was raised during the Vienna Conference and some antiquities which had been robbed during wartime were returned (Abdul Qadir Dahdouh, website). Third, the Jordanian legislator does not consider that antiquities discovered on privately-owned land is a reason for the landowner to possess them, meaning that the discovery is considered public property with a private nature.

By considering antiquities to be property in this way, several results are entailed. One is that when antiquities are considered public property, individuals are not allowed to sell or rent them, or deal in them in any other manner. Another is that any agreement on antiquities is considered cancelled and has no implications, and this restriction is related to public property. Thirdly, since antiquities are considered public property, they cannot be seized, as that may lead

to their sale by force, and therefore they cannot be mortgaged as a type of payment insurance (Hamdi Qobailat, 2012). Fourth, antiquities cannot be possessed by virtue of their age, as this is not considered to be a reason for so doing, since sites containing antiquities are viewed as state property. Fifthly, the state has the right to take over property on privately owned land for the sake of the public interest, and the owner is compensated for this when antiquities are proven to exist on such land. In this case, we contend that antiquities should be non-portable; if they are portable, the land is returned to its owner, who is compensated for any harm.¹²

Antiquities and Private Property

Although antiquities have been given the status of public property, the legislator allowed some portable antiquities to be privately owned in specific cases and with certain controls, including that individuals are not permitted to dig for antiquities unless they are licensed to do so. This also applies to the owner of land, according to Article 16(a) of the Antiquities Law. Article 5(d) overtly states that owning land does not permit the owner to dig for antiquities or possess those that exist on or under their land. Furthermore, the Jordanian legislator requires those with portable antiquities to provide the Directorate of Antiquities with a list that includes the quantity and pictures of the antiquities as well as any other details, so that they are formally documented.¹³ These antiquities remain in the possession of their owner, unless the Antiquities Department purchase them. The Department of Antiquities has the right to lend the antiquities for scientific purposes for up to one year, when they are returned to their owner. In this way, the legislator permits individuals to possess portable antiquities within certain limitations, and also prevents the owner of the antiquities from spoiling, devastating or repairing them without direct supervision by the department.¹⁴ In Article 25 of the same law, the Jordanian legislator also gives the Department of Antiquities the right to confiscate antiquities for a certain amount of compensation, and the owner does not have the right to transfer the property to others without the knowledge and approval of the department. Further, in Article 15(c), the legislator allows hobbyists to possess portable antiquities from outside of the kingdom, with the intention of ownership, but they may not trade these, even in cases where the legislation of the country of origin allows this and the individual informs the department about the details.

ADMINISTRATIVE PROTECTION FOR ANTIQUITIES

Administrative protection means that the legislator sets legal rules (Ashrah Al-Ashmawi, 2009) to ensure the safety and maintenance of antiquities during excavations and afterwards (Shawqi Shaath, 2006). To protect antiquities prior to excavations, we must first determine those sites which may have them, in cooperation with the relevant authorities, such as the Department of Lands and Survey, so that they can impose supervise the excavation process; this type of protection prevents construction on these lands or changes to their features.¹⁵ However, in this study, we are more interested in the methods of administrative protection for antiquities during discovery and excavation, and the methods of protecting antiquities after they have been found.

Methods of Protecting Antiquities during Excavation

The Jordanian legislator has stipulated the mechanisms necessary for protecting antiquities during the excavation process, and we address this topic first by defining the concept of antiquities excavations and their objectives, and then by focusing on the mechanisms for protecting antiquities or studying them for scientific and exploratory purposes.

