# Theory and Practice of Archaeological Heritage Management – a European Perspective

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A thesis submitted in fulfilment of the requirements for
the degree of Doctor of Philosophy

December 2009

UMI Number: U584468

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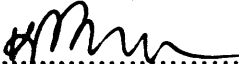
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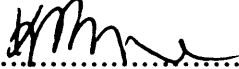
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# Abstract

This thesis looks at selected issues related to the management of archaeological heritage in Europe. It focuses on the theory, principles and standards of the archaeological conservation and the protection of the historic environment laid out in a number of international treaties and policies supported by the work of UNESCO, ICOMOS, Council of Europe and the European Union and seeks to demonstrate the complexities of their practical implementation on a national and regional level.

Attention is given to the role of the archaeological heritage and the historic environment as sources of collective narratives: the thesis explores the consequences of the institutionalisation of preconceptions about the past and cultural values and the use of the archaeology and heritage administration as instruments of creating and controlling visions of the past and future. These problems are discussed in the context of modern socio-political issues, such as the process of the European integration and globalisation, the quest for a 'common European heritage' and the values and consequent tension between local, national and 'European' identity.

Finally, this dissertation explores the relationship between the protection of the archaeological (cultural) heritage and the natural environment and the growing dependence of the heritage sector on the EU environmental legislation and policies.

A critical approach is based on the dual nature of the archaeological heritage: as a universal (trans-national) concept governed by international principles and the material remains located within nation states subjected to diverse domestic laws. The study concentrates on the analysis of the empirical material drawn from the European Union including the UK, the Republic of Ireland, France, Italy, Germany (old member countries) as well as Poland, the Czech Republic, Hungary and the Balkans (new members).

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## – a European Perspective

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# Acronyms and abbreviations

AAIs — Areas of Archaeological Importance

AIP — Archaeological Investigations Project

APPAG — All Party Parliamentary Archaeology Group

BPN — Building Preservation Notice

CAC — Conservation Area Consent

CBA — Council for British Archaeology

CC1 — Class Consent No 1

CNIR — Certificates of No Intention to Register

COI — Certificate of Immunity

CMSC — Culture, Media and Sport Committee

DCLG — Department of Communities and Local Government

DCMS — Department for Culture, Media and Sport

CoE — Council of Europe

EC — European Community

EEC — European Economic Community

EH — English Heritage

EIA — Environmental Impact Assessment

EIS — Environmental Impact Statement

EU — European Union

HAC — Heritage Asset Consent

HER — Historic Environment Record

HLF — Heritage Lottery Fund

HPA — Heritage Partnership Agreement

HS — Historic Scotland

ICOM — International Council for Museums

ICOMOS — International Council for Monuments and Sites

IFA — Institute of Field Archaeologists

IMO — International Maritime Organisation

INRAP — Institut national de recherches archéologiques préventives

LBC — Listed Building Consent

LPA — Local Planning Authority

| | |
|---|---|
| MPP | – Monuments Protection Programme |
| NMR | – National Monuments Record |
| NRA | – National Road Authority (Ireland) |
| PAS | – Portable Antiquities Scheme |
| PPG15 | – Planning Policy Guidance: Planning and the historic environment |
| PPG16 | – Planning Policy Guidance: Archaeology and Planning |
| RCHME | – Royal Commission on the Historical Monuments of England |
| SCOLA | – Standing Conference on London Archaeology |
| SEA | – Strategic Environmental Assessment |
| SHEP | – Scottish Historic Environment Policy |
| SMC | – Scheduled Monument Consent |
| SMR | – Sites and Monuments Record |
| SoS | – Secretary of State for Culture, Media and Sport |
| UN | – United Nations |
| UNECE | – United Nations Economic Commission for Europe |
| UNESCO | – United Nations Educational, Scientific and Cultural Organisation |
| UNIDROIT | – International Institute for the Unification of Private Law |

# 1. Chapter One: Introduction

## 1.1. Background

This thesis looks at the development of the theory and practice of archaeological heritage management in the last three decades, exploring the changing concepts, attitudes and latest trends. These issues are considered in a wide, trans-national (or, to be more precise, European) context. Therefore, one of the main arguments of this thesis is that, in the light of the growing European integration and globalisation manifested, amongst other things, by the gradual unification of the legislation and policies related to cultural heritage, landscapes and the environment, together with the internationalisation of research topics (and research funding) and the increased mobility of academics and field staff, heritage management and archaeology are no longer limited to nation states. At the same time, it seems that while different countries experience similar difficulties (e.g. the pressure from urbanisation and industrialisation), unmethodical and uncoordinated searches for individual solutions to common problems often lead to mistakes being repeated or even 'reinventing the wheel'. For that reason, this thesis argues that there is a need for European archaeologists to speak with a united voice in respect of issues concerning the preservation and management of archaeological heritage.

The inspiration for the research project summarised in this thesis came from my dual experience as an archaeology and law student and my subsequent practical involvement with archaeological heritage management issues in Poland (in the heritage service) and, later, in the Republic of Ireland (as a field archaeologist). While studying for my degrees in medieval archaeology and law I gradually became aware of the communication gap between legislators and heritage managers. Around that time the heritage system in Poland was undergoing a major overhaul, following the change of the

political system, preparations for the European Union membership and the ratification of the revised *European Convention on the Protection of the Archaeological Heritage* (1996). By looking at the evolution of the draft heritage bill and complementary ordinances, I was able to witness first-hand a number of challenges faced by the working committee. While lawyers were responsible for the procedural aspects of the law setting (such as translating 'soft' conservation principles and good practice standards into the language of enforceable legal norms), they generally lacked the specialised knowledge and understanding of the heritage management issues, relying on support from the 'curators': archaeologists, conservators, museum staff, etc. Simultaneously, the latter group tried to feed their ideas to the legislative process using the legal team as 'technicians' with a limited, albeit necessary, input. Such an approach resulted in a number of heated debates (e.g. about the phrasing in regulations concerning the designation of archaeological sites) and subsequent amendments to the 2003 National Heritage Act and its executive orders. At the same time, I noticed the growing importance of the environmental law, especially the EU regulations related to the sustainable development, planning and the protection of nature, and the way in which they increasingly influence cultural heritage issues. In addition, being aware of differences between legal systems and intellectual perspectives on archaeology (as an academic discipline and a practice) and cultural heritage (as a subject of research and legal protection) in various countries I wanted to explore further the impact of the politics and the 'Europeisation' agenda on the archaeological management.

## 1.2. Scope of the thesis and main new results contributed by the research

There are a number of main aims of this research: firstly, to explore the complex web of principles, legal regulations and values underpinning current approaches to cultural material; to discuss the theory and practice of archaeological heritage management in

Europe; and consequently to analyse the complexities of operating at the European level in the field of archaeological heritage. These problems will be analysed in the context of the increasing integration of the Continent (resulting, *inter alia,* from the unification efforts of the European Union and the Council of Europe) and globalisation. In addition, this thesis aims to explore in detail the noticeable influence of political and socio- economic factors in relation to the concepts of the 'common European heritage', 'European cultural identity' and 'European archaeology' and to consider consequences of this 'Europeisation' phenomenon and potential risks and impediments associated with an uncritical adoption of a European perspective and 'European identity'.

Secondly, examine how these 'European' themes and perspectives in archaeological heritage management correspond with the existing nation state-oriented cultural policies and heritage laws, and explore the real extent of the impact of the international heritage conventions, conservation principles and the 'European agenda' on the approach to archaeological management in particular countries and regions. Also, I shall examine further the link between the practice of archaeological heritage management and law, an issue which, I believe, is still largely underexplored, particularly in relation to international legislation and policy-making.

Thirdly, it will explore the relationship of archaeology and cultural heritage management to contemporary politics and socio-economic issues, such as equality and diversity, public participation, the democratisation of planning procedures and the sustainable management of the cultural environment. I argue that this topic requires a more critical examination and consideration than it has received in the existing research contributions.

Fourthly, it will identify major universal problems and threats to the archaeological heritage faced by archaeologists and heritage managers in Europe together with obstacles and challenges for the improvement of the historic environment management and the

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protection of the common European cultural heritage in a regional and trans-national dimension. This study also explores the potential for change of traditionally adopted approaches to the archaeological heritage and looks for the 'way forward'.

Finally, it will look closely at theoretical concepts of 'European archaeology' and 'archaeology for Europe' that were developed after the collapse of the Iron Curtain and put forward as a possible solution to the idiosyncratic, incoherent character of archaeological heritage management in Europe, and consider whether any such 'one archaeology' for the whole Continent (a common European heritage management policy in particular) is feasible or, indeed, needed at all.

For the majority of European countries the roots of modern heritage management go back to the 19$^{th}$ century and early phase of the development of this discipline, which may be generally divided into three universal stages (Willems 1998): the early phase, reaching back to the beginnings of archaeology itself, when interest was placed on 'antiquities' and major prehistoric monuments; the second phase characterised by the implementation of the first legal protective measures and the care of individual sites (the emergence of the 'monuments acts', 'national monuments', etc.); and the modern trend, largely inspired by the loss of the cultural heritage in the 1960s and 1970s as a result of urbanisation and industrialisation. This last stage is characterised by the preference for the *in situ* preservation, a holistic approach to cultural landscapes and the management of change rather than care or preservation of individual sites, monuments and artefacts. Accordingly, the archaeological heritage is perceived as part of the historic (or cultural) environment and becomes one of essential aspects of the sustainable development doctrine.

In the post-war period, and especially since the 1970s, the practice of the cultural heritage management had been advanced and disseminated through the work of international cultural organisations (such as UNESCO, ICOMOS or the Council of

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Europe) and the adoption of international treaties and professional standards, e.g. the World Heritage Convention, the Valletta Convention and the *European Landscape Convention*. These instruments have an important influence on national heritage systems and shape legislation at both European and individual nation state level. However, it has to be remembered that any radical changes and direct impact of such treaties are often blunted by necessary compromises (since these conventions are ratified voluntarily). At the same time, it seems that the European countries, even with the integrating international legal framework and despite facing similar threats to the archaeological heritage, still largely rely on their traditional, nation state-oriented heritage systems and legislation and seek solutions independently. Such uncoordinated efforts (e.g. in the field of the environmental impact assessments, planning-related activities or creating historic environment databases) can not only result in wasting time and resources (already very limited) but also do not prevent heritage managers from making the same mistakes.

Moreover, in many Eastern and Central European countries the cultural heritage is under threat because of the lack of funds for adequate preservation and due to the changes to the cultural legislation introduced after 1989, which often weaken protective measures in favour of economic growth, large-scale development projects and growing pressures from the private sector. Furthermore, archaeology still largely fails to keep pace with the progress of the European integration and the growing political trans-national co-operation. For instance, in the two decades which passed since the end of the Cold War period, despite the numerous means of co-operation and communication, there has been only a limited effort to bridge the theoretical, legal and mental gap between the West and the former Eastern Bloc.

Consequently, this thesis recognises the growing impact of the process of internationalisation on archaeological heritage in Europe through EU regulations and

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international heritage treaties, multiple uses of the cultural heritage in European politics and the increasing number of universal problems experienced by European countries (such as the negative effects of the environmental change, rapid urbanisation and unsustainable development). Accordingly, one of the major arguments of this thesis is that since there are a number of common threats and challenges to the archaeological heritage simultaneously affecting various parts of Europe, and since many heritage professionals struggle with similar problems within their national frameworks, there is also a need to co-ordinate heritage management efforts on a regional and transnational scale. The existing diversity of approaches and the traditional nation state-centrism of heritage regulation as well as the visible lack of proper strategic planning in relation to the European cultural environment, and a rather low position for archaeology in the planning process, are considerable drawbacks to the development of the archaeological heritage management. The adoption of a 'transnational', research-based approach and co-operation should result in sharing experience and good practice, avoiding repeating mistakes or 're-inventing the wheel' through searching independently for solutions to similar problems and so saving costs, time and effort and managing limited resources in a more effective way.

Although the harmonisation of law in the cultural sector is still excluded from the EU competences and despite the restraints of the subsidiarity principle, the extent to which the European Community may engage with heritage issues has increased significantly in the recent years (especially as a result of the Treaty of Maastricht). While the EU actions are limited to the 'incentive measures' and 'recommendations' and supporting or supplementing actions undertaken by the member states, the Community has a number of significant indirect ways of influencing the heritage management field, especially through education, tourism, research mobility or spatial planning and land-use management. This poses both an opportunity and a threat to archaeology: if effectively lobbied, the

archaeological heritage may benefit from appending cultural issues to a wider European agenda, or quite the opposite, it may be compromised by the external socio-economic (if not political) interests overshadowing (or even exploiting) the cultural sector – this is, for instance, the case of the increasing importance of environmental protection (controlled directly through the EU environmental directives). At the same time, this thesis also looks at risks associated with progressing the idea of 'Europeisation' of cultural heritage and 'greening' of cultural environment issues, noticing the potentially dangerous situation in which the protection of the archaeological heritage ceases to be of value and purpose in its own right but has to prove its 'usefulness' in respect of other socio-economic issues (the increasingly 'utilitarian' approach to cultural heritage discussed further in the next chapters). It also considers the risk posed by the growing significance of the environmental agenda which may overshadow cultural heritage needs.

Yet another important issue is the ongoing process of the 'professionalisation' (or 'commercialisation') of archaeology in Europe. Since the 1990s we have witnessed the growth of the independent archaeological sector, with different forms of a contract-tender system introduced in countries where the archaeological heritage management was traditionally placed within the public domain (e.g. Poland or the Czech Republic). The increase in the volume of planning-related archaeological works (and the increase of resources for such activities) corresponds with a shrinking number of academic projects, thus being the source of concerns about the growing divide between the 'commercial' and 'research' archaeology, the quality and value of the fieldwork and its outputs and the future of the discipline in general.

Furthermore, the commercialisation of archaeological services in a number of countries, the growing role of the development-led works and the increasing unification of the European legal framework raise concerns about the potentially negative consequences

for the archaeological heritage. This anxiety is, *inter alia*, associated with the impact of the common European market (the free movement of services and workforce within the EU) on the quality of archaeological investigations, understanding of local problems and the potential loss of the public sector monopoly (where rescue archaeology remains a prerogative of heritage authorities and research institutions).

Consequently, this thesis sees archaeology and archaeological heritage management in Europe as firmly placed within the world of politics and economics. This new 'political' role of archaeology is associated with the unification process because in modern Europe culture is increasingly being considered as a key dimension of the integration. Archaeology, historically rather prone to political and ideological use (or misuse), is now used for purposes serving the 'European' idea – which raises ethical questions about giving archaeology a role in the political process of unification and building European identity and consciousness. At the same time, the position of the EU is rather ambiguous: although referring to a common past and being able to illustrate it with archaeological examples is attractive from the ideological point of view, cultural heritage is still largely experienced on a national level and is even perceived as a factor separating identities of individual states, regions and populations.

Thus, this thesis analyses the trend of 'Europeisation' and the growing influence of the internationalisation agenda in relation to the European politics, cultural heritage management regulations as well as in archaeological theory and explores the development of concepts of the 'European archaeological heritage', 'European landscapes', 'European cultural identity' as well as the idea of 'one archaeology for Europe'. It examines potential benefits and risks associated with this phenomenon by looking at practical and theoretical problems (e.g. such as diverse legal traditions and terminology or different development paths of archaeological theory and conservation policies).

While there is a wide range of publications concerning the management of the cultural environment, the majority of studies focus either on specific problems (such as the designation of cultural assets, management of cultural landscapes, urban archaeology or illicit trade) or discuss cultural heritage issues within national contexts and legal frameworks. So far, there is a very limited focused, scholarly interest in a comprehensive, comparative research into the implementation of the international principles and treaties and the consequences of the 'Europeisation' of the cultural policies and regulations for the future of the archaeological heritage management. For that reason, by looking at key international and European regulations as well as analysing cultural legislations, policies and heritage management cases from different parts of the Continent, this thesis offers a wider perspective. Adopting a more 'holistic', transnational, approach, it aims to provide innovative contribution to the 'heritage debate'. It explores the idea of the archaeological heritage and cultural landscapes as a common European good and identifies challenges faced by archaeologists from different parts of Europe, thus recognising the need to improve and co-ordinate management efforts in a regional, trans-frontier dimension. Consequently, this thesis aims to replace the traditional comparative research of regulations and practices adopted in individual countries, concentrating instead on questions related to the theory and practice of the management of the 'common European archaeological heritage' and difficulties associated with operating on a transnational, trans-frontier level: what are the main problems and pressing needs; what makes heritage protection systems effective and which solutions adopted nationally/ internationally seem to work best; what are the roles of law and policies, heritage authorities and archaeologists and at different levels; and, finally, how can we improve protection and management of European archaeological heritage.

This study also seeks to explore issues that are likely to affect archaeology in Europe in the next few decades. These challenges and threats, which in my opinion have

to be addressed by the archaeological community, include the results of the greenhouse effect/ the global warming process (e.g. the intensified coastal erosion, drying of peat bogs, flooding of lowland cultural landscapes), the risks posed by the development of the renewable energy installations (terrestrial and off-shore facilities: tidal wave energy, wind farms, etc.), the application of the 'green approach' to the cultural assets, for instance 'recycling' of buildings, materials and locations (e.g. the frequent use of brownfield sites, modernisation of historic buildings, the site contamination) and, in consequence, inevitable clashes between archaeological and environmental concerns. As a consequence, this study aims to transcend traditional 'nature-culture' dichotomy and broaden the scope of archaeological discussion and by looking at developments in the environmental sector, 'green policies' and planning theory as a potential source of inspiration, interdisciplinary research and improved co-operation between professionals involved in the management of the historic environment.

This thesis argues the need to co-ordinate efforts at a regional and trans-national level to improve the effectiveness – and raise the status – of archaeological heritage management. This notion is derived from the analysis of the *status quo*: the problems associated with the enforcement of the international heritage protection framework (which is largely based on the voluntary accession to the treaties, charters and good practice guides); the diversity of legal, theoretical and practical attitudes towards the cultural heritage and the predominant nation-centrism; the consequent lack of a strategic planning and a comprehensive, systematic approach to the cultural environment (demonstrated, e.g. by the struggle to adopt a harmonised terminology or manage trans-frontier projects). In my opinion, these 'weak spots' disadvantage archaeological interests and cultural heritage issues in face of the growing significance of the environmental agenda, especially in the light of the ongoing integration of the European regulations. While the concept of the sustainable development is being offered as a panacea for all social and environmental

problems and becomes a popular 'have-it-all' catchphrase, in practice the consideration and the support for cultural interests regularly proves to be declaratory, or at best, limited to an interest in the social and economic use of the historic environment. Thus the protection of archaeological heritage is rarely a value in its own right but rather has to be justified by its usefulness and a potential to fulfil wider social goals (tourism, inclusion, community-building, education, etc), as it is frequently demonstrated by the rhetoric and the utilitarian approach adopted by the EU policies, national heritage regulations and public authorities' decisions. Therefore, it can be argued that the relatively low status of the cultural heritage and the lack of an efficient representation in relation to the 'green' policies and legislative acts, themselves pose a serious risk.

In order to explore these problems and ideas I draw attention to a number of case studies from across Europe and use references to specific pieces of national or international heritage legislation and policies. I acknowledge that many of examples presented in this thesis come from the British Isles and Central Europe, and concern cultural assets associated with the medieval and post-medieval period. This choice of the context and research focus had been dictated by my academic specialisation (medieval archaeology), knowledge of regional heritage management issues and a first-hand professional experience. Furthermore, I would like to contribute to the theoretical debate in medieval archaeology and post-medieval archaeology. In my opinion, this discipline has a special place in the discussion on the management of the archaeological heritage in Europe, because of its historic and contemporary political associations (the Middle Ages being an important source of the cultural identity) and the exposure of medieval cultural remains to the growing pressure from the intensive urban development and the transformation of rural landscapes (such as, for instance, the impact of the infrastructure and cultivation on the surviving ridge-and-furrow landscapes). In addition, many monuments and sites, primarily historic buildings, are at risk because their owners (e.g.

religious organisations and private landlords) lack funds for conservation, do not have sufficient expertise in managing archaeological heritage or simply have no interest in archaeology. In my view, the vulnerability of cultural assets of a medieval and later date is intensified by the reluctance of the medieval archaeologists to engage with theoretical issues and, consequently, to effectively address threats to the cultural heritage and influence management policies.

My work is aimed primarily at archaeologists and other participants of the archaeological heritage management process. However, I hope it can be a valuable contribution to wider debate involving all professions dealing with the management of the historic environment (such as town and country planners, museum curators or environment assessment specialists). In my opinion, archaeology is a vital part of the cultural environment management process. However, while European archaeologists often share similar problems and concerns, they are constrained by national frameworks and, at the same time, are not treated as equal partners in the planning process and policy-making decisions. Thus, I believe that there is an urgent need to 'empower' the archaeological lobby in Europe, increase archaeologists' participation and transnational co-operation and look for more effective ways in which archaeological theory could influence and improve managing unavoidable changes in the European cultural environment. This problem is explored further through the analysis of the role of professional organisations (such as EAA), opportunities for trans-frontier and regional projects, utilising environmental regulations and developing multidisciplinary research.

## 1.3. Layout of the thesis

This thesis is structured thematically and focuses on certain principles, regulations, policies, practices and cases within the archaeological heritage management in Europe. It

covers four areas: the background research into current threats to the archaeological remains and challenges faced by the heritage sector; the review of the existing nomenclature, definitions and international regulations (establishing the scope of research); the presentation of most important issues identified by the author and the suggestion for a future development.

The dissertation consists of 9 chapters: although the leading theme of all sections is the management of the European archaeological heritage (particularly in the context of the integration process), they also refer to selected issues and cases affecting the wider development of archaeological theory and practice. Secondly, while chapters are organised around specific problems and are stimulated by particular research questions, for the purpose of clarity and succinctness, the focus of each section is necessarily selective and contextual.

Chapters 2 and 3 offer an introduction to wider themes and contexts that inform and frame the research objectives of this study. In particular, Chapter 2 establishes the background to this work, giving a fairly comprehensive overview of major threats to the archaeological heritage in the modern-day world. Chapter 3 introduces key issues within the theoretical and legal debate around the archaeological heritage and is a critique of the existing nomenclature, definitions and concepts associated with the field of archaeological heritage management. Its aim is to draw the reader's attention to the diversity of terminology, heritage regulations and management approaches applied across Europe.

With the background to the discussion set, we turn to the major topic of this research: responses to the threats and the implementation of the international principles and standards archaeological heritage management on a national, regional and local level. Thus, Chapter 4 analyses the conceptual and legal framework for the protection and management of the archaeological heritage in Europe, or more broadly, the European cultural environment. The next three chapters are devoted to development-led archaeology

and the management of cultural assets in the planning process. While three examples of the road-scheme developments summoned in Chapter 5 illustrate risks arising from the increasing urbanisation and industrialisation and presents dilemmas associated with unsustainable development, Chapters 6 and 7 examine the origins, current problems and the future of the planning-related archaeology. Section 6.1 looks at the formation of concepts, principles and practices that led to the adoption of the current approach to the historic environment in England and Wales, and specifically, investigates consequences of the implementation of the Planning Policy Guidance 15 and 16 and the commercialisation of archaeological services. Section 6.2 examines the impact of these ideas on the management of the cultural heritage in the rest of Europe and explores latest trends and problems in the development-led sector. Consequently, Chapter 7 analyses the proposed heritage reform in England and Wales in order to establish how the changing attitudes, the advancement of the heritage studies and archaeological theory, a better understanding of cultural landscapes and the development of the international legal framework and policies are reflected in the approach to the historic environment in the region, which paved the way towards a major transformation two decades earlier.

In my view, because of the historic link between archaeology and politics and because of the diverse nationalistic and ideological associations, research problems examined in this thesis require contextualisation through the critique of the theory and practice of the archaeological heritage management in the (pan-) European dimension and in relation to the underlying modern socio-political issues. For that reason, Chapter 8 considers motivations behind the 'Europeisation' movement, the impact of the European integration process on archaeology and the consequences of the different political uses (and misuses) of the archaeological material and the past to create collective narratives ('European', nationalistic, ethnic and regional). It also identifies major problems which may hinder the advance of the 'European archaeology' and the creation of an effective

system for the protection and management of the common cultural heritage. Thus, the first part of that chapter explores in detail the formation of the concept of the 'European common heritage' and its association with other 'European' cultural initiatives: the 'common European identity' and the 'European citizenship'. It also examines responses of the archaeological community to the integration process and considers the suggestion to develop a 'European archaeology', Section 8.5 is dedicated to the analysis of the impact of the communist experience on the attitudes towards the cultural heritage and differences in approaches to archaeology and heritage management in Western and Central/Eastern Europe. This part of the thesis attempts to show the complexity of issues that need to be resolved if the concept of the 'European archaeology' was to be taken further.

The last chapter contains a brief summary of issues discussed in this study and the critique of the main themes: the subject of 'Europeisation'; the call for a more inclusive social dialogue, a wider participation and the democratisation of the cultural environment procedures; the real extent of engagement with cultural heritage issues on a local and international level; and the implications of the growing concern for the environmental protection. Finally, this part looks for a 'way forward', attempting to identify possible areas of future development for the theory and practice of the archaeological heritage management in Europe.

## 1.4. Methodology

This thesis employed a multi-dimensional, interdisciplinary approach in its research methods, analysis and use of sources. The objective of the study was to provide a comprehensive and contextualised perspective on the current problems in the archaeological heritage management in Europe. For that reason, the thesis combines elements from the archaeological theory, heritage studies, legal studies, sociology (and sociology of law) and even museology.

In the course of my research, I have drawn on a number of primary and secondary sources: legal documents (international treaties and policies setting out a framework for Europe and a selection of national regulations), decisions and statements issued by public authorities and heritage services, archaeological site reports, a wide range of monographs and articles published in archaeological, legal, environmental, sociological and other peer-reviewed journals, such as the *International Journal of Cultural Property, International Journal of Heritage Studies, Archaeological Dialogues, Antiquity, Environmental Politics* or the *Journal of Community and Applied Social Psychology.* Additional research material, which features within this thesis, was sourced from newspapers, popular archaeological magazines and internet portals. These were included in the scope of the study because they often provided a new perspective on publicly-discussed issues (including controversial views which would be otherwise excluded from the academic circulation) and because their fast tempo of publication (and thus an almost instant response in the debates).

This thesis does not have a separate section dedicated to the review of the existing literature. However, every chapter contains an overview of ideas, documents, research publications and other sources relevant to the each specific topic. Thus, for instance, Chapter 2 discusses in detail international conventions on the illicit antiquities trade, as well as legal commentaries to these documents. Similarly, Chapter 7 is based on the analysis of the draft heritage bill for England and Wales, current legal acts and policies and a number of reports and consultation documents published by the Department for Culture, Media and Sport, English Heritage, Cadw and the Culture, Media and Sport Committee. On the other hand, in the case of the Hill of Tara presented in Chapter 6, largely due to its contentious nature (especially in Ireland), so far there have been very few academic publications (e.g. Newman 1997 and 2007; Ronayne 2009). I decided to include press articles and information posted on heritage campaigners' websites because they

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reflected the public mood and the public response to heritage issues better than official governmental statements or planning consultation documents. For the same reason, wherever possible I referred directly to original documents created by the Irish government, heritage services, and planning and local authorities (some of which had been obtained under the Freedom of Information regulations).

## 1.5. Omissions

Because of the large scope and complexity of the heritage studies, this thesis does not aim to provide an exhaustive analysis of the considerable array of issues associated with the management of the archaeological heritage. The most significant omission is the underwater heritage. The focus of this thesis is limited to management of terrestrial cultural heritage as the underwater archaeology and the protection and conservation of marine sites traditionally constitute a very distinctive topic, largely regulated by separate pieces of legislation[1] and subject of an extensive research in its own right.[2] Furthermore, although this study attempts to provide a broad perspective on current problems and issues in the management in Europe and draws upon a wide range of sources and examples from different parts of the Continent, it is not an exhaustive analysis of all heritage systems and regulations implemented in every country.

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[1] E.g. UNESCO *Convention on the Protection of the Underwater Cultural Heritage* (2001), ICOMOS *Charter on the Protection and Management of Underwater Cultural Heritage* (1996) and ICOMOS *Underwater Cultural Heritage at Risk: Managing Natural and Human Impacts* (2006).

[2] E.g. A. J. Firth, 1996, Managing archaeology underwater, Ph.D. thesis (University of Southampton).

# 2. Chapter Two: The main threats to the archaeological heritage

An overview of archaeological publications, international treaties and conservation standards as well as national cultural heritage management policies and regulations shows that European countries struggle with similar problems and threats to archaeological resources. Although there are some regional differences (see Annex 2) in concentration or intensiveness or risks, we can identify several common risks and most harmful factors. These are, primarily:

- change of land-use, development programmes and urbanisation;

- degradation resulting either from natural processes or from human-induced environmental change;

- cultural tourism; and

- looting and illicit excavation.

These threats are often considered in relation to different aspects of archaeological heritage: objects (artefacts, portable antiquities), sites and landscapes, and are covered by different regulations (national and international), conservation policies and good practice guides. Thus, for instance, looting and illicit trade is perceived as an issue associated with portable antiquities whereas negative impacts of cultural tourism are usually discussed in relation to specific monuments and historic places. Yet, in practice, abovementioned threats are usually related and affect archaeological heritage on many levels (e.g. clandestine excavations damage sites, tourism attracts infrastructure projects). This chapter, being an introduction to the debate on theory and practice of cultural heritage management, presents a brief overview of major risks to the European historic environment.

## 2.1. Land-use changes, development projects and degradation of the environment

Most severe treats to archaeological heritage come primarily from the growing pressure on the historic environment caused by intensive economic development. The evolution of infrastructure and the expansion of housing and industrial building in urban settings and in the countryside generate some most serious risks to archaeological remains. This process largely affects rural areas, which, until recently, were believed to be relatively 'safe' in terms of conservation and heritage preservation. Major hazards, observed with different intensity in almost every European country, include: changes of the land-use (e.g. industrialisation, intensive agriculture, afforestation); intensified use of sensitive heritage areas (e.g. dense architecture, redevelopments in historic landscapes); environmental impacts (e.g. air, water and soil pollution, deforestation, land erosion); large-scale construction works (wind farms, dam and reservoir construction); mining; forestry operations and transport infrastructure development (road, bridge, railway, parking, harbour facilities, airports) (ICOMOS World Report 2000, *Trends, threats and risks*).

Threats resulting from the degradation of the environment can be divided into those caused by natural factors and those resulting from human activity. Undeniably, direct human-induced changes are the most destructive kind. Yet, considering the long-term, cumulative effects of industrialisation, cultivation and global warming on the cultural environment, this traditional distinction becomes increasingly blurred. For example, although the immediate effects of a wind-farm project on archaeological deposits are limited to the area of the development and can be mitigated by excavations and recording, there are also wider consequences that need to be considered. These may include a visual impact on the cultural landscape, negative influence on tourism or

disturbance of chemical and physical structure of sediments in the area (see Annex 11 and Section 9.9).

Secondly, there are significant differences between risks affecting archaeological heritage in urban and rural areas. In the case of sites located in historic urban centres, the main threats result from intensive construction works and the development of town infrastructure. Since a historic town is not simply a set of cultural layers (often dating back to the Roman period) but also a 'living' organism constantly undergoing changes, it is not possible to ban all development only because it could affect archaeological resources.

Archaeological heritage management theory gives preference to the preservation *in situ*. Thus, development plans should be created or modified with an intention of minimising the negative impacts of construction works on cultural heritage. Modern planning policies also state that archaeological heritage can significantly contribute to the identity of a historic town and to the overall concept and architectural design. Therefore, it should have an impact on future evolution of urban areas, for instance, by including original remains of existing structures and buildings in new projects or preserving the historical topography (see Sections 6.1.09 and 8.5.2). For that reason, in view of the modern standards of the cultural environment management and according to the principles of the integrated conservation and a holistic approach to the landscape, it is essential that planners take account of archaeology in their work. This obligation applies equally to the preparation of development plans, budgeting and granting planning permissions. Finally, before any decisions that may possibly affect cultural heritage are made, planners and developers should obtain adequate information and advice on the extent, character and importance of archaeological deposits and remains in order to apply least destructive methods.

However, although for archaeologists preservation *in situ* is the most favourable option, it is not always possible to reconcile it with the pressure of urbanisation and

development needs. Conservation, mitigation and project re-design require considerable architectural skills, time, effort (and thus adequate financial resources) and, most importantly, support from developers and planning authorities. In consequence, in case of urban sites, the most popular choice is 'preservation by record'. Regrettably, in practice, the results of archaeological investigations are rarely taken into account and often have only retrospective, informative value with little influence on town planning.

In order to facilitate the implementation of a more heritage-oriented approach, in 2000 the Council of Europe (CoE) adopted the *European Code of good practice: 'Archaeology and the Urban Project'*. According to the Code, archaeological heritage is an essential factor in building of the 'urban landscapes of the future'. It states that results of archaeological investigations should be treated as an introduction to planning tasks and projects related do the development of historic urban areas. Since the record of rescue excavations is often the only remaining trace of the complex past, planning authorities and developers are obliged 'to ensure that archaeological work, both on-site and in writing up the report, will be carried out to written agreements setting out standards, timetables and costs' and that 'archaeological movable objects, records and reports are deposited with appropriate institutions and that the results of archaeological work are adequately published within a reasonable time'. Consequently, lack of time and funds or pressure from developers cannot be an excuse for lowering professional standards.

Another important aspect of the management of the urban cultural heritage is the implementation of adequate legislative and administrative measures integrating archaeology with the planning process on both national and local level. Moreover, consideration should be given not only to historic town centres (as it is often the case) but also to their peripheries (e.g. suburban villages and fortifications) which often are excluded from heritage management plans and conservation area catchments as 'less important'. Similarly, in all archaeologically sensitive areas watching briefs should be

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ordered for all projects, including smaller works such as laying down pipelines or cables (a requirement which is often neglected). Finally, in practical terms, there is a need to synchronise actions and methods used by archaeologists working in the same historic setting, so that the documentation of excavation works and their results could be easy to compare, analyse and summarise.

Archaeological sites located in non built-up areas are exposed to slightly different types of risks than urban deposits. I already signalled that the customary division between natural and human-induced threats becomes increasingly problematic as long-term effects of certain projects and activities (e.g. energy harnessing installations) materialise. Secondly, even in the case of some 'natural' phenomena, such as coastal erosion, flooding or drying of peat bogs, the speed or intensity with which they occur may be intensified by effects of a global warming, pollution, landscape transformation, etc. This correlation, a relatively new topic in cultural heritage management not yet fully explored by archaeologists, is briefly discussed in later chapters (see Section 9.9). In this section, however, I would like to outline major threats resulting *directly* from human activity.

Actions, which cause immediate damage to archaeological deposits, have proven negative cumulative effects or at least significantly increase risks to cultural assets in rural areas, include:

- farming operations including 'deep ploughing', with modern agriculture machines capable of disturbing deposits up to 100 cm deep (see Annex 16), drainage and irrigation operations, clearing and levelling of land, river regulation works (although farming operations usually do not cause a total destruction of site, they often lead to mixing up of cultural layers and the decay of artefacts moved to the ground surface);[3]

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[3] For example, in Norway the average loss of archaeological sites has been estimated at 0.7% each year, much of this is a result of ploughing of fields and other agricultural works (ICOMOS 2000g). In Denmark, a

- construction or alteration of highways, expansion of buildings and renewal projects; airfields; construction of pipelines and electrical power transmission lines;

- construction of dams for irrigation, hydroelectric power or flood control (see Annex 1);

- mining and quarrying;[4]

- other works required by the growth of industry and the technological progress of industrialised societies, such as the disposal of waste products, filling up and bulldozing – this refers mainly to dumping of worn-out material and waste and domestic, commercial or industrial scrap (e.g. in Poland this kind of threat is especially visible in the most industrialised region of Silesia);[5]

- afforestation, deforestation and other forest works;[6]

- military activities – this refers especially to army traverses.[7]

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recent investigation showed that almost half of all registered burial mounds have disappeared in the course of the last 70 years (ICOMOS 2000d). In Andalusia, surface ploughing affected around 25% of sites being the greatest cause of damage (Brodie 2005, p. 134).

It has been estimated that approximately one third of the archaeological heritage in Holland has been destroyed since 1950s due to increasing urbanisation, agriculture and land use (Deeben and Groenewoudt 2005; Groenewoudt and Bloemers 1997; Willems 1998).

[4] In 2004 open cast gold mine activities crated a serious threat to heritage in Rosia Montana, a region in Transylvania well-known for its rich archaeology remains. Despite many protests - including concerns voiced by the European Parliament - the case has not been satisfactorily settled and sites are still endangered by this development project.

[5] According to the *Monuments at Risk* survey (MARS) published in 1998, in England and Wales, on average, one archaeological site has been destroyed every day since 1945, with 80% of destruction attributed to five causes: development and urbanisation, demolition and building operations, mineral extraction and industry, agriculture and road-building, with road building and construction projects (property development and urban expansion) responsible for 36% of observed damages and building alterations accounting for further 20% of all monuments destroyed (Davis 2004, p. 225).

[6] Building of roads, heavy forestry machinery and gravel pits are threatening especially unknown archaeological sites. To prevent this in Norway training courses in cultural heritage have been organised for more than 12,000 forest owners and workers (ICOMOS 2000g). An example of Denmark shows that deep ploughing connected with tree planting can remove all traces of a prehistoric settlement or burial place in the course of a single day. Ordinary cultivation, which involves steadily deeper ploughing, also results in destruction of the archaeological evidence, at a slower pace but just as inevitably (ICOMOS 2000d).

[7] For example, in Norway, military forces are in the process of reorganisation and rationalisation. In effect some old camps and training fields are abandoned and new are being planned. In eastern Norway an area of 250 km² including 3,000 archaeological sites was recently designated as regional training fields (ICOMOS 2000g).

Preservation of archaeological sites in rural areas requires specific methods of management. Like in the case of urban context, the best possible and most desirable form of protection is preservation of entire sites _in situ_. If that is not possible or practical, cultural deposits at risk have to be investigated and recorded. Pursuant to Article 13 of UNESCO's _Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private works_ (1968), preservation (or 'salvaging') should be ensured through the following means: legislation; finance; administrative measures; procedures to preserve and to salvage cultural property; penalties; repairs; awards; advice and educational programmes.

In the view of a rapid loss of cultural property, safeguarding of historic assets threatened by development projects became one of major topics of discussion in the late 1950s and 1960s. Recommendations published by UNESCO in 1968 summarised achievements of archaeological and conservation theory in the post-war period. Since then, they have been further developed in a series of international treaties, charters and policy guides – leading to the publication of the revised _European Convention on the Protection of the Archaeological Heritage (Valletta Convention)_ in 1992. Abovementioned principles are now core standards of cultural heritage management adopted by the majority of European countries.[8] Consideration of archaeological issues and development-related risks has also become a part of EU-wide regulations on town and country planning and the Environmental Impact Assessment process. In consequence, in most European states preservation by record is now a minimum standard required by both international and national regulations.

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[8] For example, in the case of Poland, the 'developer pays' principle was officially adopted through a change of heritage regulations in November 2003 (when the 1962 _Act on the Protection of Cultural Heritage_ was replaced with the _Act on the Preservation and Protection of Monuments_). However, under the influence of international conservation policies and the _Valletta Convention_, this rule had been applied in practice many years before the law review. As a result, no licence for any type of construction works on an archaeological site could be obtained without a condition of carrying out watching briefs and without a provision requiring that the developer covers costs of archaeological rescue works.

However, the quality and use of information generated by rescue excavations and development-led archaeological projects is more problematic. Firstly, such works have to adhere to professional standards and need to be properly documented. Secondly, results obtained during field operations ought to be processed, published and used in proceedings following archaeological works. This entails dissemination of information for research purposes, application of data to planning and historic environment management and presentation of results to the public. Finally, there must be adequate arrangements for the storage of artefacts and site archives and a guaranteed access to the deposited archaeological material.[9] These issues are discussed in more detail in next sections of this study.

## 2.2. Cultural tourism

Interest in the past and heritage is a driving force behind cultural tourism – 'a form of tourism whose object is, among other aims, the discovery of monuments and sites'.[10] Visiting important historic monuments, famous ruins and archaeological sites is not a new idea but rather a phenomenon associated with a tradition of the *Grand Tour*. In the last few decades, the increasing wealth of the European society, affordable transport and the fall of the Iron Curtain facilitated and popularised travelling and lead to a tremendous growth in the tourist sector, making tourists 'the pilgrims of the present' (Lowenthal 1998; Silberman 2007). In consequence, what once was an upper-classes pastime is now an activity opened to the general public, a universal entertainment, an agent of a socio-cultural transformation – and an important branch of European industry. For example, according to World Tourism Organisation, Europe's tourism arrival figures have doubled

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[9] See e.g. Provisions of the Council of Europe Committee of Ministers *Recommendation No. R (89) 5 of The Committee of Ministers to Member States Concerning the Protection and Enhancement of the Archaeological heritage in the Context of Town and Country Planning Operations, adopted by the Committee of Ministers on 13 April 1989 at the 425th meeting of the Ministers' Deputies.*

[10] *Charter of Cultural Tourism* adopted by ICOMOS in 1976 (ICOMOS 1976).

since 1980 (WTO 2000). A study conducted by the European Commission revealed that 20% of these visits were made for cultural purposes, with culture being a main component of travel for 60 percent of visitors (WTO 2001).

There are obviously numerous benefits of cultural tourism: it is a significant source of revenue and an important driver of the global economy, a factor contributing to the popularisation of knowledge and cultural exchange. It also is an incentive to improve protection of cultural heritage – in this case, the key resource (a commodified past) thus providing rationale for the preservation and management of archaeological remains (Carman 2005b; Lowenthal 1998; Hunter and Ralston 1993). However, the popularity of historic sites together with unprecedented volume of tourist traffic often result in erosion, littering, pressure from development or even looting. Ironically, the growth of interest in cultural places is at the same time a major threat to their survival.

Multiple examples from all over the world demonstrate that excessive or poorly-managed tourism and tourism-related development can threaten the physical nature, integrity and significant characteristics of archaeological sites and monuments. One of major risks is a constantly increasing number of visitors entering archaeological sites. Thousands of people passing by every year contribute to a gradual decay, with fragile pavements, floors and walls usually exposed to contact with numerous visitors being worn down on an alarming scale (Cleere 2000). As a result, many well know monuments such as Stonehenge, the Acropolis, the Colosseum or Luxor suffer from severe erosion. Other damaging effects include enormous loads of litter and cases of thoughtless devastation, with tourists climbing over historic structures, chipping off pieces of ancient stones, etc. For instance, concerns about cumulative impacts of tourism prompted English Heritage to limit public access to Stonehenge (a decision that caused very strong objections and started a heated debate). Another type of risk is associated with construction of tourist

facilities and infrastructure (roads, parking places, bars, shops, visitor centres), which may interfere with the historic landscape (if not directly disturb archaeological deposits).

