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**INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE
RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF
ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT
APPROPRIATION**

**Twentieth Session
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Provisional agenda item 6: “Treasure hunters” and cultural trafficking –
regulation on metal detectors and
underground monitoring systems

This document contains information on
international and national regulations
concerning metal detectors and
treasure hunting.

Introduction

1. This document contains information on international and national regulations concerning metal detectors used for treasure hunting¹. Considering the irreparable impact of looting of archaeological sites through clandestine excavations, the Members of the Committee and Member States may wish to introduce measures for the use of underground monitoring/penetrating systems.
2. Underground monitoring/penetrating systems² are being used by scientists, archaeologists and art historians for research or excavations. Those systems are not limited to metal objects, and are being widely used by 'treasure hunters'.
3. Metal detectors are relatively easy to obtain, and are affordable compared to more elaborated penetrating systems. They are promoted by advertisements, which can sometimes be seen as encouraging infringing legislations in force. For example, in some countries, the relevant State authority issues permits, which generally do not apply to registered archaeological or historical sites. Yet, looking at the posts of some metal detector sellers on social media websites, it is possible to find videos recorded directly at registered heritage sites.
4. Treasure search/hunting is not limited to people settled in rural areas. "Treasure legends" are very common in settlements which are close to archaeological sites or to port towns. Some studies revealed that populations living close to those areas are approached by criminal networks to hunt archaeological artefacts for the latter's benefit³.

Destruction by Treasure Hunters and or Metal Detectorist: What is the motive?

5. Although, in most of the States Parties to the 1970 Convention, undiscovered cultural heritage is considered as state owned⁴, people who suffer from poverty or lack of economic opportunities can see illegal excavations as an important source of revenue as documented in the reports provided by Syrian Arab Republic⁵ and Niger⁶ in 2015, on the implementation of the UNESCO 1970 Convention.
6. However, monetary gain is not the only motive behind stealing undiscovered cultural property. In some cases, the thrill of discovering treasures that are unknown to the public suffices as a motive to excavate cultural property.

¹ The definition of Treasure hunting has a broader meaning which also includes valuable mines such as gold and minerals, however due to the scope of this document, this term refers to the ambition to find cultural property.

² Side-Scan Sonar, Magnetometer, Swath Bathymetry (Multibeam Echo Sounder), Diver (in shallow water) or video/ROV (in deepwater) ground trothing

³ Miura, K., "Destruction and plunder of Cambodian Cultural Property", Cultural Property and Contested Ownership: The trafficking of artefacts and the quest for restitution, Ed. Hauser-Schaublin, B. and Prott, L. V., 2016

⁴ Please see paragraph 75 of the [Evaluation of UNESCO's Standard-setting Work of the Culture Sector Part II – 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property](#). For more information on State Ownership of undiscovered objects please refer to paragraphs 31 and 32

⁵ Please see the periodic report of Syrian Arab Republic available online: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Syrie.pdf

⁶ Please see the periodic report of Niger available online: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Niger_Report.pdf

What is an archaeological context and why it is important?

7. Treasure hunting and use of metal detectors has evolved in a way that is now considered a problem in many countries, and States have implemented various procedures to tackle the problem ranging from prohibition to indulgence.⁷ The use and misuse of metal detectors significantly impacts cultural heritage for many reasons:
 - a. Improper extraction of artefacts skew spatial patterns, making it hard to interpret what people were doing based on how the artefacts were placed.⁸
 - b. Improper extraction increases the chances that a scientifically (historically) significant piece is damaged;
 - c. When an artefact is removed from a site, there is no accurate account of them which makes it hard to understand the artefact or the site;
 - d. In cases where the piece is not reported (e.g. theft, illicitly excavated) and then sold in the antiquities market it is an incredible loss of knowledge, as these pieces are sold without determining the provenance.

What are the modalities for regulating treasure hunting and use of metal detector?