Definition and Objectives of Antiquities Excavations

The Jordanian legislator defines excavations for antiquities in Article 2(11) of the Antiquities Law as the performance of acts of digging and the investigation of sites with the aim

of finding portable or non-portable antiquities; that is, the discovery of antiquities by chance is not considered an excavation. Regarding the objectives, the legislation on antiquities is designed to achieve a number of goals. First, the antiquities must be protected and saved. The Department of Antiquities aims to prevent loss and damage from various risks, whether natural or due to projects being planned or implemented near antiquities' sites, including road building and other public works. Article 13/m of the law states that 'licences for establishing any facility, including buildings or fences are not granted unless the work site is about 5 m–25 m from any archaeological site, and a fair compensation is given for any loss resulting from this'. Second, the study of antiquities promotes the history and heritage of the civilization of the region, forming the background for culture, community heritage, and historical roots. Indeed, these elements promote our connection with history and civilization. Third, several excavation teams are comprised of students from the faculties of antiquities who perform research and complete graduation projects on excavation works under the surveillance and supervision of their instructors, giving them the necessary experience and qualifications to lead excavation works at different sites (Abdul Qadir Dahdouh, website).

Mechanisms for the Excavation of Antiquities

Excavation mechanisms are comprised of both procedural and objective mechanisms. The procedural requirements for an excavation are covered in Article 3 of the Antiquities Law, which states that 'the Department of Antiquities is responsible for managing antiquities, archaeological sites and archaeological reserves in the Hashemite Kingdom of Jordan, as well as supervising, protecting, and maintaining them, and decorating the surrounding areas, as well as excavating for antiquities'. Article 16 of the same law states that,

- a) The Department, exclusively, has the right to perform antiquities excavations in the Kingdom, and based on the Minister's approval, the Department can permit scientific associations, commissions and institutions, as well as archaeological missions to start antiquities excavations, after obtaining a specific licence according to the provisions of this law. Excavations should also be started according to the terms determined by the manager.
- b) Considering the provisions of item (a) of this article, no one is allowed to start antique excavations in any area in the Kingdom, even if the area is the excavator's own property.

The legislator sets certain conditions that should be followed by the party granted the right to excavate for antiquities according to Article 3 of the Jordanian Antiquities Law No. 21, Under which the regulations of archaeological projects in Jordan state that:

- a) The project manager should have the required scientific qualifications in the process of antiquities excavations.
- b) they should have the ability to set the necessary planning, organization and preparation.
- c) they should have the experience of dealing with the process of saving and maintaining antiquities as well as maintaining the archaeological sites; d) they should have practical experience in scientific research.¹⁶

Article 17 states that 'the department or the party which is licenced to start excavation works has the right to perform excavations in the lands owned by the Kingdom as well as other properties, provided that the land is returned to its original condition prior to the excavation work. The excavating party must compensate the landowners for any harm or damage resulting from excavation works, and the department is responsible for assuring the payment of compensation'. This means that the legislator is exclusively responsible for giving the authority to excavate or of licencing it to authorized parties, and that the landowner is not permitted to start excavations. We suggest that the current situation is preferred since excavation for antiquities is performed according to and under specialist controls and methods which protect antiquities from damage and enable their repair; specialists are also able to recognize the period to which the antiquities

belong. However, the Jordanian legislator does not require that an agreement be made with the landowner prior to excavations, and does not determine the amount of compensation should antiquities be discovered. The legislator authorizes that a committee, comprised of three specialists from the ministry, the private sector, and the judiciary, is formed to estimate the value of compensation due.¹⁷ We therefore suggest that the Jordanian legislator highlight the necessity of restoring the land back to its original state prior to the excavations, so that landowner is not exposed to losses in the form of the cost of repairing the damage, such as damaged plants. We further suggest that the legislator make additional amendments to Article 16 of the Jordanian law, which implies that a licence granted to private parties is not subject to resignation under any circumstances.

Terminating Antiquities Excavation Licences

In Article 19 of the Antiquities Law, the Jordanian legislator provides for the termination of excavations or cancellation of licences should the licenced party violate the conditions relating to excavations, or if the minister deems it necessary to terminate excavations based on the recommendation of the manager in antique department, if such excavations threaten the safety of the excavating mission or the security requirements demand it. In Article 20, the legislator permits licences to be cancelled if the excavation works have not started within one year from the date of granting the licence, or for two seasons in two consecutive years for no reason. We find that the existing situation provides for a managerial contract signed with the excavator who is licensed to start excavation works. Such a contract entails the imposition of managerial penalties if the excavator violates the terms.