Two sites, Pompeii and Petra, included on the UNESCO's World Heritage List are good examples showing that mass tourism can be regarded as a main risk factor for many historic sites (Jacot 1999; Ayad 1999; Guzzo 2006). The ruins of ancient Pompeii (fig. 1) attract about two million visitors every year. The considerable size of the site (and a constant shortage of money) means that there are not enough guards keeping an eye on the archaeological remains. Fragile mosaics, murals and sculptures are thus often exposed to accidental and intentional damage or even theft. The site is also open to natural agents, e.g. changing weather conditions, since until recently the emphasis was laid on extending the excavated area rather than on the proper preservation of already unearthed structures. Continuous degradation of Pompeii's monuments has led to a reduction in the area opened for visitors (from 64 houses opened for public in 1956 to 16 in 1998) (Jacot 1999). In Petra, the main threat seems to be the pressure from visitor facilities encroaching on the historic site. Only within a decade, over fifty hotels and restaurants have been built in Wadi Moussa, very close to the archaeological monuments. Economic and tourism pressure has lead to many controversial investments, including a project aimed at preventing floods in the area that destabilised the valley's water balance and damaged the site's integrity. According to Ahmed Salamin, the assistant director-general of the Petra Regional Planning Council, 'Petra has changed more in the last 15 years than it did in the previous 14 centuries' (Ayad 1999, p. 40).

**Figure 1:** Tourists visiting World Heritage Sites: 1 – Pompeii; 2 – Acropolis (source: author's archive).

Closing cultural sites to the public (or even limiting access) is rarely a viable option. Although tourism is often regarded as a major risk to fragile archaeological heritage, it also has an important educational and social function (Patin 1999) and in many cases brings in money that help finance and improve heritage protection schemes.[11] Yet, it should not compromise the safety of monuments and sites.[12] Therefore, in my opinion, sustainable management of heritage places will be one of biggest challenges faced by archaeological heritage management in Europe in the upcoming years. This will require improvement of conservation techniques and site management policies, a better integration of heritage issues in the planning process, fostering links with local communities and education of the public.

*International Cultural Tourism Charter of Managing Tourism at Places with Heritage Significance* adopted by ICOMOS in 1999 outlined six principles concerning cultural tourism:

1. Conservation should provide responsible and well managed opportunities for members of the host community and visitors to experience and understand that community's heritage and culture at first hand.

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[11] The long-term benefits to a depressed economy of cultural tourism have rarely been quantified, although it has been estimated that in Sipán (Peru), after a careful excavation, the subsequent display of both artefacts and site now generates something in the region of $14 million a year in tourist revenue, a far cry from the $250,000 the looters are thought to have earned for their initial finds (Brodie 2002a, p. 14).

[12] 'In any case, with the future in mind, it is the respect of the world, cultural and natural heritage which must take precedence over any other considerations however justified these may be from a social, political or economic point of view', *Charter of Cultural Tourism* (ICOMOS 1976).

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2. The relationship between heritage places and tourism is dynamic and may involve conflicting values. It should be managed in a sustainable way for present and future generations.

3. Conservation and tourism planning for heritage places should ensure that the visitors' experience will be worthwhile, satisfying and enjoyable.

4. Host communities and indigenous peoples should be involved in planning for conservation and tourism.

5. Tourism and conservation activities should benefit the host community.

6. Tourism promotion programmes should protect and enhance natural and cultural heritage characteristics.

It is clear that main ideas underpinning the *Charter* are sustainable development and reconciliation of needs and interests of heritage, local communities and tourists. For example, according to the second Principle, a long-term protection and conservation of heritage should be an essential component of social, economic, political, legislative as well as cultural and tourism development policies.

According to the World Tourism Organisation, in 2008, international tourist arrivals reached 992 million, with an expenditure of €642 billion (WTO 2009). WTO estimates that by 2020, the number of travellers will grow to 1.6 million, an increase of over 250% within 15 years (WTO 1999 and 2000). This makes cultural tourism one of the world's fastest growing and leading branches of industry, generating considerable revenues. One of the recommendations of the UNESCO Charter suggests that a significant proportion of this income should be spent on protection, conservation and presentation of heritage sites (Principle 6).

The Charter also underlines the importance of retaining the authenticity of heritage places advising that proper management plans should precede the opening of a site to the public. All development projects and infrastructure should take account of the aesthetic,

social and cultural dimensions of heritage places (such as natural and cultural landscapes). Although there is a need for adequate facilities for the comfort, safety and well-being of tourists, these must not affect or have a negative impact on the significant features of the site or monument (Principles 3 and 6).

However, in practice, management of archaeological sites is often far from ideal. For example, development of tourist facilities and holiday villages near or on archaeological sites is a pressing issue in Turkey, where extensive building and re-use of ancient monuments (e.g. theatres) exerts a lot of pressure on historic structures. Local authorities insist on rebuilding damaged or lost parts of ancient theatres, in order to make it possible to use them for concerts and plays (e.g. in Ephesus and Side). In consequence, installation of modern stage facilities and lighting equipment, as well as great numbers of spectators, pose serious risks for sensitive structures (ICOMOS 2002b).[13]

## 2.3. Illicit excavation and looting

Another major threat to the cultural heritage is looting, which, according to many archaeologists, in some regions (e. g. in Southern America) is the most significant cause of destruction. All over the world archaeological sites are ruthlessly pillaged to provide antiquities for commercial profit. The illicit, clandestine, unrecorded and unpublished excavation of ancient sites thus causes a massive devastation of monuments, 'an unmitigated and continuing catastrophe for the word's archaeological heritage' (Renfrew, 2000, p. 15).

In the case of looting, the most disputed topic is the illicit trade in antiquities. A heated debate (which has been going on for some five decades now) involve archaeologists, art dealers, museum curators, collectors, cultural property lawyers, representatives of tribal minorities and various government officials, the thorniest issues

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[13] Similar situation can be observed also in Greece and Italy.

being the loss of cultural property for the country of origin and trade in tainted objects. In consequence, numerous national and international regulations have been established to facilitate the restitution of looted and smuggled antiquities. Yet, although unlawfully removed cultural property should be theoretically retrievable, in practice such cases are very few.

Effects of looting are not limited to the question of illicit trade: looters hunting for precious artefacts – jewels, golden and silver 'treasures', etc. – often damage objects which they perceive to have less value. Sometimes sites are even damaged on purpose, to cover up evidence of clandestine activities. Inevitably, the disturbance (or even destruction) of cultural deposits causes the irretrievable loss of information. Although some of the looted antiquities can be recovered, the scientific significance of finds divorced from their context is very limited. Clandestine excavations are not followed by recording and publication and looted objects, hidden in private collections, are not accessible to the researches. As a result, much data, such as the relation of an object to others in an assemblage or to a datable context, are lost.

Although the problem of clandestine excavations and illicit trade in antiquities is most obvious in the case of underdeveloped regions (mainly West Africa, Latin America and parts of Asia), to some extent it also concerns all European countries. In fact, no country is able to fully eliminate looting and theft of archaeological artefacts. Instances of such illicit activities have been reported in the US, the UK,[14] Spain,[15] Greece and Italy.[16]

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[14] E.g. in 1985 treasure hunters descended upon the Romano-British site of Wanborough in Surrey and are thought to have removed 5 000 or more coins that were dispersed abroad on the international market. The best well known example of looting in the UK took place also in 1985 when the Salisbury Hoard was illegally excavated by two detectorists in Wiltshire and then distributed all over the world in a result of illicit export (Addyman and Brodie 2002; Brodie 2002a; Renfrew 2000; Sheldon 1995).

[15] E.g. a study of 12 725 sites in Andalusia (Spain) showed that the greatest cause of damage was surface ploughing, which has affected 24% of sites, while looting was second at 14% (Brodie 2002a, p. 16).

[16] For example plundering of the Etruscan tombs and the Greek necropolises in Calabria and Apulia (ICOMOS 2000f).

Most EU members also struggle with 'treasure hunters' using (in some cases illegal) metal detectors.

As I already noted, most countries have developed and implemented regulations concerning protection of cultural heritage to prevent looting and illicit export of cultural goods. In 1956, UNESCO adopted the *Recommendation on International Principles Applicable to Archaeological Excavations* – a document which created international standards for the legal control of archaeological excavations (Prott 1995). According to Article 29 of the *Recommendation*, each UNESCO member state should take all necessary measures to prevent clandestine excavations and damage to archaeological monuments and the export of objects thus obtained. The implementation of this obligation has taken various forms: many countries prohibit excavation without an adequate licence and require reporting of all archaeological finds and discoveries to the proper authorities (sometimes offering some kind of reward in return). Some national legislations declare all subsoil cultural objects to be *ex lege* a property of the state and thus exclude private ownership (and trade) of archaeological artefacts (e.g. Greece, Italy, Poland or Bulgaria). Some countries try to limit the use of metal detectors: a few forbid their unlicensed use (e.g. Sweden, Poland) and/or provide for legal confiscation of the equipment and looted artefacts.[17] Unfortunately, effective safeguarding of sites and deterrence of looting require adequate resources, which in the notoriously underfunded heritage sector is at best problematic. A law on its own, no matter how modern or restrictive, when deprived of support from efficient executive powers, enforcement mechanism and public support remains weak (see Annex 3).

There are two possible ways of tackling looting and illegal trafficking of antiquities. The first approach is to act at the source by preventing illicit excavation in

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[17] E.g. according to the Irish and Israeli law any person caught on an archaeological site with a metal detector is presumed to intend to excavate without permission.

countries of origin. The second solution is to control the international antiquities market and the movement of looted goods. However, this system can work only if all countries have proper laws protecting historic sites and antiquities enforced by effective authorities. In reality, protection of cultural places is often neglected because of economic reasons. Culture and heritage are usually given less priority than sources of fast and direct income to the national budget, e.g. industry and trade – a problem even more acute in the case of developing countries. Secondly, since looting and illicit trade in antiquities is extremely profitable, it is difficult to control. High prices paid for unprovenanced antiquities undoubtedly push illicit diggers to continue their activity (Clément 1995; Renfrew 2000).

## 2.3.1. Illicit trade

As stated in the previous paragraph, purchasing artefacts originating from clandestine excavations private and public buyers contribute to the illicit trade in antiquities and encourage further looting of sites. Some states are not able to provide proper protection to the cultural property due to lack of funds, internal conflicts, ineffective authorities, etc. Others choose not to do so by implementing permissive export laws, e.g. in order to gain money from the art trade (also, if a state does not have prohibitive export regulations, the offence of 'illicit trafficking' of heritage goods does not exist). However, since archaeological sites and 'antiquities' are a common heritage of all people, the burden of its protection must be put on everyone. The responsibility for looting and the illegal export cannot be laid solely on the countries of origin ('source countries') victimised by these crimes. One might even argue that richer, more developed countries with flourishing art markets (thus called 'market countries') should bear even more responsibility, having sufficient resources and knowledge (Fechner 1998). Therefore, under the influence of UNESCO, the international community agreed to take measures to improve protection of cultural heritage from looting and theft. The *Convention on the Means of Prohibiting and*

*Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* adopted in 1970 has been signed by 118 countries.[18] The second major breakthrough was the launch of the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* in 1995, so far enforced by 30 countries (signed by 40).

Both conventions aim to protect cultural heritage objects from looting and theft. These terms are not synonyms and need some explanation. In the case of stolen goods their provenance is usually quite well known. In most cases theft is promptly reported and there is a proof of ownership and some documentation of the object. In these circumstances, when such artefacts appear on a market there is a chance that they will be identified as stolen goods and returned to their original owner. In the case of looted antiquities, the most important obstacle is the secrecy of crime. By their very nature, clandestine excavations remain usually hidden and unreported. Moreover, looted goods are not publicly known and documented. Looters do not keep records stating the provenance of artefacts. Even the existence of objects is not known until they are looted and sold on the art market. Hence, they are not captured by crime prevention tools such as the Interpol database and national registers of stolen cultural property. In these circumstances detecting tainted antiquities and proving that an object has been illegally excavated – and moreover that it comes from a particular country – is extremely difficult, if not next to impossible (Coggins 1995; Gill and Chippindale 2002; Brodie 2002a; Bowman 2008; Oxford Archaeology 2009).[19] Thus the main idea of both conventions is an assumption that looting, theft and illicit distribution of cultural property cannot be stopped only by the countries of origin. Prevention must be organised on an international

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[18] As of August 2009.

[19] One of the most famous examples of the failure of judicature was case of the Sevso treasure. A magnificent collection of Roman silvers put on auction in 1981 by Sotheby's is believed to be looted from one of the Eastern European countries. During a long and complicated litigation Lebanon, Hungary and Croatia claimed to be rightful owners of the treasure. In 1994 due to inability to state unanimously the place of origin of the Sevso silvers the court returned the objects to the private collector.

level: adequate actions ought to be taken also by the receiving countries, especially those with a developed art market (Clément 1995).

According to Article 9 of the 1970 UNESCO Convention, any state party to this agreement whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other states parties which should undertake and participate in a concerted international effort to determine and carry out the essential measures, including the control of exports and imports and international trade in the specific materials concerned. Moreover, pursuant to the Convention, each state concerned shall take provisional measures (to feasible extent) to prevent irremediable injury to the cultural heritage of the requesting country. This particular provision was created especially to help deal with cases of objects looted from archaeological sites. Another rule of international co-operation states that parties to the *Convention* should ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner.[20]

However, the scope of both UNESCO and UNIDROIT conventions is limited. They cover only objects of illicit provenance (theft and illicit export) and are not retroactive (they apply only to goods stolen or illegally exported from one state party to another signatory country after the date of entry into force of the Convention for both states concerned). They aim to protect any 'victim' of theft (individuals, legal entities or states) and any state parties suffering from illicit export. The 1970 UNESCO Convention covers both prevention of illicit traffic and the recovery phase, whereas the 1995 UNIDROIT treaty focuses on the restitution of illicit objects. These conventions should be

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[20] Art. 13.b of the 1970 UNESCO Convention. Concrete examples of such co-operation are e.g. regulations adopted by the government of United States which banned import of archaeological objects originating from El Salvador, Bolivia, Guatemala, Peru and Mali to its territory (Clément 1995, p. 40). Recently, after the pillage of the National Museum in Baghdad in 2003 and in the view of a wave of looting of archaeological sites, a number of countries prohibit trading in Iraqi antiquities. For instance, the UK Government implemented the *UN Security Council Resolution of 22 May 2003* bringing into force the *Iraq (UN Sanctions) Order* resulting in an embargo on cultural objects unlawfully removed from Iraq after 6 August 1990 (beginning of the Gulf War).

treated as complementary regulations and therefore UNESCO recommends its member states ratification, possibly at the same time, of both acts (UNESCO 2005).

Consequently, UNESCO and UNIDROIT treaties share the definition of 'cultural property':[21] 'the 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 twelve listed categories' including, _inter alia_, products of archaeological excavations (licit and clandestine) or of archaeological discoveries, elements of artistic or historical monuments or archaeological sites which have been dismembered and antiquities more than one hundred years old, such as inscriptions, coins and engraved seals.[22]

One of key differences are the regimes concerning parties entitled to claim the restitution of stolen or illicitly exported objects as well as ways of claiming the recovery of such goods. The basic distinction is that the UNESCO Convention favours international (inter-state) co-operation and therefore relies primarily on diplomatic channels (UNESCO 2005, p. 4). According to this regulation, all requests for the recovery and return shall be made through diplomatic channels.[23] State parties are also obliged to admit actions for recovery of lost or stolen items of cultural property brought to court by or on behalf of the rightful owners (if they are cohesive with laws of the concerned country). Consequently, restitution may be claimed principally by a state party to the Convention by diplomatic

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[21] Article 1 of 1970 UNESCO Convention and art. 2 and Annex to 1995 UNIDROIT Convention.

[22] Article 1 letters c-e of 1970 of the UNESCO Convention.

[23] The States Parties to this Convention undertake at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party (art. 7.b.ii of the 1970 UNESCO Convention).

means (art. 7.b.ii), unless individuals and legal entities are also admitted by the law of the state party in question (art. 13. c).

The UNIDROIT Convention is much more private law-oriented. Pursuant to this regulation, claims and requests concerning the restitution of cultural property may be brought before the courts or other competent authorities of the state where the cultural object is located (art. 8.1). The parties may also agree to submit the dispute to any court or other competent authority or to arbitration (art. 8.2). The UNIDROIT Convention distinguishes subjects entitled to claim restitution on the basis of the type of illicit provenance. In the case of stolen cultural objects, countries and individual or legal entity owners are equally permitted to file for recovery of goods. However, only a state party is entitled to claim restitution of illegally exported objects.

Another difference is that the UNIDROIT Convention sets time limits for claiming the restitution of cultural objects whereas the 1970 UNESCO act does not establish any restrictions in this matter. However, in the case of archaeological artefacts time constraints have been relaxed.[24] Another regulation favouring the protection of archaeological heritage is Article 3.2 treating all unlawfully excavated or lawfully excavated but unlawfully retained cultural objects as stolen (when consistent with the law of the state where the excavation took place). This regulation has been preceded by a long discussion on export/import regulations, the issue of provenance and differences between civil law and common law attitudes towards ownership and acquisition, good faith and due diligence required from buyers (for example, professional art dealers and museums are required to act with special care).[25] The main consequence for the possessor of an illicit

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[24] Three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and a maximum period of fifty years from the time of the theft equally for restitution of stolen or illegally exported objects (respectively art. 3.3 and art. 5.5). The latter deadline does not apply to cultural objects forming an integral part of archaeological site or an identified monument or belonging to a public collection (art. 3.4).

[25] The key question was whether looted objects originating from clandestine excavations should be subject to regulation in Chapter II of the Convention (stolen cultural objects) or Chapter III (illegally exported

cultural property is similar according to both conventions: an innocent holder (who acted with due diligence) of such an object is obliged to return the property in their possession and is entitled at the time of return to compensation.[26]

It is worth mentioning that signatories of both conventions are primarily 'source countries', such as Cambodia, Italy and Peru (and recently Afghanistan and Gabon). European countries with a developed antiquities market were less willing to join these agreements. France accepted the UNESCO convention in 1997, the United Kingdom in 2002, Sweden, Denmark and Switzerland in 2003, Germany in 2007 and the Netherlands in 2009. Neither Germany, Denmark, the United States or the United Kingdom ratified the UNIDROIT Convention.

The adoption of the 1970 UNESCO convention was a real breakthrough in the legal protection of archaeological heritage and in consequence it influenced the international art market. Impact of both treaties is also reflected in codes of ethics and acquisition policies adopted by various public and private bodies: museums, antiquities dealers associations and research institutions, which stipulate that no one should acquire an antiquity without a proven provenance.[27] The principle of due diligence is exercised to ensure that no objects suspected of being the product of clandestine excavation or having been smuggled from the country of origin are traded. This can be done by checking the

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cultural objects). The major difference is the degree of care required from the acquirer (Prott 1995), which is more strictly regulated in Chapter III. Circumstances of acquisition are more cautiously examined in case of stolen cultural property than in regard to illegally exported goods. In the latter instance, the absence of a legal export certificate may be considered as a lack of due diligence. However, in the case of stolen property the character of the parties, the price paid and the actions the possessor took to acquire information as to whether the object had been stolen would be considered (compare articles 4 point 4 and 6 point 2 of the UNIDROIT Convention).

[26] Art. 7.b.ii of the 1970 UNESCO Convention and, respectively, articles 4.1 and 6.1 of the UNIDROIT treaty. However, it is necessary to add that in case of illicitly exported objects parties may agree to replace compensation with other solutions (agreed with the requesting state): (a) retention of the ownership of the object or (b) transfer of the ownership against payment or gratuitously to a person of its choice residing in the requesting state who provides the necessary guarantees (art. 6.3).

[27] E.g. the ICOM Code of Professional Ethics approved in 1986; Museums Association code of ethics, 2002; the British Museum Policy on Acquisitions, 2004; International Code of Ethics for Dealers in Cultural Property, approved by UNESCO in 1999; Code of Ethics & Practice of the International Association of Dealers in Ancient Art (IADAA).

provenance of artefacts, e.g. relevant information and documentation, export certificates,

registers of stolen cultural objects, exhibition and auction catalogues or publications – due

diligence should lead to ascertaining the full history of the item – from its discovery or

production.[28] Moreover, many institutions have a blanket rule refusing objects without a

proven licit origin that appeared on the market after the implementation of the UNESCO

Convention, since such antiquities are treated as a potentially 'illicit'.[29]

Two Council regulations implemented in the early 1990s by the EU are an

example of regional cultural heritage legislation. Directives on the export of cultural goods

and the return of unlawfully removed cultural objects created a unified system for

safeguarding cultural heritage of member states and introduced a legal framework for

international co-operation within the Community.[30]

Export of cultural goods outside the EU customs territory is regulated by the

*Council Regulation (EEC) No 3911/92 on the export of cultural* goods from the 9th of

December 1992.[31] Licit export requires a permission issued by the member state in whose

territory the cultural good in question is located (art. 2). The export licence may be

refused, however, if the object is covered by the domestic legislation protecting 'national

treasures of artistic, historical or archaeological value'. At the same time, each country

may choose to give up licences for the export of certain cultural goods, if they are 'of

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[28] Article 2 point 3 of the *ICOM Code of Professional Ethics*.

[29] The year 1970 is often taken as a watershed for the identification of unprovenanced antiquities. In the US, most museums insist on provenances for artefacts traded before 1972 – the year of adoption of UNESCO Convention. The trustees of the British Museum refuse the acquisition of objects that have been illegally excavated and/or illegally exported from their countries of origin since 1970 and as a rule will only acquire those objects that have documentation proving exportation from their country of origin before 1970. However, this policy does not apply to all cultural property goods but only to 'objects of a major importance'. Exception has been provided for the 'minor antiquities that are not accompanied by detailed documentary history or proof of origin'. In such cases the Museum's curators 'must use their best judgement as to whether such antiquities should be recommended for acquisition'. Another possible exclusion concerns obtaining unprovenanced objects that were otherwise under threat of destruction (*British Museum Policy on Acquisitions*, 2004).

[30] *Council Resolution of 21 January 2002 on the Commission report on the implementation of Regulation (EEC) No 3911/92 on the export of cultural goods* and *Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State* (2002/C 32/03).

[31] *Official Journal L 395, 31/12/1992 P. 0001 – 0005.*

limited archaeological or scientific interest, provided that they are not the direct product of excavations, finds and archaeological sites within a member state' (see Annex 4).

The main objective of the *Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State* of 15th of March 1993[32] is to secure for the EU countries a right to define their national treasures,[33] to take the necessary measures to protect them in the common market area and to secure their return if they have been removed from a member state's territory in breach of the domestic law or of *Council Regulation No 3911/92*. A recovery procedure begins with making an application by the national authorities to seek a specified unlawfully removed cultural object (including all information needed to facilitate the search, with particular reference to the actual or presumed location of the object and identifying the possessor and/or holder).[34] This is complemented by a mutual obligation to notify other EU countries about identifying any objects believed to have been illicitly taken from the territory of another member state. National authorities must take any necessary measures to prevent attempts to evade the return procedure and should act as intermediary between the possessor and/or holder and the member state requesting restitution. Legal proceedings against the possessor (or the holder) take place before a requested state's court.

Similarly to the 1970 UNESCO and 1995 UNIDROIT Conventions, the EU Directive assumes an obligation of paying compensation to a *bona fide* possessor, if the return of the object had been ordered by the competent court, provided that he/she exercised due care and attention in acquiring the object (art. 9). The Directive is non-retroactive and does not refer to goods illicitly trafficked before 1 January 1993. It also sets general limits for applying for restitution: return proceedings may be brought only

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[32] *Official Journal L 074 , 27/03/1993 P. 0074 – 0079.* The Directive was implemented in the UK in 1994 as *The Return of Cultural Objects Regulations No. 501.* This act extends to Northern Ireland.
[33] Including archaeological objects more than 100 years old which are the products of land or underwater excavations and finds, archaeological sites and archaeological collections.
[34] Articles 4 and 5 of the Directive.

within one year after the requesting member state became aware of the location of the cultural object and of the identity of its possessor or holder and cannot be brought more than 30 years after the object was unlawfully removed.[35]

The cultural property law has developed significantly in the last two decades as did the awareness of looting, illicit trafficking of antiquities and the destruction of archaeological heritage. And yet, international regulations are still full of loopholes. For instance, in the 'civil law' countries the property legislation differs from the common law of the US and the UK, and a legal title to a stolen object can be obtained by means of a *bona fide* (good faith) acquisition.[36] In consequence, artefacts illicitly removed from their country of origin but subsequently bought 'in good faith' may be excluded from the restitution regime (Brodie 2002a).

Moreover, even when an object is recognised as looted and illegally exported, a country that claims ownership has to provide adequate evidence in order to support the application for restitution. As mentioned before, an antiquity will not be treated as stolen unless the country in question can prove that it was exported after the date of implementing the relevant international or national heritage protection law. Yet, precisely because of the secretive nature of 'clandestine excavations' such crimes largely go undetected. Thus, for the majority of looted archaeological objects proving cultural theft and illicit trafficking is almost impossible.

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[35] Exception was made only for the objects forming part of public collections and ecclesiastical goods in the Member States where they are subject to special protection arrangements under national law (a time-limit of 75 years applies).

[36] According to the Anglo-American *nemo dat* rule, a thief cannot convey good title nor can someone claim good title through a thief, even if the property is transferred to a *bona fide* purchaser. In countries which do not follow this common law rule (e.g. the majority of European continental civil law countries), the 'good title' to a stolen object can be conveyed if the object was purchased in good faith. As a result, even if an antiquity was looted and illegally exported from its country of origin, if it was subsequently purchased in good faith in a civil country, then the good-faith purchase is favoured, and the object is no longer legally construed as stolen (Brodie 2002a; Bowman 2008 p. 233)

Even the EU legislation and policies on the protection of cultural property, believed to be the most coherent and up-to-date, is not flawless. The deficiency of the European system may be illustrated by a famous case of a large numismatic collection most probably looted from Bulgaria. In 1999, German authorities captured a hoard of Roman and Greek coins after a customs clearance station in Frankfurt-am-Main airport reported the discovery of suspect parcels to be exported to the US without authorisation. The assemblage, containing almost 20,000 pieces, was believed to be worth at least €100,000. Numismatic experts, who examined the shipment, stated that the coins were most probably looted and illegally exported from Bulgaria (evidence for this was, *inter alia*, a bulky packaging consisting of empty Tetra Pack, juice and milk bags with Bulgarian writing). As a result, the collection was temporarily confiscated. In the course of investigation, a representative of the collector claimed that the hoard had been acquired legally at an antiques exhibition in Munich and supported his statement with adequate documentation from a London art dealing firm. Ultimately, despite a strong suspicion that the coins had been looted and smuggled, the case had to be dismissed due to legal doubts and the goods were returned to the possessor (Dietrich 2002).[37]

One of main reasons for dismissing the case was a loophole in the EU system of exporting cultural objects. The relevant regulations examined by the German court were applicable only when an item was a cultural property of the EU member state and left EU territory or moved within it.[38] This condition was not met, as at that time, Bulgaria was not yet a part of EU and secondly, because the coins were to be shipped to the US. Even though the Bulgarian heritage law stipulates that all archaeological finds are the property of the state, neither Bulgaria's customs nor its cultural authorities responded officially to

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[37] Note that the ownership of the coin assemblage was not clear. If the collection indeed had been looted and illegally removed from the territory of Bulgaria, the only rightful owner could have been the Bulgarian state (according to the national heritage legislation all archaeological finds are *ex lege* the property of the state).

[38] *Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods.*

the German inquiries. It may be added that the sender and a prospective receiver of the shipment was the same person – a brother of the Bulgarian Attorney General (see Annex 3).

This example shows how an illicit antiquity can be 'laundered' in a chain of purchases. A tainted artefact may also gain a legitimised pedigree through a reference in an academic publication, an exhibition catalogue, or even a sale directory (Brodie 2002a; Gaimster 2004). For that reason, art dealers, museums and researchers are urged not to provide identification and authentication for suspected antiquities. The UNESCO *International Code of Ethics for Dealers in Cultural Property* states that professional traders in cultural property should not import, export or transfer the ownership of this property when they have reasonable cause to believe it has been stolen, illegally alienated, clandestinely excavated or illegally exported' (art. 1). Any trader who has reasonable cause to believe that an object has been looted from the archaeological site, or has been acquired illegally or dishonestly from an official excavation site or monument, or illicitly exported, should not assist in any further transaction with that object. Moreover, a dealer who is already in possession of the suspected object should take all legally permissible steps to co-operate in the return of that object to the country of origin (articles 3 and 4).

Yet, control through codes of conduct, codes of ethics or of good practice is not sufficient to restrain illicit trafficking of looted artefacts. While many honest dealers, auctioneers and collectors avoid any contact with tainted antiquities or even perceive the trade in archaeological artefacts as 'dubious' or 'sleazy', giving the whole art market a bad reputation (Renfrew 2000), for others, international and national cultural property legislation, self-regulations and ethical policies are 'capricious and nonsensical' and based on 'nothing more than arbitrary dividing line' (Marks 1998, p. 126) or, at best, too rigorous and interfering with privacy and ownership rights (e.g. Ede 1998). The attitude of professional art dealers is particularly permissive. Some of them oppose the obligation to

act with due diligence and to supply provenance documentation. A recurring argument

against the legal 'interventionism' is the supposedly self-regulating power of the art

market:

> Even if the despoliation of archaeological sites was market driven, the market forces
> are not responsible, per se. What I am suggesting is that the market forces are not
> intrinsically bad any more than drinking a jigger of whiskey is bad. A partnership is
> possible between the market (dealers, collectors, and museums) and source
> countries in a legitimate antiquities trade with benefits for both buyers and sellers
> that could equitably resolve this practical and ethical dilemma to everyone's
> satisfaction. (Marks 1998, p. 126)

Unsurprisingly, many collectors and art dealers (and even cultural property

lawyers) perceive strict cultural property regulations (e.g. implemented in Greece, Turkey

and Egypt) as 'draconian' and 'chauvinistic' (Gill and Chippindale 2002). Labelled as

'cultural nationalism', such 'emotional' attitude – the belief that objects belong to nations

within which they are found or with which they are historically associated – is criticised as

rooted in a 19th century Romanticism (see Chapter 8). Focused on 'hoarding' instead of

'sharing' cultural property, with some national heritage laws over 100 years old, is thus

obsolete and out-of-touch with the modern world (Merryman 2005, p. 31) – contrary to

the 'reasonable' liberal antiquities market approach. In addition, these 'exceedingly strict'

and 'ineffective' laws are even supposed to contribute to the increase of black market

trade by eliminating legitimate distribution (e.g. Ede 1998; Marks, 1998; Mackenzie

2004).

This critique extends to international principles enshrined in the 1970 UNESCO

Convention and the 1992 and 1993 EU Directive and Regulation. For instance, shortly

after their implementation, Merryman described the EU-wide enforcement of national

export controls as 'a regression or, at best, a lost opportunity' (1994, p. 71) when

compared with the common market policy. 'Excessive regulation [regarding the

antiquities trade] violates rather than serves the international interest [...] the archaeologists' war against acquisitors (collectors, museums, and the art trade) [...] is another source of excess' (Merryman 2005, p. 29). In consequence, 'reasonable and constructive' codes of ethics and self-regulations are hampered by 'source' nations' trade restraints (excessive in concept and in practice), implicitly condoned by the UNESCO.

Another argument frequently given in favour of a more liberal trade in antiquities is that they are not properly looked after in their homeland (Prott 2005, p. 244). According to this point of view, prohibition against antiquities trade results in adding to 'the hoarded stocks of redundant antiquities that languish unconserved, unstudied, unpublished, unseen, and unloved in the warehouses of major source nations' (Merryman 2005, p. 31). Art dealers often perceive themselves as agents salvaging antiquities at risk and promoting the cultural heritage: 'we believe one of our prime functions as dealers is to participate actively in the preservation of the remains of man's ancient past' (Ede 1998). 'Eventually most antiquities in private collections end up in a public museum, where they are preserved, studied, and enjoyed. The public becomes a participant in the ongoing discovery of the past [...] Thus, in the long run, private collecting serves the public' (Marks 1998, p. 127). At the same time, archaeologists are criticised for forcing a ban on the trade of antiquities 'for obscure and irrational' reasons and trying to hoard all artefacts for themselves:

> The archaeologist's idea that every object has its unique and important voice, regardless of aesthetic considerations, is a misleading oversimplification, as most objects found are duplicates of those already excavated in context and offer no significant new insights. Archaeologists argue that every shard is a buried treasure and ought to remain in the ground as a non-renewable resource until it is discovered – but only by them. That archaeologists like to dig and are slow to publish, if at all, is a common and notorious fact, usually blamed on lack of funding, but which, for whatever reason, has become a part of the culture of the archaeologist's world. (Marks 1998, p. 123)

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Such statements are often based on the argument that, like the 'retentive' national regulations, the archaeologists' campaign to protect sites against clandestine excavations is 'quintessentially object-oriented' (Merryman 1994, p. 70) and that their interest lies primarily in providing opportunity to document and study artefacts for their own purpose. Thus, the ethical guidance advising academics to refrain themselves from using references to unprovenanced artefacts to avoid supporting looting and the risk of corrupting scholarly record through publishing potentially falsified information (Cannon-Brooks 1994; Renfrew 2000; Gill and Chippindale 2002) is sometimes used against them. Dealers often claim that artefacts deprived of the original context ('cultural orphans'), e.g. resulting from metal-detecting, 'duplicates' and mass finds 'of little informative value', are goods unreasonably excluded from the licit trade (Brodie 2005) – while 'meaningless to archaeologists', they are often 'ravishingly beautiful' and may be appreciated by the public for their aesthetic qualities (Marks 1998, p. 123).[39]

Limitations in trading and acquiring unprovenanced antiquities[40] are discretionary to domestic legislations and most of all, are often not respected by dealers and private collectors. Secondly, lack of enforceable sanctions makes self-regulatory measures ineffective (Renfrew 2000; Mackenzie 2004). Furthermore, it is difficult to support the argument that market can police itself internally to curtail trade in tainted antiquities. The creation of a substantial price differential between well-documented, licit objects and unprovenanced artefacts should make it less profitable and thus less attractive to deal in looted goods as well as reduce the interference of law enforcement authorities (Cannon-Brooks 1994; Huang Chua and Wareham 2002). However, it seems that the value of

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[39] Government storehouses and museums are bulging with objects that have no recorded provenance and that are extremely poorly conserved due to lack of funds. Surely many of these pieces could also be released to the market, since they are believed to have no archaeological value' (Ede 1998); James Ede is the Chairman of the International Association of Dealers in Ancient Art (IADAA) and managing Director of Charles Ede Ltd.

[40] *The ICOM Code of Professional Ethics* defines provenance as 'the full history and ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership is determined'.

objects with legitimate pedigree lays in the avoidance of risks and legal issues rather than in their history or proof of authenticity. In addition, criminology theory and studies on the motivation for purchase decision in the antiquities market indicate that a significant group of dealers uses various 'excuses' (where wrongdoing is admitted but responsibility denied) and 'justifications' (admitting actions but denying wrongdoing) to arrive at the conclusion that they are actually *entitled* to purchase illicit items and are not morally bound to obey the law (Mackenzie 2006). These are usually arguments mentioned in previous paragraphs: diminishing the importance of archaeological context and provenance, devaluing rights of the source countries, acquiring objects to 'save' and 'preserve' them, etc. For that reason, there will always be a group of buyers willing to purchase unprovenanced artefacts (see Annex 5 for the discussion on the on-line trade self-regulations).

Plundering archaeological sites and dealing in tainted artefacts is a clandestine but very lucrative business. This makes this category of crimes against cultural property extremely hard to detect and to prevent. It seems that looters and traders are always a step ahead of the legal system. Whenever a new protective law is adopted, it is shortly followed by a new way to evade it. One of the current developments is selling looted and unprovenanced artefacts on the biggest international free market: the Internet. Unlike the 'traditional' activity of *tombaroli* and *haqueros*, this is a universal problem, which, to some extent, affects every European country. By allowing thousands of buyers and sellers from all over the world to communicate, exchange goods and transfer money in a fast and easy way, internet portals, such as eBay, provide almost endless possibilities for looters and 'collectors'.

Browsing auctions, looking at images, descriptions and provenance of antiquities displayed on eBay is like reading a Fast Guide to the European Archaeology. Roman cross-bow brooches, Anglo-Saxon strap-ends, Byzantine coins and thousands of other

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portable antiquities are all there, all waiting for the highest bidder. Buying archaeological artefacts has never been easier. With just a few clicks, you can order them from any part of the world and simply wait for the postman to deliver a 'piece of history' to your doorstep. In the case of the on-line shopping virtual reality, buyers are less likely to consider the origin of goods or, to be more precise, provenance of antiquities. Additionally, electronic auctions and e-shops provide their users with anonymity, creating a sense of impunity and safety (Grabosky 1998; Huang Chua and Wareham 2002). Thus, the nature of the internet trade makes it extremely difficult for heritage services and law enforcement institutions to monitor and control electronic auctions. This problem is additionally aggravated by the wide availability of metal detectors, relatively easy access to information on the historic environment and liberal regulations on the flow of goods within the common EU market.

In consequence, a simple search run on eBay.co.uk for 'British Anglo-Saxon antiquities' on average returns over 100 objects put on sale 'to be posted worldwide'. While majority of sellers offer relatively low value metal detector and surface finds, some auctions include items such as 'a beautiful rare Anglo-Saxon funerary hanging bowl mount very similar to the example found at Sutton Hoo but arguably of finer design' (put on sale with an opening price of £560 in 2007). Ironically, the UK, with its established antiquities market and relatively liberal cultural property trade policy, is also a 'source country' for looted archaeological artefacts (Brodie 2005).

There is a wide range of literature on the anthropology, psychology and sociology of collecting antiquities. On a basic level, collecting can be defined as a primeval 'urge or instinct, a fundamental and universal human activity' or, more specifically, as 'an object-oriented activity in which items are selected in order to become part of what is seen as a specific series of things, rather than for their particular use-values or individualised symbolic purposes' (Macdonald 2006, pp. 82-3).

There are various types of collecting guided by different impulses and grounded in social differences (e.g. of gender or class). These categories may include the aesthetic and the taxonomic, the systematic and the eclectic, the planned and the impulsive the connoisseurial and the fetishistic or a 'dealer' and a 'true collector' approach (Macdonald 2006, p. 83). Since collecting is a culturally significant social practice and performance, it is also morally charged. Thus, attempts to distinguish and classify different types of collectors often involve implicit or explicit moral and value judgements, with some activities perceived as more worthy and legitimate than others (e.g. museum and art gallery collections or popular culture and 'trinket' assemblages) or even dismissed as pathology (such as acquiring illicit/ looted antiquities).

Many researchers interested in the topic conclude that the practice of individual collecting is to a large extent driven by the same themes as that of the museum collecting, for instance, the desire to 'preserve the past', an expression of a distinctive cultural identity or re-evaluation of the daily life and 'ordinary' objects (Macdonald 2006, p. 89). Two major questions related to this phenomenon are why people become collectors in the first place and what drives their behaviour. Answers are sought, *inter alia*, through the adoption of a psychoanalytic perspective – for instance, according to Sigmund Freud (who himself had a considerable interest in archaeology and was a keen antiquities collector known for acquiring 'unprovenanced' objects), it is a substitute of a sexual activity (sometimes turning into an addiction, a compulsive pattern of accumulation or fetishistic attachment to objects). It can be also a result of searching for psychological security due to deep feelings of insecurity from childhood (Belk 1995; Ucko 2001; Macdonald 2006). Furthermore, collecting can be seen as a way of expressing aspirations (social, financial or intellectual), manifesting one's personality and emphasising individuality – or on the contrary, stressing one's sociability, an association with a particular group, a symptom of a sublime feeling of alienation and disenfranchisement (and thus the attempt to reconnect

with better, happier times) or, more simply, a form of consumption or a type of financial investment (albeit involving emotions and an element of hunting and searching for unique objects) (Belk 1995; Lowenthal 1998; Macdonald 2006). Modern researchers usually adopt a more multi-faceted approach and tend to avoid reducing collecting to a single motive or cause.

Collecting of unprovenanced artefacts (and trading/ dealing in illicit antiquities) is a specific issue. Although this 'grey transnational market' is legally and ethically questionable and, in fact is not dissimilar to other forms of illicit trafficking (in terms of its functioning, differentiation, smuggling networks, exploitative effects and corruptive influence) it is perceived as different from e.g. human trafficking or dealing in drugs and weapons. First of all, trading in antiquities is not an illegal activity (on the demand end of the market, provided that dealers follow national and international regulations). Furthermore, many artefacts are bought and sold at remarkably high prices and finally, it is a white-collar crime with buyers usually of prominent socio-economic status (Mackenzie 2006; Bowman 2008). In addition, while many collectors are willing to ignore legal and ethical aspects of their activity, feel that they are 'entitled' to make a purchase that may be illicit or succumb to the desire to acquire a new piece no matter the cost,[41] others make impulse purchases or are simply unaware of the criminal elements that bring tainted object onto the market (Brodie 2002a; Bowman 2008). Annex 5 pursues these issues in some more detail in relation to the internet trade in unprovenanced European antiquities.

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[41] In a study exploring dealers' perceptions of the ethics of the antiquities trade, Mackenzie (2006) concluded that many collectors and dealers justify their illegal behavior to avoid guilt and maneuver themselves to psychological positions where they see themselves as 'entitled' to purchase an unprovenanced or illicit artefact. This is done, for instance, by referring to objects as 'chance finds' and not products of oganised looting, quoting their duty to 'save' objects from loss or destruction, declaring a desire to provide an adequate protection and conservation or invoking aesthetic qualities of archaeological artefacts as 'objects of art' that should be enjoyed and admired and not shut in dusty museum cupboards (e.g. Ede 1995, 1998 and 2006; Marks 1998; Ortiz 2006).

It could be argued that the main effect of the UNESCO Convention has been moral rather than material (Brodie 2005, p. 135). The Convention, apart from its symbolic importance, is often considered a failure (Merryman 1994, p. 63). Surely, the reluctance of major art-dealing countries to sign it was a contributing factor if not a principal reason for its ineffectiveness (Coggins 1995). However, the apparent failure of self-imposed codes of practice, the plague of 'nighthawking' and growth of the tainted antiquities on-line market in the last few years compelled many European states to accept that looting is an international issue, that the way to minimise illegal excavations and irresponsible metal-detecting is to make it very hard to looters to sell their merchandise (Brunwasser 2006). Since this problem is by no means contained only to African, Asian or South American source countries, it has to be tackled both at a global and domestic levels. Recent ratifications of the 1970 UNESCO Convention and the implementation of the EU-wide regulations suggest that European governments are increasingly aware of the damage to the archaeological heritage and are prepared to take some steps to rein in the illicit trade (Prott 2005, p. 235), as manifested by the UK's accession to the 1970 UNESCO Convention in 2003 and passing of the *Dealing in Cultural Objects (Offences) Act 2003* (see Annex 4).

However, the increased interest in reducing the illicit trade in antiquities is not dictated solely by the concern about the cultural heritage. A more restrictive approach adopted in recent years in some European counties can be can be also explained by the growing threat posed by the international crime, which, not unlike legitimate businesses, have adjusted to the complexities of the global economy, with the geographical distance or political border becoming, to some extent, a nonissue for crime problems (Bowman 2008). Therefore, there is a need for more research into understanding the problem of looting and trafficking in tainted artefacts and a more critical analysis of the role they play in cultivating the illicit antiquities market. Secondly, these issues should be explored as

global problems, e.g. in collaboration with criminology, economy and socio-politics to analyse links to the international crime and global economy and as a transnational side effect of the unequal distribution of wealth, privilege, power, and knowledge fostered by global competition (Mackenzie 2006; Bowman 2008).