8. Whilst some national legislations prohibit treasure hunting regardless of the case of a detector or not, there are other examples which allow this activity under certain conditions. Prohibitions or permissions are to be decided at the national level, for which clear and comprehensive regulations are needed. The main risk that is caused by treasure hunters and/or metal detectorists is destruction and ruining archaeological context.
9. Absolute prohibition: In this model, individuals are not entitled to search or excavate for the purpose of treasure hunting. This blanket prohibition covers the use of metal detectors. For example, according to the legislation of the Former Yugoslav Republic of Macedonia⁹, seeking for treasures is prohibited and the license for the use of a metal detector can be only provided for scientific excavations.
10. Licensing System: Permits are issued under certain conditions to treasure hunters as well as metal detector users. These permits are generally being issued for areas excluding archaeological, historical sites or ancient monuments. In the countries which implement a licensing system using metal detectors without a license is strictly prohibited and criminalized. For example, according to the Greek legislation¹⁰ a person might be liable for up to 10 years of imprisonment for violating the law concerning the use of metal detectors.
11. Cyprus, in 2012, amended its Antiquities Law and introduced restrictions on the import and use of metal detectors. The use of such instruments now requires prior

⁷ http://www.academia.edu/5684936/Past_present_and_future_of_archaeological_metal-

⁸ <http://www.pbs.org/time-team/explore-the-sites/lost-civil-war-prison/metal-detection/>

⁹ Please see the periodic report of FYROM available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/macedonia_2010-11natrep_1970_en.pdf

¹⁰ Law 3028/2002

written permission from the Director of the Department of Antiquities¹¹. Malta also restricts import of metal detectors.

12. It has been reported by Estonia¹² that a new regulation on metal detecting devices recently entered into force. According to this regulation the obtainment of a permit is subject to satisfactory training, all licensees have to be annually reported to the Heritage Board. This framework encourages metal detectorists to inform the authorities about the sites they may discover. Estonia highlights also the difficulty of proving the intention of searching for cultural artefacts when individuals are caught as the use of metal detector is not limited to searching for archaeological objects.
13. The Netherlands informed the Secretariat¹³ on new rules for metal detection which entered into force in 2016. These rules permit metal detection up to 30 cm deep with the exception of archaeological sites and protected (archaeological) monuments. The 30 cm depth was decided upon, it corresponds to a depth that has already been disturbed due to other activities (agriculture, building, roadwork etc.). The legal permission for metal detection is only valid on land, not under water, as objects of archaeological value might be found just above or directly under the surface.
14. In 2010 illegal metal detector users entered a registered archaeological site in Noyon, France and excavated coins, antique fibulas, strapping copper and shrapnel fragments from the First World War. Following this incident, the Ministry of Culture and Communication asked for a report from the "*Conseil national de la recherche archéologique*" (CNRA), on the impact of metal detector use in France¹⁴. CNRA has made a series of proposals to strengthen the legal framework on the use of metal detectors, particularly training of metal detector users, supervising the use of such devices, raising awareness among "amateur archaeologists", involving regional authorities, registering metal detectors, criminalization of unauthorized use and implementation of legislation.
15. In Sweden the use of metal-detectors is legally prohibited. The Swedish Heritage Conservation Act 1988, states that "metal detectors may not be used, except by National Heritage Board or for military activities to search for things not including ancient items¹⁵". However, despite this prohibition, Sweden reported that looting occurring in archaeological sites are often due to the use of metal detectors¹⁶. In 2012, the Swedish National Heritage Board issued a report with suggestions on new regulations on the use of metal detectors in the Swedish Heritage Conservation Act¹⁷. This report proposes solutions such as permitting the search of objects other than ancient artefacts and the adoption of a licensing system which would include a training package and pilot training programmes for examiners.

¹¹ Please see the periodic report of Cyprus available online:

<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/CYRPU5 REPORT.pdf>

¹² Please see the periodic report of Estonia available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_ESTONIA.pdf

¹³ Please see the periodic report of Netherlands available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_Netherlands.pdf

¹⁴ http://www.culturecommunication.gouv.fr/content/download/48536/381738/file/cnra_rapport_ddm_2011.pdf

¹⁵ Sweden Heritage Conservation Act 1988 art. 19

¹⁶ Please see the periodic report of Sweden available online:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Suede.pdf