As for the maintenance of antiquities, the terms maintaining and repairing are used interchangeably. Katefoley defines these as ‘introducing the cultural discoveries in relation to their relationship with the prospective future, where as much data as possible are gathered through new studies and analyses, while repairing refers to introducing the discovered objects or buildings to understand them easily for those specialized in the domain or non-specialized ones’. Repairs do not aim to deceive but to situate the object as an archaeological item, with all the information that it includes, either as an incomplete tool or building. Maintaining and repairing antiquities requires continuous work to save them from damage (Khalid Ghonaim, 2002, p.10).

In this regard, the Jordanian legislator clearly gives the Department of Antiquities the responsibility of maintaining and repairing antiquities, as stated in Article 3a(3): ‘the Department of Antiquities is responsible for the archaeological sites and reserves in the Kingdom, in terms of supervising, protecting, maintaining and repairing them as well as beautifying the surrounding areas and demonstrating their outstanding features’. However, the legislator does not determine liability for the maintenance and repair of existing antiquities, and so we suggest that the Department of Antiquities perform this task due to its experience and financial capabilities in respect of protecting antiquities from loss or damage. Here, we would like to point out that the most important decisions issued in the Ninth Conference of the UNESCO were related to the establishment of the International Centre for the Study of the Preservation and Restoration of Cultural Property. In total, one hundred and twenty states participated in the establishing of the centre, which plays a vital role in performing maintenance and repair works in the member states (Ahmad Al-Mansouri, 2013).

The Methods of Protecting Antiquities after their Discovery

In this section, we address legal efforts to protect antiquities after they have been discovered in terms of recording them in official records, protecting them while they are managed, and protecting them in times of crisis.

Registering Antiquities

To ensure the protection of antiquities, there should be a special registry of all antiquities and their relevant information, with an index linking a specific ID for each antique. In this regard, the Jordanian legislator might coordinate the registration of antiquities concisely. Article 4 of the Antiquities Law limits the authority to determine archaeological sites that should be registered in the record of non-portable antiquities to the minister of tourism, based on cooperation with the Department of Land and Survey, which documents the sites in its records and maps. This means that the legislator has not assigned specifics for the registration of archaeological sites and portable antiquities, and instead just implies that non-portable properties should be registered as treasury/antiquities, whereas non-portable antiquities bought by hobbyists from outside Jordan should be registered and documented according to the legal rules within seven days of the date of possessing them. The legislator is also limited to publishing a list that includes the names and boundaries of the archaeological sites in the official gazette, provided that such lists are introduced publicly (Articles 5–6).

1.1 It may be suggested that these texts are lacking depth, since the registers should include data and amendments on these antiquities, how they may be possessed and, especially, the antiquities possessed by individuals. We urge the legislator to adopt the procedures followed by international organizations involved in protecting antiquities, such as UNESCO, which set models for registering antiquities. These include the following types of data: 1) the piece type; 2) the materials and techniques used; 3) measurements (height, length, width, depth, weight); 4) additional measures and notes; 5) inscriptions and marks; 6) distinctive features; and, 7) all other data that provide a detailed report for the antique. In so doing, the UNESCO guidelines not only detail comprehensive data for the registration of antiques but also for information on their discovery, maintenance or loan.¹⁸

Controls on Antiquities in Circulation

Countries paid more attention for the issues related to antiquities circulation and did their efforts to set the necessary controls for that, in order to avoid the negative consequences against countries related to antiquities robbery and damage which would, in turn, be reflected on their history and economy. The researcher will only be limited to research the as administrative organization for the processes of circulating antiquities, while the author won't address the illegal trading of antiquities which is controlled by the rules of criminal liability.

Controls on Antiquities Dealing

For portable antiquities, the legislator states that antiquities should be in the possession of their owners, who are not allowed to act freely with them unless they have prior permission from the Department of Antiquities (this does not include antiquities which have been bought). In Article 25, the legislator provides that, if the owner desires to transfer ownership of the antiquity, the department should be informed so that the procedures are performed under the department's supervision. However, the researcher suggests that the text is deficient, as it does not address all aspects of circulation, such as resignation for non-Jordanians, or cases where the antique was taken outside the Kingdom, as well as the mechanisms of such a resignation. The text also does not include a specific form for the resignation process, such as in writing or the inclusion of notes in a specific record, and the causes of such a resignation, even though the text does contain a prevention with regard to imitating the antique. Therefore, we suggest that this issue should be coordinated based on clear and comprehensive texts. Text also lacks allowance for presenting antiquities as gifts, in that since antiquities are described as public property, the department has no authority to present them as gifts to another party.