In my view, the *casus* of clandestine excavations, metal-detecting and illicit trade in antiquities serves as a very good introduction to the wider analysis of archaeological heritage management in Europe. To a large extent, discussion of looting, its consequences and prevention reflects general attitudes towards cultural heritage and the historic environment, the difficult relationship between academia, conservation authorities, the private sector and the general public, which all have their own interest and agendas. The discussion of tainted antiquities issues also reminds us that the legislation on its own will never be an effective tool. Without the public support, awareness and education, and, consequently, a mutual consent to curb (to some degree) individual interests and 'rights' (or at least perceptions thereof), protection of the historic environment is a cops-and-robbers game, with authorities focused on limiting damage to the cultural heritage and perpetrators constantly finding new ways to evade the law. It also illustrates the complexity of a legal framework for cultural heritage protection, an intricate web of international, national and regional laws, policies and principles and guidance issued by heritage organisations and professional associations. This tension between different types of legislation (e.g. heritage protection and environmental regulations, restrictions to ownership rights, EU and domestic regulations) will be further discussed in the next part of this study. Section 3.2 explores various terms and definitions introduced in this chapter, for instance, 'cultural property', 'cultural good' and 'archaeological heritage', which play an important role in understanding the heritage management debate. Finally, Chapter 8 puts problems of archaeological protection in a context of European politics, exploring

issues of nationalism and integration, historic background and modern values, language, and uses of cultural heritage.

Many of the threats described in this chapter result from the special and unique nature of archaeological heritage which consists not only of sites located below today's ground surface but also includes structures above ground and cultural landscapes. This important statement often seems to be forgotten even by professionals involved in protection and conservation of the cultural property,[42] as illustrated by the Pompeii case. Excavation on a very large scale and massive tourism along with a lack of proper conservation and protection from external factors led to a gradual degradation of the site and, as a result, about 60% of the complex had to be closed for the public. In order to support the protection of Pompeii's remains the Italian parliament passed in 1997 a regulation allowing any private firms that wanted to take part in the restoration to obtain tax breaks (Jacot 1999). Even though this regulation was unanimously voted for and met with a great initial enthusiasm, it soon became clear its implementation caused many unexpected problems. First of all, due to a late publication, one of three relevant tax years was practically lost. Secondly, prospective beneficiaries of the new law were not as enthusiastic as the act's sponsors expected (Guzzo 2006). According to Article 9 paragraph 10 of the act in question, donations in practice were to take the form of *defrayal of cost of restoration for the period not longer than three years, according to prior*

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[42] For example, recently members of the ICOMOS International Committee on Archaeological Heritage Management (ICAHM) decided to remind ICOMOS and other bodies and professionals dealing with heritage places and sites that archaeological heritage is not only sub-surface. This notion has an effect of causing it to be invisible in development processes. 'Rescuing' sites is in fact destroying them, as removing the entire site provides no opportunity for later analysis by more modern techniques of evidence remaining *in situ*. 'Archaeological heritage is not simply individual sites; they are interconnected with each other, both representing a past landscape of human interconnectedness. They are also inextricably linked to the environment; the draining of peat bogs in Eastern Europe, for example, not only destroys many individual smaller archaeological sites, but a past land use – this way we lose our link to the land. Archaeological heritage is not simply artefacts for museum display, whether in a hotel lobby in the location of the former site, or in an actual museum, as is often the case in central business districts where sub-surface heritage is removed for car parks; it is evidence of past lifestyles and who we have been – this way we lose our story' (ICOMOS 2005, p. 255).

*calculation of the necessary expenses for the restoration of the cultural property or real*

*estate, assessed and agreed by the heritage service* [soprintendenza] *and in compliance*

*with the recommendation of the institution in charge of the restoration work.*[43] Such

regulation did not gain much interest among potential benefactors (private and public)

because it reduced the role of donating companies to merely providing finance.

Entrepreneurs complained about undervaluation of their role and lack of influence on

managing restored properties. In consequence, very few donations were made. In most

cases emphasis was laid on the 'media-backed fund-raising exercises, aimed at saving

selected monument or gifts linked to personal, one-off factors, such as patron's interest in

a particular situation' (Guzzo 2006). Unfortunately, this was a one-time legal initiative,

which, due to the inadequate results, has not been repeated.

## 2.4. Summary

The purpose of this chapter has been to present an overview of main threats to the

archaeological heritage and to introduce common themes and problems faced by European

countries in relation to the protection and management of their cultural environment.

European countries struggle with similar problems in relation to the archaeological

heritage management: mainly urbanisation and unsustainable development, degradation of

the historic environment, rapid growth of the cultural tourism, looting and trafficking of

archaeological finds. The specific case of illicit trading in antiquities and looting illustrates

major theoretical and practical difficulties associated with the creation, implementation

and enforcement of international treaties and policies, such as conflicting national

interests, different legal systems and traditions or diverse terminology and language

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[43] Law number 352 from the 8th of October 1997, published in Gazzetta Ufficiale n. 243, 17th Oct. 1997, Supplemento ordinario n. 212.

barriers. These are key problems in the operation of law- and policy-making at an international level.

# 3. Chapter Three: Responses to threats – legal background and conservation policies: definitions, international and national regulations

## 3.1. The 'archaeological heritage' debate

In his seminal paper *Excavation as Theatre* published in 1989, Christopher Tilley did not hesitate to picture archaeology as 'a discipline desperately in need of theory and the development of alternative conceptual structures [which] appears by large to think that it can get on quite nicely without them' (Tilley 1989, p. 276). Respectively, John Carman pointed out that, in general, archaeologist do not regard themselves to be a part of 'heritage studies' or heritage management process but rather see themselves as historians dealing with past – and not present – societies (Carman 2000, p. 303). Considering the significant development of archaeological theory in the last two decades and the unprecedented number of archaeologists participating in the 'heritage debate', it can be argued that criticism such as Carman's and Tilley's is gradually becoming obsolete.

Indeed, in many European countries archaeologists are one of the major professional groups involved in cultural heritage management. Yet, in practical terms, their influence on planning policies and development strategies is often very restricted. Many do not engage sufficiently with theoretical issues because they are focusing on practicalities of the contract work, have difficulty placing themselves within the planning process (notably due to lack of an adequate training) and are not treated as equal participants in the discussion. Also, despite the increased interest in the cultural heritage management, such as historic landscapes, intangible heritage or community projects, the gap between rescue excavations and research archaeology (as described e.g. by Tilley in 1989) is still far from closing. In addition, preservation of archaeological remains is

seldom a top priority on the policy-makers' agenda – at least compared with issues such as road-building, provision of gas and electricity or business infrastructure improvements. For example, in the Environmental Impact Assessment (EIA) process cultural heritage issues are frequently treated far less rigorously than other aspects of the appraisal and often are not given adequate regard. In many cases the focus of planning authorities is rather narrow and concentrated on tangible, visible cultural assets – mainly the built heritage, with archaeology often perceived as an add-on, a problem which can be resolved by ordering rescue excavations to clear the way for prospective development projects.

In this chapter I would like to discuss a number of fundamental questions related to the protection and preservation of archaeological heritage. First of all, it is necessary to analyse the diverse vocabulary and definitions used in the context of archaeological theory and legal regulations, and consider the consequences of adopting specific nomenclature ('archaeological heritage', 'cultural objects', 'cultural property', etc.). Secondly, the discussion on effective cultural heritage management needs to address the question of values and significance associated with archaeological resources. Conservation theory and heritage regulations have to consider what is important to the public; what people actually value in cultural heritage, and why; and to what extent the society is prepared to give up potential financial profits or restrict private property rights in order to protect/ preserve cultural assets. I will also explore the relationship between archaeology and law by analysing various types of regulations related to archaeological heritage management and the development of European cultural policies.

## 3.2. Definitions: cultural heritage, cultural property, archaeological heritage

**Cultural heritage** formally entered the realm of the international law through the Hague Convention of 1907. [44] Respectively, the phrase '**cultural property**' has been popularised by the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* of 1954. [45] The Hague Conventions were responses of the international community to looting the 'spoils of war' and the destruction of monuments and sites in times of armed conflicts (especially during the First and Second World War) and officially recognised cultural assets as belonging to 'all people' and not just as the property of particular countries. Over the years, phrases 'cultural heritage' and 'cultural property', originally used in the very specific context of the laws of war, gained a much broader meaning. In consequence, these terms currently appear in a number of international legal documents and standard-setting instruments. However, the relationship between those two terms is not entirely clear.

Although 'cultural heritage' and 'cultural property' are frequently used interchangeably in the common language, *sensu stricto* they are not synonyms in legal sense, do not appear simultaneously in legal documents and are not even represented by uniformed definitions (Blake 2000, p. 63; Frigo 2004, p. 375; see Chapter 8). 'Cultural

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[44] Article 27 of the Hague Convention states that *in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.*

[45] For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

property', popularised in the common law by the 1954 Hague Convention, in the civil law corresponds e.g. with French *biens culturels*, Italian *beni culturali*, German *Kulturgüter* and Polish *dobra kultury*. These terms include mainly immovables, and to lesser extent, intangibles and their interpretation may differ slightly between relevant legal systems (Frigo 2004, pp. 369-370). The concept of cultural property is also narrower than that of 'cultural heritage' (Prott and O'Keefe 1992, p. 312; Blake 2000, p. 66; Frigo 2004) which can be interpreted as a form of inheritance that ought to be protected and preserved for future generations. Heritage creates the perception of something handed down, something to be cared for and cherished (Prott and O'Keefe 1992, p. 311) and implies a duty to preserve. It is often a symbol associated with a group (national) identity and used to build and enhance this identity. Secondly, the concept of cultural heritage includes not only material remains but also intangible heritage and associations accompanying monuments, sites and artefacts. Thus it is able to encompass categories excluded from or not fully covered by the definition of 'property', e.g. cultural landscapes, traditional skills, rituals, etc. For these reasons, the latter phrase was found more useful in overcoming the ambiguities associated with the existing terminology and after 1972 many countries decided to incorporate the new concept to their national legal systems (French *patrimoine culturel*, Italian *patrimonio culturale*, German *Kulturerbe*, Polish *dziedzictwo kulturalne*, etc.).

The diversity of terminology (see Annexes 7 and 8) is confirmed by a brief overview of national and international regulations and policies. 'Cultural Resource Management' is a term favoured in the USA (e.g. Lipe 1984), 'Cultural Heritage Management' is especially popular in Australia (e.g. Prott and O'Keefe 1992) and 'Archaeological Resource Management' is widely accepted in the UK (Darvill 1994) whereas multiple international instruments (especially pan-European documents) have 'Archaeological Heritage Management' as a preferred option (e.g. the Valetta

Convention). Also different groups of professionals involved in heritage management and heritage industry tend to use specific terminology. The choice of words may reflect the intention of the speaker: while dealers prefer 'antiquities' or 'antiques', archaeologists use 'heritage' and 'cultural resource', and the majority of lawyers consequently favour expressions used in legal acts – 'cultural property', 'cultural object', 'treasures' or 'cultural goods' (Carman 2002, p. 12). Finally, differences between legal systems and definitions make a comparative research on cultural heritage management rather difficult. For example, in consequence of discrepancies in terminology and designation policies, a relatively small Estonia lists over 6,600 archaeological sites and a much bigger Portugal only – 742 but at the same time records 5,900 underwater sites. Accordingly, while Bulgaria reports 15,503 sites, smaller but equally heritage-rich Croatia lists only 340 archaeological sites and 42 underwater sites/finds (HEREIN 2007).

In the view of multiple legal systems and languages, most international treaties include vocabulary and glossaries which are created or adopted for specific purposes, the sense of which must be understood and analysed internally within the text of every document. These strict rules of interpretation are sometimes used to support the argument that heritage regulations and principles, lacking shared definitions or even one generally agreed concept, predominantly focus on narrowly-targeted responses to specific problems (like looting, illicit trafficking of goods or threats resulting from armed conflicts), failing to recognise the deeper implications or leading to 'contradictory positions and unintended outcomes' (Blake 2000, p. 85). Cultural heritage has also been criticised as a concept 'borrowed' by legal norms from other disciplines (e.g. archaeology, history of art and anthropology) and thus lacking necessary theoretical background and fully developed or independent within the remit of the international law (Blake 2000, p. 63).

Yet, in my opinion such a narrow approach is not fully justified. It can be argued that the interpretation of 'cultural heritage' and 'cultural property' ought to rely upon non-legal disciplines (Frigo 2004, p. 376) as these terms are closely associated with social interests and values. Also, while there may be multiple definitions within specific texts (both at international and domestic level), this does not mean that there are no common norms, interests and values embedded in multilateral agreements (Frigo 2004, p. 376) or a sufficient overlap of definitions, principles and areas of practice. At least the 'cultural heritage' seems to have a well-established meaning. In five decades, by way of a consistent use in the UNESCO's documents – especially the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage* (the World Heritage Convention) – and a coherent interpretation, this concept has gained certain connotations supported by a substantial body of international treaties and heritage management policies. This argument is based on the evaluation of recent developments in the theory underpinning modern cultural heritage management as well as critical analysis of European policies and legal framework.
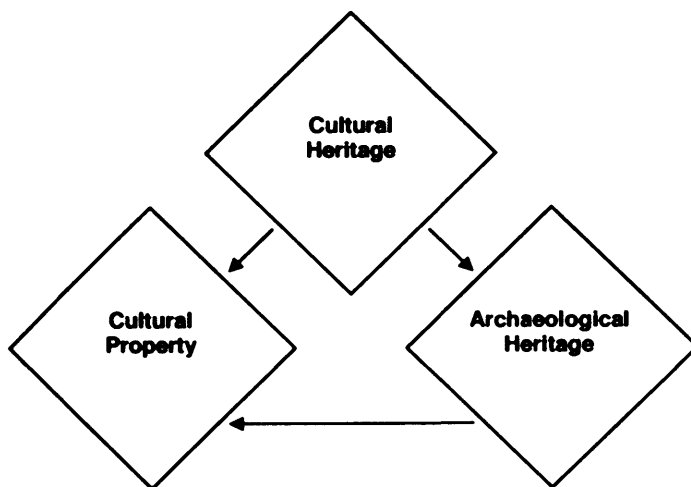


**Figure 2:** Elements of cultural heritage.

The primary aspect of the cultural property law is the protection of owner's and possessor's rights (right of an individual, legal person, community or state to exploit, alienate or exclude) (Prott and O'Keefe 1992, p. 309). This means that objects are granted protection because they are a 'property' of designated owners (private, public). Consequently, the concept of 'cultural property' has commercial connotations (assigning market value, treating artefacts as commodities) (Blake 2000, p. 66; Prott and O'Keefe 1992, p. 310) and is traditionally associated with works of art (e.g. 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* mentioned in Chapter 2). It also has a rather limited scope focused primarily on material culture and physical objects. Consequently, since not all societies manifest their culture in creation of material objects and because the property law does not to apply to all aspects of cultural manifestations (Prott and O'Keefe 1992), the definition of 'cultural property' excludes some tangible and intangible cultural phenomena. Therefore, it should be perceived as sub-group within the concept of cultural heritage (fig. 2).

The fundamental policy behind the cultural heritage law is the protection of heritage for the enjoyment and benefit of present and later generations. This in turn implies essential restrictions on ownership (such as prohibitions against the destruction and damage, export bans, planning regulations), whereas the cultural property law focuses on the protection of owners' and possessors' rights. Following this line of argument, Prott and O'Keefe defined several categories of 'cultural heritage' and stated that 'cultural property' could cover some parts of its meaning: real [estates] property (monuments, sites), personal property (movables) and intellectual property (Prott and O'Keefe 1992, p. 313) but does not apply to intangibles such as rituals, ceremonies, oral history and performing arts. Thus term 'cultural heritage' is rightfully superseding 'cultural property' because: 1) the existing legal concept of 'property' is not broad enough for the purposes of

preservation of diverse evidence of human existence, 2) the 'property' does not incorporate concepts of duty to preserve and protect (Prott and O'Keefe 1992, p. 307).

Having considered inconsistencies in terminology, I decided to employ in my work the phrase 'cultural heritage' and a more precise term 'archaeological heritage management' as referring to the concept preferred by the Council of Europe, commonly applied across the EU, used in many international documents and translated to the majority of European languages. Following the guidelines of the Council of Europe (CoE 200b) I will be referring to the 'archaeological heritage' as defined in the article 1 of the *European Convention on the Protection of the Archaeological Heritage* (1992), the so-called Valletta Convention: 'all remains and objects and any other traces of mankind from past epochs [...] including structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water'.[46]

*Components of Archaeological Heritage – broadening of the definition*

Within the last 100 years the focus of archaeological research has gradually moved away from 'objects' to 'sites and monuments' and subsequently was extended to include 'landscapes'. Each step originated from the expanding knowledge, growing experience in heritage management, better understanding of heritage issues and developments in archaeological theory. The revolution in the perception of 'heritage' has been also associated with the changing approach to the environment, the idea of human rights and, finally, with the implementation of various legal instruments and international cultural conventions. Over time, new elements of 'heritage' have been incorporated to national and

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[46] It is worth noting that even this definition is a result of a compromise. The original proposal was found too broad by some members of the working committee. Some northern European countries felt that the provisions of the Convention should not apply to the built heritage because that would imply that very costly research would be required whenever historic buildings were being altered in some way. Southern countries, however, were unwilling to limit the definition of archaeological heritage because of all their extant historic buildings from Antiquity (Trotzig 2001; Willems 2007, p. 62).

international cultural regulations. Each step brought into focus a bigger, more complex category of archaeological material (Carman 2002, p. 30) and was reflected by the changes in law and the scope of legal protection (fig. 3).
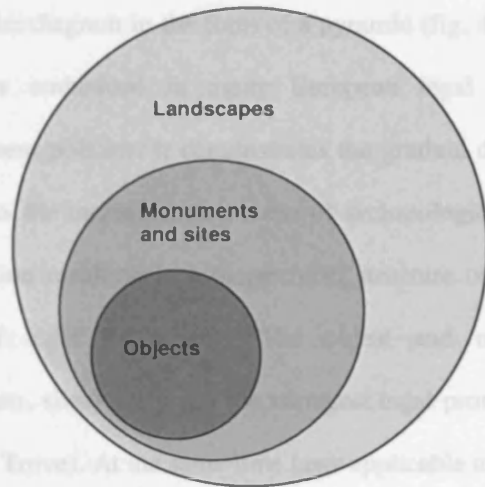


**Figure 3:**  A tripartite division of archaeological heritage categories: illustration of the expanding characterisation of 'archaeological heritage' in the international law and archaeological theory.

Regulations referring to **'portable antiquities'**, **'movable objects'** or **'finds'** (the Treasure Trove being one of the oldest examples) usually have the narrowest scope and application. In most European countries, legal protection was extended to **'sites'** and **'monuments'** and their closest setting in the course of the late 19th and early 20th centuries. In legal terms, these features (usually perceived as standing structures or fixed underground features, at the beginning mainly prehistoric) are usually protected as 'national monuments' (e.g. Republic of Ireland), 'scheduled monuments' (England and Wales) or 'registered sites/monuments' (Poland). An even broader category of protected historic objects – **'architectural heritage'** – includes (*inter alia*) 'listed buildings', 'urban centres', 'historic towns' and 'building complexes'. The variety of protected elements was once more widened through the incorporation of heritage management to the process of spatial planning, resulting in the creation of a new category: 'conservation zones' or

'conservation areas'.[47] The last step was the recent evolution of **historic and cultural landscapes**, which form a specific subject of legal protection being both a part of natural environment and cultural heritage (tangible and intangible).

The diagram in the form of a pyramid (fig. 4) depicts the hierarchy of 'protection' categories embedded in many European legal systems and international heritage management policies. It demonstrates the gradual development of archaeological theory, as well as the increased awareness of archaeological material in need of protection and preservation resulting in a hierarchical structure of heritage regulations and a widening scope of legal instruments. The oldest and most traditional categories (objects, monuments, sites) are given the strongest legal protection (e.g. through scheduling or the Treasure Trove). At the same time laws applicable to newer categories – much broader but less strictly defined (historic landscapes and cultural environment) – are much more general and less punitive as the new concepts originating from the archaeological theory have not yet been fully incorporated to domestic and international regulations.
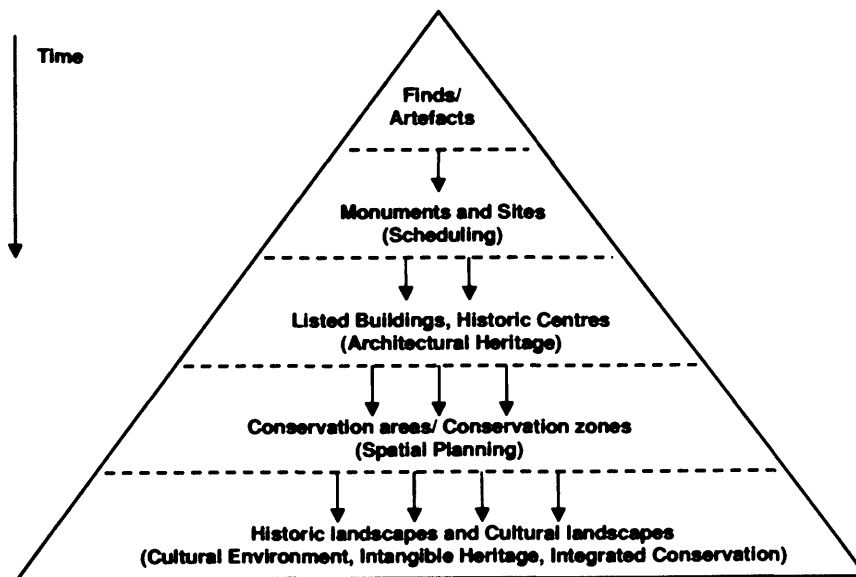


**Figure 4:** Broadening scope of heritage protection categories (chronological development).

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[47] Choice of name for English Heritage in 1984 and publication of PPG16 in 1990 are the evidence of changes in the perception of heritage in the UK.

There are two legal approaches to the safeguarding of 'archaeological heritage': to designate specific monuments and sites to be protected by law (e.g. by listing them in national inventories) or to grant total and automatic protection in law to all elements of the archaeological heritage. According to the first ('traditional') model, objects need to be evaluated and classified in order to be afforded statutory protection. Thus designated monuments and sites are clearly demarcated zones, areas singled out from the surrounding landscape. The second regime safeguards all sites – designated or not – because of their *potential* cultural value. This means that both known and unknown and newly discovered archaeological features are protected *ex lege* and cannot be disturbed unless a relevant permission is given. In Europe, where heritage regulations vary from one country to another, depending on the legal system and tradition, priority is given either to one of these approaches or both regimes co-exist on different levels. In some countries, a full statutory protection is only given to designated (listed/ scheduled/ registered) monuments and sites with other features (of a 'lesser' cultural value and importance) usually safeguarded from immediate threat of destruction. In any case, archaeological heritage legislations restrict landowners' and developers' rights to exploit the land and in this respect are similar to environmental and planning regulations.

Archaeological heritage is an evolving concept, and in a sense, it is what archaeologists 'choose' it to be – according to their research interests, current state of knowledge, social trends and even political pressures (Mathers *et al.* 2005a). In the course of the 20th century, such influences included, *inter alia*, the 'green' movement, heritage of war, totalitarianism, conflict and indigenous people (Light 2000; Boyd *et al.* 2005; Darvill 2005; Glass 2008; McAtackney 2008). Thus, there are some categories of heritage that transcend the schematic division 'objects – monuments/sites – landscapes' and cannot be

easily and adequately classified. These are, for example, ecofacts, flint scatters[48] and natural deposits which can be a source of archaeological evidence but strictly speaking are not artefacts or archaeological ('cultural') contexts. Being a part of natural environment rather than human-made objects or humanly-transformed strata, and oscillating somewhere between archaeology and natural sciences, they do not quite fit within the established categorisation of archaeological resources management. Nonetheless, in many cases they are a valuable research material, especially for the study of the earliest periods of human existence, e.g. the Palaeolithic (Carman 2005a, pp. 65-69; Wenban-Smith 1995). Similar cases are hedgerows, historic parks and gardens but also burial practices, rock art, sacred places, etc. (fig. 5), which amalgamate material remains and elements of intangible heritage and do not easily fit within the traditional concept of heritage protection categories.

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[48] Management of these sites faces a number of challenges. Firstly, lithic scatters are in majority cases revealed in the process of soil ploughing and erosion, resulting in disturbance of archaeological deposits and dispersion of artefacts. For the same reason, it is very hard to set boundaries of such sites. Although very often disturbed by soil ploughing and erosion, properly analysed lithic scatters can be a valuable source of information on land-use and settlement pattern, technology and trade in Paleolithic to Bronze Age periods. Identified mainly through fieldwalking, some scatters are recorded in museum records and SMRs. However, it is unlikely that they become scheduled monuments as they generally are not covered by the definition of monument included in the *Ancient Monuments and Archaeological Areas Act*. Best preserved sites, of highest importance and 'research value', are the subject to the Planning Policy Guidance. English Heritage lists six criteria: 1) clear, identifiable boundaries, 2) the quality of artefacts, 3) evidence for presence of structural remains, 4) non-disturbance of deposits, 5) dating and interpretation capacity, and 6) diversity of artefacts and past human activities on the site. Sites of the highest 'significance' may be preserved *in situ*. However, according to the view supported by the English Heritage, in majority of cases recording would be the most appropriate (and sufficient) option (Schofield 2000).
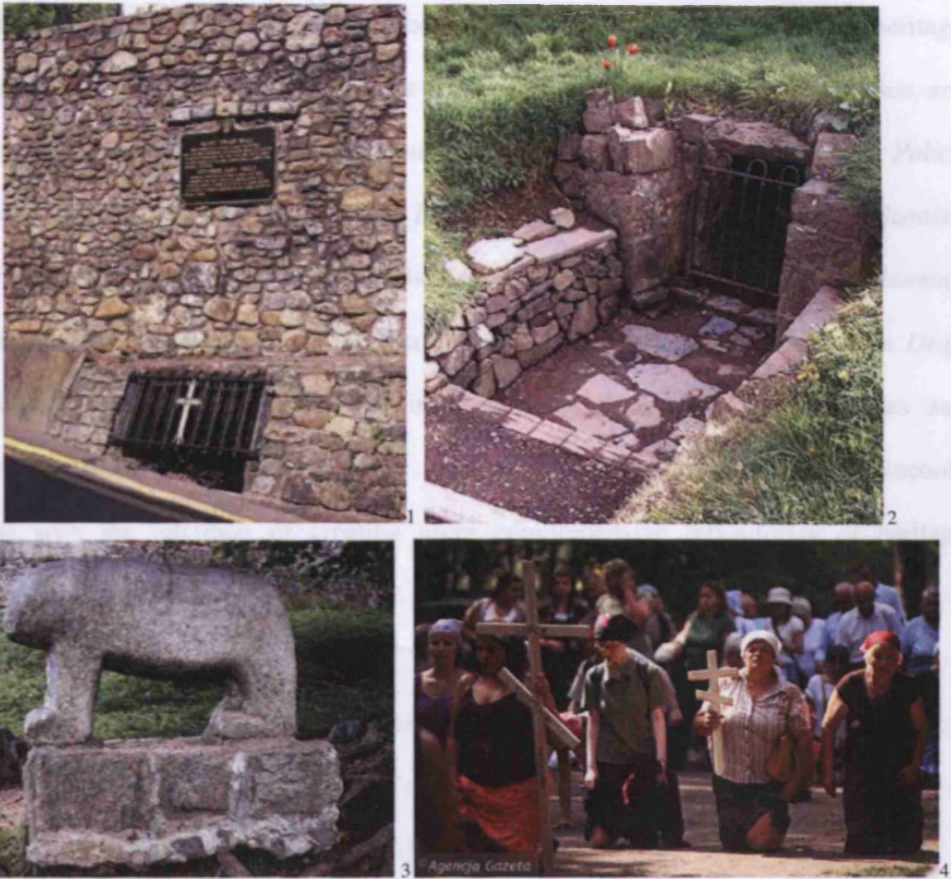
**Figure 5:** 1 – Saint Teilo's Well, Llandaff Cathedral; 2 – Holly Well at the Hill of Tara (Neamnach); 3 – Slęża, a Celtic/ early Slavonic (?) religious landscape rediscovered by neo-pagans (source: author's archive), 4 – An annual pilgrimage to the Orthodox Christian sacred site on Góra Grabarka (source: Gazeta.pl).

For these reasons, in recent years, the heritage management theory has created a new category – '**cultural environment**', which evolved alongside concepts of 'cultural rights' and 'environmental rights' (an aspect of the human rights). This term incorporates a wide variety of elements: natural and cultural heritage, cultural landscapes, monuments and sites, intangible heritage, economics, well-being, education, etc. but, precisely because of its broad scope, 'cultural environment' is not well-defined in legal terms. However, elements of the archaeological heritage excluded from the traditional tripartite scheme are covered by another new legal category (slightly narrower in scope): '**historic environment**', which can be defined as the material remains of the past (fig. 6). Adoption

of this new term in the UK is a reflection of a modern approach to the heritage management. The value and importance of the 'historic environment' protection are enshrined in the planning process through documents such as the *Planning Policy Guidance (PPG15): Planning and the Historic Environment* (England), the *Scottish Historic Environment Policy* (SHEP) or the *Scottish Planning Policy (SPP 23): Planning and the Historic Environment.* In England and Wales, this concept underpins the *Draft Heritage Bill* published in 2008. For instance, as a part of the reform, Sites and Monuments Records (SMRs) are being replaced with Historic Environment Records (HERs) with the intention of creating more comprehensive repositories of heritage information (see Chapter 6).
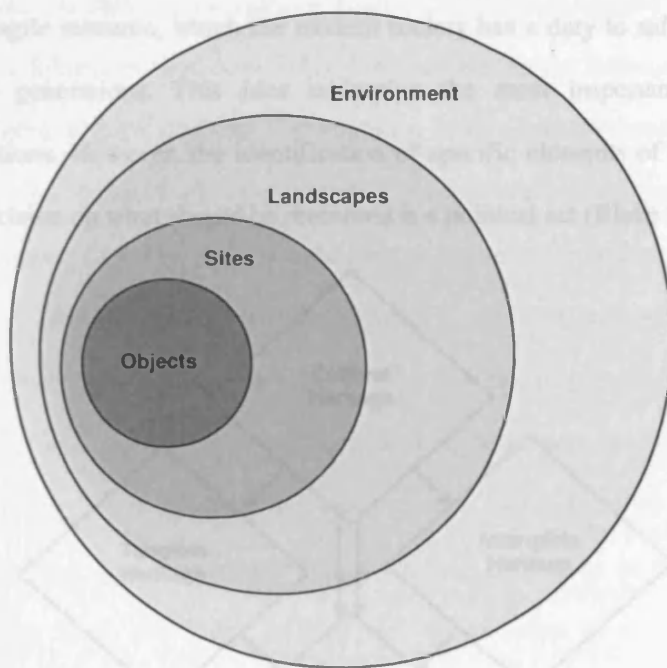


**Figure 6:** A broadened concept of the archaeological (cultural) heritage.

*The idea of 'inheritance'*

'The heritage consists of those things of value that we have inherited and wish to keep for future generations' (Brisbane and Wood 1996, p. 4). This quotation from English Heritage educational pamphlet is a textbook example of a definition of heritage based on

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the concept of 'inheritance', which recently has become one of the key issues in the theory debate. It can be read as an attempt to reconcile the advance in archaeological science, changing philosophical perspectives and development of international legal instruments and policies. The modern concept of heritage (e.g. as perceived by post-structuralism) relies on the assumption that it is the universal 'legacy of the past all around us' (e.g. Carman 2002 and 2007; Smith 2006; Smith and Waterton 2007; Pickard 2004). The broader understanding of the 'cultural heritage', including e.g. intangible elements, historic landscapes or cultural environment (figures 4, 6 and 7), means that 'everything that comes from the past' constitutes a part of the universal (belonging to the whole humankind) historic inheritance (Blake 2000, p. 69; Carman 2002) and thus is a valuable and fragile resource, which the modern society has a duty to safeguard for the benefit of future generations. This idea underpins the most important international heritage regulations. However, the identification of specific elements of the cultural heritage and the decision on what should be preserved is a political act (Blake 2000, p. 68).
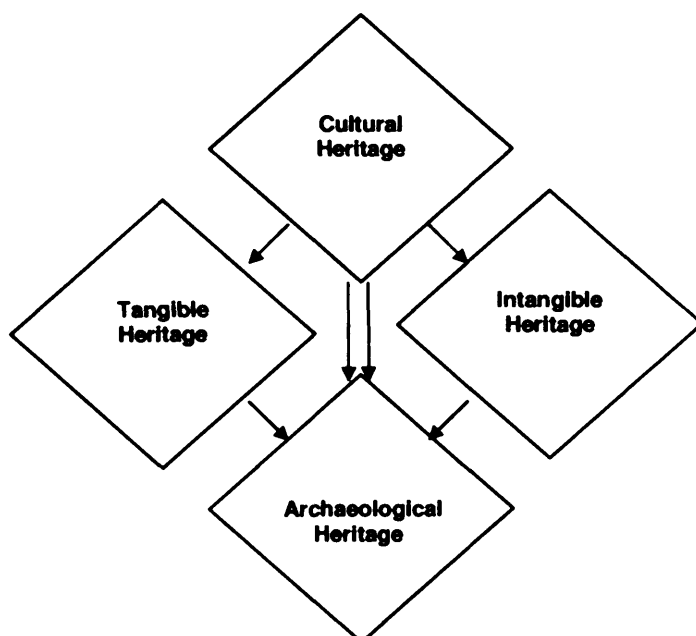


**Figure 7:** Components of the cultural heritage.

# 3.3. Reasons for protection: value types in archaeology

There are several major questions related to research on archaeological heritage: What do we decide to preserve for the future? And most importantly – why? What will be the object of archaeological attention and future research? How do laws and conservation policies that we create reflect on these issues, and how do they influence the perception of and values associated with archaeological heritage?

Before I start analysing the question of values associated with archaeological heritage I would like to stress that the term 'heritage' will be from this point on used in relation to both physical relics of the past (or so-called 'material culture') and as a cultural construct. Archaeological remains exist in the present context and constitute a part of modern cultural environment. Therefore, archaeological heritage management cannot be considered without studying contemporary society and the public role of archaeologists. Neither can archaeology be viewed as a hermetic university discipline focused solely on past communities. Great discoveries, famous excavation sites or even the mundane daily work of archaeologists continuously attract public interest. Furthermore, archaeology increasingly engages itself in current social debates, negotiating its position in relation to environmental studies, planning, economic development, politics, identity, etc. Indeed, archaeology is not a value-free, 'pure' science. No research is free from socio-political interests and agendas, isolated from 'external' influences or 'internal' micropolitics of discipline itself. As Tilley pointed out, the practice of excavation is rooted in the contemporary word and the contemporary society; it is, in fact, 'value-loaded' (Tilley 1989, p. 279). Heritage 'importance' or 'archaeological significance' as a feature of a site, building, landscape or artefact is not intrinsic to the material object but it is a product of perception (Thomas 2006). These are intangible values ascribed by people to elements of

the material word based on the current state of knowledge, philosophy, ethics and aesthetics.

Principles of archaeological heritage management are based on the supposition that remains of the past are a matter of public concern (Carman 2005a, p. 45; McGimsey 1972) which assumes that 1) people (the general public) are aware of archaeological material's existence, 2) they value it, 3) are interested in its protection and preservation, and 4) are willing to limit their property rights, economic income or otherwise refrain themselves from actions that could possibly impinge on the safety of archaeological heritage. This argument was used, for example, in the 2007 report on the challenges associated with the ownership and guardianship of our historic sites, buildings, places and gardens prepared by Britain's leading heritage organisations (Heritage Link, English Heritage, National Trust, Historic Houses Association and the Heritage Lottery Fund). According to the survey, the majority of adults living in England are concerned with heritage issues, with 87% of respondents stating that the historic environment plays an important part in the cultural life of the country and over 90% thinking that historic values are worth saving when improving local places (EH 2007, pp. 2-3).

Modern societies are represented by a state, which – as a legislator and a guardian of archaeological heritage – acts 'in the public interest' (Carman 2005a, p. 45; Fowler 1984, p. 110; Cleere 1989, p. 10). However, although most countries agree that elements of cultural heritage should be preserved for future generations (view expressed e.g. by ratification of international treaties), there is far less consent in relation to *what* and *to what extent* should be preserved (Prott and O'Keefe 1992, p. 309). Cultural heritage is a common European concern: the Council of Europe (CoE) perceives the archaeological, built and historic sites and cultural landscapes as 'witnesses of the complex history of Europe as a whole as well as that of given territories, its varied cultures and present and former inhabitants' and recommends that preservation of archaeological remains should be

an integral part of land-use policies. Cultural heritage inventories and instruments protecting undesignated sites should be essential planning tools in every member state (CoE 2000b, pp. 10-13). Yet, there are very few European legal regulations directly related to heritage management issues and they are extremely limited in scope and influence. Like in the case of UNESCO, EU concentrates mainly on specific strands of the heritage law (cultural diversity, environmental impact assessment, cultural identity) and creates very general guidelines leaving the responsibility for their implementation to individual countries. For that reason, while other authors may have a different view (e.g. Bond, Taller 2001), I would argue that although the Council of Europe and the European Commission engaged themselves in drafting and implementing several treaties, directives and other regulations, there still is not a unified pan-European cultural heritage policy (see Chapter 8).

Clearly, it is impossible to protect and retain all evidence of human activity. Neither would such an attempt be desirable. For that reason, different countries developed numerous systems of evaluation and decision-making and thus in most cases, the choice of cultural heritage elements to be preserved – be it archaeological deposits, historic buildings, or cultural landscapes – depends on national or/and international laws and conservation policies. These documents tend to focus on selected objects of legal protection: monuments, sites, museum collections, etc. – which are relatively easy to describe, identify and asses in terms of rarity, significance and nature of the material as well as prospective costs of preservation. In the Civil Law countries different rules may apply to cultural resources owned by public bodies (e.g. the state), private citizens or religious organisations. The degree of protection will then vary, not because of the different value (commercial or cultural), but because of the difference in legal qualification. One example is the already mentioned variation in regulations related to the restitution of stolen or illicitly trafficked cultural objects (see Section 2.3). However, even

in this case, it could be argued that regardless of means of protection adopted in particular legal systems, they have been used to reach the same conclusion: that the cultural heritage is worth protecting (Prott and O'Keefe 1992, p. 317; Frigo 2004).

The question of values is a crucial aspect of the archaeological heritage management. Values underpin standard-setting international legal documents, national regulations and heritage policies, and stand behind political actions of international organisations such as the European Union, Council of Europe or UNESCO. They also govern rules of conservation and archaeological practices, principles of cultural property trade, tourism and education, and influence such crucial issues as allocation of funds and approval of planning proposals. Finally, the 'value discourse' has a critical role in defining the concept of heritage itself. In the last two decades there has been some discussion regarding the problem of values associated with archaeological material. Triggered by the development of archaeological theory and changes in conservation regulations, the debate questioned the concept of archaeological 'significance' and 'importance'. It also aimed to devise methods of evaluation of cultural resources and to update principles of heritage management. Although, as Carman critically stated, much of the effort has been reduced to the issue of practicality and 'lacked philosophical approach based on understanding' (2002, p. 148), there were three influential papers published by William Lipe (1984), Timothy Darvill (1995) and Martin Carver (1996) which revolutionised the approach to the concept of 'archaeological value' (these contributions to the value debate are discussed in detail in Annex 6).[49]

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[49] The leading notion in the heritage debate is that 'significance' applicable to cultural heritage is a relative concept and can only be interpreted within an explicit context and frames of reference. These, as suggested by Mathers, Darvill and Little (Mathers *et al.* 2005b, pp. 6-7), are: 1) the physical and intellectual environment within which the value and importance of archaeological heritage are established ('value' depends on number of considerations specific to a certain time and place); 2) moral and ethical considerations underpinning and informing particular perspectives and approaches (e.g. availability of funding for research and conservation); and 3) current operational approach (legislation, conservation policies, implemented grading systems etc.).

Archaeological material is usually perceived as a fragile, finite, non-renewable resource increasingly threatened with destruction (CoE 2000b, p. 13; Pickard 2002, p. 91). This view is reflected in texts of seminal international heritage documents, e.g. in preambles to the World Heritage Convention and Valetta Convention (see Appendix 19). Therefore, the contemporary society should protect archaeological remains against any interference and hand them down to future generations. However, it is not possible to preserve *everything*. Such attempt would not only be impractical but simply impossible. The traditional compromise, accepted by the majority of legislators and policy-makers in Europe, states that only the most 'significant' remains ought to be protected *in situ* at all costs. In all other cases, the potential damage to the cultural heritage and loss of information should be mitigated by rescue archaeology and 'preservation by record'. Thus the practice of evaluating archaeological sites and assessing their significance became a central activity of heritage institutions around the world (Carman 2002, p. 154). However, the viability of 'archaeological significance' for heritage management is a problematic issue. The main critical argument drew attention to the fact that 'significance' is a quality ascribed to the archaeological material by archaeologists themselves and is based on a contemporary point of view dependent on the state of knowledge, available research techniques and research interests (Carman 1996, p. 10). 'Significant until proven otherwise' (Schaafsma 1989) quickly became a new motto.

Cultural heritage is either regarded as belonging to nations (thus within the remit of national law and a responsibility of nation states) (*cultural nationalism*), or cultural resources are considered to be the part of the 'common heritage of humankind' (*cultural internationalism*) (Müller 1998, p. 395). Carman subscribes to the second view: 'heritage as a collective store of cultural value is not intended for private ownership; the latter represents the appropriation of a sense of community for the enhancement of an individual's own status, which in turn denies the very purpose of promotion of objects to

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'heritage' status (2005, p. 74). By considering archaeological material as 'cultural property' we make archaeology a *handmaiden of law and economics* (p. 63). Thus, Carman seeks alternative forms of property regime, to move away from the conception of exclusive property rights (2005, pp. 60-1; tab. 1).

In the case of many European countries, legal regulations give the control over heritage objects and sites or their ownership to the state, which acts on behalf of the society and in its best interests. According to Carman, the state ownership of archaeological remains does not correspond with the nature of 'heritage' and as something that is 'shared'. Instead of promoting the sense of community, it converts it into 'national heritage' giving prestige and authority to the state as institution: in the case of private ownership, 'exclusivity of access denies sharing'; in the case of state-managed 'national heritage', 'symbolic and cultural capital accrues to the institution of the state alone' (Carman 2005a, pp. 76-7). Instead, Carman puts forward the idea of treating archaeological heritage as a 'common property'.

**Table 1:** Attitudes towards the ownership of archaeological resources (source: Carman 2005a).

| Attitudes towards owning archaeological resources: |
| --- |
| - private ownership |
| - public ownership (state property and common property) |
| or |
| - state property |
| - private property, |
| - common property, and |
| - open access (non-property) |

Cultural heritage is often mentioned together with the natural heritage as a form of inheritance and joined responsibility of the whole international community. For example, the preamble to the 1972 *UNESCO World Heritage Convention* states that 'deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful

impoverishment of the heritage of all the nations of the world'. Similar concept applies, *inter alia*, to the biological diversity and other universal non-renewable resources. The doctrine of 'Common Heritage of Mankind' was initially developed in the international law in relation to Antarctica[50] and then applied to the Moon[51] and deep seabed mineral resources[52] (Blake 2000, p. 70; Carman 2005a). Yet, agreement on a peaceful and collective exploitation of Moon and other celestial bodies to benefit all countries and to protect interests of both present and future is rather easy to honour in the situation when no country has sufficient technology to access and utilise them. However, in the case of more accessible resources, the ideals of common inheritance cave under the economic and political pressure. While the Moon still remains out of the mankind's reach, the race for the natural resources located around the North Pole has already begun (CNN 2007). Similarly, while the preamble to the *Convention on Biological Diversity* (1992) states that 'the conservation of biological diversity is *a common concern of humankind*, the use of this particular phrasing was intended to avoid discussing interests of various states in relation to *accessible* biological resources and challenging sovereignty of states of origin (Blake 2000, p. 71).