¹⁷ http://www.raa.se/publicerat/rapp2012_3.pdf

16. Turkey enforces a regulation concerning treasure hunting¹⁸, according to which individuals can apply for permission for a treasure-hunting excavation at non-archaeological or historical sites. Under this regulation, experts from the nearest state museum examine the area, which cannot be broader than 100 m². If the application is approved, the excavation cannot exceed 30 days. The excavations must be undertaken under the supervision of museum professionals, a representative of police or gendarmerie and a representative of treasure administration. If a cultural layer is revealed, the treasure hunting excavations is immediately stopped and rescue excavations by museum professional are undertaken until a site management plan is decided.
17. The United Kingdom has had a system of “scheduling” in place since 1882 of monuments considered to be of national importance; and scheduling is the only legal protection specifically available for archaeological sites. The current legislation, the Ancient Monuments and Archaeological Areas Act 1979, places restrictions on the use of metal detectors on protected sites and disturbance or removal of an object may result in a fine. However, the Treasure Act 1996 does allow treasure-hunting at other sites, with the consent of the landowner. The United Kingdom also enforced the Portable Antiquities Scheme (PAS) which allows for use of metal detectors and for awards when important findings have been made¹⁹.
18. The Indian Treasure Trove Act regulates treasure hunting for objects buried for less than 100 years. In order to conduct a treasure search a license is required. This kind of search can only be done in areas which are not protected by law. For artefacts buried for more than 100 years, according to The Antiquities and Art Treasures Act, the Central Government is responsible for taking appropriate action regarding its sale, export, import or preservation²⁰.

What is the International Legal Framework?

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

19. Although, the 1970 Convention is most commonly referred to for its return and restitution articles, this instrument is composed of three main pillars which are prevention, international cooperation and return-restitution. In the preamble of the Convention, the concern about illegal excavations is mentioned as follows:
“Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,”
20. As illegal treasure hunting excavations mean clandestine excavation in a broader definition, Article 10 (b) which obliges States Parties to endeavour “by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports” falls within the scope of this discussion.
21. Additionally, according to Article 5(d) of the Convention, State Parties undertake “to organize the supervision of archaeological excavations, ensuring the preservation ‘in

¹⁸ http://www.unesco.org/culture/natlaws/media/pdf/turkey/turkey_regulationtreasurehunting_4_entof

¹⁹ C70/13/1.SC/INF.2/REV2 « Consideration of the draft operational guidelines Study prepared by Professor Lyndel V. Prott » http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/INF2-SC1_StudyLVP_en_REV2.pdf

²⁰ http://www.unesco.org/culture/natlaws/media/pdf/india/inde_act52_1972_enorof

situ' of certain cultural property, and protecting certain areas reserved for future archaeological research." The first aspect of this provision is directed at clandestine excavations, which, as mentioned, damage archaeological heritage, and cause permanent loss to historical data. Furthermore, ensuring preservation in situ and preserving areas for future research are both provisions that are widely accepted in archaeological practices for sites on land.²¹

Operational Guidelines on the Implementation of the 1970 Convention

22. Paragraph 45 of the Operational Guidelines directly addresses treasure hunting and the use of metal detectors. "States Parties are also encouraged to establish provisions on the use of methods of ground-penetrating analysis such as the use of metal detectors. States are encouraged to prohibit, as appropriate, unauthorized use of such equipment for purposes of undertaking clandestine excavations on archaeological sites."
23. Furthermore, paragraph 25 of the Operational Guidelines states that "in fulfilling their duty to protect cultural heritage, several States have enacted explicit laws on State ownership of certain cultural property, even when it remains officially undiscovered or otherwise unrecorded. State ownership laws constitute the first barrier against looting and should prevent laundering and international trade in undocumented cultural property."²². This provision is frequently supplemented by additional requirements on recording, reporting and occasionally rewards for finding significant artefacts.

The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage

24. The 2001 Convention on the Protection of the Underwater Cultural Heritage was adopted as the international community's response to the increasing looting and destruction of underwater cultural heritage²³. The Convention includes strict regulations to prevent commercial exploration, pillage and traffic of underwater cultural heritage.
25. The availability of metal detectors poses a high risk to underwater cultural heritage, especially when used for unscientific purposes. The legends of pirate wrecks or sunken cities which are thought to house valuable artefacts are often a motive behind the looting or exploitation of underwater cultural heritage. Article 2 of the 2001 Convention addresses the issue of looting by asking States Parties to take measures.
26. The Committee Members and Member States at large may wish to adopt measures including awareness-raising and strengthening national legislation, as well as to encourage the ratification of the 2001 Convention.

UNESCO-UNIDROIT Model Provisions on the State Ownership of Undiscovered Cultural Objects

27. The Committee at its 17th session in 2011, adopted the UNESCO-UNIDROIT Model Provisions on the State Ownership of Undiscovered Cultural Objects. These model provisions aim at both encouraging the protection of archaeological objects and facilitating their restitution to the State where illicit excavations took place. These provisions also aim at avoiding the time and efforts that would be needed to develop

²¹ Commentary on the 1970 UNESCO Convention pg. 51

²² Operational Guidelines paragraph 25

²³ <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/frequently-asked-questions/>

comprehensive interpretations of the law of the State taking an action for the return of an object that falls within the scope of these provisions²⁴.