Lending or Giving Antiquities as Gift

The Jordanian legislator provides for the authority to lend antiquities in Article 10 of the Antiquities Law: ‘the Council of Ministers, based on a recommendation from the minister has the right to lend, exchange or present antiquities as a gift, in case the departments have a similar alternative, where such a loan, exchange, or gifting is performed to scientific, official, or archaeological parties, or to museums’. In Article 11, the Jordanian legislator describes gifting the information materials related to antiquities, stating that, ‘a) the manager has the right to determine the prices of brochures, printed materials, pictures, maps, moulds, modern mosaic works, and designs performed or supervised by the department and related to its tasks; and, b) the manager has the right to gift any of the objects mentioned in Section (a) of the same article, to any scientific institution, university or college according to bases that are determined in accordance with regulations issued by the minister for this purpose’.

Controls on the Trade in Antiquities

The legislator coordinates the provisions of trading in portable antiquities in Article 5/g of the Antiquities Law, stating that, ‘it is not allowed to take out any portable antiquities from the Kingdom with the intention of exporting them, with a certain person or *via* the transit traffic, unless they provide a written document confirming their legitimate possession of the antique’. Article 24 states that, ‘it is not allowed to transfer, export or sell portable antiquities outside Jordan unless by agreement with the Council of Ministers, based on a placement by the minister according to a prior recommendation by the manager of the Department of Antiquities’.(see more. rev generale de droit international public 2000). We note that the legislator addresses these issues briefly and does not specify the mechanism for trading or the party that estimates the value of the antiquities. Additionally, there should be a specification of the type of antiquities that require the agreement of the Council of Ministers, whether the antiquity is owned by the state or an individual. However, the legislator cancelled all forms of licence applicable before the law of 1988.¹⁹

Therefore, reference should be made to UNESCO’s Code of Ethical Conduct for Dealers in Cultural Property,²⁰ so that a website can be created to inform potential dealers about the bases and mechanisms of trade in antiquities, and show all transactions in antiquities, along with information relating to their sale, revenues, the names of licenced traders, parties allowed to buy, and the reasons for doing so (see more, Jan de breacker, 1975).

CONCLUSION

This study addressed the extent of administrative protection for antiquities and, to our knowledge, is the only one to address this to picto date. The study summarises the findings as follows. First, the Jordanian legislator organizes the provisions for antiquities in the Jordanian Antiquities Law, but other provisions exist in the law of architectural planning and construction systems as well as the law of penalties,²¹ and so there are multiple provisions relating to antiquities. Second, the legislator has not set clear controls over the licencing of those permitted to excavate for antiquities which demonstrate the extent of their liability, should the antiquities be damaged, the conditions of the licence be exceeded, or there is a need to revoke the licence. Third, the legislator has not adopted the procedures for protecting antiquities followed by international organizations, such as a model for recording the age, characteristics, and importance of antiquities, and the extent to which they can be circulated.

Fourth, the legislator has given the authority to organize how antiquities are dealt with to the minister of tourism, *via* regulations which are issued by him/her. This is a cause for concern since these regulations could be changed for different reasons which may not be in the public

interest or the specific interest of antiquities. Fifth, the legislator has provided the minister of tourism with the authority to lend antiquities for a period s/he considers appropriate, reducing the protection the legislator must bestow on some antiquities that constitute wealth and national importance. Sixth, the age standard (1750) adopted by the legislator for antiques becomes inaccurate over time, prompting the legislator to change this criterion continuously.