The archaeological heritage falls within the category of those objects where exclusive ownership may be inappropriate. Carman criticises treating archaeological heritage as a private or state property and questions the concept of 'cultural property' in general: 'it is by treating the heritage as an object of *ownership* that its reduction to a

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[50] Antarctic Treaty (1959): *it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord* (Preamble).

[51] The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the 'Moon Treaty', 1979): *The exploration and use of the moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries [...] Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations* (art. 4.1).

[52] United Nations Convention on the Law of the Sea (1982): *the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States* (Preamble).

commodity is effected and the gift increase that represents the creation and maintenance of community is thereby taken away' (2005, pp. 28, 33). Quoting the anarchists and Proudhon's famous statement 'Property is Theft', he concludes: 'the category of Cultural Property should be considered no less than the theft of culture' (Carman 2005a, p. 44). His response is the concept of a 'mixed ownership', a solution based on the model of scheduling and guardianship monuments in England and Wales, where the legal ownership of the monument or site remains with the landowner but other rights – such as the right to alter or destroy the monument – are held by the state (Carman 1996, pp. 216-18). Another example of mixed property are the land trusts and conservation arrangements where public bodies retain some rights while others are exercised by a private owner (Carman 2005a, p. 31).

To support his point of view, Carman refers to examples of successful community archaeology projects and underlines that local involvement and leadership ensures that the resource is given value and is effectively protected from damage and looting (Carman 2005a, p. 90). Moreover, engaging people in community projects is in compliance with the idea of the democratic society, active citizenship and self-governance promoted by the EU. The question is, whether the concept of 'mixed ownership' postulated by Carman would be feasible in the day-to-day practice of archaeological heritage management. Carman refers to carefully moderated experimental projects organised on a very small scale and, in some cases, concerned with intangible heritage of indigenous people. If we consider his suggestion and make a shift from the state-managed to community-owned heritage on a national (pan-European?) scale, how should such system work? Who should accept the responsibility? What mechanisms of protection ought to be implemented?

One of the main problems would be the designation of the *community* entitled to control the archaeological heritage. How broadly should we characterise it and on what grounds? – as local inhabitants, a nation, an international European community? I would

argue that in the heritage debate there are three main groups of stakeholders: local communities and interest groups (represented by local authorities or NGOs), nations (represented national authorities) and the international community (represented by international organisations). Claiming rights to archaeological heritage by specific interests groups and political regimes has bad connotations and proved to be very dangerous (see Chapter 8). Therefore we would have to rely on 'local communities' – in many cases very loose and fast changing formations. They may not be interested in the 'heritage' that is not 'their own'. Or there may be many conflicting interests. Finally, members of the 'community' may have priorities other than the heritage, e.g. roads, new shopping centres, new sports facilities, etc. And that is assuming that people would be actually willing to take the responsibility for cultural remains management. In many countries the public still does not seem to be interested in active participation in governance, which is demonstrated e.g. by a very poor attendance at general and local elections. Secondly, my experience with the effect of the 'communal ownership' ideology on the post-communist societies in Eastern Europe is extremely negative. In situation, where monuments and sites, historic parks, woodland, etc. had officially been declared a communal property, they have quickly become 'no-one's land'. In practical terms, if something belonged to 'everyone' and was everyone's responsibility, members of the public would treat it as nobody's property, which could be damaged, destroyed or stolen without consequences (see Section 8.5).

Different approaches towards the ownership of archaeological resources influence, *inter alia*, the problem of tacking the illicit trade in antiquities, as described in Chapter 2. Since heritage is by many regarded as having the 'use value', it is also perceived as a potential marketable and elements of the archaeological heritage (artefacts) are often treated as commodities product (Bower 1995, p. 34). Mim Bower notes that the humanity has a need to relate itself to the past. People need to feel the sense of continuity, belonging

to the family, place, community and nation. This sentiment, 'nostalgia', is necessary for the individuals to define themselves within a cultural group, to place themselves socially and specially. The desire to own 'a piece of history' urges members of the public to buy artefacts (or at least their replicas), which in turn leads to the discussion on property rights, licit trade and looting. Finally, many people cherish the 'idea' of heritage (emotions, spiritual values) rather than material objects themselves. These feelings are also a powerful part of the heritage protection process. 'When marketing archaeology as heritage, we sell nostalgia at a very basic level. It is this feeling that we use to make the first step of drawing in the public, attracting their interest [...] Those who market heritage have identified this need [for continuity] and learned to utilise it' (Bower 1995, pp. 38-9). Bower uses the term 'heritage' to describe archaeological material which is 'immediately tangible' (and thus most commonly identified by the public): known sites, listed buildings, ancient monuments, art galleries and museum collections, etc. (Bower 1995, p. 33). Focusing on the issue of material archaeological remains, she implies that archaeologists should 'consider the manipulation of the public opinion to further the cause of preservation of the record for the use and education of future generations'. Otherwise, if people do not regard the past as something significant, they will not be interested in maintaining its visible remains and subsidising the preservation of material culture (Bower 1995, p. 34).

## 3.4. Archaeology and law

The discussion on archaeological significance, heritage values, conservation policies and legislation unavoidably leads to the following dilemma: does the public interest depend upon the law for its existence, or does the legal protection result from a pre-existing public concern? If the second case was true, there would not be a need to advocate the importance of safeguarding archaeological heritage. Otherwise, where does the impulse to

implement heritage legislation come from?

'Heritage' and 'resource' are two expressions repeated most often in the 'value debate'. In some cases these words are incorrectly used as synonyms. 'Heritage' designates something of symbolic and social value, whereas 'resource' is an economic term describing something of use and utility value. The key difference between them is that 'one is not used but that the other has to be' (Carman 2005a, p. 59). For instance, the Council of Europe perceives the archaeological heritage as 'a finite, non-renewable resource, which should be managed carefully to last as a scientific source in the future' (CoE 2000b, p. 12). Thus, archaeological material should be protected against any 'interference' (development, agriculture or any other potentially damaging land use activities, looting and vandalism or adverse effects of massive tourism *as well as* archaeological excavation) and the most desired option is to leave remains preserved *in situ*. This argument is supported by the constant advancement of archaeological and scientific techniques and methods and ability to gather more information about the past. The official standing of the Council of Europe states that

> excavations should only be permitted when they are absolutely necessary to answer a
> scientific, archaeological problem or when remains are threatened by unavoidable
> decay, erosion or development. (CoE 2000b, p. 13)

It is crucial that the legislation allows granting excavation licences for rescue/ mitigation and research projects (or for that matter any interferences with the archaeological heritage) 'only if overriding public interest or private interests of very great importance are implied'. The Council also stresses the necessity of creating 'archaeological reserves' to provide for the protection and preservation of cultural remains (visible or hidden in the ground) in their original context so that they 'are left undisturbed for future archaeological investigation, preferably with non-intrusive methods developed in the future' (CoE 2000b, p. 13).

Archaeologists often find themselves in an awkward situation when they have to choose between the full legal protection of an archaeological site and the desire to carry out a research project. From the legal point of view, scheduling (and similar instruments implemented in other European countries) provides the strongest protection of a site. Any works on a designated site require formal consent of appropriate conservation authorities: acts of destruction, damaging, demolition or illicit excavation are explicitly forbidden and perpetrators can be prosecuted *ex lege*. On the other hand, designation significantly limits the possibility of carrying out archaeological investigation. In almost every case obtaining excavation consent for works on a scheduled monument is a complicated and lengthy process. Moreover, in the light of the commonly accepted policy of *in situ* protection and the growing number of rescue works, conservation authorities generally do not support such applications. Therefore many archaeologists concerned with the future development of the discipline are afraid that, in situations where rescue projects and commercial works significantly outweigh research schemes and agendas, archaeology can lose some of its main objectives as an academic discipline.

At the same time, modern conservation policies favour application of non-invasive techniques and preservation *in situ*. Any invasion into the original context of a site unavoidably leads to the 'destruction' of cultural material under protection. As archaeological features can be excavated just once, the preservation measures require, whenever possible, leaving a section of a site untouched for future study. However, in order to obtain precise information and move the discipline forward archaeologists have to be able to excavate. This paradox brings us back to the problem of values related to the archaeological heritage. Leaving sites (or their parts) undug is interpreted as preservation of a cultural legacy entrusted to us ('existence value', 'feelgood factor') and accumulating inheritance for the posterity ('option value') (hence the idea of setting aside parts of archaeological sites for the future reference promoted in some European countries, e.g.

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Poland). That approach may be in conflict with other cultural values like the development of science, or the increase of public accessibility to learning resources, artefacts and sites. With the growing number of sites threatened by development projects and limited funding, possibilities to carry out excavation conducted purely for research reasons have become very restricted. Many specialists argue that although leaving important sites undisturbed meets official requirements for 'preservation' but at the same time it limits research possibilities and access to information. Additionally, implementation of such policy in the case of important sites and discoveries means that the public interest associated with archaeology is not fully utilised (Gurr 1992, p. 10; this argument was brought to the discussion not that long ago in relation to the Waterford Viking site in the Republic of Ireland – see Chapter 5). In this situation many archaeologists face something similar to the Hamlet's dilemma – to dig or not to dig? They find themselves torn between the desire to excavate and to preserve intact sites. Without excavations there would be no progress in archaeology and our understating of the past. On the other hand, the future may bring better, more advanced research possibilities. 'Because we do not know the directions these new developments will take, we cannot use them to set priorities for what should be preserved for future study – and priorities set on the basis of current research aims and approaches are almost certain not to provide fully for future needs' (Lipe 1984, p. 7).

The attribution of importance, or value, to particular archaeological resources is assessed with reference to two main factors: 1) its significance within the framework of an established research agenda and methodology for investigating the past, and 2) its representatives of the archaeological heritage as a whole. Consequently, the perception of the elements of the archaeological heritage and their significance are not constant, but constantly change, being dependent on such factors as the available research techniques or political and social context (Wenban-Smith 1995, p. 148). The idea of saving resources intact primarily for their informational value depends heavily on research. Proponents of

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preservation of cultural resources 'must make their case on the basis of their best understandings of today's needs, plus their best projections and guesses of what kinds of resource will be most useful in tomorrow's studies' (Lipe 1984, p. 7). Secondly, although archaeological deposits are regarded as an important and non-renewable source of information, with the value of cultural sites represented by the maxim *totum maior summa partum* – the entity of cultural deposits is greater than the sum of individual artefacts out of their context (Brodie 2005, p. 128), they cannot all be preserved (e.g. due to extensive cost of conservation or need to develop the land). On the contrary, the scheme to 'protect everything' is not only economically unachievable but also would not gain public support. In addition, even some archaeologists and heritage management experts oppose the axiom 'that heritage is a fixed and ever-diminishing quantity'. For instance, Lowenthal argued that the heritage is not static or dwindling but rather gets altered and added every day: 'ancestral treasures are unearthed, discoveries made on land and water, things found in attic and basement [...] fresh creations and recognitions more than make up for what is lost through erosion, demolition and obsolescence' (2005, p. 395). 'Heritage is such a sacred cow that none dare call for its culling' – therefore, we ought to be 'selective stewards' rather than attempt to preserve too much (Lowenthal 2005, p. 396). Yet, perception of discovering 'treasures' buried in attics, etc. as 'adding' to the resource is a questionable argument – after all, these objects have already existed and, while forgotten, are not new additions. Secondly, whilst latest recognitions (e.g. 19th and 20th century buildings) increase the scope of heritage assets, such additions cannot fully justify or compensate for diminishing earlier resources. Also Carman argued that the archaeological record does not necessarily have to be treated as a non-renewable resource. He suggested three ways in which it can be 'renewed': 1) by deposition of new material to become the archaeological record in the future, 2) by discovering new sites, and 3) by discovery,

recognition or identification of entirely new classes of archaeological remains (Carman 1996, p. 7).

A study of the archaeological heritage management mechanisms requires an analysis of the relationship between the law and the object of the legal protection. Without getting into a detailed discussion on the philosophy of law, we can identify two main correlations: 1) protective regulations simply sanction existing values and interests shared by the majority of the population (e.g. the respect for human life, private property, etc.) or 2) enactment of specific laws may be aimed at creating new public attitudes, values and behaviours (e.g. protection of intellectual property associated with the development of the information society). Looking at such issues, Carman suggested a reversed perception of the valuation function of law: *Identification* of things with value (pre-existing filters, e.g. monetary value, research value) → *Selection* from things with value (values applied to archaeological finds; finds judged as significant/ insignificant) → *Recategorisation* (allocation to a specific legal category) → *Valuation* (result: protection/ or denying legal protection) (Carman 1996 p. 127). This means that values, filters by which the significance of archaeological discoveries is measured, pre-exist and are attributed to the discovered archaeological material often by archaeologists themselves:

> First, objects are chosen for a particular form of treatment. Second, they are categorised. Only at the end of this process are they given value (Carman 1996 pp. 32-3). It is the law that places values on material that requires its legal protection. Accordingly, archaeological material is not protected because it is valued, but rather it is valued because it is protected. (Carman 1996, p. 115)

To support this view Carman gave an example of the Treasure Trove, a medieval law originally enforced to enrich the Crown, which was subsequently transformed into a device adapted for the purpose of the new discipline – archaeology – and used to acquire objects for museums (Carman 1996 pp. 60-61). Furthermore, according to Carman, the

Treasure Trove doctrine is reflected in all the branches of the English law devised or appropriated for application to archaeological material through mechanism of selecting a body of material to which law can be applied (excluding other bodies of material); recategorisation of this material (transforming it into a legal category) and adding value to the selected material (through this process of recategorisation itself and consequently 'changing the way people think about material from the past') (Carman 1996, pp. 45, 157).

The nature of the law is to 'set boundaries', to closely define and specify the subject of legal protection. Therefore, most heritage regulations traditionally focus on the protection of monuments and sites – areas and objects extracted from their surroundings, and defined by clearly mapped (chartered) zones of protection: 'where it does seek to define its object, the law places boundaries around it. Both monuments and sites are understood as clearly demarcated spaces which have hard edges that can be identified' (Carman 1996, p. 122; Clark 2005; Matthews 2008). However, the archaeological material cannot be confined to recorded sites. The evidence of past human activities can be found – with varied intensity – across the landscape. Archaeological sites only designate areas with the highest concentration of cultural deposits. This again leads to the problem of protecting archaeological remains located outside the traditional instruments of legal protection (monuments and sites), such as flint scatters. One solution is to create protective zones, e.g. areas of archaeological importance (England and Wales) or conservation zones (Poland), which are hybrid instruments resulting from the combination of planning regulations and heritage protection laws. Another solution, now gradually implemented in the European legislations, is the protection of entire landscapes – for both 'cultural' and 'natural' values (*European Landscape Convention*).

Archaeological features transferred into the realm of law and public domain gain new character. Firstly, a feature is given a new name; becomes a part of legally defined category (Carman 1996, pp. 160-161), e.g. a 'national monument', 'listed building',

'archaeological site', 'urban conservation area', 'Word Heritage Site'. Secondly, as it was mentioned above, application of legal regulations to the archaeological material redefines this material. One of the immediate and most visible effects is separating the object from its surrounding landscape by setting boundaries of the protection zone. This process is followed by the application of specific legal instruments of protection and preservation, heritage protection regimes – scheduling, registering in the inventory of monuments, planning restrictions, conservation requirements, export bans, nationalization, etc. Another important consequence is adding 'a new moral status and value' (Carman 1996, p. 162).

The theoretical discussion on 'values', 'importance' and 'significance' in archaeology has some very practical applications: for instance, the Council of Europe (CoE) encourages its member states to implement evaluation schemes for the archaeological and architectural heritage. In situation, when financial resources for the protection and preservation of archaeological sites and historic buildings are usually limited (admittedly in some countries more than others), evaluation should enable authorities to assess the significance of sites, their conservation needs and priorities on the national and regional level – and thus serve as a tool for the decision-making process in heritage protection and sustainable development.

In its guidance on heritage assessment, the Council of Europe urged specialists involved in the cultural heritage management to analyse the *significance* of monuments and sites using seven factors: archaeological, architectural, historical, social, cultural, religious and ethic, which during the evaluation should be considered on four different levels: international (internationally important), national (of outstanding national importance, of special national interest), regional and local. At the same time, CoE reminds that in the assessment of significance it is important to distinguish between the significance of the archaeological site or historic monument *for heritage management professionals* and its significance *for the community* (CoE 2005, pp. 50-1).

Usually, regulations define types of cultural heritage which are the object of statutory protection, e.g. 'archaeological sites', 'monuments' ('definitional' criterion), and then set additional conditions for each category of cultural material to qualify for the specific protection regime, e.g. being of a 'national importance' or of 'historic and/ or artistic interest'. Thus, legislation identifies many objects of archaeological, cultural, historic, artistic or architectural interest that potentially meet the criteria of the state protection but at the same time limits the number of objects remaining under care and custody to items considered to be of the highest importance (Thomas 2006). This attribute is usually granted as a result of an administrative decision (e.g. to schedule the site). The problem of such constructed mechanisms of heritage protection is that:

a) not all elements of cultural heritage are formally a subject of legal or quasi-legal protection (as they do not fulfil the criterion of high importance/ special interest); and

b) a number of elements of cultural heritage of high importance may not be granted statutory protection because they are not covered by legal definitions, e.g. lithic scatters or hedgerows.

Caves are a good example of unclassified heritage element. A broad characterisation of archaeological heritage – as humanly modified monuments and sites – includes cave-sites respecting the importance of prehistoric remains. However, the same definition does not cover all aspects of prehistoric heritage, especially natural Pleistocene deposits. Hence, Palaeolithic sites without artefacts or evidence of past human intervention in the landscape are often excluded from legal protection granted to archaeological contexts (Wenban-Smith 1995, pp. 153-4).

# 3.5. There is no such a thing as 'heritage'

Discussion and various interpretations presented above draws attention to the problem of choosing a commonly accepted designation of 'heritage', a definition which is constantly revisited, revised – and in fact negotiated. Indeed, the problem of heritage law and associated values may be perceived as a bit of a 'chicken or egg question'. Do we implement laws in order to provide a better protection of what we value or does a designation according to legal norms increase the value of an object? While Carman argues the second is the case, namely that heritage regulations create values associated with material remains of the past (Carman 2000), Laurajane Smith challenges the very idea of 'heritage' (Smith 2006). Her critique of the 'Authorised Heritage Discourse' (AHD) is based on the assumption that heritage is a discourse, *a 'process' and not a 'thing'*, a set of meanings, a process of negotiating identity and identifying cultural and social values (Smith 2006; Smith and Waterton 2007). Ultimately, in Smith's opinion, heritage is a cultural practice, involved in the construction and regulation of a range of values and understandings (Smith 2006, p. 11). Contrary to the traditional view, it focuses not on monuments, archaeological sites, structures and historic buildings but on activities around these objects. Thus, heritage is no longer confined within traditionally recognised, identifiable boundaries (established by mapping, listing, scheduling, etc.) – which may constitute a useful tool in heritage management process – but in essence are artificial. Offering a new approach Smith also opposes the idea of heritage as 'inheritance' – a fragile resource of an innate value – which ought to be preserved and passed on to future generations in an unchanged state.

This new theoretical approach raises the question whether the values defined by law have dominated the perception of the cultural heritage to the point where the original purpose behind these rules have become disguised, becoming a primarily 'bureaucratic

process' – and, consequently, what is the future of the archaeological heritage management. Also, do cultural rights and the cultural heritage – new legal categories and concepts widely promoted on the international forum – have tangible implications for the cultural environment (e.g. in relation to the EU policies and integration strategy) or are they no more than popular (or populist) buzzwords? Do the international standard-setting instruments have a 'real' influence on national governments or should we take statements laid out in numerous heritage conventions and charters with a pinch of salt?

## 3.6. Summary

Archaeological heritage is an evolving concept that has increasingly broadened its scope and definition as archaeological theory has developed. This chapter has outlined major concepts and terminology associated with the theoretical and legal debate around archaeological heritage in Europe, including the very idea of archaeological heritage, cultural heritage, cultural property, intangible heritage, cultural and historic landscapes and cultural environment, public interest, ownership and guardianship issues, responsibility for cultural heritage.

The diversity of terminology reflects the diversity of concepts and policies implemented in various European countries, with the choice of words usually reflecting the intention of the legislating body, policy-makers and participants in the heritage management process. An analysis and critique of the existing vocabulary, definitions and concepts used in the context of archaeological theory and legal regulations, and consider action of the consequences of adopting specific nomenclature ('archaeological heritage', 'cultural objects', 'cultural property', etc.), draws attention to the difficulties resulting from the diversity of terminology, legal traditions, heritage regulations and management approaches applied across Europe. The majority of international conventions, standard-setting instruments and policies (including European regulations) are created and adopted

for specific purposes, often focusing on narrowly-targeted responses to specific problems. They thus have a restricted influence and application when confronted with national legal frameworks.

Fundamental questions related to the protection and preservation of archaeological heritage include the problem of values and significance associated with archaeological resources, and the relationship between archaeology and law (or law-making). Consequently, this chapter has analysed various types of regulation related to archaeological heritage management and looked at the influence of archaeological theory and of social, economic and cultural factors on the development of European cultural policies, in order to explore ways in which importance, or value, is attributed to particular cultural resources based on factors external to archaeology. Analysis of conflicting values and interests shows that the preservation of archaeological remains is often given a fairly low priority in the planning process and policy-making activities, especially in situations when heritage issues clash with wider economic interests. Planning authorities tend to concentrate on the preservation of visible, designated cultural assets (such as scheduled monuments or listed buildings) and to restrict archaeological heritage management to rescue excavations.

Despite being one of the major professional groups involved in cultural heritage management, archaeologists often have a very limited impact on planning policies and development strategies as they largely fail to engage actively in theoretical discussions and have difficulty placing themselves within the planning process, focusing instead on practicalities of their contract work and rescue excavations.

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# 4. Chapter Four: Responses to threats - archaeological heritage management in practice

## 4.1. Historic landscapes and the cultural environment

As mentioned in the previous chapter, there are two dominating legal approaches to the problem of heritage. The 'traditional' concept focuses on monuments and sites, clearly demarcated zones singled out from the surrounding landscape. The second regime provides a general protection of all sites based on their *potential* cultural value – which means that all elements of the cultural landscape are significant 'unless proven otherwise'. In practice, in Europe, depending on the country, its legal system and tradition, the priority is either given to one of these options or both regimes co-exist on different levels. Thus, conservation policies and heritage regulations vary from one country to another. The Council of Europe attempted to manage these discrepancies to improve the protection, preservation and management of the common European cultural heritage through a number of conventions:

- the *Granada Convention* – the *Convention for the Protection of the Architectural Heritage of Europe* – 1985 – for the first time recognised the idea of the integrated conservation in an international treaty;

- the *Valetta Convention* – the *European Convention on the Protection of the Archaeological Heritage, revised* – 1992 – established a direct interaction between archaeology and planning; and

- the *Florence Convention* – the *European Landscape Convention* – 2000 – offered a holistic view of both natural and cultural values and assets. The name of this treaty should be read as the 'European Landscape' convention and not a 'European convention', which means that the landscape is not confined by national borders.

The *European Landscape Convention* is an important part of the CoE's cultural, political and legal framework for the common European heritage (cultural and natural), environment, sustainable development, town and country planning and self-government designed to systematise the approach towards the management of landscapes and to fill in gaps between existing international legal instruments. Its adoption demonstrated the ideological shift in the perception of heritage itself as well as of the relationship between the cultural heritage and the environment (tab. 2). Starting with the protection of individual monuments and sites, policies moved on to the concept of 'integrated conservation'. The idea was to incorporate conservation of cultural assets into the planning system, to preserve groups of historic buildings and their atmosphere, and to include heritage issues in economic and social affairs. In the 1990s, the approach was broadened though putting archaeological remains next to the built heritage. Afterwards, physical elements of the cultural heritage were included in the scope of spatial planning. The final step was the development of new concepts: 'cultural landscape' and 'cultural environment' as well as the idea of sustainable development incorporating natural environment and material, non-material and spiritual elements of cultural heritage. Consequently, protection was granted to landscapes 'as perceived by people', appreciating the personal view and the individual experience of the environment (Déjeant-Pons 2006, p. 366).

The importance or value of a landscape may be based e.g. on emotions, the quality of life, local identity or simply 'beauty' of the environment. The place may also be appreciated as a tourist attraction and a significant factor of the economic growth (Fairclough 2002a, p. 4). Landscape is thus a 'living' construct, built on emotions and intellectual observation. It is also a subject to constant changes. Consequently, the bottom-up approach, the 'subjective' views and opinions must be treated with a proper regard, and hence should be incorporated into the planning system and be a part of the landscape

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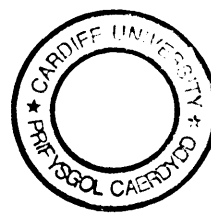
management process. The Landscape Convention recognises the need for the dialogue and the citizens' right to decide, which landscapes are most valued and how they should be managed. In this system archaeologists, with their understanding of the landscape transformation, should play an active part guiding the course of change in order to secure sustainable development (see Section 5.2).

**Table 2:** Table showing broad trends in cultural heritage management. The new concepts are added to the older concepts and they do not replace them (Clark 2001, p. 112).

|  | **From** | **To** |
|---|---|---|
| **Definition of Heritage** | Monuments | Landscapes |
|  | Buildings | Urban Areas |
|  | Sites | Historic Environment/ Cultural heritage |
| **Role of Heritage in Society** | National Unity | Respect for cultural diversity |
|  | Generate revenue from visitors | Wider Economic benefits Social Benefits |
| Decisions | State | Region/locality |
|  | Authoritarian | Democratisation Participation |
| Professionals | Experts | Facilitators |
|  | Single discipline (e.g. buildings, archaeology) | Multi-skilled professionals |
|  | Historical knowledge | Management Skills |
| **Significance** | Old | Industrial heritage Post-war buildings |
|  | Aesthetic | Commemorative value |
|  | National importance | Local Distinctiveness |
|  | Mono-cultural | Values of different cultures |
|  | Narrow range of values | Wide range of values |
| Interpretation | Expert led | Community led |
| Responsibilities | State led | Communities The Market/Private sector |
|  | Heritage sector | Environmental sector |
| **Management Practices** | Designation | Characterisation |
|  | Separate conservation Site based | Integrated conservation More strategic |
|  | Technical research | Philosophical research |

## 4.2. Archaeological heritage and cultural rights

Since its creation in 1949, the Council of Europe has been concerned with safeguarding and enhancing something that we may broadly call 'European culture'. Archaeological heritage is placed within the scope of this policy supporting the integration of the Continent by way of tightening cultural and intellectual co-operation. This has been done, *inter alia*, through protection of historic towns, architectural monuments and archaeological heritage, or more recently, cultural landscapes, advancing sustainable development and encouraging trans-frontier collaboration. Major aspects of the cultural policy are the relationship between the culture and human rights, protection of both individual and collective cultural rights, recognition of diverse cultural values and compromising between majority and minority cultures. Ultimately, the Council of Europe attempts to develop a 'new European cultural identity', a new European citizenship and achieve harmonisation of cultural heritage regulations 'whilst at the same safeguarding cultural diversity' (CoE 2000b, p. 11).

One aspect of this policy is the respect for the heritage of the national, ethnic and cultural minorities and non-discrimination. According to the *Declaration on cultural diversity* adopted by the Council of Europe in 2000, member states are 'urged to pay particular attention to the need to sustain and promote cultural diversity'. The guidelines drafted after the Fourth European Conference of Ministers responsible for the Cultural Heritage (Helsinki/Finland, 1996), for example, state that all types of heritage should be equally respected, including the preservation of original place names. Conservation activities should favour traditional use patterns and, if preservation of these is not possible, planners should consider wishes, social values and the memory of the original community. Following the provision of the Venice Charter, the CoE recommends that works associated with cultural heritage objects should respect contribution of all periods and

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history 'marked by the passage of several cultures and the alteration or succession of different peoples' (CoE 200b, p. 15).

The link between cultural rights and human rights is stressed in a number of international conventions and policies. The *Hague Convention* was the first – and still is – the most important international agreement related to the protection of cultural heritage in the context of crisis situations and in the time of peace. Being a response to the massive destruction and the trauma of the Second World War, the Convention was an important step in associating the safeguarding of the cultural heritage (including monuments and objects of artistic, architectural, historical and archaeological interest) with human rights. Consequently, the *Universal Declaration on Cultural Diversity* adopted by UNESCO in 2001 states explicitly that 'cultural rights are an integral part of human rights, which are universal, indivisible and interdependent' (art. 5):

> As a source of exchange, innovation and creativity, cultural diversity is as necessary
> for humankind as biodiversity is for nature. In this sense, it is the common heritage of
> humanity and should be recognised and affirmed for the benefit of present and future
> generations (art. 1).
> Heritage in all its forms must be preserved, enhanced and handed on to future
> generations as a record of human experience and aspirations, so as to foster creativity
> in all its diversity and to inspire genuine dialogue among cultures (art. 7).

Another priority identified by the CoE is the improvement of the trans-frontier co-operation related to areas which – although now divided by modern political boundaries and located in different countries – in the past shared similar cultural heritage. In order to encourage and facilitate the international collaboration on regional and local level, the Committee of Ministers adopted in 2000 the *Recommendation on fostering transfrontier co-operation between territorial communities or authorities in the cultural field*. The document refers, *inter alia*, to co-ordinating management of trans-frontier heritage sites and landscapes, and the creation of joint institutes for studying frontier cultures.

Unfortunately, the implementation of this recommendation is not very wide. For example, not long ago Czech and Slovakian archaeologists were prevented from crossing the Austrian border while carrying out GIS survey of early medieval Bohemian settlements.[53] Although this particular administrative problem should disappear due to the enlargement of the Schengen zone, the core issue – problems around fostering international research – remain.

## 4.3. Archaeological heritage and intangible cultural heritage

Like 'cultural rights', the 'intangible cultural heritage' has become in recent years one of 'buzzwords' associated with cultural heritage management. The *Convention for the Safeguarding of Intangible Cultural Heritage* signed by UNESCO in 2003 defines 'intangible cultural heritage' as

> practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. (art. 1)

The 'intangible cultural heritage' should be seen in a broad perspective, including traditional and popular folk culture and the 'collective works' of a community (Pickard 2004, p. 73) manifested, *inter alia*, in oral traditions and expressions (including language), performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe and traditional craftsmanship. What is especially relevant to our topic is the relationship between the intangible and tangible heritage. For

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[53] Personal information from Dr Jan Marik, University of Prague.

example, these can be various legends and beliefs associated with holy springs and wells or ghost stories related to medieval castles, memories and recollections associated with the Berlin Wall or – on completely different level – traditional skills and arts like thatching, stone cutting or carpentry. However, from the point of view of the archaeological heritage protection, the most important aspect may be the statement that immovable heritage is the integral part of the environment inherited from previous generations and redefined by modern societies. This entails the existence of material, tangible elements (archaeological remains, ruins, etc.) and consideration of intangible aspects of cultural heritage, e.g. historical, spiritual and aesthetic values or architectural and commemorative significance. If sufficient number of people consider a historic landscape, building or archaeological site to be something more than just another fixed 'lifeless' component of their environment – *i.e.*, as something representing intangible value – chances of safeguarding such a place are much higher. Therefore, the Council of Europe promotes the broader interpretation of heritage values (uniting tangible and intangible heritage).

Due to the evolution of international law and cultural policies, human rights, cultural identity and cultural diversity as well as the sustainable development and cultural environment can no longer be separated from the 'cultural heritage'. *The Fifth European Conference of Ministers responsible for the Cultural Heritage* (2001) called for the widening of the concept of heritage to encompass the *cultural environment* and addressing the need to sustain its material, non-material and spiritual values *as perceived by people*. This last statement is parallel to the definition of landscape used in the *European Landscape Convention*.

The concept of 'integrated conservation', based on the Granada and Valetta Conventions, has been accepted and implemented by the majority of European countries. Widening of the approach to cultural heritage from individual 'sites' and 'monuments' to 'areas' and 'environment' put heritage management on a completely new track.

Safeguarding of archaeological heritage was incorporated into planning regulations and development project control by the majority of European countries (e.g. the UK, France, Belgium, Poland and Czech Republic). Many other countries are in the process of reforming their heritage laws and conservation policies.

In the discussion on the definition and interpretation of heritage Carman (2007) stated that 'all heritage is intangible', arguing that all heritage values inevitably relate to the intangible characteristics of heritage objects but at the same time reminding that the power of heritage cannot be entirely disconnected from its materiality. In the case of archaeological heritage, archaeology itself creates intangible values, e.g. such as a sense of community and a sense of place (social value) or tourist potential (instrumental or use value). However, inevitably these values attach themselves to tangible objects – sites and artefacts. In the case of cultural landscapes, for example, values, identities and memories are associated with tangible cultural objects: buildings, structures and artefacts as well as equally tangible 'natural' environment. Needless to say, all of these elements are not solely intangible concepts – they are perceived and experienced with all human senses. Cultural identity is usually strongly associated with the character of the landscape, especially its tangible aspects such as monuments and important landmarks. They evoke *genius loci*, remind of ancestral roots as well as cultural diversity. They also provide information on past uses of the land and sustainable management of the environment. Finally, the materiality of the landscape, its durability and intransigence evoke the sense of security, and is often perceived as a counterbalance to the frailty of human existence.

Until recently, landscapes were believed to be stable and resistant to change – almost eternal. For centuries people lived and worked in rather fixed settings. Changes were taking place slowly and gradually; significant transformations rarely took place within the life of one generation. The emergence of the philosophy of the Enlightenment and Romanticism along with the beginning of the Industrial Revolution brought the

awareness that the environment was not constant and everlasting. The nineteenth century saw the raise of first initiatives for the protection of the 'nature', e.g. *Société Nationale de Protection de la Nature* (France 1854), *National Trust for Places of Historic Interest or Natural Beauty* (England 1895) or *Deutsche Bund Heimatschutz* (Germany 1904). These private societies formed by social élites were mainly concerned with the protection of natural beauty, wildlife and ruins and focused on spectacular sites of 'national' importance'. This concept of heritage protection was readily seized by governments and policy-makers and in many ways still underpins legislation and work of heritage institutions of many European countries (Antrop 2003; Smith 2006).

One of the problems related to the protection of cultural landscapes is the fact that – like in the case of 'heritage' – there is no clear definition. In its nature law does not like ambiguities. Most legal systems favour precise, distinguishable rules and sharp classifications. It is relatively easy to sanction protection of e.g. a medieval castle – a historic building with an evident perimeter. Such construction can be described, delimited and mapped or even surrounded with a fence and labelled as a 'monument'. Archaeological sites are more troublesome – in many cases it is hard to establish their extent and set up a clear boundary. Therefore, recorded monuments are enclosed in artificial perimeters and thus extracted from the surrounding landscape (Carman 1996; Clark 2005; Matthews 2008).

The perception of heritage focusing on cultural landscapes and cultural environment is a fairly recent development and in many European countries it still has not been fully incorporated to conservation policies. Management and protection of landscapes is also complicated by the fact that not only do they usually consist of numerous plots of land governed by various property rights (e.g. ownership, leasehold, easement, tenancy) and in possession of different stakeholders, but it is also almost impossible to define their boundaries. Such attempts have been made for the purpose of

research: historic landscape characterisation projects, planning or EIA process by way of careful research and precise analysis (e.g. in the case of the Hill of Tara, Woolchester Valley, and Stonehenge). We can record elements of relic cultural landscapes and draw formal boundaries on location maps. Nevertheless, any kind of such boundary would always be open to question (Darvill *at al.* 1993). Therefore, in some cases, national authorities choose to ignore the concept of cultural (historic, archaeological) landscape, misinterpret it or even contradict its existence. The most evident example is the 'Hill of Tara controversy' that is analysed in Chapter 5.

Another big problem related to the integrated management of both cultural and natural heritage is the supposed clash of interests. The customary division between 'cultural' (architectural, archaeological, built) and 'natural' is often a source of disagreement which originates from the perception of culture and nature as completely separate (or even antagonistic) phenomena. A clear example of such distinction is the *World Heritage Convention* (1972) – one of the most important international documents in the field of heritage management. Not only the cultural heritage and natural heritage have separate definitions (articles 1 and 2 accordingly) but the text of the Convention concentrates on unique places. Consequently, when these two 'opposing' strands of heritage overlap – although the common goal would be to protect the area against the development and other damaging factors – values, objectives and management schemes can differ or even contradict (Antrop 2003). The concept of 'cultural landscape' and the implementation of the *European Landscape Convention* are the visible attempt to overthrow this traditional view. The idea of a 'pan-European landscape' aims to change the focus and underlines the value of the more holistic approach. It refers to both categories of heritage ('natural' and 'cultural') but also provides for the protection of 'ordinary' landscapes, *i.e.*, located outside national parks, conservation zones, heritage sites.

## 4.4. Cultural environment

The philosophy underpinning the work of the CoE states that the heritage of each country, region, community and religion is the common heritage of all Europeans – and at the same time – their common responsibility to current and future generations. The care of the European heritage – a shared task of all countries and individuals – is also seen as an important factor contributing to the integration, co-operation and inter-cultural dialog within the European Union. The Council perceives the heritage as a vital asset and not an obstacle to advance of modernisation and development. Therefore, the integrated conservation of the archaeological and architectural heritage and the sustainable development are among the most important themes in the work of the Council. These issues repeatedly occur in all European heritage strategies, and they should constitute a primary concern of town and country planning, urban development and environmental studies.

In its multiple documents the Council stresses the link between the cultural and natural heritage and spatial planning (Pickard 2004, p. 81). One of the first documents expressing Council's concept of cultural heritage was the *Recommendation No. R (95) 9 on the integrated conservation of cultural landscape areas as part of landscape policies.*

According to the Recommendation, the conservation, enhancement and management of the evolution of cultural landscape should be handled in accordance with the wishes of society as a whole by the way of landscape policies – frameworks agreed and applied jointly by public authorities, landowners and other concerned stakeholders. While forming their policies, governments must balance the needs of society, the use of natural resources and the organisation of human activities and try to achieve harmonious relationship between them. They should not simply rely only on bodies normally involved in the spatial planning process (like regional and urban planning or agricultural and

forestry authorities) but must include other interests, e.g. cultural, aesthetic, ecological, economic and social, and try to harmonise them in order to achieve sustainable development and the 'environment which reflects both the cultural and natural heritage while taking cognisance of the evolutionary nature of the landscapes as a whole'. This concept has been further developed in *Guiding Principles for Sustainable Spatial Development of the European Continent* and strengthened by the adoption of the *European Landscape Convention*.

## 4.5. Sustainable development

Achieving balanced and harmonious relationship between social needs, economic activity and the environment is one of crucial aims of the European Community.[54] In its *Guidance on the development of legislation and administration systems in the field of cultural heritage* (CoE 2000c) the Council of Europe refers to the sustainable development as the 'development which meets present needs without compromising the capacity of future generations to meet their own needs'. This definition depends on the equilibrium of three key principles: social balance, economic development and protection of environment *including* protection of cultural and natural heritage. Should any of these principles have precedence over the other two, the goal of sustainable development will not be achieved. The abovementioned definition has several components: 'intra-generational equity' – present generations' moral duty to retain sufficient resources for people yet to come, 'inter-generational equity' – an ethical obligation to consider needs of the global population and an obligation to resources efficiently and maintain the quality of the environment (Morris and Therivel 2009, p. 466). This interpretation dates back to 1987, when the sustainability principle was adopted by the World Commission on Environment and Development and was further developed through the outcomes of the 'Rio Earth

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[54] See e.g. the preamble to the *European Landscape Convention*.

Summit' in 1992 by highlighting the importance of biodiversity.

The place of the cultural heritage management is governed by the concept of integrated conservation. It must comply with the concept of 'cultural environment', which in terms of law and policy-making means improvement of multi-disciplinary approach incorporating such diverse issues as spatial and urban planning, conservation, economics, tourism, social policy, education, etc. This perspective is further developed by the concept of heritage as an *inherited infinite resource* which, according to the idea of sustainable development, should be handed down to future generations enriched by contemporary work. Such an approach considers cultural heritage (including archaeological heritage) as a resource which should be safeguarded for posterity but at the same time can be utilised for the benefit of the contemporary society on a sustainable level. It disagrees with the concept of archaeological heritage as finite and non-renewable, assuming that achievements of the contemporary society increase the pool of cultural resource. Secondly, it also presupposes active participation of the society (or on smaller scale community) to which principles of sustainable are applied (Pickard 2002, p. 91).

A sustainable spatial development policy should thus incorporate the concept of 'cultural environment' and 'integrated conservation' (and principles embedded in the Florence and Valetta Conventions). It must address a number of issues related to the management of cultural and natural heritage. First of all, it has to balance interests of conservation and development. However, priority should be given to community and environment-led focus rather than to the development-oriented approach (Pickard 2002). Applying a holistic approach, such policy should not centre its attention on nationally important selected monuments but must provide for the safeguarding of the 'cultural environment' at a local and regional level, and incorporate protection of sites, landscapes and features of heritage interest and special importance for the communities. The third condition is to include the review of heritage 'resources' in the planning process and

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assess the impact of major development projects. The idea of the sustainable development also requires setting limits to environmental change and landscape transformation in order to prevent the loss, irreversible or unacceptable damage of cultural and natural heritage. Finally, as many cultural landscapes do not respect modern administrative borders, regional and trans-frontier co-operation may be required.

## 4.6. Environmental directives

Implementation of the Environmental Impact Assessment (EIA) legislation in the EU member states is closely related to the development of the 'sustainable development' concept in the 1970s and 1980s. The promulgation of the *Council Directive on the assessment of the effects of certain public and private projects on the environment* in 1985 (85/337/EEC) and its subsequent implementation across the European Community (1988) is an example of translating the sustainable development concept into a legal document and putting it into practice. Inclusion of cultural heritage in the scope of EIA regulations demonstrates the evolving emphasis on preventive, holistic approaches to the environment (see Annex 11).

Directive 85/337/EEC together with the amending Directive 97/11/EC introduced an EU-wide requirement to carry out mandatory assessments (art. 4.1) of certain classes of project types (listed in Annex I)[55] and discretionary assessments (art 4.2) of other schemes (Annex II).[56] In addition, EIA Directives specify that the description of such projects needs to list aspects of the environment likely to be significantly affected, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the

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[55] E.g. construction of motorways, express roads and railway lines, airports, crude-oil refineries, thermal power stations, radioactive waste storage facilities, asbestos extraction facilities or waste-disposal facilities.
[56] E.g. agricultural projects such as use of uncultivated land or semi-natural areas for intensive agricultural purposes, water-management projects, afforestation, land reclamation for the purposes of conversion to another type of land use; extractive industry (peat, mineral and coal extraction, etc.); industrial electricity installations and gas and oil pipelines; certain types of plants and factories; infrastructure projects (industrial-estate development projects, urban-development projects, dams, etc.).

architectural and archaeological heritage, landscape and the inter-relationship between the above factors (Annex III, EC, 1985 and Annex IV, EC, 1997). Such information should be provided in a document submitted with the application for development consent and called the Environmental Impact Statement (EIS).[57] The selection of projects for EIA, where assessment is optional, is called 'screening'. In such cases, relevant project documentation should consider location, environmental sensitivity of geographical areas likely to be affected and potential impacts, including impacts on landscapes of historical, cultural or archaeological significance (Annex III, 1997).