28. All model provisions ought to be reflected in national legislations. As far as illegal treasure hunting is concerned, Model Provision 4, which stipulates that « Cultural objects excavated contrary to the law or licitly excavated but illicitly retained are deemed to be stolen objects », is worth noting. Member States who have not done so may wish to accelerate the process of the integration of these provisions into their national legislation to strengthen their fight against illegal treasure hunting.

The European Convention on the Protection of the Archaeological Heritage (Valletta Convention 1992) adopted under the aegis of the Council of Europe

29. The Valletta Convention is a Europe-wide international treaty which establishes the basic common principles to be applied in national archaeological heritage policies. It supplements the general provisions of the UNESCO World Heritage Convention (1972) and updates the Recommendation on International Principles Applicable to Archaeological Excavations (UNESCO, 1956) and the Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (UNESCO, 1972). In terms of preventive measures, it also complements the 1970 Convention. The 2001 Convention on the Protection of the Underwater Cultural Heritage is more restrictive in scope and more specific than the Valletta Convention. It relates mainly to underwater heritage, covering objects that are at least 100 years old. As such, the two conventions complement one another²⁵.

30. Building on the Recommendation 921 (1981) of the Parliamentary Assembly of the Council of Europe, Article 3(iii) of the Valletta Convention, addresses metal detectors as follows:

“To preserve the archaeological heritage and guarantee the scientific significance of archaeological research work, each Party undertakes:

(...)

(iii) to subject to specific prior authorisation, whenever foreseen by the domestic law of the State, the use of metal detectors and any other detection equipment or process for archaeological investigation.”

31. The Recommendation 921, in addition to highlighting the importance of prior authorization, also addresses an important issue, namely the regulation of the metal detector market. As mentioned in paragraph 3 of this document, monitoring the market to ensure responsible trade is very important. Moreover, the Recommendation underlines the necessary cooperation between the administrative authorities, general public, archaeologists and metal detector users.

Main challenges and remedial action?

32. The main challenges with regards to metal detectors are the fact that they have become increasingly affordable and easy to acquire. Furthermore, the technology involved is constantly being developed, allowing for a variety of metals and antiques to be found. Although not all metal detectorists are looking for profit, there is an

²⁴ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO-UNIDROIT_Model_Provisions_en.pdf

²⁵ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/143>

increase in the demand for ancient finds in the international market. This demand is fuelled by the great range of valuable cultural objects that can easily be acquired. Additionally, the channels through which finds can be found is expanding. For instance, eBay has a range of cultural artefacts on sale that have been found using a metal detector. In most cases, once an item has been found and sold, the possibility of discovery and prosecution is very small.

33. Another challenge lies in the number of videos available online, which share experiences on how to find a treasure. These tools are deceitful and prompt people in committing offences. Furthermore, despite the fact that in most of the Member States the use of metal detectors is not allowed in any registered sites, “appealing promises” are given by metal detector sellers and advertisements are shot at archaeological sites. Although in most of the national legislations referred above it is obligatory to report the discovery of a cultural property, failure to do so is not necessarily criminalized.
34. Considering the importance of engaging local populations in the protection of cultural heritage, tailor made awareness-raising campaigns should be organized for this strategically significant audience. According to the information provided in the periodic reports on the implementation of the 1970 Convention, several countries are already undertaking campaigns or permanent programs in order to raise awareness at the local level²⁶, in particular among the public settled close to archaeological areas. As an alternative to awareness-raising programmes some countries organize vocational courses to provide sustainable job opportunities for local communities as an alternative to illicit trafficking activities²⁷.
35. In cases where it is not preferable to enforce an absolute prohibition, a licensing system should be established and sanctions in case of irresponsible/illegal treasure hunting, metal detecting and detector selling should be dissuasive and applicable. In addition to criminal sanctions, administrative sanctions should be applied such as, confiscation of the detector etc. Import restrictions should be considered for advanced technology metal detectors, which should be traceable.

²⁶ The use of open-source information kept minimum in the preparation of this document. The main source used is the periodic reports on the implementation of 1970 Convention.

Please see the periodic reports of Bulgaria, Bosnia and Herzegovina, Cyprus, Ecuador, Former Yugoslav Republic of Macedonia, Jordan, Lebanon, Pakistan, Turkey, Uzbekistan.

Available online: <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/periodic-reporting/>

²⁷ Please see periodic report of Ecuador:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_ECUADOR.pdf