We therefore make the following recommendations:

1. The provisions governing antiquities must be unified in one legislation to ensure there is no conflict or overlap between the interested authorities;
2. The legislator should set clear controls concerning licences to excavate for antiquities which demonstrate the extent of the licensee's liability should the antiquities be damaged, licence limits exceeded, or if there is a need to revoke the licence;
3. The legislator should adopt the procedures followed by international organizations for protecting antiquities;
4. Antiquities have great importance and so their regulation should be delegated to a higher authority than the minister; instead, they should be coordinated by a law issued by the Jordanian Council of Ministers;
5. The legislator should determine a maximum loan period for antiquities, especially those of great importance. For example, the period should not exceed two years and should remain under the supervision of antiquities specialists to prevent damage;
6. The legislator should refer to UNESCO's website on Ethical Conduct for Antiquities Dealers, which demonstrates the bases and mechanisms of antiquities trade, such as transactions.²²
7. The legislator should adopt a standard for what is considered an antique. This standard should not be a specific age, such as considering objects to be two or three hundred years old. This is because such a determination leads to the use of the concept of antiquities for other issues which exceed this standard, and also results in legislative instability.

ENDNOTES

1. Government of Jordan. The Modified Jordanian Buildings and Cities Regulation No. 82, 1168.
2. Jordanian Antiquities Law No. 23 of 2004. Hereafter referred to as the Antiquities Law.
3. This contrasts with Article 3 of Egyptian antiquities law (2010) and M/3 of the Yemeni Antiquities Law No. 8 of 1997, which define antiquities as those found on Egyptian and Yemeni lands.
4. S.A. Al-Abdullah, A Comparative Study of Penal Protection of Archaeology in Arab Legislation (2015). Ph.D, Aleppo University.
5. J.P. Lecat, J.P. Bady and J.M. Vincent, Patrimoine culturel, patrimoine naturel: colloque 12 et 13 décembre 1994 (Paris, La Documentation Francaise, 1995).
6. W.M. Ibrahim, Protecting Antiquities and Elements of Cultural Heritage in Private International Law (2005). Ph.D, Helwan University, Egypt.
7. Ibrahim, supra n.6, p.5; A.C. Kiss, 'La notion de patrimoine commun de l'humanité', 175 (1982), NV.
8. Jordanian Antiquities Law No. 23. supra n.2.
9. (Al-Monjid in accuracy and media, 2003, p700)
10. Jordanian Civil Law No. 43 of 1976.
11. K. Al Said, Explanation of the Penal Code: Crimes against Public Interest: A Comparative Analytic Study (Amman, Jordan, House of Culture for Publishing and Distribution, 2008). p. 128.
12. G. Carducci, 'La restitution internationale des biens culturels et des objets d'art', Uniform Law Review, 3 (1998), pp. 219-221.
13. We believe that the legislator must specify a period of time that obliges the excavator of the antiquity, and whoever knows of its existence, to inform the department during its excavation, since it is easy to smuggle portable antiquities or sell and trade in them.
14. See Articles 7–9 of the Jordanian Antiquities Law No. 23. supra n.2.
15. Article 4(a) of the Jordanian Antiquities Law No. 23 of 2004 stipulates that the Minister of, upon the recommendation of the manager ?, and in cooperation with the Department of Lands and Survey, may determine the names and boundaries of those archaeological sites which must be registered in the non-portable Antiquities Register, including the determination of the rights that they enjoy.
16. In accordance with Jordanian Antiquities Law No. 21 of 1988.
17. It would be preferable if the Jordanian legislator followed the conduct of the Qatari legislator, who stipulated in Article 3(a) of the Qatari Antiquities Law that, 'The Qatari Museums Authority is in charge of making an