In 2001, after a long period of negotiations, the European Parliament and the Council of Europe finally agreed the *Directive on the assessment of the effects of certain plans and programmes on the environment* (2001/42/EC). The Strategic Environmental Assessment (SEA) Directive, which became operational on 21 July 2004, is a framework regulation with an objective to provide 'a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development'. Like the EIA directives, it enforces the use of environmental assessments but on a strategic planning level – it applies to national, regional and local development plans and programmes that are likely to have significant environmental effects.

Environmental Impact Assessment is often regarded as a mechanism for promoting sustainability across Europe (Morris and Therivel 2009). Yet, it has to be remembered that the establishment of a uniform EIA system within the EU was also a measure of preventing unfair and potentially harmful competition amongst member states in terms of permitting environmentally contentious developments (Jones *et al.* 2006). EIA regulations have been introduced by way of directives – a type of EU's legislative act that obliges member states to focus on certain objectives but leaves them free to decide the appropriate

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[57] Sometimes also called Environmental Statement (ES).

means to achieve that result. In consequence, although norms and principles laid down in such act are adopted in all countries, because of the legislative flexibility, their implementation on a national level may differ considerably and even lead to inconsistencies (Jones *et al.* 2006; Teller and Bond 2002). In the case of cultural heritage, its treatment in the Environmental Impact Assessment process would depend not only on regulations specific to national systems but also other obligations arising from international law, e.g. UNESCO World Heritage Convention 1972, CoE heritage conventions or ICOMOS Charters. This is important because while EU directives harmonise law by way of enforcing certain requirements on each member state irrespective of national legal systems, conventions bind only countries that have ratified them and conservation charters are only 'good practice' guides.

The EIA regulations have been additionally strengthened by provisions of the UNECE *Convention on access to information, public participation in decision-making and access to justice in environmental matters* (adopted in 1998, entered into force in 2001). The most important input of the Aarhus Convention is the establishment of rights of the public to access environmental information (including cultural heritage issues) and participate in the decision-making process and to comment on plans, programmes and projects relating to, or affecting, the environment and to challenge decisions infringing these rights or environmental law in general.

The Granada Convention[58] (1985), the Valletta Convention[59] (1992) and the Florence Convention[60] (2000), signed by the majority of European countries, are heritage-specific regulations referring to environment management, sustainable development and planning. The Valletta Convention highlights threats to Europe's archaeological heritage arising from major planning schemes and stresses the importance of using appropriate

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[58] In force, ratified by 39 countries (June 2009).
[59] In force, ratified by 35 countries (June 2009).
[60] In force, ratified by 30 countries (June 2009).

measures for enhancement and physical protection of archaeological heritage in the context of town and country planning operations. A number of principles enshrined in the text of the convention have been repeated in EIA directives and guidelines including the preference for *in situ* preservation, favouring the use of non-destructive methods of investigation wherever possible and requirement to allocate sufficient time and resources to allow appropriate scientific study of archaeological material. The Granada Convention is concerned with the protection of the architectural heritage in the planning process. It also draws attention to the importance of preserving cultural assets for future generations, improving the environment and fostering economic, social and cultural development. Finally, the interpretation of EIA and planning regulations has been strongly influenced (and updated) by the definition of landscape and principles of holistic approach and public participation in the environment management set in the Florence Convention.

In 2005, the Council of Europe opened for signatures its *Framework Convention on the Value of Cultural Heritage for Society* (*Faro Convention*).[61] This document reflects changes in the cultural heritage management theory shifting the emphasis from preservation of physical assets to recognising and enhancing its social value by putting 'people and human values at the centre of an enlarged and cross-disciplinary concept of cultural heritage'. Heritage, as presented in the text of this treaty, is a resource in terms of human development, capable of enhancing cultural diversity and promoting greater dialogue as well as an economic resource for sustainable development (Jones *et al.* 2006).

The theory of EIA also recognises the importance of archaeological heritage and the need for its protection: while the pattern of archaeological remains is 'the result of the impact of successive generations on remains left by previous generations [...] today the archaeological record is more likely to be deleted than altered or added to' in effect of growing number of development projects (Therivel 2009, p. 147). However, as I already

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[61] Not yet in force, requires 10 ratifications; so far 15 signatures and 7 ratifications (June 2009).

mentioned, the implementation and interpretation of EIA principles on a national level (or regional, e.g. in the case of Germany or Belgium) differ from country to country. For example, the French government enacted in 2001 a specific national law on archaeology (modified in 2003) to enforce the Valetta Convention and the EIA Directives but Germany is not a party to the *European Landscape Convention* and historic cultural landscapes are protected through federal and regional natural environment and heritage legislation.

As a result, while the Directives force EU members to implement common EIA regulations in their national planning legislation and procedures, the practical execution of these norms vary depending on the country and region. This is often followed by the lack of a consistent terminology and, consequently, an independent but also incoherent way of dealing with similar problems, repeating mistakes and problems with managing trans-frontier projects and tasks. The European Parliament partly addressed these issues (explored in detail in Annex 11) in 2005 through the publication of 'operational guidelines' aimed at improving the practice of cultural heritage management within EIA in the EU and the attempt to create a European thesaurus for archaeological and heritage terms (which, so far, has a very limited scope and linguistic variety) (see Chapter 8 and Annex 11 for further discussion). In the light of increasing European integration and the growing number of 'European' and trans-frontier projects, there is an urgent need to develop such linguistic tools, which would significantly facilitate international collaboration. Perhaps this task could be best undertaken by the European Association of Archaeologists and Europae Archaeologiae Consilium, as these bodies are already concerned with improving understanding and building a common platform for co-operation for the 'European archaeology'.

## 4.7. Summary

This chapter analyses the conceptual and legal framework for the protection and management of the archaeological heritage and cultural environment in Europe. This developes themes outlined in Chapter 3, especially the diversity of conservation policies and heritage regulations in Europe, the 'real' influence of international standard-setting instruments on national regulations and heritage policies and their practical applicability in nation state-focused legal frameworks.

In the context of protecting European historic landscapes and cultural environment, these international regulations often have limited actual influence on national governments. Attempts by the Council of Europe to manage considerable discrepancies between various European countries and their legislation and to improve the preservation and management of the common European cultural heritage through international treaties (mainly the *Granada Convention*, the *Valetta Convention* and the *Florence Convention*) have been summarised as a valuable, yet still imperfect, contribution. While new concepts such as cultural rights, cultural diversity and intangible cultural heritage continue to influence archaeological heritage management theory and practice, e.g. through the changing understanding and attitudes to the management of landscapes, traditionally oriented national legislations often do not 'catch up' with the latest trends in archaeological debate.

This problem can be analysed by looking at the example of cultural landscapes, a fairly new category of protected heritage assets. As the *Florence Convention* gave only a general definition of landscape, interpretation of this concept depends largely on the legal tradition and pre-existing approaches to heritage management in each country and has to confront concepts of designated heritage assets, monument inventories, the dichotomy of cultural and natural heritage protection, and limitations to the ownership of land. As a

result, the notions of cultural landscapes, cultural environment and the integrated management of both cultural and natural heritage have yet fully to be incorporated to conservation laws and policies.

This chapter also consideres approaches to managing the change in 'cultural environment' through the adoption of the 'sustainable development' paradigm, a problem illustrated specifically with the example of Environmental Directives implemented across the EU. The application of Directives proves to be hampered by a number of significant problems: although these documents force EU members to implement common EIA regulations in their national planning legislation and procedures, the practical execution of norms in individual countries (or even regions) is, at best, incoherent, usually lacking a strategic approach. Consequently, the 'patchiness' of interpretation, terminology and implementation models results in a failure to co-ordinate protection efforts in regional dimensions and causes problems with managing trans-frontier projects and tasks.

This reveals an urgent need to increase international collaboration on cultural environment management and to improve project management methods. Proposals include developing such tools as common thesauri listing archaeological vocabulary, data standards for information about the historic environment and recording systems. It is suggested that this task could be undertaken by the European Association of Archaeologists and Europae Archaeologiae Consilium, bodies already concerned with improving understanding and building a common platform for co-operation for the 'European archaeology'.

# 5. Chapter Five: Development-led archaeology

## 5.1. Archaeological heritage and cultural landscape endangered by road schemes

European cultural heritage is increasingly affected by the fast progress of development and urbanisation. Even rural areas, which for many decades had been regarded as an environment reasonably safe for archaeological sites, have now become seriously threatened by large construction projects such as road schemes, business and retail parks and the constantly expanding outskirts of European metropolises. Reconciliation of heritage protection with economic growth and crucial needs of citizens is not an easy task for the government of any country. This difficulty in finding a proper balance is well illustrated by the case of the Republic of Ireland.

During the years of an intensive economic growth, the boom in countryside housing around Dublin and the rapid increase in the number of commuting car-owners have led to severe congestion in the Irish capital and its environs. Because of the catastrophic state of roads and the archaic public transport system, residents of adjacent towns and suburban estates spend four-five hours a day travelling to and from work. It was also a major problem for business enterprises. Thus, the development of a modern motorway network has become a major concern for the Irish authorities and, consequently, a political issue. In several cases, the pressure to 'facilitate' completion of road schemes led to hurried decisions and controversial ventures which were strongly opposed by environmental and heritage lobbies. As a result, the Irish government had to deal with a number of time-consuming legal challenges, significant delays and tremendous costs as well as face the opposition of the conservation and planning experts, international academic community and its own heritage service.

In this chapter, I will present three cases of the controversial road schemes, which revived international discussion on cultural heritage management and its relation to town and country planning. These are cases of the Carrickmines Castle in Co. Dublin, the Woodstown Viking site in Co. Waterford and Tara/Skryne valley in Co. Meath.

## 5.1.1. Carrickmines Castle

Carrickmines Castle is a late medieval site situated on the outskirts of Dublin. In the 12$^{th}$ century, it became a Norman fortress and a settlement. In 2000, preliminary archaeological investigations revealed remains of medieval houses and workshops, kilns, wells and parts of a unique system of fortifications, including a well-preserved fosse accompanied by several inhumations and a significant number of artefacts (including almost 20,000 pieces of medieval pottery, coins, weapons, musket and cannon balls and textiles). In the autumn of 2002, when archaeological works were about to finish, it became clear that a large part of the site would be destroyed by the prospective M50 road and a roundabout – a part of the Dublin ring road (fig. 8). These plans were opposed by a group of campaigners who, calling themselves the 'Carrickminders', demanded re-routing of the road to save the castle. When the activists realised that no compromise was possible, they followed the example of the 'eco-warriors' and organised a picket on the site, then occupied it permanently to block access. The National Road Authority (NRA) and the Dún Laoghaire-Rathdown Co. Council responded with court actions. In January 2003, the 'Carrickminders' initiated their own legal challenge in order to prevent continuation of construction works claiming that neither the county council nor the NRA held a permission from the Minister for the Environment to destroy part of the castle's remains which, in their opinion, formed a national monument. The Supreme Court approved this claim stating that the authorities had failed to provide an expert evidence to contradict the specialist opinion presented by the campaigners. After the court's ruling, the

construction works on the site were brought to a halt. In the end of 2003, the project was recommenced, just to be again abruptly stopped after a few months in January 2004 due to a new legal challenge. This time the campaigners claimed that the Minister did not have the authority to issue the order leading to the removal of castle remains and once more, the Supreme Court agreed overturning the works consent as illegal (Morahan 2004).

Realising that the project could not be continued under the existing legal framework, the Minister for the Environment initiated changes to the *National Monument Act* – the key Irish heritage bill – leading to the passing of an amendment facilitating development programmes in July 2004 (Reid 2004). In the summer of 2004, under the new regulation permission was given to carry on works at Carrickmines Castle. This decision was immediately challenged by the campaigners seeking the abolition of the amendment but this time the Supreme Court dismissed the plea

The quarrel over Carrickmines Castle sparked an important debate engaging politicians, planners, road builders, conservationists, archaeologists and the local community, dividing the public opinion and leading to a long-lasting legal battle resulting in a significant delay in the completion of the road and great financial costs. The campaigners accused the Dún Laoghaire-Rathdown County Council of selecting the route and junction layout in order to facilitate the development of the lands owned by a private developer, Jackson Way Properties. The land deals around the site have become the subject of an anticorruption investigation at the so-called Mahon Tribunal (Flood Tribunal) exposing the Council to compensation claims estimated at tens of millions of euros (O'Brien 2004a; Clinton 2004). Although the battle to save the remains of the castle was finally lost, it is not the demolition of almost one third of the medieval site that was the most important consequence of the dismissed legal challenge. The key aspect of the

'Carrickmines case' was the revision of the legislation and its repercussions for the management of archaeological heritage endangered by road development projects.
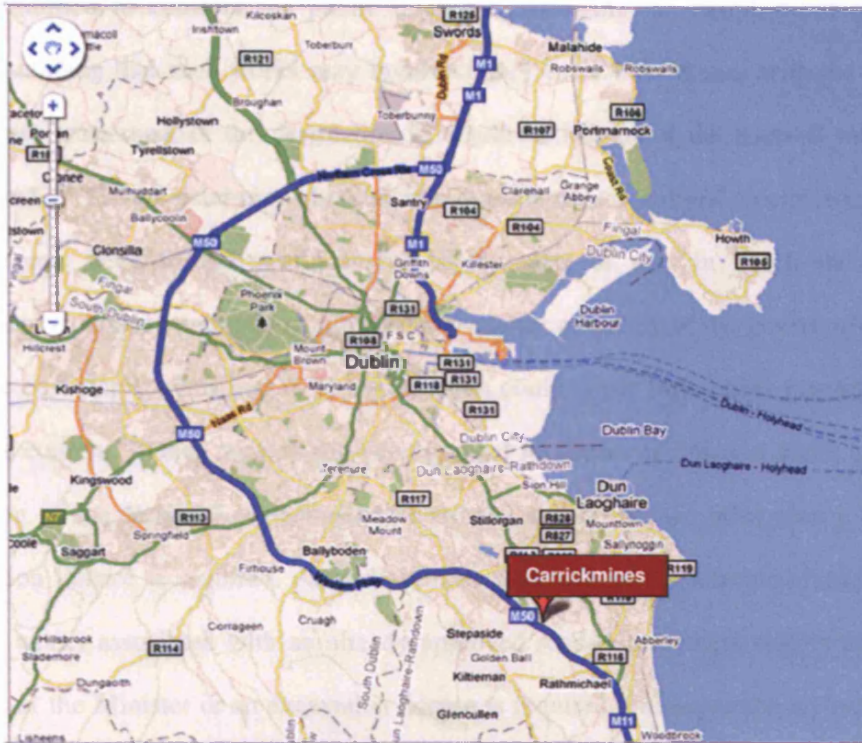


**Figure 8:** Dublin ring road M50 (source: Google Maps).

The 2004 Amendment provided the Minister for the Environment, Heritage and Local Government with discretion to grant a consent to 'carry out works' (similar to the Scheduled Monument Consent) in relation to a national monument owned or guarded by the Minister or by a local authority, or in respect of which a preservation order was in force. Carrying out works in this case includes demolishing the monument, removing it wholly or in part, and excavating. The Minister can approve such works only after seeking the obligatory consultations with the Director of the National Museum of Ireland (NMI). The period of consultation, however, cannot be longer than 14 days or exceed any other time agreed by the parties.[62] Moreover, while this authority shall be subject to such

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[62] *2004 National Monuments Act*, Section 14 (1-2).

conditions and restrictions as the Minister may determine and specify in the consent, in

exercising her/his discretion the Minister is not restricted to heritage preservation needs

but is 'entitled to consider the public interest in allowing the carrying out of works

notwithstanding that such works may involve injury to or interference with the national

monument concerned, or the destruction in whole or in part of the national monument

concerned'.[63] The Minister may also consider environmental, cultural, social, recreational

or economic benefits that would accrue to the state or area in which the national

monument is situated and may also regard any matter of policy of the government or the

possible cost implications that in her/his opinion could occur from either granting or not

granting consent.[64] Once consent has been granted no further permission under any other

provision of the *National Monuments Act* (NMA) and no licence other than a standard

excavation licence is required. According to Section 14A of the amended NMA, in the

case of works associated with an already approved road development neither additional

consent of the Minister or an excavation licence is required. Subsequently, archaeological

works are to be carried out in accordance with the directions of the Minister issued after

the consultation with the Director of the National Museum of Ireland.[65]

The 2004 amendment also regulated the situation when a national monument is

discovered during works relating to a road development. In such cases, the road authority

should report the find to the Minister. Except for actions urgently required to secure the

monument's preservation, no works, which could interfere with the monument, can be

carried out. At his discretion, the Minister should then issue directions to the road

authority ordering the preservation, renovation or restoration of the monument, its

excavation or recording and/or demolition or removal.[66] Again, before issuing directions

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[63] *Ibidem*, Section 14 (2).
[64] *Ibidem*, Section 14 (3).
[65] *Ibidem*, Section 14A (2).
[66] *2004 National Monuments Act*, Section 14A (3-4).

the Minister has to consult in writing with the Director of the NMI. Timescale for consultations and conditions of issuing directions are the same as those regulating granting a works consent mentioned in previous paragraphs. However, an additional provision was made stating that, where the Minister considers it expedient to do so in the interests of public health or safety, such directions may be issued 'without having regard to those matters which otherwise would have been considered'.

In the case of issuing directions concerning a national monument, the road authority shall also inform An Bord Pleanála (Irish Planning Appeals Board) as well as comment on any changes to the approved road development. The Board determines whether such directions result in a material alteration to the project and whether the alteration is likely to have significant adverse effects on the environment. If this is the case, an environmental impact statement (EIS) has to be prepared by the road authority.[67] Following principles set by the EU's Environmental Directives this assessment has to consider the location of the proposed development, the environmental sensitivity of geographical areas and the absorption capacity of the natural environment, with a particular attention to landscapes of historical, cultural or archaeological significance.[68]

Section 8 of the 2004 amendment included additional provisions aimed at regulating the case of the South Eastern Route – principally to solve the Carrickmines Castle 'impasse' and to deal with similar situations in future. The amendment gave the Minister for the Environment extraordinary powers to decide about the protection level of a national monument or to order its excavation and demolition and to command the completion of approved development projects. Obligatory consultations with the Director of the National Museum cannot be considered a sufficient precaution, especially when a two-week period provided for them is alarmingly short and any other statutory bodies

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[67] *Ibidem*, Section 14B.
[68] *Ibidem*, Section 22, Text of Schedule 7 to the Planning and Development Regulations 2001.

have been excluded from the decision-making process. Moreover, the Act gave the Minister liberty to interpret *ad hoc* the legal definition of a 'national monument' (see Annex 9). This issue, as well as the importance of expert evidence has subsequently become a major problem in other controversial development-related cases: the Woodstown and Hill of Tara described in the next part of this chapter.

In the last instance, the Carrickminders challenged the 2004 Amendment seeking its annulment to prevent the destruction of the castle site (Reid 2004b) on the basis that the Section 8 of the *National Monuments Act* was invalid both constitutionally and under the EU law. They also claimed that the directions granting consent to proceed with the development of the M50 issued by the Minister were void and null because of his failure to order a new environmental assessment. Finally, they sought an injunction restraining the County Council from demolishing or interfering with the national monument (the property of the Council).[69]

However, the Supreme Court unanimously upheld the constitutionality of the 2004 regulation stating that the Oireachtas (Irish Parliament) was not prohibited from enacting new laws even those weakening the protection of national monuments. Under the new legislation, the works at Carrickmines Castle were excluded from the scope of the *National Monuments Acts* and, according to Section 8, Dún Laoghaire Rathdown Co. Council as landowner did not need consent to carry out the works nor a licence. Consequently, An Bord Pleanála was precluded from ordering an additional 'mini' EIS.[70]

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[69] *Dunne v. the Minister for the Environment, Heritage and Local Government, Ireland, the Attorney General and Dún Laoghaire-Rathdown County Council.* Dominic Dunne, the plaintiff representing the heritage campaigners group demanded in his legal challenge a declaration that section 8 of the 2004 Act was invalid having regard to the provisions of the Irish constitution and that this regulation was invalid and of no legal effect due to the provisions of European law and, in particular, the provisions of Directives 85/337/EEC and 97/11/EC. Alternatively, he sought a declaration that the directions of the Minister were a nullity and of no effect and invalid by reason of the failure to comply with or to have regard to the requirements of the Directive in relation to environmental impact assessment.

[70] *Dunne v. the Minister for the Environment, Heritage and Local Government, Ireland, the Attorney General and Dún Laoghaire-Rathdown County Council.*

The Supreme Court also ruled that the Minister was empowered to act on the basis of a range of criteria, including the unspecified government policies. As no guidance was given as to how the prioritise these various criteria, the Minister was entitled to balance the benefits of archaeological preservation against the wider public interest (including social or economic benefit) which would accrue as a result of the carrying out of the road development[71] and could give such directions as he thought fit (Carolan 2006d).

Although the 2004 amendment theoretically strengthened the protection of any archaeological sites of national importance that can be unexpectedly exposed on road schemes by ordering a supplementary EIS, the overall aim of the bill was to facilitate development projects. The new legislation, viewed as an answer to the evident political requirement, has been strongly criticised not only by the 'Carrickminders' group (fig. 9) but primarily by the heritage experts describing it as 'draconian' and 'pushing the clock back to the period before the National Monuments Act, back before the 1930s', 'an act designed to facilitate roads and real estate' and finally as 'unconstitutional, unethical and un-Irish'. Since its implementation in 1930, the *National Monuments Act* has been modified a number of times, in response to the increasing understanding of the cultural heritage and the progress in conservation policies, with all amendments designed to update the heritage law and to strengthen the protection of monuments. In particular, the 1994 Act, which introduced strict conditions and procedures concerning alteration or destruction of national monuments,[72] was universally applauded as the assertion that the Wood Quay case – the destruction of unique remains of medieval Dublin in order to make space for a development project – would not be repeated. Section 8 of the 2004 NMA

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[71] *Ibidem.*

[72] 'The amendment enacted in 1994 more rigorously controlled the granting of consent to the demolition, removal, disfigurement, defacement, alteration or any manner of injury to or interference with a national monument in the ownership or guardianship of the Commissioners of Public Works or a local authority or which was the subject of a preservation order', *Dunne v. the Minister for the Environment, Heritage and Local Government, Ireland, the Attorney General and Dún Laoghaire-Rathdown County Council*, judgment of the Supreme Court delivered on the 25th of July 2006.

removed the requirement of placing an order to demolish a national monument before the Parliament for 21 sitting days implemented in 1994.[73] Moreover, it was an extraordinary regulation which brought a specific case (of the M50 route) to the most important Irish heritage act designed as a general and universal law (it has been implemented explicitly to enable the fast completion of works at the Carrickmines Castle site and finally close the Dublin ring motorway case). It was a significant step backwards, drastically reducing the number of parties involved in the decision-making process, treating heritage as a 'problem', supporting unsustainable development and representing questionable pecuniary interests (Holland 2004; O'Brien 2004a; Salafia 2004).



**Figure 9:** Satirical cartoon commenting on the M50 road development scheme (source: www.hilloftara.blogspot.com).

### 5.1.2. Woodstown

The Viking site at Woodstown was discovered in April 2003 during archaeological investigation carried out on the route of the prospective N25 in Co. Waterford (fig. 10). According to current knowledge, the site covers approximately 3.6 hectares, with around 6,000 Viking artefacts uncovered so far, a 'Viking warrior' grave (one of the most elaborately furnished weapon burials in Ireland), a number of Scandinavian imports,

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[73] Section 14 of the 1994 *National Monuments (Amendment) Act.*

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hacksilver and a large assemblage of lead weights (Downham 2004; Etchingham 2004; O'Brien 2006; Russell *et al.* 2007; Woodstown Working Group 2008). As this was an unexpected discovery, the site had not been dealt with in the EIS or considered by An Bord Pleanála in the pre-development process. Preliminary solutions suggested, *inter alia*, rolling a section of the N25 over the site as a means of the *in situ* preservation. However, in this case, the NRA itself asked the Minister for Environment to re-route the road – presumably expecting legal challenges and high cost of archaeological excavation estimated at €10 million (McDonald 2005b).

The Department of the Environment's Chief Archaeologist initially supported the *in situ* option it as 'most cost-effective' (contrary to a full-scale excavation project), even after the site was recognised as being of the international importance. It has been estimated that in the result of covering the site with thousands of tons of hardcore, gravel and concrete, sensitive cultural context would be strongly compressed and reduced by at least 35 cm (McDonald 2005b). Unsurprisingly, heritage experts criticised the idea of 'preserving' archaeological remains under a road surface as unpredictable, almost certainly leading to a severe deterioration of the site and at the same time blocking future investigation and research projects. Also local campaigners, known as the 'Save Viking Waterford Action Group' (SVWAG), lobbied for archaeological excavations at Woodstown, hoping for an opportunity to develop the site as a tourist attraction (Swift 2005). Moreover, the press revealed that the NRA and Waterford City Council had kept the discovery in Woodstown secret for 13 months and had tried to play down its importance.

In these circumstances, since the authorities were threatened with difficulties similar to those of the Carrickmines Castle case, the Chief Archaeologist, Mr Brian Duffy, withdrew his support for the controversial *in situ* preservation plan and the NRA finally

decided to re-route the road. At the beginning of 2005, the Minister for the Environment issued a preservation order for the site – now declared a national monument – an action which (according to the *2004 National Monuments Act*) was to be followed by the 'directions' and formulation of 'a long-term strategy by an expert group' (McDonald 2005b).

While the immediate threat of the road development has been dismissed and the preservation of the Woodstown site granted, launching of a large-scale excavation project faces difficulties. Woodstown have been identified as a potential longphort (a river port) occupied in 9th and 10th centuries, thus giving a rare opportunity to investigate a Viking-age settlement undisturbed by later developments (unlike the adjacent Waterford or Dublin). Although a plan for a long-term research project received support of the Heritage Council and the National Museum of Ireland (Swift 2005; Reid 2005b; O'Brien 2006), so far, only a limited study was carried out in 2007 on behalf of the Department of the Environment (Russell *et al.* 2007).[74] Securing funding is a major concern, especially in the light of the economic crisis which badly affected the Republic of Ireland.

The Woodstown case has another particularly important aspect. The difficulty in establishing the full extent of the Viking site (see Annex 9) fuelled the discussion on the management of archaeological heritage highlighting problems around designations of cultural assets and drawing attention to the clash between the traditional approach, centred on the protection of recorded monuments and sites and the modern concept of cultural landscape. While from the legal point of view, declaration of Woodstown as a national monument required mapping of the site and describing its perimeter, results of a field survey suggested that the actual remains of the Viking longphort may have extend further than the declared protection zone, possibly including the new road layout (the impact of

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[74] The 2007 project confirmed the evidence for iron and wood working (possibly including ship repair) along with some textile, silver and glass working.

which had not been assessed) as well as affecting land ownership rights in the area. The Director of the National Museum argued that the Ministry was trying to confine the site within 'artificial boundaries' and limit the discussion (McDonald 2006c). Other experts also suggested that protection of a wider historical or archaeological landscape had not been considered.[75] Like in the case of the Carrickmines Castle, conflicting interests and opinions highlighted differences in legal and archaeological interpretations and brought attention to the discussion on the definition and the extent of 'national monuments' and an 'archaeological landscape'. In both situations the legislation rather than conservation theory became a key factor in the decision-making process. However, the debate on the development of the Irish heritage management policy was yet to enter into its most important – and most controversial – stage: the M3 motorway/Hill of Tara battle.
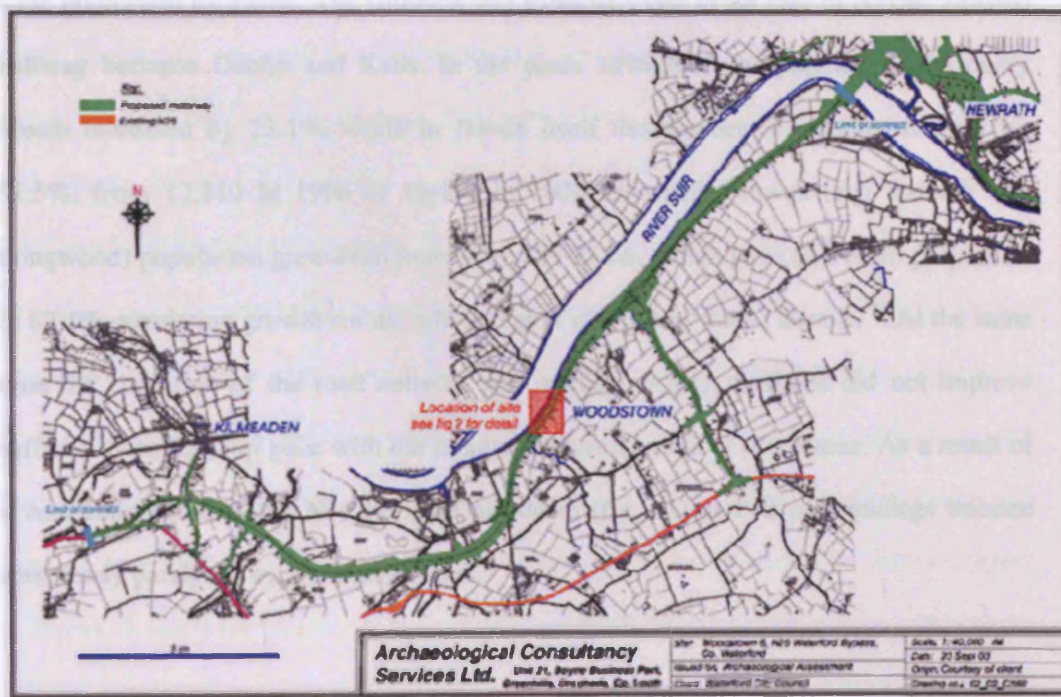


**Figure 10:** Location of the Woodstown site (source: www.nra.ie).

[75] Interim Report and Preliminary Recommendations of the Woodstown Working Group to the Minister for the Environment, May 2006.

## 5.1.3. Tara and the M3

In the last few years controversies around routing of the M3 motorway in the proximity of the Hill of Tara not only divided experts and the public opinion in the Republic of Ireland but also stimulated a wider discussion on the management of the historic environment and development-related threats to the archaeological heritage in Europe.

In its final form, the new motorway (now almost completed) leads right through the Tara/Skryne Valley in Co. Meath, at the closest point passing the Hill of Tara – possibly the most important Irish monument – at about 1.3 km to the east. The old N3 road between Dublin and Kells (which also leads through the Tara/Skryne Valley) was a two-lane road that carried double its suggested traffic capacity. Towns located on the N3 route were gridlocked by traffic. The situation was especially bad in the case of Navan, situated halfway between Dublin and Kells. In the years 1996-2002 the population of County Meath increased by 22.1%, while in Navan itself the number of inhabitants grew by 51.5%, from 12,810 in 1996 to 19,417 in 2002. In smaller towns (e.g. Ratoath and Longwood) population grew even more – by 158-258%, which gave an overall proportion of 87.1% population growth for the whole region within less than a decade. [76] At the same time the condition of the road network and public transport facilities did not improve sufficiently to keep up pace with the rapidly increasing number of citizens. As a result of severe congestion on the N3, the town of Navan (fig. 11) and its surroundings became completely paralysed by commuters' cars.

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[76] For instance, according to the *Strategic Issues Paper* prepared by the Meath Co. Council Planning Department in March 2005, the number of new houses in period 1999-2004 reached over 16.600 completed buildings and was still growing.

**Figure 11:** Navan, a fast-developing capital of County Meath, Ireland (source: author's archive).

For these reasons, a swift major overhaul of the road network became a pressing need and in 2003 An Board Pleanála approved the construction of the M3 motorway. Ahead of the planned development the NRA ordered preliminary archaeological investigations: geophysical survey and test trenching along the central line of the 60 km route. As a result, over 160 new archaeological sites were discovered along the entire M3 route (fig. 12); 38 of them were located on the 15 km long section between Dunshaughlin and Navan leading through the Tara/Skryne Valley (the so-called 'Blue corridor') (McDonald 2004b). Approximately 20 of these sites were in the close environs of the Hill of Tara designated national monument, including a circular enclosure in Baronstown (possibly a prehistoric ritual site or an Early Christian farmstead), a number of fulachta fiadh (burnt mounds) and post-medieval buildings, a pit kiln, a few prehistoric and possibly Early Christian burial sites and a series of pits and ditches which dating and function could not be identified during test excavations (fig. 13). However, the true extent of failure to assess the impact of the road scheme on the historic environment and evaluate cultural remains in the planning process has been exposed by important discoveries made by archaeologists during rescue works.

One of major surprises was a late Mesolithic and an early Neolithic settlement at Clowanstown with astonishingly well-preserved remains of a prehistoric fishing platform

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(including wattle baskets or fish traps, stone axes, stone pendants and bone pins).[77] The most important discovery, however, was made in 2007, when at Lismullin archaeologists unexpectedly exposed remains of a large timber-post structure, later identified as a large ceremonial enclosure dating from the early Iron Age (520-370 BC) (O'Connell 2007; Owen 2007 and 2008). Located in the same area were also thirteen clay-cut cereal-drying kilns and a 10th-century souterrain passage. The latter subsequently proved to incorporate a broken decorated megalith, probably taken from a ruined passage tomb. Shortly after its discovery, the Lismullin Henge – by media quickly labelled a 'royal temple' – was declared a national monument. However, due to the fragile state of archaeological remains, preservation by record and quick excavation was chosen as a preferred option (works were completed the same year; see Section 5.2).



**Figure 12:** Archaeological excavation on the M3 motorway route, Co. Meath, Ireland (source: author's archive).

In May 2005, in accordance with the Section 14A(2) of the *National Monuments Act* amended in 2004, Minister for the Environment, Mr Dick Roche, issued directions for

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[77] Information obtained directly from the project director, Mr M. Mossop, shortly after the discovery made in the end of 2006. Details were published in a 2007 post-excavation report (Mossop 2007).

the Dunshaughlin-Navan M3 section, thus giving a 'green light' to the rescue excavations. The document, regulating the conduct of archaeological works on all sites located in the Tara/Skryne Valley, specified conditions and methodology. It also required a pre-emptive submission of potential project directors' names and approval of method statements for each site to guarantee a 'better supervision of the work'. In addition, Meath Co. Council was obliged to appoint a coordinating Project Archaeologist responsible for submitting reports on the progress of works at two-week intervals. The *Directions* also included conditions related to post-excavation activities, treatment of finds and storage of site archives (e.g. the NMI had to be informed about the location of all archaeological objects and would participate in arranging for their final deposition). However, the most important direction was the provision of extra time and extension of archaeological works if any of the sites proved to be more extensive or more complex than anticipated. According to the 2004 amendment to the NMA, the document stated that if in the course of rescue excavations any site should prove to be a national monument, all works should stop and the National Monuments Section should be informed immediately.

During the consultation process, the Director of the National Museum of Ireland strongly opposed the launch of the M3 scheme, stating:

> I believe Tara and the complex or association of monuments are sacred places in its
> surroundings to be the most important of their type in Ireland, if not in Europe.
> Taken together, this group of monuments constitutes an archaeological and cultural
> landscape, which deserves the fullest and most generous archaeological protection.[78]

The NMI criticised the process of evaluation prepared by the NRA and the Department for the Environment for 'choosing to confine its deliberation to Tara on the basis of the requirements of individual sites' and knowingly ignoring the importance of

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[78] Directions to Meath County Council for archaeological works on the M3 Clonee to North of Kells (Dunshaughlin to Navan section) approved road development issued by the Minister for the Environment on the basis of Section 14A(2) National Monuments Acts 1930 to 2004.

the place as a complex thus encouraging the planning authorities to approve the proposed M3 route. The NMI also pointed out that although the *National Monuments Act* did not explicitly refer to the protection of the 'archaeological' or 'historic' landscape or to 'complexes' of sites, according to the 1987 amendment,[79] the Minister had the power to designate important complexes as 'archaeological areas'.

Admittedly, having received the NMI's opinion, the Minister for the Environment made a number of significant changes to the draft *Directions*. Overall, the improved version of the document, together with general archaeological guidelines and rules of conduct, laid out provisions compliant with international standards and, taken at face value, indicated a good practice providing for the 'proper' excavation and 'preservation by record' of sites located near Tara.[80] However, the main argument against the scheme was not concerned with the treatment of individual sites and artefacts but rather with the negative attitude towards the historic landscape of Tara/Skryne Valley criticised as a plot 'designed purely to free up for the M3 motorway' with some experts even calling it 'service archaeology' (Cooney 2005).

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[79] Section 5 of the 1987 NMA.
[80] According to comments made by a number of site directors working on the M3 project, methods and conditions of archaeological investigations outlined in the Directions as well as funding provided for works initially fulfilled their expectations in relation to professional standards.
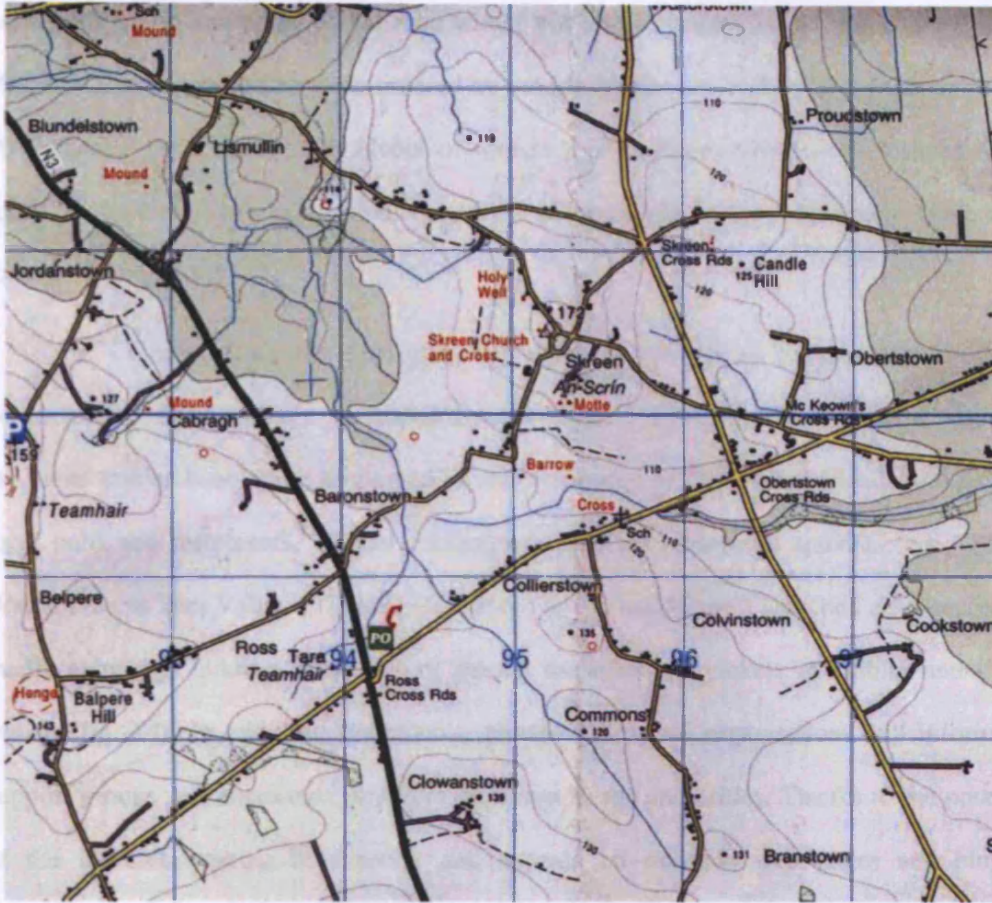
**Figure 13:** Hill of Tara environs (source: Ordinance Survey map).

While the Department for the Environment, the NRA and the local county council strongly supported the project as the most reasonable solution leading to the significant improvement of the road network and the well-being of thousands of commuters, the heritage campaigners, archaeologists and the Museum of Ireland opposed the idea as barbaric, ill-designed and damaging to the valuable historic landscape. A national survey commissioned by Tara campaigners revealed that 70% of respondents wanted re-routing of the controversial M3 motorway away from the Hill of Tara (Gartland 2005). This was challenged by the authorities' claim that the chosen location for the motorway had a tremendous support: almost 90% of Co. Meath's 135,000 citizens were supposed to be

saying 'litigation and delay of the road would not be undertaken in our name' (O'Brien

2005). According to another poll, ordered by the Meath County's Chamber of Commerce,

80% of local residents were in favour of – or at least did not oppose – the selected M3

route. However, at the same time, only 37% of respondents could correctly name its

location (Heath 2005).

In County Meath the M3 motorway scheme became an important (and very

controversial) issue, widely discussed by the local community. It evoked so strong

emotions that archaeologists employed on the motorway project were banned from some

local pubs and restaurants.[81] Local campaigners and environmental activists (e.g. 'Tara

Watch', 'Save Tara Valley', 'Tuatha De Danna' and 'TaraSkryne') launched a widespread

media campaign holding a number of protest marches and pickets in Dublin and Co.

Meath (fig. 14). In addition, individuals, non-governmental organisations and informal

support groups sent thousands of letters of protest to the authorities. Thanks to the power

of the Internet, posting information and appeals on multiple web pages and blogs

dedicated to the 'Tara case', the protest campaign gained an international interest and

attracted millions of supporters all over the world. Establishing the 'Artists for Tara'

group, activists managed to involve a number of Irish and international celebrities

including Bono, Charlize Theron and Stuart Townsend.

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[81] Author's personal experience.

**Figure 14:** Protest marches against the location of the M3 motorway in the Hill of Tara environs, Dublin (source: Indymedia Ireland, http://ireland.indymedia.org/article/77031 23/11/2006, 14.12.2006) and Navan, Co. Meath (source: TaraWatch, http://tarawatch.org/?cat=1523/11/2006, 14.12.2006).

The dispute (additionally heated up by the media) involved patriotic references, emotional arguments, catch-phrases and, in some cases, rather surprising rhetoric. When the European Association of Archaeologists (EAA) and a group of specialists from British universities and archaeological research bodies criticised the M3 project calling for the 'rethinking the approach to the archaeology of the Hill of Tara landscape',[82] activists pointed out an 'irony' of the case: that 'foreigners' were demanding protection of the greatest Irish national symbol from a threat created by the Irish people themselves (McDonald 2006b). The controversial case has also been depicted as a battle between the Irish mystical, Celtic past and the materialistic modern society. The media came up with attention-gripping titles, for example: 'Next Exit: Food, Gas and the Burial Place of Irish Kings' (*NYT*), 'Next left: high kings, pagan overthrow' (*Environment*), 'In Ireland, Commuters vs. Kings' (*Washington Post*), 'Road threatens seat of Kings' (BBC), or 'Land of High Kings is battlefield for fight between heritage and growth' (*The Guardian*) (Lavery 2005; Heath 2005; Frankel 2005; BBC News 2004; Bowcott 2006). Proponents of

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[82] Letter to the *Irish Times* from 05.04.2005.

the M3 were named 'a bunch of philistines that wanted to dig up Ireland's spiritual heart' (Burns and Oakley 2005). The campaigners spoke of 'Tara's desecration' and 'the Celtic Tiger turning its back on its Celtic past' (Lavery 2005), compared the M3 to putting a motorway through the Pyramids (Buckley 2003) and claimed that 'the only people who would benefit from the construction of the M3 were the toll road operators and property speculators' (Gartland 2005) (figures 15 and 18). The NRA, on the other hand, defended its decision saying: 'we have to live in the real world. There are 120.000 archaeological monuments in Ireland and hundreds of thousands more beneath the surface. It's impossible to stick a spade in the ground without hitting something of value' (Frankel 2005). The spokesman for the NRA summarised the Authority's approach stating that 'history and culture have a place, but I don't accept that they should necessarily dictate planning decisions. You can't sacrifice the current population en masse for archaeology alone' (Lavery 2005).