- agreement with the owner of the land on the principle of excavation and the amount of compensation for damage, and if the agreement is not reached, the land may be seized by following the administrative methods’.
18. UNESCO, Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970).
 19. Jordanian Antiquities Law No. 21. supra n.16.
 20. UNESCO, International Code of Ethical Conduct for Dealers in Cultural Property (1999).
 21. The Modified Jordanian Buildings and Cities Regulation No. 82 (2018); Al Said (2008).
 22. UNESCO, International Code of Ethical Conduct for Dealers in Cultural Property (1999).
 23. The ownership of portable antiquities will be confined to the state, and no other party may own these antiquities by any means of ownership or pay the state's right to that ownership by statute of limitations or other defenses.
 - a) The ownership and portable antiquities and dealing with them shall be subject to the provisions of this law.
 - b) Hobbyists are entitled, with the approval of the Department, to possess antiquities or collect them from outside the Kingdom for the purpose of acquisition, if permitted by the legislation of the country of origin, provided that the customs centers are informed about that.
 - c) The ownership of the land does not give its owner the right to own or freely act upon the antiquities on its surface or beneath it, nor does it entitle him to excavate for antiquities there.
 - d) It is permissible to acquire or buy any real estate or antiquities that the department's interest requires to possess or buy it.
 - e) Registering all the archaeological sites in the name of the treasury/antiquities. Archaeological sites not registered with the department and which are discovered on the treasury's lands or are possessed or purchased are also registered in the name of the treasury.

REFERENCES

- Bashar, K. (n.d). The antiquities of the arab east and international law, model of road antiquities, palestine, the golan heights, a jurisprudence comparison, lectures introduced at the international symposium on the history and antiquities of the golan, Damascus, 10-13.
- Kiss, A.C. (n.d). “*The concept of the common heritage of humanity*”. In: Collected courses of the Hague Academy of International Law. 175.
- Al-Monajjid. (2003). *In accuracy and media, (Third Edition)*. Dar Al-Mashriq, Lebanon - Beirut, 2003.
- Al-Ashmawy, A. (2009). *The development of egyptian legislation concerning legal controls for the exit of antiquities from Egypt*. A work paper submitted to the Nineteenth Conference on Antiquities and Cultural Heritage with the Arab Nation, Riyadh, 9-11.
- Abdul, R., & Al-Sanhouri. (1991). *The mediator in explaining civil law, part 9*. Dar Al-Nahda Al-Arabiya, 1991.
- Abdul, Q.D. (n.d.) Introduction to archeology and its techniques.
- Abu, A.J.A., Omar, B.M.B.M., Al-Afriqi, A., & Lisan, A. (1990). *Letter R, Word of antiquities*. Dar Sader, Beirut, Lebanon, 4.
- Hamdi, A.Q. (2012). *Administrative Law, The second Book*. House of Culture, Amman, 2012.
- Hameed, H.A.M., & Hussam, A. (2013). Legal protection of antiquities: A comparative study. *The Legal and Judicial Review, Issue 2*, Ministry of Justice, Center for Legal and Judicial Studies, 2013.
- Kamil, A.S. (2002). *Explanation of the Jordanian Penal Code*. House of Culture for Publishing and Distribution, First Edition, 2002.
- Khalid, G. (2002). *Archeology, conservation and restoration of tools and archaeological sites, (First Edition)*. Al-Samman for Publishing and Distribution, Beirut, 2002.
- Lama, A.B.M. (n.d). *Legal protection of antiquities in the face of reality challenges*. The University of Baghdad. D.T.
- Rafat, A.F.H. (2003). *The penal protection of antiquities in the light of the antiquities protection law, No. 117 of 1983: A comparative study of Islamic law*. Dar Al-Nahda Al-Arabiya, Cairo, 2003.
- Shawqi, S. (2006). Historical monuments in the Arab world, and the metods of protecting them, maintenance and restoration. *Arab Heritage Journal, (26)*
- Waleed, M.I. (2005). *Protecting antiquities and elements of cultural heritage in private international law*. PhD., Egypt, Helwan University, 2005.
- Frederique remarks on the international restitution of cultural goods from the angle of public international law. general rev on public international law 2000 p357 ets Jan, D.B. (1975). (the reserve of necessities militarized in the hague convention 14\5\1954 on the protection of cultural property. *Review of military criminal law and the law of war, 14, 255*.
- Jean. (1994). Pierre body: Cultural heritage and natural partimony Documentation, French, 10

Unesco. (1979). The conservation of the cultural property, paris.

Unesco. (1970). Convention on the means of prohibiting and illicit of ownership of a cultural property on 5/5/2009.