**Figure 15:** Satirical picture referring to the Minister for the Environment, Dick Roche (source: www.hilloftara.info).

In addition, the argument over Tara acquired religious undertones, sparking a new wave of the neo-pagan, Celtic revival. The campaigners joined their forces with spiritual groups organising 'solidarity vigils' and celebrating pagan festivals on the hilltop, with some protesters even establishing a permanent 'solidarity camp' which for several months has been a major trouble to the authorities (McDonald 2006b; fig. 16). The Catholic Church in Ireland also joined the discussion expressing uneasiness about the careless attitude towards the degradation of the environment and the lack of long-term perspective in transport development planning and accusing authorities of a total disrespect for the opponents to the M3 project, avoiding dialogue with the general public and showing disregard for public concerns (McDonald 2004b; Burns and Oakley 2005).



**Figure 16:** Tara Solidarity Vigil – Flame Procession, Co. Meath, Ireland (source: Indymedia Ireland, http://ireland.indymedia.org/article/77689, 23.11.2006).

Both parties did not hesitate to use *argumentum ad personam* (figures 15 and 17). For example, the campaigners accused the Chief Archaeologist in the National Monuments Section of the Department of the Environment, Heritage and Local Government of a lack of knowledge and understanding of modern archaeological issues

and insufficient qualifications, going even as far as questioning the fairness of his nomination to the post.[83]



**Figure 17:** Satirical comment on the Hill of Tara/M3 motorway case (source: www.hilloftara.blogspot.com, 23.11.2006).

The protest against the proposed route of the M3 motorway reached its climax when the environmental campaigner Vincent Salafia took legal actions against the Minister for Environment, Meath Co. Council, the Attorney General and the NRA. Salafia challenged the constitutionality of the 2004 amendment to the *National Monuments Act,* a regulation seen as unlawful and intended 'to tilt the balance in favour of infrastructural development as against heritage protection' (Irish Times 2006a) arguing that some of its provisions undermined the Irish State's responsibility to protect national monuments. Consequently, Salafia questioned the legitimacy of the archaeological *Directions* issued for the Navan-Dunshaughlin section of the M3 (Carolan 2006a). Moreover, according to Salafia, the area requiring protection and conservation was much larger than the established zone of the Hill of Tara registered monument. For that reason, he demanded extending the protected area and asked the court to make a declaration that the whole Tara/Skryne valley 'constituted a national monument and a complex or series of monuments'.

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[83] Admittedly, Mr Duffy did embarrass himself in the experts' eyes by claiming that 'the M3 motorway would be a monument of major significance in the future' (McDonald 2005d) and suggesting that the Viking site in Woodstown could be preserved *in situ* by rolling the N25 Waterford bypass over it.
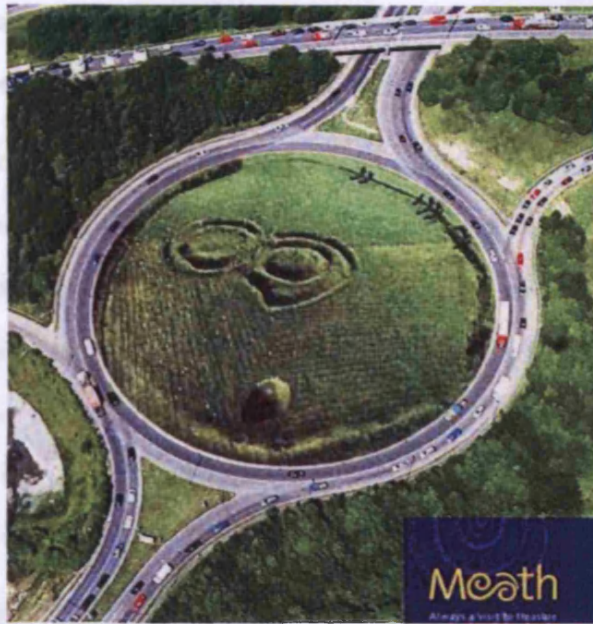
**Figure 18:** Satirical comment on the Hill of Tara/M3 motorway case (source: www.indymedia.ie/article/79242#attachment26765, 21.02.2007).

As in the case of the Carrickmines Castle, work on the motorway scheme had to be brought to a halt until the court case was finished. The NRA blamed the environmental campaigners and Salafia's legal actions for significant delays (allegedly costing Irish taxpayers €1 million a week and exceeding a total amount of €70 million), as well as for the number of fatal car crashes in the Tara surroundings attributable to the unmodernised road (Bowcott 2006; O'Brien 2006). Arguably, if the information on both archaeological areas had been properly interpreted and assessed in the planning stage, legal challenges and delays would have not occurred (see Annex 10).

In its final judgement delivered in March 2006, the High Court dismissed Salafia's lawsuit on all grounds upholding the 2004 Amendment. The court ruled that the Oireachtas was 'fully entitled to regulate land and road developments in the interests of the common good, even when it requires interference with property rights and national monuments' and that the Minister for the Environment had properly and lawfully issued his *Directions* (Carolan 2006b and 2006c). The declaration that 'the greater Tara

landscape' national monument was denied on grounds of insufficient evidence and inconclusive expert advice.

This decision came shortly after the negative verdict in the Carrickmines Castle case and was a hard blow to the heritage and environmental campaigners. Dismissal of plaints in both court cases significantly limited the scope of any future actions and confirmed changes to the heritage law. Moreover, since representing the activist group Salafia acted before courts as an individual, he was now charged with enormous legal costs (€600,000 in the Tara case alone).



**Figure 19:** Historic landscape of County Meath, Ireland (source: author's archive).

Controversies around the three cases discussed in this chapter (Carrickmines, Woodstown and Tara), although focused primarily on 'Irish' issues, had also important repercussions for a wider debate on the protection of cultural heritage in Europe. Firstly, they illustrate a strong division within the archaeological community itself, based on different approaches to heritage management, different research and commercial interests ('academia' *versus* 'contract' sector) and an ambiguous web of financial, professional and personal relationships (Ronayne 2008).

Involvement of various activists, politicians and the general public placed all three cases in a broader social and political context. Seeking support in their court battles, the

'Carrickminders' and 'Tara' activists framed their arguments around heritage values and historic importance of the area, citizens' well-being and even religious and spiritual values. They succeeded in gathering a wide response in Ireland as well as abroad and were helped by heritage professionals, academics, journalists, artists and politicians from Europe and North America. On a number of occasions the activists also forged alliances with political parties. The Greens openly supported the 'Tara campaign' calling the M3 project 'an act of sacrilege' and criticising the 'flawed' 2004 heritage legislation (McDonald 2004a and 2004e; Reid 2004c). While (rather unsurprisingly) the political support for heritage issues was largely opportunistic, usually lasting until the nearest election day (Leonard 2006; Taylor and Flynn 2008), the co-operation between heritage and environmental campaigners proved to be much more substantial and long-lasting (see Section 9.9).

At the same time the Irish case clearly exposed the weakness of 'active citizenship' and 'expert control' mechanisms – concepts strongly promoted by the EU and the Council of Europe (see Section 8.4.2). While the controversies around cultural heritage issues resulted in a number of nation-wide campaigns and stimulated an international debate, in practical terms the activists, non-governmental organisations and international 'expert bodies' remained toothless, having no power to take any legal action against questionable planning decisions. In the case of Tara, the European Association of Archaeologists (EAA) challenged by archaeologists representing the NRA and the Department of the Environment withdrew its negative opinion on the M3 project, and subsequently apologised saying that it 'had strayed into difficult territory' (McDonald 2005c).

Finally, cases discussed in this chapter question the status of archaeological considerations in the planning process, especially in relation to managing cultural landscapes. The latter issue poses a particularly difficult problem, since establishing the

full extent of a historic ('cultural', 'ancient', 'ritual') landscape is very hard (or almost impossible). This has major consequences for the practice of heritage management: during the Tara debate, the campaigners, supported by heritage experts, fought for the protection of the Hill and associated monuments and sacred spaces as an important, sensitive 'archaeological and cultural landscape'. However, that claim was successfully challenged by the authorities because the exact nature and extent of the Tara landscape/complex had not been defined from a legal and administrative point of view. As a result, in the planning process landscape implications of the proposed M3 were not given appropriate consideration (see Annexes 10 and 11).

Overall, it seems that at least in the case of the Republic of Ireland, the declared commitment to managing archaeological heritage through preservation *in situ* applies primarily to visible (and usually designated) monuments. As the number of sites in state ownership or guardianship is relatively small, most recorded monuments as well as the majority of unrecorded archaeological sites remain in the hands of private owners. This situation, along with the 'reform' of national heritage service[84] and legislation clearly prone to political influence has led to the point where means of legal actions are rather limited. In addition, interpretation of the *in situ* preservation policy as a 'do-nothing' approach (Cooney 2004) has led to a number of misunderstandings such as the proposal to protect the Woodstown Viking site by rolling the motorway over it.

According to the Heritage Council, around 10% of all national monuments in Ireland have been lost between 1994 and 2004 (Irish Times 2004). It is certain that the

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[84] Dúchas, the Heritage Service of the Irish Government, was disbanded after the reorganisation of the central administration in 2003. Tasks of the former Heritage Service relating to archaeology were ceded to the National Monuments Service, itself a part of the Department of the Environment, Heritage and Local Government. Since the Department, which took over the responsibility for the care of the endangered archaeological heritage, is actively involved in the planning process, it was a very controversial decision seen as a step towards facilitating development projects and getting rid of the political 'hot potato' (McDonald 2003a and 2003b) – it was believed that over the years Dúchas' decisions upset some powerful interests (Irish Times 2003).

process of archaeological heritage degradation accelerates as a result of the dynamic economic growth of the country, leading to an increase in the number of large development projects and regional and national road schemes. It may be argued that the legal requirement for carrying out archaeological investigation in advance of development on all sites will at least provide for their preservation 'by record' where the protection *in situ* is not possible. However, another statistic recorded by Dúchas in 2004 revealed an alarming backlog in processing finds and writing up post-excavation reports. It has been estimated that out of the total number of approximately 6,700 excavations licensed between 1997 and 2002, reports had not been filed in 1,514 cases (more than 20%). Furthermore, there was not sufficient supervision over the past reports to ensure that they met adequate standards and contained all the relevant information. According to the Heritage Council, Dúchas itself had a backlog of 250,000 unprocessed artefacts, some of which had been stored for over twenty years. The National Museum has been estimated to hold over a million unconserved acquisitions (Hickey 2004a). These numbers clearly demonstrate that the Irish heritage service was not coping well with the increased volume of work resulting from the rapid development and change of land-use.

In these circumstances, assurances of the NRA and the Department of Environment that in cases such as Carrickmines Castle or Tara 'preservation by record' is the best possible option and 'a responsible and balanced approach to the complex undertaking of building our future while protecting our past' (Deevy 2004) are somewhat problematic. While, according to the NRA, rescue works on the M3 would 'provide tangible benefits to the country while at the same time bringing to light knowledge and artefacts that might otherwise have remained forgotten', the Heritage Council (2005a) was concerned with the lack of a detailed and coherent (if any) research framework for the Tara/Skryne project.

## 5.2. Application of the European Landscape Convention

The *European Landscape Convention* defines the landscape as an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors (art. 1). Landscapes are an essential component of people's surroundings, an expression of the diversity of shared cultural and natural heritage, and as a foundation of peoples' identity (art. 5). They contribute to the formation of local cultures and consolidation of the European identity and are a 'basic component of the European natural and cultural heritage'. Thus it may be said that the Convention has verbalised and incorporated to the legal framework a statement that, for many various reasons, often personal, landscapes – or places – have a special meaning for people and are important part of the quality of life and well-being and therefore deserve special care and legal protection. Consequently, 'subjective' views and opinions should be recognised in the planning system and landscape management: the Convention thus promotes the 'bottom-up' approach – an open dialogue with citizens and their right to decide (on every level – from the European to the local), which landscapes are most valued and how they should be managed (Fairclough 2002c, p. 5; Dury 2002, p. 13).

Focusing on human-made, 'cultural', aspects of the (pan-) European landscape the Convention shifted away from the dominating interest in natural ecosystems.[85] The landscape is not equal with 'environment' but is rather an interpretation of the natural environment and human-made setting, a creation of peoples' imagination and subject to emotions. Although the environment can exist without the human aspect, the landscape can be perceived only through the human activity (Ermischer 2003, p. 175). Therefore, the concept of cultural landscape unites natural and human factors and reflects the interactions

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[85] E.g. *Council of Europe's Pan-European Biological and Landscape Diversity Strategy* (1995) or the Natura 2000 Network.

between people and their natural environment over space and time (Fairclough 2002b, p. 31).

Although the *European Landscape Convention* does not refer directly to archaeology, by putting forward the safeguarding and the management of 'entire' landscapes rather than specific places, the treaty introduced a new legal foundation for the protection of archaeological heritage, moving away from the idea of protecting individual sites towards investigation and conservation of cultural assets within their settings and within the wider landscape (Fairclough 2002b, p. 27). The Convention also stresses the need for an interdisciplinary approach and co-operation between various experts in order to comprehensively understand and value the landscape. Archaeologists, with their understanding of the landscape transformation and expert value judgements, should play an active part guiding the course of change in order to provide for sustainable development (Fairclough 2002a, p. 4 and 2002b, p. 35). Ratification of the *European Landscape Convention* (in 2002) obliged the Irish government to establish and implement appropriate landscape policies in order to provide for the protection, and management of the landscape and to integrate landscape into planning, cultural, environmental, agricultural, social and economic policies, as well as into any other policies with a possible (direct or indirect) impact (e.g. transport).[86]

The debate around shortcomings of the management of archaeological heritage in Ireland carries on – on both national and international level. Salafia's 2006 fiasco before the High Court (see Section 5.1.3) was not the last word in the M3 legal battle. In years following the ruling against the concept of 'Tara historic landscape', the campaigners continued to stage organised protests and looked for alternative ways of stopping the road development. While the Department of Transport was completing the M3 project, the

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[86] The Council of Europe *Explanatory report* to the European Landscape Convention.

Department of the Environment launched a public consultation to review Irish Tentative List of World Heritage Sites to include, *inter alia*, the Hill of Tara. Activists responded with their own petition pleading for the inscription of the 'Hill of Tara archaeological complex/ cultural and natural landscape' onto the World Heritage List but trying to pressurise UNESCO and ICOMOS to take a stand by asking for the listing only on the condition that the M3 was re-routed away from the Hill so as not to destroy the integrity of the site and the landscape.

Campaigners' new legal approach focused on challenging procedures and decisions associated with the EU environmental regulations (Carolan 2006b; Irish Times 2006b). Article 226 of the European Treaty gives the European Commission powers to take legal action against a member state which does not respect its obligations. Indeed, in 2007, the Commission decided to act and referred Ireland to the European Court of Justice (ECJ) in a case concerning alleged breaches of the Community legislation on environmental impact assessments. The EU Environment Commissioner expressed disappointment with Irish legislation used to implement the EIA Directive, deficient provisions governing the approval of large industrial projects and regulations related to the removal of important archaeological sites. In particular, the Commissioner questioned Ireland's approach to decisions involving the removal of historic structures and archaeological monuments' (European Commission 2007). In its final warning (issued in June 2007), the European Commission criticised the hasty removal of a Lismullin national monument and the apparent lack of an appropriate impact assessment (because the site was identified in 2007, its significance could not have been considered in the original 2003 assessment of the motorway project).[87]

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[87] The Commission was particularly concerned about the way Ireland interpreted the Directive as not applying to certain separate decisions involving the removal of structures and monuments in order to facilitate infrastructure and other major project types. Violations of the Community regulations included

In the meantime, the Hill of Tara featured on the 2008-9 List of 100 Most Endangered Sites published by the World Monuments Fund and the *Smithsonian* magazine list of '15 must-see endangered culture sites which might be gone tomorrow' (Bensen 2009). In September 2009, the NRA reported that the contentious M3 was almost complete with the opening scheduled for mid-spring 2010 (Kelly 2009b). In this context, the proposal of the new Minister for the Environment and Meath County Council to designate the Tara-Skryne Valley as a Special Conservation Area to 'protect the archaeological and historic landscape and make it difficult for any construction to take place within the zone' and to increase the protection for national monuments through legislative changes (Kelly 2009a) seem a little overdue.



**Figure 20:** The Tara/Skryne Valley cultural landscape. View of the valley from the Hill of Tara (source: author's archive).

One of the main tasks for landscape management is to contribute to a better understanding of the past and present landscapes, processes leading to their transformations and consequences of changing the environment. Another important issue is the democratisation of the process of managing the landscape. This, according to the

decisions and ministerial directions issued in relation to the excavation and preservation by record based on the 2004 Amendment to the *National Monuments Act* thus putting the legislation itself into question.

Council of Europe, is an important part of building the civic society. The *European Landscape Convention* is the embodiment of this policy presupposing that people who are given an active role in decision-making on the landscape and more influence on their surroundings are more likely to identify themselves with the areas where they spend their working and leisure time. This consequently leads to the reinforcement of the local and regional identity as well as to individual, social and cultural fulfilment. The community strongly connected with their living space feels more responsible for its preservation and promotion of sustainable development (Nord Paulsson, 2002, p. 148).

Therefore, the preamble to the Convention underlines the importance of public consultations and consideration of the views and wishes of local communities or any other groups of interests into the planning process describing the treaty as complimentary the *European Charter of Local Self-Government*[88] – a key statement on active citizenship, foundations of the democratic regime and the right of the EU citizens to participate in the conduct of public affairs. To large extent, the implementation of the *European Landscape Convention* was triggered by a growing number of protests against the alteration of the landscape by technical and economic developments without public consultations. In this spirit, the Convention requires signatory countries to open up their decision-making processes and planning procedures and improve public participation to include personal, individual and subjective perceptions and values.

However, there are some fundamental questions: how do we decide what is worth preserving for the future, whose benefit should be considered as prevailing and who should make such decisions – inhabitants and local communities, experts, developers and market forces or politicians? According to *the European Landscape Convention*, Environmental Directives and Historic Landscape Characterisation programmes, all

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[88] Signed in Strasbourg on 15 October 1985.

decisions ought to be made in agreement, balancing different opinions and groups of interests (Nord Paulsson 2002, p. 147). Yet, as I tried to demonstrate in this chapter, practical application of this principle is very problematic: cultural heritage issues are often 'side-stepped' and treated far less rigorously than other aspects of the EIA (Teller and Bond 2002, Bond *et al.* 2004; Therivel 2009), the public participation is restricted or only declaratory and the non-professional stakeholders' views and values tend to be downplayed in the planning process. In consequence, although the heritage management is carried out on behalf of the public and for the communities' benefit (the 'public heritage' being often the point of reference), ironically, the public is still largely precluded from having a tangible input in decision making (Randolph 2004; Waterton 2005; Reed 2008) (see Annex 11 and Chapter 9 for further discussion). Moreover, it seems that even archaeologists themselves have not quite identified their place in the landscape management and planning process. For some, the new approach seems too radical, too interdisciplinary and indeed, too far from archaeology (Fairclough 2002b; Ermischer 2002).

In my opinion, in the case of the Irish debate, to some extent archaeologists and other heritage experts were at fault, failing to adopt a consistent approach and a provide a clear statement, thus causing further confusion of the general public and earning the distrust of the developers. Moreover, the position of archaeologists as reliable experts and equal participants of the planning process has been seriously undermined.

## 5.3. Summary

Recent cases in the Republic of Ireland represent the multiple risks resulting from the progressing urbanisation and industrialisation, and the dilemmas associated with the concept of sustainable development, including those of reconciling heritage protection with economic growth and needs of local communities. The three case studies discussed in

this chapter provided a framework for exploring the question of the status of archaeological considerations in the planning process, in particular in relation to the management of cultural landscapes and the actual impact of the *European Landscape Convention* on national heritage regulations and decision making.

Analysis of the Irish case clearly demonstrates the weakness of some major concepts and mechanisms advocated by the EU and the Council of Europe, such as Environmental Impact Assessments and 'expert control' of the planning process, together with a disregard for social dialogue and public consultations. It also highlights the mistakes of archaeologists and other heritage experts, especially their failure to adopt a consistent approach to heritage landscape management issues, thus causing further confusion on the part of both public institutions and the general public. As a result, the inability to rise above personal interests, the lack of a coherent position and of a research-based discussion, have seriously undermined the position of archaeologists as reliable experts and equal participants of the planning process.

At the same time, while noticing the failure of the Irish authorities to engage with the idea of 'active citizenship' and 'cultural rights', the considerable importance of archaeological heritage and cultural landscapes to local communities and ordinary citizens is clearly demonstrated by the substantial force behind 'grassroots' movements and heritage campaigns. This introduces a discussion of possible co-operation between heritage and environmental experts, which is explored in greater detail in Chapter 9.

# 6. Chapter Six: 'Forward planning'. Part 1: The influence of the British archaeological heritage management system

## 6.1. Archaeology and planning: origins of the contract-tender system in the UK

At present, with nearly forty countries subscribing to the Valetta Convention and with all EU member states implementing Environmental Impact Assessment legislation, integration of evaluation, excavation and recording of archaeological deposits threatened by development is one of core principles of cultural heritage management. At the forefront of the transition leading to the organisation of rescue works based on the 'polluter pays' principle, forging links with the planning process and the growth of the contractual system was British archaeology. Its influence extended beyond national boundaries and in consequence, in the last three decades, the system created in the UK had, and still has, a significant impact on the shape of development-related heritage management in Europe. For that reason, in this chapter I would like to focus on a number of key issues currently discussed in the UK, analyse positive and negative aspects of introducing a planning-related, commercialised heritage management approach, as well as look at recent policy shifts and a proposed change of legislation in England and Wales.

The origins of rescue archaeology in Britain date back to WWII, notably to excavations associated with construction of large-scale military installations and redevelopments of demolished historic towns in the 1950s and 1960s (Gerrard 2003; Everill 2007). The rapid destruction of archaeological remains was a growing concern in the post-war period: as the resources and capacity of British archaeologists to 'salvage information' decreased proportionally to the growing number of archaeological sites threatened by construction and infrastructure projects, the need to address the problem

became an urgent matter. There were too few trained archaeologists and even with the support of local societies and volunteers it was not possible to keep up with the pace of destruction. The so-called 'Walsh Report' (1969) suggested that developers should pay for the preservation by record necessitated by their destructive actions and proposed the creation of 'mobile teams of archaeologists' to undertake rescue excavations. In 1971, the British Archaeological Trust RESCUE was established, quickly becoming a prominent lobby for the heritage protection reform. Also, in the course of the 1970s, archaeological remains started to be perceived as a non-renewable resource that ought to be preserved rather than exploited (Wainwright 2000, pp. 914-5; Everill 2007, p. 120). The advance of new approaches to cultural environment, supported by a number of vigorous campaigns to save the British heritage threatened by the rapid urbanisation and intensive development of infrastructure, resulted in the publication of the *Ancient Monuments and Archaeological Areas Act* in 1979.

In the early 1980s, the governmental policy in the UK was also influenced by the European Community's view that developers ought to be held responsible for the effects of construction projects. One of the key elements was the adoption of the 'polluter pays' principle expressing the view that the tax-payers should not bear the costs of damage to the environment caused by companies or individuals gaining profit from their undertakings – an approach that has been transferred to archaeology and conservation (Lawson 1993, p. 151).

These gradual changes of trends and approaches to cultural heritage management, largely influenced by the developments in the environmental field, reached a climax in the mid-1980s, when the Rose Theatre case (see Annex 12) and other examples of controversial development projects created a growing heritage awareness and interest in archaeology. The consequent public debate created a favourable atmosphere for reform around development-threatened archaeology (Wainwright 2000, p. 925) and resulted in

launching of the *Planning Policy Guidance 16: Archaeology and Planning* (PPG16) on 21

November 1990 as a part of the *Town and Country Planning Act*.

### 6.1.1. 'A watershed': implementation of the PPG16

The publication of the PPG16 in England became an important watershed, 'nothing less

than a fundamental re-shaping of the structure of the profession, not just in Britain but in

the rest of Europe' (Wainwright 2000, p. 929). One of key concepts enshrined in the new

Planning Policy Guidance was the concept of archaeological remains as 'a finite and non-

renewable resource' (Cleere 1989, Darvill 1993). Another important change was the

replacement of the traditional, responsive 'rescue archaeology' with a more modern

proactive approach embedded in the planning process (Darvill and Russell 2002, p. 3).

While the *Ancient Monuments and Archaeological Areas Act* of 1979 established a solid

framework for safeguarding and conservation of clearly identified and mapped 'nationally

important' monuments and sites, it did not provide an adequate protection for

archaeological deposits located outside scheduled monuments and conservation areas. The

PPG16 (although a non-statutory guidance) complemented the Ancient Monuments

legislation by making archaeology a part of the planning process and development control

and placing emphasis on mitigation through redesigning projects (relocation, exclusion of

archaeologically sensitive zones, change of architectural design, etc.) or preservation by

record (financing evaluation and excavation of archaeological remains). Thus the new

system shifted the balance from protecting isolated designated sites and salvaging

information on threatened remains towards the consideration of archaeological issues and

all potential archaeological resources in the early stages of the decision-making process

*prior* to the development.

The reduction of the central government's and public agencies' input in heritage

management and the devolution of responsibilities to the local authorities and planners,

the switch from core-funding to initiative-funding following the acceptance of the 'polluter pays' principle and the consequent externalisation of archaeological services (Darvill and Russell 2002, p. 51) was not unique to the heritage field but was a part of a wider attempt to restructure the public sector at the time. In consequence, these changes have led to the opening of the heritage sector to commercial archaeological operators and the emergence of competitive tendering for projects, a move that has revolutionised the archaeological profession in the UK. Just ten years after the PPG16 implementation, work within the development-led sector accounted for nearly 90% of fieldwork in England, with only about 11% of all investigations regarded as research-orientated (Darvill and Russell 2002).

In addition, PPG16 was coupled with the attempts to improve the quality of fieldwork project management. New ideas were developed by English Heritage and published as the *Management of Archaeological Projects* (MAP 1990) and its later revised version known as MAP2 (1991).[89] MAP2, initially intended as EH's internal guidance, 'brought about a revolution in the concept, planning and management of archaeological projects of all kinds' (Davis 2004, p. 225). Adopted by developers, contractors and local authorities, it subsequently became a generally accepted standard in England (Chadwick 2000; Wainwright 2000). Interestingly, many British or UK-based archaeologists also implement principles of MAP2 while managing projects abroad (e.g. Italy or Jordan).[90]

In 1990, the structure of British archaeology was fundamentally changed and since then the system created by the implementation of PPG16 and PPG15 *Planning and the Historic Environment* has been a subject of scrutiny, fierce debate and – quite often – a strong critique. By some archaeologists it is perceived as a 'robust pillar' (alongside the Ancient Monuments legislation and the independent sector including museums,

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[89] Replaced in 2006 by *Management of Research Projects in the Historic Environment* (MoRPHE).
[90] Information based on experience of colleagues working abroad for or in co-operation with British academic and heritage institutions (personal comments).

universities and amateur archaeologists) of the preservation and management of archaeological remains, consolidating the best practice in the UK with changes in international conservation theory and standards (Darvill and Russell 2002, p. 3). The PPGs 16/15 regime was also praised for establishing a useful framework for dealing with archaeology on development projects (Jackson 2002), bringing money into archaeology and providing a 'system that worked for planners and developers' (Pickering 2002) and forcing archaeology to develop as a 'proper profession' (Samuels 2002) represented by an expert body – the Institute of Field Archaeologists (IFA).

At the same time, the reformed system, even at an early stage, was subject to strong criticism. Some commentators were concerned with 'entrusting the decision-making responsibilities to people with relatively little expertise' and encouraging a reactive site by site approach (Jackson 2002), questioned the quality of development-led archaeological investigations, emphasised negative changes to the archaeological profession (e.g. fragmentation of archaeological knowledge and loss of local experience), and predicted problems with the publication of investigation results (Howe 1995; Morris 1998a; Denison 1999). Others criticised it for not communicating easily archaeology to 'those people who wanted to know about it' (Pickering 2002), especially for failing to relate to the local communities (Whytehead 2002) and leading to a gradual exclusion of amateurs and the general public (Graham 1992).

It has been two decades since the publication of the *Planning Policy Guidance: Archaeology and Planning* – enough time to spot major benefits and pitfalls of the reform. Since the system created in 1990 had far-reaching consequences to the cultural heritage management, not just in the case of British archaeology but going beyond the United Kingdom, it is important to consider how successfully it achieved its objectives.

## 6.1.2. The impact of the PPG16 regime on archaeology in the UK: gains and losses

The debate on the planning-related archaeology and criticism revolve around a number of key issues: the growing rift between the 'research' and 'rescue' and insufficient exploitation of excavation results (e.g. Morris 1997; Morris 1998a; Chadwick 2000; Lawson 2001), inadequate resources for analysis, storage and publication of records (Chadwick 2000; Cumberpatch 2000; Wainwright 2000), poor quality of fieldwork (Chadwick 2000; Cumberpatch and Blinkhorn 2001), alienation of non-professionals (Chadwick 2000; Cumberpatch 2000; Wainwright 2000), and negative impacts on the profession itself (Denison 1999; Morris 1999; Chadwick 2000; Cumberpatch 2000; Everill 2007; Aitchinson 2009a and 2009b).

The discussion on the influence of the PPG16 regime on British archaeology in the last two decades should start by making a distinction between development-led (or 'rescue') archaeology and a contract-tender (commercial) system. While interrelated, these concepts quite often get confused, blended or wrongly used as interchangeable. As mentioned in previous paragraphs, the idea of rescue works has gradually been introduced to archaeological and conservation theory under the influence of damages to cultural assets caused during WWII and in the subsequent period of intensive reconstruction and industrialisation. Implementation of the PPG16, which insisted on preservation or recording archaeological remains and discoveries threatened by development plans, was a major regulatory step and a breakthrough in heritage management practice. Effectively, the PPG16 sanctioned the incorporation of rescue archaeology into the planning process. As a result, in England, the overall number of archaeological investigations has trebled over a decade with twelve times more post-determination investigations relating to controlled development carried out in 1999 than in 1990 (Darvill and Russell 2002, p. 42).

Making developers responsible for the damage they cause to cultural remains and obliging them to cover the costs of planning-related activities was in line with the 'polluter pays' principle developed earlier in the environmental sector and was a way of securing a long-term funding scheme. At the same time, PPG16 also enabled developers to seek advice and commission archaeological assessments and necessary evaluations from 'a professionally qualified archaeological organisation or consultant'. In a situation when independent operators were authorised to perform heritage management tasks, the commercialisation of services and the development of a contract-tender system were a consequence of a free market economy.

However, there is a growing disenchantment within professional archaeology in the UK leading to a notion that changes triggered by the PPG16 at some point have 'slightly gone astray'. While the introduction of competitiveness to the contract archaeology contributed to the increase of efficiency and better organisation of fieldwork (Lawson 2001), the cost of this transformation was the danger of reducing development-led archaeology to 'heritage decontamination' or a 'heritage clean-up service' (Morris 1998b; Chadwick 2000) and reducing the practice of archaeology to 'a series of technical mechanisms for facilitating the process of capital accumulation' (Cumberpatch and Blinkhorn 2001, p. 41).

However, the commercialisation of development-related archaeological works is not an unavoidable result of integrating heritage considerations with the planning process. Neither should it be treated as a scapegoat. In fact, apart from the UK, only a few countries adopted such a liberal model, for instance the USA, the Republic of Ireland and Spain, with several tolerating only some degree of commercialisation (e.g. Poland, the Czech Republic, Slovakia) and others retaining archaeological heritage management as an exclusive state's prerogative (e.g. Greece, Italy, France) (see Annex 14). Yet, it would be extremely hard to find a country in Europe, regardless of the attitude towards contract

archaeology, which does not have any problems related to archaeological heritage management.

### 6.1.3. 'Research-less' archaeology and the loss of 'local knowledge'

One of significant innovations brought by the implementation of the PPG16 was the abandonment of the customary 'zones of operation', regionalisation of works based on the remit of archaeological units. Opening up the archaeological sector and abolishing traditional territorial divisions was concurrent with principles of the free market and increasing competitiveness between service providers. Such change suited numerous private companies and consultancies that quickly emerged after 1990 and facilitated the further development of the commercial sector. Yet, this was (and still is) a highly controversial issue. Although a number of units (especially old county council-based bodies) took up the challenge of commercialisation and, adjusting to the new reality, started to work outside their traditional areas, for many others the removal of 'territoriality' was a hard blow leading to their subsequent dissolution. This in turn, caused anxiety about maintaining the appropriate level of expertise, especially in terms of local knowledge, fostering a reactive rather than proactive approach to archaeological heritage management, marginalisation of research and sanctioning an almost anti-intellectual atmosphere amongst archaeological practitioners (Denison 1998; Morris 1998a; Wainwright 2000; Lawson 2001; Baker 2002; Bradley 2006; Moore 2006; Everill 2007).

As all archaeological providers need to have similar skills and follow the same professional standards and conservation guidance, there is an assumption that all contractors, regardless of their location, are capable of carrying out any project and thus are eligible to tender for jobs in every part of the country. However, many critics of the post-PPG16 system repeatedly express concerns about the 'loss of local expertise' and the 'fragmentation of knowledge' in situations, where price may be a decisive factor in the

process of choosing an archaeological contractor. In their opinion, negative consequences of such cost-oriented approach mean that local archaeologists are forced to compete for work with providers from elsewhere, who, while offering lower prices, 'frequently have little grasp on area's history' (Denison 1998). Growing professionalization, the increased mobility of field staff and the dependence of archaeology on the construction industry are also seen as factors divorcing practitioners from the landscape, material culture and regional experience and decreasing intellectual input and the advancement of knowledge (Baker 2002; Moore 2006). Finally, since time and money play such an important role in the case of rescue projects, many aspects of archaeological work that do not serve directly the purpose of the developer tend to be marginalised or eliminated, especially research, dissemination of results and communication with non-archaeologists (Cumberpatch and Blinkhorn 2001, p. 42). That in turn, extends the rift between the development-led and the research-oriented archaeology (Bradley 2006).

Emergence of these distinctive 'two cultures' (Bradley 2006) is not solely the result of the PPG16 but rather dates back to the origins of rescue archaeology – the gap between the 'academic' and 'rescue' field archaeology was already visible in the 1980s and only widened after 1990. However, the implementation of the PPG16 drew attention to the growing separation (and marginalisation) of research activities (down to 11% in the first decade). It has been noted that under the new regime and according to the conservation principle of favouring the excavation of threatened sites over undisturbed remains, sites with greatest archaeological potential would often not be investigated for 'academic' purposes, with most interesting deposits 'withheld from research by PPG16' (Tilley 1989; Grenville 1993).

Yet, the biggest concern was the lack of a structured plan to integrate the development-led archaeology into a wider research and heritage management framework. Many archaeologists felt disappointed that despite the increase of funding opportunities

and a fast-growing volume of work, the discipline was not moving much further. Negative consequences included problems with comparing results (e.g. because of differences in recording), treating research as an expensive and negligible 'add-on' (not just by developers reluctant to pay for any extra activities but also by some archaeological contractors), failure to disseminate and exchange information on projects' outcomes ('fragmentation of archaeological knowledge') and to communicate with non-professionals (e.g. Chadwick 2000; Baker 2002; Denison 2003; Moore 2006). PPG16 was also criticised for encouraging 'a reactive site by site approach to archaeology' (Jackson 2002), focusing on individual projects and failing to consider the importance of a wider context (e.g. regional historic landscape) or a long-term term preservation strategies. The growing dissatisfaction with the 'research-less archaeology' (Morris 1997) was summarised by Denison (2003) in the following words: 'optimistic ideas, in the 90s, that the results of small developer-funded excavations would be pieced together by a national agency to produce meaningful new information have come to – well, not very much'.

While the implementation of PPG16 gave an easily identifiable date and served as a marker of change, it cannot be seen as the only (or even the principal) source of problems mentioned above. In fact, the UK was one of many countries experiencing the split between research – and development-oriented archaeology arising from linking the discipline to the planning process. PPG16 (and later its Welsh and Scottish equivalents, see Annex 16) addressed issues arising from changes in cultural heritage management theory that took place in the 1970s and 1980s but was not designed as a panacea for all problems and was not intended to formulate academic research strategies or to be a tool for wider dissemination of project outputs (Baker 2002; Bradley 2006).[91]

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[91] For example, Bradley scorned archaeologists who criticise the post-PPG16 system too much stating that 'fieldworkers are also victims of their own success, although they seem oddly depressed about it. The fact is that more projects are taking place now than at any other time, many of them are conducted to higher standards than was possible a generation ago, and they can be well funded. More people are working in the

There are several key issues in this discussion. Making sharp distinctions between 'research' and 'rescue' archaeology and highlighting the conventional theory-practice opposition is not entirely warranted. Whilst it is hard to disagree with the argument that 'without research, archaeology is a waste of time and private and public money, and intellectually pointless' (Morris 1997), there would be very few (if at all) development-led projects that are completely devoid of questions, interpretation and intellectual input (Bradley 2006, p. 5). Another argument states that the practice of focusing on the 'preservation by record' of sites threatened by infrastructure projects (in the UK as well as other European countries) leads to the production of largely unexploited 'avalanche of data' and increasing crisis in conservation and storage of site archives, samples and small finds (see Section 6.1.4). Again, this is an oversimplification, because whereas the academic community criticises the poor accessibility of rescue works results, at the same time it largely fails to use and synthesise evidence that is made available.

It is unlikely that at this stage the process of professionalization of field archaeology and further delegation of tasks to independent contractors could (and indeed should) be stopped. Although it currently creates considerable challenges, in the long-term perspective, if managed properly, the process of opening-up the profession may contribute to the improvement of standards and unification of practices across Europe, and, hopefully, facilitate the advance of research. It should be possible to bridge the 'gap between the two cultures' (Bradley 2006) by creating a more favourable means of communication and improving coordination and administration of planning-related projects.

Development of local, regional and national research strategies and heritage management frameworks incorporating input from all archaeological works is mentioned

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field than ever before and the expansion of contract archaeology has led to some outstanding projects, many of them in regions that hardly been investigated until now' (Bradley 2006, p. 9).

as the most pressing need and the best remedy. In recent years, there has been also a growing realisation that such strategies and frameworks should be implemented not only across the UK (Morris 1997; Morris 1998b; Denison 1998; Jackson 2002) – or independently in any other country – but also trans-nationally, recognising a specific context and needs of the archaeological heritage and wider historic landscapes exceeding modern political and administrative frontiers (see Chapters 3 and 5 and Annex 11). This is a crucial point considering that in the enlarged European Union archaeological investigations are often related to trans-regional projects (e.g. pipelines, road schemes, railways) and are undertaken by companies, institutions and individuals unrelated to the region and unfamiliar with local history and knowledge. For example, a significant number of British contractors and consultants took advantage of the construction boom triggered by the rapid growth of the Irish economy in recent years and undertook work on large development projects and road schemes. Moreover, a considerable proportion of archaeological staff employed in the British Isles (in some cases over 90% of site teams) comes from outside the UK and the Republic of Ireland (see Section 6.2.1). This trend corresponds with the general expansion of contract archaeology in Europe (especially after the Valetta Convention) and at the same time is the result of the development of European common market regulations (free movement of services, labour, capital and goods). Consideration must be also given to issues such as the increased mobility of EU citizens in recent years in general (facilitated by opening borders and the greater than before popularity of English as the modern *lingua franca*) and the very nature of the profession itself. Most archaeologists, regardless of their nationality, are familiar with relatively short-term work and frequent changes of employment and locations. Therefore, more and more field staff and consultants are used to seeking jobs outside their local community or region and are prepared to apply for contracts in other countries.

Finally, it is important to stress positive aspects of the growth in planning-related works. Definitely, the pool of archaeological data is expanding. Although, as discussed in previous paragraphs, there is a concern that the archaeologists are not able to choose where to focus their efforts and that the accumulated information is in fact of little benefit to archaeological knowledge, in my opinion, such a conclusion is not justified. Focusing on familiar sites and well-researched regions and/or on problem-orientated or curiosity-driven research strategies also has its drawbacks. For instance, Moore (2006) argued that the development of rescue archaeology and the implementation of the PPG16 contributed greatly to improving our understanding of cultural landscapes through encouraging archaeologists to investigate areas and sites located outside their traditional research interests (based on established assumptions and value judgements, e.g. of 'high' and 'low' significance). On the one hand, development-led excavations ideally take place in areas believed to be of 'lesser importance', where the chance of affecting archaeological remains is limited, or where these remains are believed to be 'expendable', provided that they are preserved by record (here a value judgement in relation to significance is made). In practice, however, development projects are largely characterised by their relative randomness. As a result, in the process of heritage management all kinds of deposits are being uncovered – not only those 'interesting' from the research point of view or identified as 'important' – often leading to interesting discoveries, identification of new types of sites or new types of data and, potentially, to a reassessment of knowledge (Darvill and Russell 2002; Tainter and Bagley 2005; Moore 2006).[92]

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[92] Moore illustrated his argument with the example of the approach towards Iron Age sites in the UK. He noted that while hillforts were usually protected or even scheduled as most important monuments of that period, lowland sites were often regarded as cultural assets of limited research importance, less significant and even expendable (Moore 2006, pp. 2-3). Similar situation can be observed e.g. in Poland in relation to different categories of medieval sites. Traditionally, research interest and preservation efforts focused on historic town centres, castles and religious sites. At the same time, rural settlements were rarely excavated. This attitude, developed in the post-war period, is still reflected in the contemporary approach to archaeological heritage management. Castle sites are in most cases designated monuments are rarely excavated. Historic urban sites usually lay within special conservation areas with restricted planning

Ideally, all heritage management decisions should be based on a local or regional research framework 'working back from the wider archaeological landscape to the detail of a particular site' (Jackson 2002), with the use of coordinated approaches and methodologies. The curators of cultural heritage (e.g. local authority archaeologists) should be allocated responsibility and adequate resources to provide guidance to the commercial sector and ensure research input into project designs (Morris 1998a; Baker 2002). At the same time, it is essential for archaeologists to participate more actively in the planning process and become more aware of (or 'fully conversant', Darvill and Russell 2002) issues related to planning and development – so far, a matter largely neglected in university curricula and professional development. Finally, professional archaeologists should communicate more with volunteers, amateur societies and local communities and maintain interest in regional archaeology, a task that could be facilitated and guided by local authorities.

### 6.1.4. Publications, archives and 'grey literature'

Following the argument about the 'research-less' fieldwork outlined in the previous section, we may add that 'there is little point in archaeology taking place if it is never disseminated' (Moore 2006, p. 6). One of key issues in the 'commercial archaeology' discussion is the concern about the growing volume of information produced by independent contractors that is not properly analysed, synthesised and published. In England, the number of investigations associated with development projects started to grow rapidly after the publication of the PPG16. Within a decade, the number of archaeological projects prompted by the planning process amounted to 89% of all

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permissions and, although significantly affected by development project, are incorporated to local or regional research strategies. Rural sites, by large regarded as less significant, are usually 'preserved by record' to give way to development projects (this is especially the case of small, open settlements) (see Annex 21).

interventions (Darvill and Russell 2002, p. 42).[93] At the same time, it became apparent that the increased volume of work was putting strain on resources causing a backlog in processing and publishing archaeological information. This gave way to the criticism of the PPG16 as a regulation that has led to producing an enormous amount of uncoordinated, unused (or even 'unusable') data (Merriman and Swain 1999; Chadwick 2000; Cumberpatch 2000; Wainwright 2000; Lawson 2001; Bradley 2006; Moore 2006; RESCUE 2007b). Negative opinions refer to the quality of projects and post-excavation reports produced by commercial contractors (e.g. Chadwick 2000), the limited nature of the investigations, restrictive site-by-site approach and thus limited results and fragmentation of knowledge (e.g. Moore 2006), inadequate site archives storage arrangements (Merriman and Swain 1999), delays in publishing results and the growing volume of 'grey literature' (e.g. Bradley 2006) or the PPG16's failure 'to deliver the full potential of the archaeology' in general (Moore 2006, p. 5): 'it is doubtful whether anyone there really knows what has come out of the fieldwork of the last twenty years' (Bradley 2006, p. 3).

In order to illustrate the problem, let us look at the issue of collating and storing site archives. Before 1990, most of field records and artefact assemblages would be produced by local archaeological units, museums and universities and kept in their own facilities. However, heritage management requirements enshrined in the PPG16 (and later also the PPG15) led to a major increase in field projects and thus a greater quantity of evidence being produced. After a few years, it became obvious that the existing storage capacity was limited. This situation has been additionally aggravated by the simultaneous increase in the number of independent archaeological service providers who also had to manage accumulated site archives. Since PPGs 15 and 16 enforced the archaeological

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[93] Interestingly, Darvill and Russell named the *Time Team* as an important contributor to the number of non-planning related investigations not funded as commercial contracts (loosely described as research work) (Darvill and Russell 2002, p. 46).

recording but did not regulate the issue of archives, it was largely the contractor's responsibility to take care of site records. Secondly, there was no mechanism for funding long-term storage and curatorial tasks after the archives were deposited (since the developers were not held responsible for these issues).

In consequence, the problem of archaeological archives, the variety of storage methods and the insufficiency and inadequacy of facilities became a growing concern (e.g. Merriman and Swain 1999; Chadwick 2000; Cumberpatch 2000; Darvill and Russell 2002; RESCUE 2007b). Results of survey carried out in England and some anecdotal evidence gathered by Merriman and Swain made it clear that already ten years after the publication of the PPG16 the available storage space for the archaeological material was running out fast and that there was a large amount of unpublished materials. Since most fieldwork was done through the planning system, with a tendering system potentially open to archaeologists from all parts of the country there were very few (if any) organisational links between the contractors and local museums. For that reason, the latter, generally underfunded and with limited space, started refusing to accept any new material or charged a fee to contractors. Some bigger units and consultancies build their own warehouses to store site archives. However, the overall conclusion was that much archaeological material was stored in poor and cramped conditions and remained largely inaccessible and little consulted – both in the case of arrangements made by museums and by contractors who held site archives (Merriman and Swain 1999, p. 257).

The survey also left Merriman and Swain with a question whether archaeological archives and collections resulting from the planning-related activities carried out on behalf of the society indeed served the public interest (1999, p. 259). A similar theme appeared in a recent statement to the Secretary of State for Culture, Media and Sport made by RESCUE (2007b): since the intellectual potential of site records was not being exploited through accessibility, interpretation, research and presentation of comprehensible

information to the general public, contractual archaeology was becoming an exercise in accruing unused data.[94]

It is worth recalling that the PPG16 is only one element of a much bigger puzzle and not a sole cause of all weakness troubling the archaeological heritage management system. Most of problems mentioned above are neither new nor specific to the UK. For example, the accumulation of unpublished excavation results was already a recognised problem in the 1970s (Butcher and Garwood 1994). Clearing the backlog in analysing and disseminating results of field work and managing site archives is also a challenge faced by Irish and Polish heritage services (see Sections 5.2 and 8.5.1). For example, Poland, a country which has a very clear and strict ownership regime in relation to finds and artefacts (all archaeological finds and artefacts belong to the state) and where contract archaeology is still a relatively new phenomenon, faces similar challenges. While pre- and post-excavation reports are kept by the local conservation authorities, museum and research units' storage facilities are very limited (and probably even more badly underfunded than in Britain). It is thus not uncommon for the contractors to keep (at least 'temporarily') finds and records from excavations in their basements and garages.

These are, in my opinion, not failures of individual regulations, conservation principles and guidelines, but rather universal consequences of the significant increase in the number of development-related projects in the past twenty years exacerbated by inadequate administrative solutions and insufficient funding in the heritage sector. In England, the abovementioned problems have been partly addressed e.g. through the implementation of MAP2 (for projects sponsored by EH) and inclusion of adequate resources for post-excavation work and publication of reports in contracts with developers

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[94] In 2007, RESCUE formally approached the Secretary of State expressing concerns about inadequate provisions for archaeological storage, access to data and ensuring the long-term integrity of the archives (RESCUE 2007b) pointing out that the increase in the volume of the development-led works not only was not matched by the increase in museum resources for archival storage and curation but even decreased in some areas.

in the private sector. Scotland and Wales have their own policies with information and archaeological material held, respectively, by the National Monuments Record of Scotland (NMRS), the Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW) and by regional Sites and Monuments Records (SMRs) maintained by Welsh Archaeological Trusts.

It is possible to argue that the rapid build-up of archaeological material and records and consequent inability to store, interpret and publish all collated data are symptoms of what Lowenthal calls a 'heritage glut'[95] – too much of everything is collected and retained, with valuable evidence 'acquired at a faster rate than it can be digested' (Lawson 2001, p. 705). There are several options that at least could potentially reduce the amount of collected material, e.g. through more rigorous sampling or using mass finds for public displays, school lessons and community projects (museum boxes) or even selling 'duplicate artefacts to stop illicit antiquities trade (Brodie 2005, see Section 2.3.1), etc. However, such an approach has an essential weakness: once disposed of, finds are no longer available for research. And whilst one may argue that, at the moment, although stored and preserved they are also not accessible, so there is no public benefit and no research, experience shows that there are many cases when some archival material becomes a valuable source for research studies.

In my opinion, the alleged rift between research and commercial archaeology is not so serious that the gap could not be bridged. The foremost condition is to make results of field investigations more accessible and useful in analysis and synthesis. For that, they need to be disseminated at least in the form of post-excavation reports with all publication backlogs cleared as soon as possible. Secondly, the 'grey literature' must be made widely

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[95] Lowenthal pointed out that since the 1970s, archaeologists have been salvaging so many remains that scholars and museums cannot process and analyse information. In result, much of what has been excavated remains unseen and inaccessible. 'Fending off irreversible change, we preserve, restore, or replicate. Any extinction, even of pestilential germs, becomes a crime against the legacy of diversity' (Lowenthal 1998, p. 11.).

available. In the light of changing methodology and technology, such records ideally should be available electronically, in the form of searchable databases linked to the GIS data.[96] However, the 'grey literature' is a specific source. Field reports, primarily written for planning authorities, heritage services and developers, are rarely intended for an academic circulation and tend to focus on site-specific and project-specific issues and technical problems. As I already noted, many researchers also have reservations not only in relation to the content but also the value and reliability of information (Chadwick 2000; Bradley 2006). Thus it is imperative for the quality of investigations and post-excavation reports to be controlled in an efficient way (see Section 6.1.6).

With all the aforementioned mechanisms in place, and with an adequate administrative support, amalgamation of planning, archaeological heritage management, fieldwork and research should be much easier to achieve. However, such a goal requires a bigger interest and involvement of archaeologists themselves (Bradley 2006). This can be done through providing training in using archaeological records on one hand, as well as raising standards in relation to the intellectual output of development-led work. Another option is in providing more incentives for those willing to undertake records-based research, for example through placements or offering PG/doctoral bursaries to study and interpret unpublished historic excavations. Finally, amateurs, voluntary groups and local communities could be encouraged and trained to make use of archives (RESCUE 2007b).

In recent years the UK has experienced a significant shift from the site-oriented approach towards the wider context of historic landscape and historic environment. The Historic Landscape Characterisation (see Chapter 5) is one such case. Another example may be the attempt to develop the existing Sites and Monuments Records (SMRs) into a

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[96] For example, Ireland experiments with on-line publications through *Excavations.ie*, a searchable database of excavation reports which currently (2009) holds over 15,000 reports from 1970 to 2005 with 41 reports for 1970 and over 1700 for 2005. In the UK, much information can be accessed through the Archaeology Data Service (ADS) website (although only partly supported for Northern Ireland). Similarly, Poland develops *e-Archeo*, an on-line database of all known archaeological sites and records linked to GIS data.

more coherent network of Historic Environment Records (HERs) (see Section 7.2) and make them comprehensive planning tools, educational resources and accessible 'one-stop-shops' for heritage professionals, planners, researchers and the general public.

### 6.1.5. Lack of communication and alienation of non-professionals

As noted above, the growing professionalization of the development-led, post-PPG16 archaeology, has been seen as a major factor responsible for splitting the archaeological community between 'researchers/curators' and 'contractors', leading to a rivalry between individual contractors made to compete for work and alienating the non-professional audience (Chadwick 2000; Cumberpatch 2000; Moore 2006).

Although the question of public access to archaeology is a universal issue in all countries that have some form of commercial archaeology, discussion about volunteers' participation seems to be the liveliest in the UK. This is largely due to the origins and development of the discipline in Britain, with its longstanding tradition of private investigations and informal access to the profession. Since the beginning of the 18th century there was a steady increase of interest in the past with a number of local and national amenity and scientific societies being established (e.g. the Society of Antiquaries of London in 1707, the Society of Antiquaries of Newcastle upon Tyne – 1813, the Royal Archaeological Institute, the Victoria County Historic Society). For decades, generations of antiquarians, self-educated archaeologists and lay members of the public were the 'backbone' of the British archaeology. While in some other European countries formal archaeological training and a degree in archaeology, history or other related disciplines was required already in the 1950s and 1960s, in Britain amateurs and volunteers still played an important role up to the 1980s (including people employed through the Manpower Services Commission scheme). As a result, the UK is probably a country with the most liberal definition of an archaeologist in Europe – a person who 'does'

archaeology (see Section 6.2.1). The 'independent sector' of British archaeology is perceived not only as a traditionally important element but one of the pillars of the heritage management system (Darvill and Russell 2002, p. 3). Similar recognition for the significance of the input provided by independent consultants, archaeological contractors, amateur societies and interested individuals is rarely given in other European countries.

However, participation of non-professionals has been gradually decreasing since the introduction of the PPG16 and the contract-tender system. Although blaming the 'massive government intervention' for 'cutting the profession off from its roots' may be a step too far (Wainwright 2000, p. 930), it is hard to disagree with the observation that currently volunteers and archaeology students are rarely given access to planning-related excavation sites and 'field archaeology schools' are profitable business ventures. However, what is rarely appreciated is the fact that for developers and contractors organising a public access is a rather problematic matter. Apart from the dubious argument of practising unequal competition through using unpaid labour there are, for example, numerous health and safety regulations and security and insurance issues that have to be taken under consideration (especially in relation to under-18s). In some cases, plans for admitting an audience to the site or organising open days or guided tours are abandoned because the compliance with all rules and procedures is deemed too expensive and unreasonably complex.

If the direct access proves to be too difficult to reconcile with safety issues, limited budgets and time constraints, there are other, more feasible, options, such as signs and displays, viewing platforms or gaps in site fencing. Many archaeological contractors have web sites where they post information on projects' results, podcasts and live streaming. Other suggestions include reporting discoveries through local newspapers, leaflets and post-excavation displays in museums or libraries (Whytehead 2002). *Conditio sine qua non* is the support of the developer (especially the financial contribution) for dissemination

of information. Publicity around archaeological discoveries is usually the privilege of major regional infrastructure projects. This was, for example, the case of the trans-national Jamal-Europa pipeline project stretching from Siberia to central Europe. Investigations on its Polish section were summarised in a multi-volume post-excavation report and a touring exhibition with an additional publicity created for the developer through the establishment of a dedicated museum in a restored medieval building (Mazurowski 1998). Admittedly, as discussed in Annex 15, such activities are often marketing tools used to create positive PR rather than educational resources. Yet, arguably they still may have some public benefit.

### 6.1.6. Quality control

Another major topic in the development-led archaeology debate is the quality of work and post-excavation results (Darvill and Russell 2002; Jackson 2002; Moore 2006). There are a number of voices blaming commercialisation of heritage management for lowering the standards of investigations, recording and reporting or even encouraging 'cutting corners' to minimise time, cost and effort in order to please the paying client and increasing cost margins, in consequence questioning the ability of the profession to self-regulate and maintain adequate standards of work (e.g. Lawson 2001; Chadwick 2002; Willems 2007). Consequently, tools devised to define and secure minimum standards in field archaeology, such as various professional guidelines, codes of conduct and ethical principles, are often perceived as inadequate (if not toothless) in confrontation with the harsh reality of contract-tender market.

For those who perceive preservation by record as 'a poor substitute for keeping the original' (Clark 2005, p. 327) and 'less a record of what existed than an eye-witness account of its destruction' the only 'redeeming feature' is that 'the eyewitness has expert knowledge' (Bradley 2006, p. 6). Hence, examples of malpractice and many anecdotal

'horror stories' (Chadwick 2000), such as deliberate destruction of sites and yielding to developer's pressure against good practice, are used to demonstrate the failure (at least in part) of the profession to maintain quality and professional standards through self-assessment and self-regulation, and question the impartiality, objectivity (Collcutt, 1993) and the social role of archaeological contractors as 'the mediators of the past' and interpreters of material culture (Cumberpatch and Blinkhorn 2001).

A contrary point of view presents the private sector as a driving force behind increasing effectiveness, improving organisation and introducing innovations and time-saving approaches to fieldwork. Advantages of the private (for-profit) contractual archaeology include cost-effectiveness ('a private company, given the same amount of money can nearly always do a better, faster and more efficient job than academia') and ability to establish a good rapport with developers since commercial archaeological operators are equally goal-oriented as their clients. Accordingly, centralised, publicly funded heritage organisations and universities are criticised for lack of flexibility and management skills, inability to meet tight schedules and control expenses.

> The difference between an amateur sports team and professional sports team is similar to the difference between academic and private, for-profit archaeology. The participants in the former do it for the love of it and little pay. They do it when they want to and find it convenient. They are often very good and expert, but there are few consequences if they are not. The latter may love it, but it is also their main source of income. They do it full time, whether the weather is nice or nasty, or whether it is fun and convenient or not. They have to meet a minimum standard on nearly every project or they will be out of a job. If they make gross errors, they and the people employing them will suffer serious financial and other consequences. (Wheaton 2008, p. 202)

Many archaeologists, especially those already associated with the commercial sector, support this view and believe that countries that oppose the commercialisation will finally have to yield to pressure and allow the presence of private providers (Wheaton

2008, p. 203). Major arguments are the 'free-market approach' and accountability, with the assumption that private companies are more able to satisfy their clients' needs providing a 'value for money' archaeological service. This is achieved by complying with legal requirements within reasonable time and budget, and simultaneously giving developers the satisfaction of saving the cultural resource. Ultimately, 'bad' contractors, failing their clients (financially, time-wise or in quality of reporting and publishing results), would gain bad reputation and would be eliminated from the market.[97]

Such arguments reflect a strong belief in archaeologists' ability to self-regulate and maintain quality of professional conduct. Yet, regardless of the attitude towards commercialisation, no country allows a complete devolution and liberalisation of the rescue archaeology sector. There are two main approaches to be considered: a 'front-ended' mechanism scrutinising archaeological contractors before they are permitted to undertake works, and a 'back-end' regulation, allowing developers to choose freely a contractor and examining the quality of post-excavation reports on completion of a project. The first option is usually implemented through establishing lists of approved contractors and archaeological consultants, e.g. through licensing project directors (the Republic of Ireland, Italy) or, less formally, through the membership of professional bodies (e.g. IFA in the UK) and through the evaluation of project designs before granting a consent. A 'back-ended' approach is concerned with scrutinising the outcome of archaeological works. If the result (mainly the post-excavation report) is not adequate and does not meet management and regulatory needs, it has to be improved and resubmitted before a next stage of the project can take place, which, in turn, results in time delays and increases financial costs.

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[97] Invoking the US example, Wheaton (2009) suggested civil suits as a quality control tool and a potential deterrent.

Neither of these options is ideal. The upfront scrutiny associated with licensing may not be matched by the quality control of actual results. Secondly, such a system not only restricts access to senior posts in the profession (see Section 6.2.1 and Annex 13) but can even escalate quality issues. For example, in Italy, where such lists of 'approved' archaeologists exist, they are criticised for creating nepotism, blocking access to the profession and lowering standards of archaeological conservation in general.[98] In the case of 'back-ended' regulations, the focus is firmly placed on examination of results, the quality of which becomes ultimately the responsibility of the developer through his choice of archaeological contractor. Analysing this approach, Wheaton argued that a good standard of works should be assured by the fact that if the job is done very poorly, the client must spend some time and money revising the report, or 'it may mean redoing the entire project' (2008, p. 207). There are several problems with this argument. First of all, if a project was badly managed and 'done poorly', how can it be improved and corrected once the damage and mistakes made in the first attempt are irreversible (after all *digging* is *destroying*)? How can revising a report based on sub-standard work enhance adherence to heritage management principles or compensate for the loss of information? Also, who should pay for the post-excavation work, if the planning consent was revoked?

These concerns may be addressed by proposing a mixed, 'phased' approach which requires intermediate quality assessments for the client to 'see if the archaeologist is performing properly before proceeding to the next phase' of the project (Wheaton 2008, p. 208) but still would not fully prevent instances of bad practice. In any case, making 'the client' a central figure of the development-led archaeological activities is associated with the assumption that the invisible hand guiding a free archaeology market will automatically eliminate poor, under-qualified and unreliable consultants, thus assuring the increase of quality and standards among private providers – seemingly infallible solution

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[98] Information based on author's personal experience and comments provided by Italian colleagues.

based on self-regulating powers of the profession and with a minimum cost to the tax-payer: 'there are no disadvantages to the for-profit private sector' (Wheaton 2008, p. 206), or are there?

So far, the experience of countries that allowed the commercialisation of archaeological services (or at least tolerate some forms of it), tells us that the preservation of archaeological deposits for the public benefit or the moral satisfaction derived from saving information are rarely a developers' priority. Moreover, contractors often face the double responsibility and conflict of interests between the professional obligation towards the archaeological heritage itself and pressure from paying clients. It is thus clear that some form of institutional control over archaeological projects carried out by private-sector consultants will always be necessary. What seems to be an underexplored issue in this discussion, however, is the figure of 'the client' and his role in the archaeological heritage management process.

### 6.1.7. Who is the client?

Gradual integration of archaeology with the planning system in the 1980s and the publication of the PPG16 resulted in the differentiation of the archaeological profession in England through the separation of archaeological curatorial and contractual functions (Wainwright 2000; Cumberpatch and Blinkhorn 2001; Lawson 2001; Darvill and Russell 2002). This was a crucial step since with the introduction of the contract system it would have been ethically questionable for the same organisations or individuals to protect archaeological interests through specifying planning permission conditions and details of archaeological works and then bidding for contracts. As a result, three major types of archaeological jobs – or 'role-sets' – emerged: *curators, contractors* and *consultants.*

- Curators are concerned with the preservation, protection, conservation and management of archaeological remains. This group includes organisations such

English Heritage, Historic Scotland or Cadw (also Welsh Archaeological Trusts) and individuals employed by local government whose task is the preservation, protection and conservation of archaeological heritage and advising on archaeological requirements for preservation or excavation.

- Contractors (archaeological units, trusts or private companies) provide 'rescue archaeology' services: fieldwork, research, analysis and reporting on a commercial basis competing for contracts and undertaking archaeological work for developers.

- Consultants also work on behalf of developers acting as intermediaries between their clients and curators, providing advice on planning conditions, archaeological issues and estimated costs of work, commissioning works and monitoring progress of investigations.

These three groups of professionals represent diverse perspectives on archaeological heritage management. It is also popularly believed that they have different aims and objectives and need to negotiate conditions of co-operation (e.g. Darvill and Russell 2002). It may seem that by way of identifying roles, splitting responsibilities and introducing tendering the new system created clear rules of professional conduct, increased efficiency and competitiveness, and enabled independent expertise on various stages and levels of the planning process and development projects. Lawson (2001, p. 703) summarised this point of view stating that the curator should 'stand up for archaeology', the contractor 'would be employed to do the work', and the consultant 'might have to give advice on such things as the reasonableness of planning authorities' demands or the estimated costs of the work'. Consequently, the system should guarantee that adequate consideration is given both to the protection of archaeological heritage and interests of developers and the public, as well as assure the quality of archaeological work and research.

Critics of the post-PPG16 system point out that in reality the separation of research, fieldwork and heritage management caused more harm than positive results. The most important argument is the already mentioned rift between the research and contract archaeology and the availability (and quality) of archaeological investigation results. For instance, according to Lawson, the division within the archaeological profession and appointing different 'role players' on every stage of the process is not necessarily bringing good overall results. In his opinion, such a system is not built upon teamwork; often it does not utilise a wide range of expertise and experience of university departments, archaeological units or the independent sector capable of providing comprehensive advice and service under one roof (Lawson 2001, p. 704).

Yet, some degree of separation of duties and tasks is necessary. For example, in the late 1990s, Poland saw a comparable process of moving away from centrally-controlled archaeological management. As in the UK, the opening-up of archaeological works to commercial operators led to the emergence of independent field units, private companies and consultancies. Many researchers, archaeologists employed by the heritage administration and museums and experienced field staff decided to leave the public service to set up their own archaeology businesses. This not only caused a draining of intellectual powers and human resources away from the curatorial and research sectors but also created a 'grey area' of conservation authorities-contractors relations, with many former colleagues, friends and even family members now working on 'both sides of the barricade'. In the context of the development and separation of functions, slowed down by bureaucracy and anachronistic legislation such lack of clear distinction between roles, especially separating curatorial responsibility from contractors is not only ethically questionable but can also lead to cases of corruption and pathological behaviour.

In this situation, unsurprisingly, in 2006, the Polish Academia was taken aback by the story of corruption in its own ranks followed by a number of arrests of archaeologists

involved in motorway projects. Five very well-known professionals were charged with corruption. The archaeological community had known about rumours concerning unclear contract procedure and shadowy deals associated with road schemes for several years. However, this unhealthy state of affairs remained unchanged and unchallenged until it was finally revealed by the press and officially investigated by the law enforcement authorities. As it is often the case, all national media picked up the story and suddenly the issue of 'corrupted archaeologists' became national top news (MKiDN 2006; Rybak 2006). As a consequence, public disclosure of this scandal pressured the archaeological community to remove the discredited individuals from their posts and (at least temporarily) apply greater self-scrutiny.

One should hope that such cases of obvious malpractice and abuse of authority are, if not isolated, at least rare. However, they draw attention to a problem much greater than instances of individuals breaching principles of personal conduct – the issue of defining who the ultimate beneficiaries and recipients of archaeological heritage management activities are. Development-led, planning-related archaeological heritage management concentrates on the identification, recording and, in most cases, the removal of cultural remains followed by the creation of a post-excavation report and a site archive. Thus, one of the prevailing assumptions in the commercial archaeology sector is the conviction that the work is carried out for the benefit of the client defined as 'the individual or organisation commissioning and paying for the work' (willingly or by necessity) – usually a developer who requires a specific 'service' to comply with planning and heritage regulations (Cumberpatch and Blinkhorn 2001, p. 40; Lawson 2001, p. 704). A counterargument states that, ultimately, all investigations are undertaken on behalf of the society (or the public), which in this sense is also a 'client', represented by 'curators' defining the public interest. Consequently, since rescue and mitigation works are carried out as a response to loss of cultural heritage and serve the public, archaeologists have a

direct moral responsibility to the society and are obliged to work to an acceptable standard

and follow professional codes of practice (Lawson 2001, p. 704).

Yet, this social role of archaeology is often overshadowed or downplayed by

economic, technical and even political issues and contractors and consultants are required

to 'serve two masters', torn between the responsibility to the paying customer

commissioning works that affect archaeological resource and demanding particular results

and 'the nebulous notion of archaeology' rooted in principles of professional conduct and

ethics, and are confronted with the 'presumption of the over-riding privileges of capital'

(Cumberpatch and Blinkhorn 2001, p. 40).

Secondly, even when the broader definition of a 'client' (or a 'beneficiary') of

archaeological works is accepted, its interpretation is not always clear. The 'public' is

often treated as a label describing non-professionals, *i.e.*, all groups and individuals with

interest in and claims to the past, e.g. local communities, historic and amenity societies,

amateur archaeologists, etc. This tendency often leads to an oversimplified view and

treating the public as a single, homogenous group that, lacking expertise and experience in

professional archaeology, requires only basic level of communication and limited amount

of information (Cumberpatch and Blinkhorn 2001). Consequently, thus perceived 'public'

is not seen as an equal, full-fledged participant of the decision-making process in heritage

management issues (the case of Tara described in Chapter 5 is a reflection of such a

negative attitude).

Finally, while the implementation of heritage management principles enshrined in

the PPG16 (together with Welsh, Scottish and Northern Irish equivalents, the Valetta

Convention and other national regulations in Europe) means that archaeologists become

increasingly better at salvaging information and producing technical reports, the wider

social aspect of their work, improving understanding of the past and communicating

discoveries and advancement of knowledge to non-professionals has not developed

adequately. As noted in Section 6.1.3, if data produced as a result of rescue works are not integrated in a structured research framework and are not used to inform the public, they do not contribute to enhancing the local knowledge or raising interest in archaeology and cultural heritage. This, in turn, raises concerns that a process essentially designed for the public benefit has actually led to the collapse of the 'public-interest archaeology' (Denison 1998; Lawson 2001; Moore 2006).

As discussed in Chapter 5, preservation of cultural remains and protection of the historic environment cannot be effective without public participation and support. It is therefore essential to communicate with non-professionals and make the public an important part of the heritage management process, which can be only done by promoting archaeological matters on a wider forum, improving communication and education. Thus, there is a need for a greater emphasis on widening access to archaeology, enabling 'bottom up' inquiries and building links to local communities and non-professional groups (Lawson 2001). These ideas are not new and, developed in the form of community and public archaeology, have become part of the heritage management theory.

Yet, my concern is that the 'public' aspect of cultural heritage management, theoretically a core issue of the development-led archaeology and historic environment protection (with all activities carried out in the 'public interest'), in practice is still far from being central part of the planning process. Rhetorical assertions in international and national legislation, codes of ethics, conservation guidance, etc. and isolated and uncoordinated efforts to interact with the public (e.g. one-off community projects, exhibitions or publications) are not enough. Indeed, each such case is a very important and valuable contribution. However, in a sense, they are not much more than a justification and a 'feel good factor' for the archaeological community, barely 'skimming the surface' but not touching the core of the problem. As long as the 'general public' does not have sufficient interest and knowledge of archaeological heritage problems, the voice of non-

professional stakeholders will remain marginal in the decision-making process dominated

by the 'top-down' approach.[99] This requires raising awareness of heritage issues to make

them really 'count' in the public debate – something that, for instance, the environmental

lobby has accomplished over the years. So far, archaeology has not been able to achieve a

similar level of recognition (as it is demonstrated by cases of Irish sites described in

Chapter 5 and by the analysis of the EIA process in Annex 11).

## 6.1.8. 'Value for money'

Another important topic in the development-led archaeology debate is the issue of 'value

for money' – the assessment of amount, quality and usefulness of information generated

by planning-related investigations which may be interpreted differently by archaeologists

and developers. In the assessment of the post-PPG16 regime Darvill and Russell noted

that the results of such activities are sometimes seen as having 'little overall value'

(Darvill and Russell 2002, p. 58). This, for example, was the point made by Richard

Morris (1997; 1998a) who criticised the concept of 'preservation by record' for being a

'research-less', intellectually pointless, exercise in producing an 'avalanche of data' and

adding it 'to a largely unconsulted archive which is increasingly unaffordable to store'.

Consequently, he argued that development-led archaeology was a waste of both private

and public money. Since the tension between research and rescue works has already been

discussed elsewhere (see Section 6.1.3), in this section I would like to focus on the

contractor-client relationship.

Section 6.1.7 signalled some key problems related to defining the position of a

developer in the archaeological heritage management process. Conservation policies, the

principles of professional conduct and work ethics charge contractors with the

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[99] See Annex 5 for an example of positive results of community involvement and interaction with the wider public in the case of Portable Antiquities Scheme.

responsibility of maintaining the highest standards, or at least 'due diligence', in relation to cultural assets. At the same time, commercial providers try to satisfy the needs of their clients through compliance with heritage regulations and fulfilling contractual arrangements. In the current debate 'satisfaction' seems to be a key issue.

There are generally two points of view. The first assumes that most clients (developers) are only interested in the regulatory aspect of the planning process, requiring minimum time, cost and effort to achieve compliance (see e.g. Whytehead 2002). There is also a contrary view stating that, in fact, archaeologists may not be fully satisfying the needs of their clients as the latter want to enjoy and be proud of the outcome of the archaeological investigations that they commission (e.g. Lawson 2001). Essentially, this dichotomy corresponds with the discussion on the definition of a 'client' (developer – the public) and general responsibilities of archaeologists (putting the paying customer or the interest of cultural assets at the centre of attention). In practical terms, this problem can be brought down, for example, to the question of paying for 'nonessential' activities such as dissemination of information to the public, research activities or testing experimental techniques. According to the 'client-oriented' approach, developers are neither prepared to nor should be expected to cover such costs (the development process should not be treated as 'a cash cow to be milked', McKee 2002; Whytehead 2002).

Interestingly, to large extent this discussion seems to be rather one-sided and based on assumptions, since not many studies directly consult developers. For instance, an important problem raised by the development industry is the volume of data on heritage-related issues available at the early stage of the planning process allowing investors to make informed decisions on location, planning constraints, project design and the amount of money required before applying for a consent (see e.g. McKee 2002). This problem was, *inter alia*, considered in the report on the impact of archaeology on property developments in the London City, which demonstrated that developers were far more

concerned about the effects of delays on their projects than about paying for 'archaeology' (Corporation of London 2001; Aitchison 2009; see Annex 15).

In consequence, whilst very few developers considered 'archaeology' to be adding any direct financial value to their projects, nor was it seen as a significant financial burden. At the same time, several respondents admitted to using archaeological associations in their publicity to draw attention to the way in which cultural heritage enhanced the general working environment (Corporation of London 2001, p. 1). A similar attitude of developers treating archaeology as a positive PR booster is illustrated by the example of the recent King's Cross area regeneration project (Annex 15) and the trans-national gas pipeline discussed in Section 6.1.5.

Admittedly, the abovementioned examples were big, well-funded projects carried out by major investors in a favourable economic climate. The more cynical among heritage professionals argue that most of developers want to 'get rid of the problem' as quickly as possible and at minimal cost. This would be especially true in the case of small-scale projects for which the cost of archaeological investigations (as well as any possible delays) is relatively higher. It can also be expected that the recent economic downturn will have some impact on the archaeological heritage management: although one consequence could be raising expectations towards the preservation of the historic environment and regeneration projects (since there is not much demand for new-built properties), it is more likely that there will be an increased pressure to facilitate developments.

### 6.1.9. Mitigation and the principle of preservation *in situ*

Negative impacts from the construction industry, agricultural activities and infrastructure schemes were recognised as a significant threat to archaeological heritage as early as the 1950s and 1960s. However, in the first few decades of the post-war period archaeological considerations focused primarily on rescue works and 'salvaging' information through

recording. The preference for physical preservation of cultural remains and avoiding

destruction or disturbance whenever possible was introduced to the conservation policy in

the end of 1960s[100] and gradually became one of key principles of modern archaeological

heritage management enshrined in international heritage regulations and

recommendations, e.g. in the Valetta Convention[101] and the ICOMOS *Charter for the*

*Protection and Management of the Archaeological Heritage* (see discussion in Chapters 5

and 8).[102]

In the UK, the resulting presumption in favour of physical preservation of cultural

remains had been embedded in the planning process[103] and had an immense impact on

archaeology and contributed to changing approaches towards historic environment

management, especially through the promotion of mitigation strategies and sympathetic

engineering designs to protect important cultural remains. Secondly, because according to

the sustainable development principle, land is seen as a finite resource, present planning

guidance and housing policies encourage use of brownfield sites (previously developed

land) rather than greenfields (Davis 2004, p. 225; DCLG 2006; Aitchison 2009b). This

tendency is further driven by economic considerations, especially rising real estate prices

during the 1991-2007 housing boom. Because 'brownfield' sites have been previously

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[100] UNESCO Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private works (1968), point 5: 'Due account should be taken of the relative significance of the cultural property concerned when determining measures required for the: (a) Preservation of an, entire site, structure, or other forms of immovable cultural property from the effects of private or public works'.

[101] Art. 4: 'Each Party undertakes to implement measures for the physical protection of the archaeological heritage, making provision, as circumstances demand: (i) for the acquisition or protection by other appropriate means by the authorities of areas intended to constitute archaeological reserves; (ii) for the conservation and maintenance of the archaeological heritage, preferably *in situ'*.

[102] 'The overall objective of archaeological heritage management should be the preservation of monuments and sites in situ, including proper long-term conservation and curation of all related records and collections etc'.

[103] PPG16, Point 6: Archaeological remains should be seen as a finite and non-renewable resource, in many cases highly fragile and vulnerable to damage and destruction. Appropriate management is therefore essential to ensure that they survive in good condition. In particular, care must be taken to ensure that archaeological remains are not needlessly or thoughtlessly destroyed. They can contain irreplaceable information about our past and the potential for an increase in future knowledge. They are part of our sense of national identity and are valuable both for their own sake and for their role in education, leisure and tourism.

Where nationally important archaeological remains, whether scheduled or not, and their settings, are affected by proposed development there should be a presumption in favour of their physical preservation.

occupied and used, they are likely to be of archaeological significance (Aitchison 2009b). This is particularly the case of urban areas, where town centres and historic suburbs often have substantial medieval (or even Roman) archaeological contexts. Additionally, high land prices limit the size of development projects and result in a prevalence of smaller 'infill' schemes, deep basementing, underground car parks and sizeable foundations to support high buildings (Therivel 2009). As a result, in the last two decades urban locations have seen an increasing application of mitigation strategies favouring *in situ* preservation of archaeological remains, intended to combine the aims of reducing damage to cultural contexts with minimising the cost to developers (Davis 2004, p. 225). These include the use of piling solutions, e.g. the Rose Theatre and Gloucester regeneration (Pugh-Smith *et al.* 2004) as well as the re-use of pile locations, e.g. Governor's House (Hughes *et al.* 2004) and the Millennium Footbridge (Hughes *et al.* 2004) in London, or raised platforms, e.g. York (Grenville and Ritchie 2005).

According to the study commissioned by English Heritage, *Mitigation of Construction Impact on Archaeological Remains,* development of a site can be generally divided into four stages of construction activity involving a number of ground-disturbing operations potentially damaging archaeological remains (Davies *et al.* 2004): pre-construction ground investigation (1) and site preparation (2), construction activities (3) and remedial and monitoring activities (4). Analysed mitigation strategies ranged from preliminary desktop studies and site evaluations (with archaeological input providing information for later stages of the project), zoning and designing access routes (to avoid archaeological deposits) to design changes and engineered solutions (e.g. use of load spreading plates, sand backfill, geo-membrane, piling or rafts).

The key finding of the study was the assertion that a good communication between all participants of the planning process (the developer, engineer, archaeological consultant, the main contactor team, planning authority, etc.) was essential for devising effective

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strategies for managing cultural heritage. Secondly, like many other studies on cultural heritage management (see e.g. Annexes 11 and 15) the report stressed that early and active participation of archaeologists and good co-operation between different specialists is a fundamental condition of efficient project management not only from the heritage point of view but also in financial terms (Davies *et al.* 2004). Effective communication helps make informed decisions about a project and carry it out to an agreed timescale and budget (Whytehead 2002; Davies 2004) to avoid potential delays or design changes, which can greatly increase costs (see Annex 15). For example, in the case of the Rose Theatre site, unresolved archaeological issues and a prolonged dispute contributed to massive cost overruns, with the developer spending an estimated £11m on a six-month excavation project and subsequent alterations to the building design (Davis 2004, p. 225; see Annex 12). The cost of the delayed construction of the controversial M3 motorway had been assessed at around €70 million (see Chapter 5).

However, the preference for the preservation *in situ* through the use of mitigation strategies has its limitations and disadvantages. For instance, it may not be possible to foresee all effects of construction works (e.g. the weight of plant and machinery on site is often not considered, piling may cause chemical and biological changes to archaeological deposits, a project may affect a waterlogged site's environs, finished buildings may still distort and compress stratigraphy, etc. (Chadwick 2000; Whytehead 2002; Davies *et al.* 2004), and the restricted size of a project and limited scope of archaeological investigations provide only partial information on a site. Secondly, long-term consequences of such schemes are not yet known. It is thus essential that the effectiveness of adopted mitigation strategies themselves is monitored and the information on results is disseminated to increase the pool of data for further research (Peacock and Turner-Walker 2004; Davies *et al.* 2004). There is also the question of what happens if profound changes take place that may threaten archaeological deposits: how then they can be rescued and

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who pays for the work (Whytehead 2002). Unfortunately, as in the case of storing site archives and publishing reports, these issues have not been regulated. In addition, the application of innovative design solutions and mitigation strategies require the participation of skilled architects, engineers and archaeologists with an adequate expertise and – quite often – ample resources. While this is rarely an obstacle for large multi-million construction schemes, it may be a real difficulty for small (e.g. domestic) developments.[104]

Because of the nature of 'brownfield' projects, often heavily contaminated, there is also a potential conflict between archaeological mitigation (e.g. under PPG16) and remediation of environmental degradation. This problem occurred, for instance, in relation to several projects carried out in Oxford's medieval suburbs. In this case, sites were affected by groundwater and soil pollution and the recommended mitigation strategy put the quality of land and water over the cultural heritage (Durham 2004, p. 242). Finally, some archaeologists voice concerns that the focus is too often placed on technical matters rather than the question whether or not preservation *in situ is* indeed desirable.

> Preservation *in situ* is widely believed to preserve archaeological deposits for future generations, perhaps when excavation techniques will have improved. This is misleading however. Many deposits now preserved *in situ* have been removed from study for decades, if not hundreds of years. Future techniques are unlikely to be able to interpret archaeology buried underneath multi-storey car parks, motorways and housing estates. The current procedure only delays the inevitable decision regarding the fate of such deposits, and their survival into the future is not necessarily assured. It hinders contextual and interpretative work in the present. (Chadwick 2000)

Chadwick's argument is especially important if we consider that in some cases, *in situ* preservation may be but a justification for saving developer's time and money and not

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[104] For example, in the case of a medieval urban site redevelopment in Trondheim the cost of a 10-year monitoring project was estimated at approximately 10% of a full-scale rescue work. This analysis signalled that costs of a compulsory long-term archaeological monitoring would be a significant problem for small domestic developments (Peacock and Turner-Walker 2004, p. 70).

the best heritage management solution. For instance, the mitigation strategy proposed for the Waterford road scheme described in Chapter 5 was considered as an excuse to avoid costly rescue excavations. Instead, the developer suggested covering the site with tons of concrete, which would be equal to damaging cultural deposits. St. Andrewsgate development in York is an example of a different scenario, where not deliberate action but rather lack of communication between planning process stakeholders, has lead to replacing plans for a major archaeological project with a limited trial excavation. In this case, archaeologists argued that although the site – well-preserved medieval structures and Roman deposits (possible location of a legionary amphitheatre) – has been conserved according to current heritage management standards, its scientific value and potential have not been utilised (Grenville and Ritchie 2005, p. 216) with a viable research project abandoned because of economic reasons and because of a disagreement between the developer and local authorities.[105]

## 6.2. The influence of planning-related archaeology and commercialisation on archaeological profession in Europe

While British archaeologists have become gradually disenchanted with the development-led system and the subsequent commercialisation of heritage management services, several other European countries implemented similar solutions (e.g. the Republic of Ireland or Spain) – or at least tolerated the emergence of private archaeological companies (e. g. Poland, the Czech Republic, the Slovak Republic, Hungary (see Annex 14). These changes took place due to the incorporation of the Valetta Convention principles into

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[105] A consortium of the York Archaeological Trust and the York University Archaeology Department prepared a proposal for a research strategy to sample parts of the St. Andrewsgate site and carry out a public archaeology project in advance of a construction scheme. Although at first the developer agreed to the idea of the research excavation, in the result of a disagreement with the city council over planning issues and without economic or political support of either the council or the developer the agreement was withdrawn. In accordance with the PPG16, the ground was raised up by three feet in order to avoid damage to archaeological deposits by the construction of townhouses. Disappointed archaeologists believed it to be 'a precaution against the expense of archaeological excavation' (Grenville and Ritchie 2005, p. 216).

national law and in response to the increasing demand for rescue works triggered by the process of urbanisation and industrialisation. However, considering the amount of criticism voiced in relation to the English model, one may wonder whether these countries, especially those of the former Eastern Bloc which largely mimic 'western' solutions by 'revolutionising' their traditional heritage management systems, are doomed to repeat the same mistakes and struggle with problems similar to those experienced by archaeology in Britain or Ireland, and, while seeking solutions, will try to 'reinvent the wheel'. In my opinion, this question (although perhaps rhetorical) is an important one and thus requires further consideration. For that reason, I shall first examine the effects of the commercialisation of archaeological services on the archaeological profession itself in the light of European integration and, secondly, look at the discussion on possible alternatives and solutions to the 'rescue archaeology crisis'.

### 6.2.1. Free (?) movement of workers and services

As signalled in previous sections, one of the direct results of linking archaeology with planning was the transformation of development-led archaeological work as well as the growing professionalization of the sector. In the UK, this phenomenon has been closely monitored through periodic surveys, such as *Profiling the Profession* (see e.g. Aitchinson 1999; Aitchinson and Edwards 2003 and 2008). Data collected over the years provide evidence for an array of important changes. First of all, there was a substantial growth of the number of archaeologists employed in Britain (to around 7 000 in 2010) and a consequent emergence of a small but important industry. At the same time, monitoring programmes carried out in the UK indicated that the profession has gradually become dependent on the situation of the construction industry, proving extremely vulnerable to fluctuations of the economy. Other negative consequences noted in subsequent reports included the instability of the employment market and forced mobility of staff as well as

lack of clear progression routes and limited training opportunities for field archaeologists (a detailed analysis of these problems can be found in Annex 13).

In the light of the increasing professionalization of archaeology and the progressing internationalisation of archaeological vocation, with many European archaeologists seeking employment, carrying out projects or bidding for contracts across Europe (in countries other than their country of origin), the 'employment debate' started in the UK touches upon a number of interesting problems. For that reason, in this section, I shall to discuss some major consequences of the further commercialisation and internationalisation process for the archaeological sector in Europe.

A recently published series of reports exploring the state of the archaeological profession in Europe – *Discovering the Archaeologists of Europe* (DISCO) – analysed the situation in twelve countries which are signatories to the Valletta Convention. DISCO focused on the realisation of the Leonardo programme objectives:[106] transparency of qualifications, improving the quality of, and access to vocational training in archaeology, and the lifelong acquisition of skills and competences. At both European and national levels, the project tried to estimate the number of archaeologists working in each country and to establish ways of entering the profession (and identify access barriers). It also looked at issues such as transnational mobility, labour market trends, career progression difficulties, identification of skills shortages and training needs.

One of key findings of DISCO were significant differences in defining 'archaeologist' and necessary professional qualifications, with some countries using legal definitions and strict licensing regimes (e.g. Greece) and others defining 'archaeologist' simply as someone who 'does archaeology' (e.g. Britain) (Collis 2009, p. 3, see tab. 11 in Annex 14). Secondly, the survey revealed that while in general archaeologists earned

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[106] The *Leonardo da Vinci* is part of the European Commission's Lifelong Learning Programme. It funds a wide range of actions such as cross-border mobility initiatives, co-operation projects developing and spreading innovation and thematic networks.

slightly above the national standard pay (107% of the EU average for all workers), the employment situation was significantly different in the UK, the Slovak Republic and Ireland, three countries with a higher percentage of contract archaeologists (respectively, an average archaeological salary was 78%, 83% and 97% of a national average). The report demonstrated that salaries in archaeology tend to be higher where works are carried out primarily by state agencies and lower where archaeology is undertaken as a commercial activity (Aitchison 2009b, p. 5 and 23). The UK was identified as a country with by far the most numerous archaeological workforce, which was also attributed to the development of the commercial system (Aitchison 2009b, p. 11).

The DISCO report also emphasised the unique case of Ireland, where an extraordinary 45% of archaeologists were non-nationals. Although in the past many British and Irish archaeologists travelled between Northern Ireland and the Republic of Ireland, the rapid rise in the number of infrastructure and development projects (especially in the Republic) created a drastic shortage of skilled workers that could not be filled by local staff. This has not only led to establishing commercial Irish companies or UK-based firms working in the Republic but also to 'importing' field archaeologists from outside the British Isles. Moreover, Ireland had an exceptionally high number of archaeologists – approximately 1700 in 2007 (an increase of 263 per cent over five years previously) – 0.08% of the entire workforce, one in every 1,250 workers, compared to between 0.01% and 0.02% for other countries. This was a consequence of a high volume of development-led work, the dominance of commercial companies and flexible employment conditions (Aitchison 2009b, p. 12). The influx of non-Irish archaeologists was facilitated by the popularity of English as second language across the EU (Aitchison 2009b, p. 19).

The study confirmed the high level of transnational mobility of European archaeologists, particularly the extraordinary increase in the number of the migrant fieldworkers (spurred by the 2004 enlargement of the EU). This growth was especially

visible in countries with a developed commercial archaeology services, notably in Ireland and the UK (and, importantly, where English is as an official working language) as well as in the Netherlands after the transformation of the system of archaeological practice from a state-led to a market-orientated approach (tab. 3). In these cases, the sector benefits from having a flexible workforce and in times of economic boom this also opens new employment possibilities to professionals from across the EU, particularly those prepared to work on a project-by-project basis (see Annex 14).

Yet, the study also demonstrated that the high mobility phenomenon is mostly limited to very junior posts (see Annex 14). Although skilled, competent fieldworkers can move freely from country to country and find work when it is available, the final report identified a number of obstacles blocking access to senior jobs (being also barriers to the flow of the skilled archaeological employees between the EU member states) including unequal qualifications requirements, national licensing procedures, language requirements and an evidence for a prior extensive experience in a particular country (Aitchison 2009b, p. 27). At the same time, some archaeologist hint at the presence of the 'glass ceiling' phenomenon and feel discriminated against because of their nationality (see Annex 14). In addition, the recently experienced global recession exposed the vulnerability of the itinerant staff to the consequences of the changing economic trends and proved that the excessive flexibility in employment conditions may not always be 'to the benefit of individual archaeologists' (Aitchison 2009b).

For instance, negative aspects of the increased mobility became a painful experience of contract archaeologists in Ireland (both in the Republic and NI), who were perhaps one of first groups affected by the economic crisis. The end of the building boom came to Ireland earlier, in 2007, with some major development schemes put on hold or abandon entirely. In consequence, there has been considerably less archaeological work carried out and reports suggest that there are significantly fewer archaeologists

(particularly non-Irish) currently involved (Aitchison 2009b), with non-nationals often finding themselves at the forefront of redundancies or not being able to find any new employment in the profession.[107]

Table 3:    Recorded growth of the archaeological sector (source: Aitchison 2009b, p. 13).

| Country | Growth over past five years (since 2002-03) | Growth over past three years (since 2004-05) | Growth in last year (since 2006-07) |
|---|---|---|---|
| Austria | -18% | -22% | -14% |
| Belgium | +24% | +15% | +6% |
| Cyprus | +23% | +29% | +29% |
| Czech Republic | +30% | +23% | +6% |
| Germany | +8% | 0% | -2% |
| Greece | +11% | +2% | -10% |
| Hungary | | unknown | |
| Ireland | +39% | +32% | +21% |
| Netherlands | +61% | +54% | +36% |
| Slovak Republic | +20% | +11% | +2% |
| Slovenia | +45% | +4% | -4% |
| United Kingdom | +18% | +17% | +10% |

## 6.2.2. Contract archaeology: a way forward

Archaeological heritage management in Europe is a complex issue characterised by a wide variety of approaches and regulations concerning the ownership of archaeological material, rescue excavations funding, management policies and access to the profession (Wheaton 2002). First of all, there are significant differences between systems developed under the 'Roman law' and 'common law' legal tradition. They manifest themselves, for example, in varied approaches to ownership of archaeological finds. In Italy and Greece, archaeological heritage has been nationalised and *ex lege* belongs to the state; however, Greece allows the 'possession' of archaeological sites by landowners. In Denmark and Poland, landowners are permitted to own archaeological sites but the actual use of land is restricted; excavations are licensed and portable antiquities (also 'chance' finds) belong to

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[107] This also applies to some small UK-based consultancies displaced form the Irish market. Information is based on personal comments supplied by colleagues currently or previously working for Irish archaeological contractors and developers.

the state. In the Netherlands, artefacts from excavation works (all of which are also licensed) are the property of the state while chance finds belong to the finder or the landowner.

Such discrepancies between national (or even regional) cultural heritage management systems are even more visible in the case of approaches to the commercialisation of archaeological works. In many European countries development-led, rescue archaeology has been monopolised by the state and national heritage services. This is traditionally the case of Greece and Italy and recently France. In many former Eastern Bloc countries, e.g. Poland, legislation also bestows the ownership of all archaeological material together with the responsibility for its protection upon the state (ironically, despite the many flaws of the communist regime, legislative protection of cultural heritage was often regarded as rather effective and comprehensive, see e.g. Cleere 1993). Similar regulations exist in Scandinavia and some German Lands (Demoule and Audouze 2002).

At the same time, the UK's devolved system with part of heritage management responsibilities transferred to local planning authorities has been influencing the theory of archaeological conservation in other European countries. Its most important impact was through the Valetta Convention. The team which drafted the text of the treaty was able to observe effects of the PPG16 regime and 'benefited greatly from the input from England' (Willems 2007, p. 62) – the working committee adopted some British ideas and transferred them to the Convention. In consequence, during the 1990s, the implementation of the 'polluter pays' principle and integration of archaeological heritage management with the planning process, together with the relative success and efficiency of the contract system in the UK, led to a gradual introduction of private archaeological operators in a number of European countries (see Annex 14).[108]

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[108] For example, the EAA, in the light of diverse national and regional archaeological heritage management frameworks, 'accepts and supports' different models of rescue archaeology 'respecting autonomy of

British archaeologists have had almost two decades to analyse and assess the consequences of commercialisation of archaeological services. While some demonstrate high confidence in and pride of the post-PPG16 contract-tender regime ('if you go to any European conferences to meet archaeologists, our system is their envy', Samuels 2002) others criticise its effectiveness and voice concerns about the future of archaeological heritage management in the UK. As explained in previous sections, on one hand, linking archaeological heritage management with the planning process resulted in a large increase in funding and the volume of work, and thus contributed to an exceptional growth of archaeological sector. However, the simultaneous emergence of the contract-tender system and dependence on developers and the construction sector became a source of disappointment. For that reason, criticising the post-PPG16 regime, a number of practitioners and theorists turned to more state-oriented, centralised approaches, suggesting breaking the direct link between the developer and archaeologist, restoring research as 'the defining feature of archaeological project' (Cumberpatch and Blinkhorn 2001), reinstating archaeological units linked to local authorities and replacing planning-related funding with a general development tax (Chadwick 2000; Everill 2007).[109]

For example, as mentioned in Section 6.1.3, a major source of criticism of the contract system is the 'loss of local knowledge' resulting from abolishing geographical divisions and permitting any archaeological operator to tender against 'local' units. In this respect, suggestions concentrate on limiting developers' choice to a number of approved contractors able to demonstrate regional expertise (Chadwick 2000). In general, arguments in favour of an accredited practice see it as a way of encouraging archaeological service providers to improve their performance, add research value to rescue projects and increase

different countries' and their right to adopting preferred solutions 'as long as these provisions guarantee high quality and efficiency' (Demoule and Audouze 2002).
[109] 'Only when archaeology is no longer undertaken for profit will it become a truly profitable endeavour for all concerned' (Everill 2007, p. 135).

public benefits from development-led works without contractors facing a danger of 'pricing themselves out of the opportunity to win the project' (CMSC 2008, Evidence 29). This problem has also been discussed in relation to the proposed heritage protection reform (see Chapter 7). For instance, the Archaeology Forum suggested the introduction of a licensing system pointing out that the UK, unlike many other European countries, lacked a 'competence-based right to practise archaeology' – an omission leading to a potential damage to cultural heritage: 'there are certainly cowboy tendencies that have the potential to grow [...] at present anyone can provide commercial archaeological services, regardless of their background and competence' (CMSC 2008, Evidence 29).

Stressing the importance of planning-related works as a service carried out on behalf of and for the benefit of a great number and variety of stakeholders (as discussed in Section 6.1.7), many archaeologists argued the need to broaden the definition of a 'client' to include all groups and individuals 'who wish to retain archaeological resources' (local communities, amenity groups, heritage institutions, etc.) and all those with an interest in specific sites or landscapes (Cumberpatch and Blinkhorn 2001, p. 41). This argument is often followed by the overall suggestion that the emphasis in heritage management should be shifted from the developer-oriented contractual dependence to responsibility towards the society and communities. Consequently, a number of British archaeologists advocated the establishment of a tax on development projects and the creation of a 'body with legal authority to administer the funds' (an independent party mediating between archaeological contractors and the construction sector, Cumberpatch and Blinkhorn 2001, p. 44; Chadwick 2000). Interestingly, the idea of a 'development tax' became a centre of the French heritage reform in 2002.

## 6.2.3. Development tax and preventive archaeology in France

The Institut national de recherches archéologiques préventives (INRAP) was created in 2002 under the Law on Preventive Archaeology in order to enhance management of archaeological heritage affected by development and infrastructural projects. INRAP is a semi-public agency in charge of overseeing all operations relating to 'preventive archaeology' in France. As a 'research institute' it was also made responsible for disseminating results to the scientific community (at the same time developing links between research and rescue operations) and the general public.

By carrying out a heritage law reform and establishing INRAP, the French authorities tried to address the growing crisis in rescue archaeology triggered by the rapid growth of excavations in early 1980s (Audouze 1998) and assert the state's control over development-led archaeology and commitment to support this type of activity as a part of a public service mission. So-called 'preventive archaeology' (see Section 8.4.4) represents approximately 90% of all French archaeological activities. Under the revised heritage law, all costs of rescue operations are covered from a fixed tax paid by developers according to the principle 'polluter pays'. The value of the tax depends on the level of the threat represented by a prospective development project and is proportional to the size of the affected site, its depth (complexity) and the density of artefacts. In the case of archaeologically sensitive areas, local authorities with an accredited archaeological service, have a month to decide to undertake the evaluation. However, if they decide against it, INRAP is automatically designated as contractor. This provision, put together with a nation-wide coverage (including metropolitan France, French Guyana, Guadeloupe and Martinique) and around 1,800 staff, collaborators and researchers (INRAP 2009) makes the Institute the largest and most important archaeological operator, practically a monopolist in the sector.

The system of 'preventive archaeology', with a dedicated tax on development projects, an almost omnipotent INRAP and the quasi-public servant status of French archaeologists is a unique solution, linking heritage issues to a broadly interpreted state's mission. The reform of the French rescue archaeology system raised some concerns with the nationalisation of archaeological services questioned as too restrictive and inconsistent with the EU common market regulations and 'freedom of enterprise' principles. In practice, this argument was brought down to the question whether contract archaeology is a business activity or a public service. In response, the French Parliament and the Constitutional Council ruled that the 'preventive archaeology does not constitute a commercial or trading activity' (Demoule and Audouze 2002), thus deciding that rescue works should not be treated as a service to developers but as a mission of the public sector and a scientific task. Consequently, reports from archaeological investigations are administrative documents accessible to the public according to the freedom of information standard (Audouze 2001, see Section 9.9).

The French debate reflected wider concerns that the further development of contract archaeology in Europe may lead to treating it as just another type of business enterprise governed by EU competition law and internal market principles, based on EU legislation not specifically related to archaeology or even culture but potentially having a major effect on the organisation of the heritage system. This could threaten state monopolies and, in the future, even force countries such as France, Denmark or Greece to open up to the private sector and accept the presence of companies and individuals from other member-states. This 'threat' of the growing internationalisation of archaeological services is supported by concerns related to the quality of works, the further detachment of rescue sector from research, the lack of local knowledge and severing ties with local amateur societies, etc.

As demonstrated in Section 6.2.1, in the past few years most Irish and British contractors and consultancy firms employed archaeologists from other EU countries (free flow of workers) or bid for jobs in other member-states territories (free flow of services). A similar situation has been anticipated also in the Netherlands, with foreign companies possibly applying for excavation work contracts after introducing commercial services in the sector (Willems 1998, p. 304). Admittedly, the recent market downturn has led to significant decrease in development projects in 2008 and 2009 followed by a major cut in job opportunities in contract archaeology and transnational staff mobility. Although this means that the number of field archaeology 'nomads' living from contract to contract in a borderless Europe decreased for the moment, I would argue that the long-term internalisation process has merely slowed down.

Firstly, according to the EU equality regulations related to employment, trained professionals with adequate skills, experience and a degree honoured across the EU cannot be discriminated against on the basis of their nationality. Secondly, assuming that the process of European integration is going to develop even further, sharing different approaches to archaeology and exchanging experiences may generate new ideas and raise professional standards. Sharing information and research outcomes at international forums such as the EAA and working together in the field will perhaps facilitate overcoming linguistic and legal barriers and help develop a more unified and internationally accepted terminology – a task that lawyers have failed to achieve so far (see discussion in Chapter 4, Annex 11 and Section 8.4.5). What is needed, however, is a comprehensive and coherent quality control of the rescue works sector.

There are a number of actions that could (or should) be implemented in order to improve management and protection of archaeological heritage in the light of growing internationalisation of the profession, especially the increased mobility of field workers. These include:

- increasing the awareness of archaeological heritage management principles and regulations, especially through incorporating these issues in university curricula;

- regulating the profession, especially in terms of unifying access requirements and recognition of qualifications and skills;

- developing and improving awareness of professional standards (e.g. through the EAA);

- enhancing quality control over the development-led works and heritage management activities – e.g. by popularising the model of reviewing project outcomes in which relevant authorities verify whether a satisfactory final post-excavation report had been produced, submitted and published before granting permits for future fieldwork.

Finally, if the co-operation between archaeologists from different countries is to be made more effective, communication has to improve. At the moment, many trans-frontier projects are held back by linguistic and legal barriers. A recent assessment of large development projects in the North-Western Europe exposed problems caused by the diversity of national heritage regulations, inconsistency of terminology and approaches to managing archaeological issues. For instance, the Dutch State Service and the Rheinisches Amt für Bodendenkmalpflege carrying out a pilot trans-frontier project were surprised by the number of difficulties both sides experienced despite speaking each others' languages, using comparable (but not identical) recording and evaluation techniques and generally maintaining rather close ties between Rheinish and Dutch archaeology. There were, for example, significant differences in categorisation of site types; also, while both countries had detailed soil maps, when compared, these did not match due to use of different soil survey techniques (Willems 1998, p. 308). In my opinion such cases demonstrate that harmonisation of scientific terminology, developing core data standards for archaeological

records and synchronisation of databases will soon become major issues in European cultural heritage management.

## 6.3. Summary

Recognising the considerable influence of the British archaeological heritage management system in the last three decades (especially through the adoption and dissemination of the *Valetta Convention* and the 'polluter pays' principle) in European archaeology and using England and Wales as a case study, this chapter has examined the origins, current issues, problems and the future of the planning-related archaeology in Europe. Since England was at the forefront of the transition leading to the integration of rescue works with the planning process and the development of the contractual system, the aim of this chapter has been to provide a critical analysis of the English system, its major principles, theory and practice and, in particular, consequences of implementing PPGs 15 and 16 and the subsequent commercialisation of the sector.

A number of key issues currently discussed in the UK have been explored in search of positive and negative aspects of the planning-related, commercialised heritage management approach. A considerable increase of archaeological investigations, particularly those related to controlled development, together with a considerable increase of resources and the provision of a long-term funding scheme (as a result of making developers responsible for the damage they cause to cultural remains and obliging them to cover the costs of planning-related activities), were followed by the transformation of the archaeological profession itself (including the growth of the number of field archaeologists in the UK).

At the same time, an in-depth study has revealed a growing disenchantment of many British archaeologists with changes triggered by the implementation of PPG16. These included 'research-less' archaeology and loss of 'local knowledge', failure to create

an effective system for storing site archives, publishing excavation reports and disseminating information acquired during rescue work, the continuing alienation of non-professionals and a failure to communicate with the public as well as issues associated with the quality of planning-related work.

Another important issue which emerged in the course of the study summarised in this chapter was the influence of the planning-related archaeology and commercialisation on archaeological profession itself, both in the UK and in other European countries. This problem has been analysed in the view of the two pillars of the European common market: the free flow of workers (the right of individual archaeologists to undertake employment in every EU country) and the free flow of services (the right to bid for contracts in other member-states territories). The analysis carried out in this chapter revealed some considerable problems, such as the increasing instability of archaeological employment market, unfavourable employment conditions (especially when compared to other professions associated with the planning process), and limited progression routes and training opportunities. At the same time, the internationalisation of the profession in recent years has been identified as an important, although informal, contribution towards exchanging ideas and sharing experiences and good practice between individual archaeologists and even overcoming linguistic barriers and incoherent terminology.

Consequently, this chapter has argued that the commercialisation of development-related archaeological works is not an unavoidable result of integrating heritage considerations with the planning process. Similarly, the integration of rescue works with the planning process is not the sole source of problems troubling the archaeological profession and lowering the standards in archaeological work. This study has suggested a number of actions that could improve the management and protection of archaeological heritage in the light of a growing internationalisation of the profession and European integration, including raising the awareness of archaeological heritage management

principles and regulations, incorporating cultural heritage issues in university curricula,

developing and improving awareness of professional standards, and facilitating

co-operation between archaeologists from different countries (e.g. through the EAA).

# 7. Chapter Seven: 'Forward planning'. Part 2: The heritage protection reform in England and Wales

## 7.1. 'A case for perestroika' – the context for the heritage reform

Problems described in the previous chapter have been at the heart of the discussion on improving protection of archaeological heritage in Britain for about two decades. Key issues identified for a 'perestroika' (Greeves 1989), resulting from developments in archaeological theory and conservation principles, included unification of the fragmented heritage legislation and designation regimes, strengthening protection of unscheduled monuments and sites and cultural landscapes, making planning-related heritage management more effective and improving access to published and unpublished heritage information. Recognition for principles of sustainability, inclusivity and social responsibility spurred interest in heritage 'values', community-building, well-being, integration and widening participation. In its later stages, the discussion on the review of heritage protection was also associated with issues of identity (e.g. the debate on what it means to be 'English' and 'British'), devolution (in the light of Welsh, Scottish and Northern Irish self-governance) and the UK's role and place in the EU.

There were several 'milestones', which drew attention to problems associated with archaeological heritage management in the UK and identified issues for the prospective heritage reform in England and Wales, notably research and surveys on the state of preservation of cultural assets: the *Monuments Protection Programme* (EH 1997), the *Monuments at Risk* (Darvill and Fulton 1998) *and Heritage at Risk* (EH 2008a); assessments of archaeological sites in arable landscapes: *Ripping up History* (EH 2003c) and *COSMIC* (Oxford Archaeology 2006); several policy statements and discussion papers: *Power of Place* (EH 2000), *Historic Environment: A Force for Our Future* (2001)

and *Valuing our heritage: the case for future investment in the historic environment* (EH 2007), English Heritage's declaration on *Conservation Principles* (2006 and 2008b); and, finally, subsequent heritage reform consultation documents: *Protecting our historic environment: Making the system work better* (DCMS 2003), *Review of Heritage Protection: The way forward* (DCMS 2004) and *Protection of Historic Assets in Wales* (Cadw 2003 and 2004). The results of the consultation exercise and key reform proposals were outlined in *Heritage Protection for the 21st Century (White Paper)* (DCMS 2007a), shortly followed by the release of the *Draft Heritage Protection Bill* (DCMS 2008a).

One of major signals indicating a need for revising approaches to the archaeological heritage protection were findings of the *Monuments at Risk Survey* (MARS), a project carried out in the 1990s to examine the state of preservation of archaeological sites in England. The survey exposed a significant damage to cultural assets revealing that since 1945 at least 22,500 monuments have been wholly destroyed ('a rate of just over one monument per day') (Darvill and Wainwright 1995; Darvill and Fulton 1998). According to the *Heritage at Risk* study published in 2008, over a half of 19,709 English Scheduled Ancient Monuments (SAMs) were believed to be at high or medium risk (EH 2008a). In both surveys, destruction and loss of cultural assets were attributed primarily to property development, agricultural activity and natural erosion.

The research carried out by English Heritage also demonstrated that scheduled monuments were significantly more likely to be at risk than other designated cultural assets – listed buildings or historic landscapes (including battlefields and historic gardens). While the number of endangered historic buildings has been gradually decreasing,[110] threats to SAMs seem to be growing (EH 2008a). Since the majority (59%) of scheduled monuments are earthworks (mainly of prehistoric and medieval date) and standing structures (22%, principally of medieval or later date), this demonstrates that the

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[110] Number of grade I and II* listed buildings at risk fell from 3.8% in 1999 to 3.2% in 2008 (EH 2008a).

archaeological heritage is particularly at risk. English Heritage sought an explanation of this imbalance in economic and environmental factors. While the majority of listed buildings are used either as private homes or businesses premises and have a quantifiable worth, the market value of scheduled monuments (especially archaeological sites) is very limited. Taking under consideration that in England, most of SAMs are in private hands (74%),[111] there are fewer financial incentives for owners to maintain them in good condition than in the case of architectural heritage assets (EH 2008a) (see Annex 16).

## 7.2. Stages of the heritage protection debate

The *Draft Heritage Protection Bill* published in April 2008 is seen as an attempt at 'a radical overhaul of the way the historic environment is protected and managed in England and Wales' (EH 2008). The main goal of the reform is to modernise the heritage protection system through bringing together various pieces of legislation, concepts and procedures which have been developing since 19th century. The current system is deemed to be too complex ('few people fully understand all parts of it' or 'have a grasp of all parts of the legislation' DCMS 2003) with numerous procedural overlaps, gaps and inconsistencies in interpretation. With core discussion concentrated on harmonisation of designation regimes (listed buildings, scheduled monuments, registered parks, gardens, battlefields and wrecks), review of land-use and planning-related issues and the proposal to strengthen protection of the historic environment at local level, the prospective heritage reform undeniably will have a tremendous effect on British archaeology. However, many issues currently disputed in the UK are also part of a wider, international debate on archaeological theory and principles of cultural heritage management. Furthermore, considering that other European countries often experience similar difficulties and seek

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[111] Only 12% are owned by local authorities and 9% by government or their agencies and by utilities (EH 2008a).

solutions to parallel problems, the outcome of the reform effort is of interest to the wider archaeological community. For that reason, I shall briefly discuss this issue in the last section of this chapter.

The intention to carry out a review of the heritage legislation in England and Wales announced by the in 2001 in the document entitled *Historic Environment: A Force For the Future* (DCMS 2001) and was soon followed by publication of a consultation paper titled *Protecting our historic environment: Making the system work better* (DCMS 2003; McIntosh 2003). Already the reference to the historic environment in the title of the document suggested the adoption of a new approach to heritage management: the government declared an intention to make the historic environment 'central to social, environmental and economic agendas at a local as well as national level' (DCMS 2003). Proposed changes focused on making the system more transparent, open and flexible by removing inconsistencies resulting from piecemeal development of the heritage law, particularly by bring together major regulations: the *Historic Buildings and Ancient Monuments Act 1953* and the *Ancient Monuments and Archaeological Areas Act 1979*, the *Planning (Listed Buildings and Conservation Areas) Act 1990* and the *Town and Country Planning Act 1990* as well as PPG16 and PPG15.

The prospect of a heritage reform was welcomed by archaeological community as a long-awaited (or even overdue) task (CBA 2003; RESCUE 2003). However, not all proposed changes have met with equal approval. Generally, there were concerns were about the bias towards issues related to built heritage (CBA 2003). More specific criticism referred to the review of designation regimes. While the idea of creating a unified register of heritage assets was seen as an improvement, discussion arose around choosing criteria for designation and extending protection to incorporate new categories of archaeological resources such as artefact scatters and paleo-environmental sequences. *Protecting our historic environment* suggested separation of 'national' and 'local' designations and

increasing discretion whether to schedule (or list) a site or monument. The rationale

behind a bigger flexibility was based on the assumption that in some cases alternative, less

rigorous means of protection (e.g. requirements of PPG16 or management agreements

with landowners),[112] were more efficient ways of securing the future of the site (DCMS

2003, p. 10). Unsurprisingly, this argument did not convince archaeological consultees,

with CBA and RESCUE opposing it as a further step towards facilitating development at

the expense of cultural heritage and a potential threat of devaluing status of some areas

and features. In response, CBA advocated development of Areas of Archaeological

Importance to create 'archaeological reserves' (as suggested by the Valetta Convention) in

urban landscapes (CBA 2003).[113] The value of management agreements was also

questioned, mainly through reference to the failure of management schemes based on

Ecclesiastical Exemption and Class Consent Orders regulations (CBA 2003; RESCUE

2003).

Publication of *Protecting our historic environment* resulted in approximately half a

thousand responses provided by key heritage organisations, local, planning and church

authorities, professional bodies and individuals. The next stages of consultations begun

with the circulation of a decision document *Review of Heritage Protection: The way*

*forward* (DCMS 2004) followed by launch of EH's pilot projects and parliamentary

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[112] This suggestion was based on the experience of using agreements as the form of protection for the natural environment, for example in the management of Sites of Special Scientific Interest (SSSIs), agreements negotiated by English Heritage with farmers to limit damage to monuments from farming operations and environmental farming schemes such as the Countryside Stewardship and Environmentally Sensitive Area Schemes.

[113] The aim of Areas of Archaeological Importance (AAIs) introduced in 1979 by the Ancient Monuments and Archaeological Areas Act was to protect city centres of historic significance by forcing developers to permit archaeological access prior to construction works. However, only five historic centres have been designated as AAIs (Canterbury, Chester, Exeter, Hereford and York) and no new AAIs have been created since 1984. The use of AAIs designation was perceived as superseded by PPG16 (DCMS 2007a) and, as a result, they have been removed from the *Draft Heritage Bill* (DCMS 2008a). CBA argued that PPG16 did not offer adequate protection to urban sites since site or areas considered as of 'national importance' but not designated (as was the case of most urban sites), were *de facto* given worse protection than e.g. scheduled monuments or AAIs, and that he prevailing heritage management method of rescue works and 'recording' was inferior to preservation in situ (CBA 2003). The potential loss of protection for urban archaeological deposits from damaging aspects of permitted development was also pointed out by the Association of Local Government Archaeological Officers for England (ALGAO: England, CMSC 2008, Evidence 8) and the Archaeology Forum (CMSC 2008, Evidence 29).

enquiry summarised in *Protecting and Preserving our Heritage* (CMSC 2006). Discussions culminated in the release of *Heritage Protection for the 21st Century (White Paper)* (DCMS 2007a) leading to the publication of the *Draft Heritage Bill* in April 2008 (DCMS 2008a).

## 7.3. The heritage protection reform: proposed solutions and future influence

Key goals of the proposed Heritage Bill, in its current shape, include the unification of the designation regimes (to replace the current system of listing, scheduling and registering; see Annex 17). Following ideas outlined in the review documents, the Bill also introduces an integrated heritage consent regime (Historic Asset Consents – HACs) merging the current Listed Building Consent and Scheduled Monument Consent. It also abolishes the separate Conservation Area Consent linked to planning permissions. The devolution of competences and increase of responsibilities for the historic environment at a local level includes an obligation to create and maintain Historic Environment Records (HERs).

The idea of unifying designation regimes was pursued in the *Review of Heritage Protection* (85% of responses to the 2003 consultation paper were in favour of creating some sort of a single list). This was one of the most important aspects of this consultation stage, introducing an overarching definition of 'historic assets' covering archaeological remains (such as earthworks/excavation above/below ground and man-made deposits), historic buildings (including post-war architecture), underwater historic assets (including in rivers, ponds etc), man-made landscapes, battlefields and historic areas.[114] The *Heritage Protection for the 21st Century (White Paper)* (DCMS 2007a) suggested further changes to designation regimes, expanding them to cover sites of early human activity without

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[114] Since 2004, term 'historic assets', defined in the proposed legislation as a place with archaeological, architectural, historic or artistic interest, has become part of the official nomenclature adopted by the UK Government and English Heritage.

structures (e.g. flint scatters, paleo-environmental sequences or cave deposits).[115] According to the *Draft Heritage Bill* (DCMS 2008a), the new system of cultural assets designation, called the Heritage Registers for England and Wales, will combine historic buildings and structures, archaeology, parks, gardens, historic landscapes (Wales only), battlefields, marine heritage sites and World Heritage sites. The revised system should facilitate recording of different categories of historic assets in a more comprehensive way, e.g. grouping Historic Asset Records of a building and gardens of a historic house in one register entry.

Since one of the primary aims of the proposed heritage reform was to deliver 'greater flexibility in considering the future management of a designated site' (DCMS 2004), the review of scheduling/listing schemes was followed by a proposal to transfer the responsibility for national designation to English Heritage (with the Secretary of State retaining a power to call in exceptional cases for a discretional decision) and allow more discretion and discernment in making decisions. During the consultation process, the majority of respondents approved plans for devolution of tasks from the SoS and were in favour of English Heritage having limited flexibility but simultaneously stressed that only technical criteria, and never economic considerations, should be taken into account at the designation stage (DCMS 2004; RESCUE 2007a). In result, the draft legislation transfers

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[115] The suggestion to extend protection of archaeological heritage resulted in a review of a legal definition used for designation purposes. According to the *Draft Heritage Bill* (Section 2), 'registrable structures' (whether above or below the surface of the ground, and whether or not to any extent submerged) considered to be of special historic, archaeological, architectural or artistic interest' include: (a) buildings or other structures; (b) earthworks and field systems; (c) parts of buildings or of any other structures, or of anything within paragraph (b); (d) caves or excavations; (e) sites comprising the remains of anything within any of paragraphs (a) to (d); (f) site comprising, or comprising the remains of, the whole or part of a vehicle, vessel or aircraft; (g) site (other than one within paragraph (e) or (f)) comprising any thing or group of things that evidences previous human activity; (h) group of things specified in previous paragraphs.

Explanatory notes to the Draft Bill specify that letters (a) to (f) are objects and sites which evidence human construction (e.g. buildings, monuments, statues, barrows, dockyard cranes, etc.), or human habitation (e.g. caves) as well as the remains of such assets (e.g. buried archaeological remains, ruins). Letter (g) describes sites containing objects or material remains which evidence early human activity (whether man-made or not, e.g. sites of accumulated animal bone; cup stones, where the surfaces of naturally lying rocks have been worked by prehistoric humans; lithic scatters or sites where there is evidence of burning, hearths, etc.). Letter (h) enables groups of objects, which are related, such as barrows, monoliths and excavations, to be registered as a single heritage structure (DCMS 2008a).

responsibility for designation from the Secretary of State to English Heritage (in England) and to the Welsh Ministers (represented by Cadw).

The discussion also focused on 'regional' types of designations such as conservation areas and local historic building listings.[116] While regulations on conservation areas await review, the initial proposal to move any Grade II items to a local list was abandoned due to a very negative feedback.[117] This idea was associated with the attempt to curb the so-called 'spot-listing' – designation of historic buildings in cases, where planning permission was granted for redevelopment of a site, or where an application for planning permission was under consideration. Since 'spot-listing' affects regeneration and redevelopment issues by creating delays and adding to the burdens on developers and planning authorities, the government expressed its intention to 'tackle this difficulty' (DCMS 2004). This can be interpreted as a development-friendly move, especially since the designation system was to be opened-up to include consultations with owners and LPAs (DCMS 2004). While the majority of respondents agreed that the process should be more transparent (as generally beneficial from in terms of widening participation), there was a visible concern that it may escalate threats to heritage assets and result in their deliberate destruction by developers/owners trying to avoid having sites designated.

The discussion paper did not explain how important consultation would be, e.g. if the owner or a LPA objected to designation because of underlying economic interests. Nearly 99% of respondents opted for an obligatory interim protection for the period from application to decision-making to prevent abuse by owners and pre-emptive damage or demolition (DCMS 2004), a situation which by no means is unique to England and Wales.

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[116] Currently, in England and Wales, there are around 10,000 and around half of all local planning authorities have some list of locally significant buildings.

[117] According to the initial suggestion, current GI and GII* listings were to be combined and renamed G1 and GII category (renamed G2) was to be moved to a 'local' level (DCMS 2003). The idea has been dropped as highly unpopular (95% of consultees objected) (DCMS 2004).

For example, exactly the same problem can be observed in Poland, where developers and owners in some cases demolish a building or a site while conservation authorities consider designation (notably one such case took place literally next to the office of the 'Conservator General' in 2001). It has been pointed out that LPAs have a right to serve a Building Preservation Notice (BPNs) to protect buildings considered to be under immediate threat. However, BNPs are often not used because they may involve paying compensation (difficulty similar to revoking Class Consents in case of sites at risk from agricultural activities, see Annex 16). Addressing these concerns and following earlier recommendations (DCMS 2007a), the proposed Bill introduces a form of temporary protection for historic assets during the designation consultation process through 'provisional registration' (DCMS 2008a, Section 11). The interim protection is also 'intended to ameliorate the effects of spot-listing' and reduce the burden on local authorities by removing the need to address this threat through BPNs (DCMS 2008d, p. 12).

Another concept that has been developed through subsequent stages of the heritage system review is the 'integrated heritage consent', or, in later versions, the Heritage Asset Consent (HAC) required for demolition, damage or destruction, removing, repairing, making alteration or addition, etc., affecting the special interest of protected structures. A new unified consent regime introduced by the Draft Bill brings together the currently separate systems of Scheduled Monument Consent (SMC) and Listed Building Consent (LBC). HACs would be administered by local authorities (already responsible for LBCs) (*Draft Heritage Bill,* Section 86) and not (as in current regulations) by the Secretary of State, English Heritage or the Welsh Ministers (as proposed in responses to the 2003 consultation paper). According to the Bill's impact assessment, this merger and simplification of the application process should be beneficial for owners and managers of

heritage assets, especially in cases of complex sites that include buildings and archaeology (DCMS 2008d, p. 17).

It has been suggested that, in its final form, integrated consent could be extended to cover planning permissions and Conservation Area Consents (CACs) as well as incorporate statutory management agreements (DCMS 2003 and 2004). While amalgamation of SMC and LBC did not raise many objections,[118] the question of merging CACs and planning permissions caused some concerns as a development-friendly solution potentially leading to lower protection for wider aspects of the historic environment, including archaeological deposits. Secondly, it has been pointed out that LPAs often do not have the expertise to deal with such applications and that the proposed reform did not resolve the issue of providing resources or acquiring specialist staff (DCMS 2007b; Hewitson 2008; RESCUE 2008).

DCMS also sought an opinion on a statutory guidance promoting pre-emptive assessment for all major planning applications. An overwhelming number of respondents (89%) felt that such guidance should exist and the majority of the local authority stated that this already occurs in relation to archaeology and 'works very well' (DCMS 2004). According to the *White Paper*, 'this approach has proved useful in enabling development to take place while mitigating its effects on important archaeological remains' (DCMS 2007a, p. 26). In consequence, the Government expressed its intention to explore further, or even strengthen, the use of pre-application assessments extending it to all types of heritage assets 'in order to minimise the burdens for those undertaking major developments' (e.g. stop spot listing) (DCMS 2007b).

Accordingly, Section 39 of the *Draft Heritage Bill* introduces Certificates of No Intention to Register (CNIRs) presently known as Certificates of Immunity (COIs). Under

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[118] A number of consultees noted that in the current system it was possible for sites to be both scheduled monuments and listed buildings and in such situations weaker provisions and lesser penalties associated with the scheduling regime applied rather than those related to listing (RESCUE 2003; DCMS 2004 and 2007b).

the current system, developers can apply for COIs to receive guarantee that a building will not be listed for a period of 5 years. During the consolation process, the Government articulated 'strong support' for the use of COIs 'as a means of providing developers with certainty'. The new system suggests expanding the scope of these Certificates, so that they may encompass entire sites rather than individual buildings. In addition, in future, it would be possible to request a COI at any time, not only once a planning application has been submitted (DCMS 2008d, p. 13). This is seen as particularly relevant in urban areas, as means of facilitating regeneration projects (DCMS 2007b, p. 10).[119] This, however, can have potentially disastrous consequences for archaeological remains at risk from development projects. The intention to expand the use of pre-application assessments and mitigation strategies based on principles and procedures currently set out in the PPG16 may also lead to the increased application of 'preservation by record' or invasive solutions (piling, rafting, etc.). Moreover, together with a common use of certificates of immunity, this can create a loophole in the proposed system of heritage protection in dealing with unquantifiable and/or unknown archaeological potential (RESCUE 2007a). The proposed Bill specifies that where a certificate has been issued, the heritage authority must not, at any time within five years beginning with the date on which the certificate is issued, include the heritage asset in its register. Yet, there is no discussion on what happens when new evidence is discovered after issuing a certificate. This seems to be a significant omission, especially in relation to archaeological deposits, where potential and significance are often difficult to fully asses in pre-emptive evaluations, including cases of important discoveries (of 'national importance') in the course of rescue or construction works (such examples were discussed in Chapter 5).

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[119] In the consultation process, the support for the extension of COIs came, unsurprisingly, mainly form LPAs and developers who believed that this could help cut down on the number of spot-listing applications. Archaeologists criticised the proposal drawing attention to the difficulty of having enough certainty over the lack of archaeology in an area to grant a COI (DCMS 2007b).

As noted above, the prospective Heritage Protection Bill sets a number of ambitious goals intended at bringing regulations and policies in England and Wales up-to-date with developments in cultural heritage management and conservation theory. One of key aims of the reform is to support 'sustainable communities by putting the historic environment at the heart of an effective planning system' through greater openness, flexibility and dialogue (DCMS 2007a).[120] Yet, there are some concerns that, although there is a focus on sustainable development, *development* may be the key word steering the heritage debate. This is not entirely unfounded allegation, since official governmental statements repeatedly refer to heritage as 'a vast and valuable educational resource' and an 'expression of our past and of our identity' as well as a 'driver for regeneration and tourism' which creates the impression that heritage protection is dependable on other interests and has to be justified by practical gains.[121] In addition, a number of proposals are explicitly aimed at 'reducing uncertainty for developers' (see Annex 15).[122] The bias for built heritage and support for solutions favouring development as well as a rather utilitarian approach to the historic environment in general have been picked upon by the archaeological lobby and became major sources of criticism: 'it would seem that while we can have <<art for art's sake>> the protection of the Historic Environment seems to have

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[120] Andrew McIntosh, Heritage Minister, launching consultations on the review of historic environment protection in 2003 stated: 'We need a system fit for the 21st century [...] that will provide benefits to all stakeholders through more simplicity, more flexibility, more openness and greater rigour' (McIntosh 2003).

[121] For instance, Carman (2005b, p. 47) sees designation of cultural assets (e.g. scheduling of Ancient Monuments and listing of Historic Buildings) as the reflection of the 'economic school value' – practices largely based on ideas borrowed from economics, social studies and increasingly from environmental studies (e.g. sustainable development). In his opinion, increasingly, archaeological heritage is perceived as an economic finite resource (Carman 2005b, p. 48) and the protection of archaeological remains becomes feasible only when their continued survival would benefit the community or the society (e.g. through education, recreation, tourism or social stability). The advantage of such an approach is that it 'gives us a usable list of tangible purposes for having a heritage and treating it as something different from anything else' (Carman 2005b, p. 50). However, it ultimately puts archaeological heritage in the context of economics where alternative value schemes have less authority.

[122] E.g. as in the case of the intention is to curb 'spot-listing' justified because 'in a small number of cases, designation can delay, derail or prevent development' – a particular problem in the case of large-scale planning applications, where advanced proposals for major developments can be substantially delayed by listing (DCMS 2007a, p. 26).

to be justified in terms of wider policies and anticipated outcomes rather than for its own sake' (RESCUE 2004).

Many archaeologists are disconcerted that, despite high hopes and promises, the proposed reform may not accomplish much improvement in a long-term protection of archaeological heritage and that the emphasis on built heritage (noted also in other areas of cultural heritage management, e.g. in the EIA process; see Annex 11) will lead to a diversion of resources from archaeology. The proposed legislation (including the draft Bill released in April 2008) has been criticised for its incompleteness and a number of significant omissions, such as provisions for conservation areas management or Ecclesiastical Exemption, Class Consent Orders (especially the revocation of Class 1 consents as promised by the *White Paper*), review of buffer zones for World Heritage Sites or lack of secondary legislation related to planning (CMSC 2008).

The heritage reform carried a promise of enhancing protection of archaeological remains under agricultural cultivation. For example, *Review of Heritage Protection*, which developed proposals included in *Protecting our historic environment* and subsequent feedback, promised a review of the *Ancient Monuments (Class Consents) Order* 1994 to improve protection of nationally important archaeological sites from ploughing. According to Class Consent No 1 (CC1), related to agricultural, horticultural and forestry operations on scheduled ancient monuments, 'same depth' cultivation can be carried out on scheduled sites previously lawfully cultivated. This regulation was based on the assumption that continuous same depth ploughing did not cause significant damage to archaeological deposits. However, this was proved to be wrong by successive research looking at cumulative effects of such activities and, for that reason, archaeologists, amenity societies, and professional and voluntary organisations have repeatedly suggested 'setting aside' culturally sensitive sites as the most secure way of ensuring their preservation (CMSC 2006 and 2008, RESCUE 2007a; DCMS 2007b; see Annex 16).

Although the *White Paper* included a commitment to revoke Class Consents, they were upheld in the *Draft Heritage Bill* (Section 93).

The *Draft Heritage Bill* (Sections 157-160) provides a statutory framework for a new system of optional heritage management agreements – HPAs – to be negotiated between owners, heritage authorities and planning authorities. Such agreements would replace the need for repetitive consent applications for similar works giving the owner permission to carry out certain types of activities on the site (usually repetitive and/or small-scale works). The rationale behind HPAs is to 'enable proactive long-term management of sites', provide certainty, and 'reduce bureaucratic and administrative burdens' for owners and local authorities, and ultimately save time and money (DCMS 2008d, p. 10). Although currently management agreements are seen to be of particular use for owners of large estates or complex sites (DCMS 2008d, p. 19),[123] the proposed regime also suggests their future application to sites under cultivation (DCMS 2007a) where the objective would be to enable continued cultivation wherever possible. At the same time, CC1 would not be immediately revoked but should remain in force 'until such time as a HPA is proposed by either the local planning authority or by English Heritage' (DCMS 2007a, p. 28).[124] Since many parties to the consultation process expressed concerns about transparency and openness of HPAs, it has been suggested that such agreements should become public records (DCMS 2007b, p. 14). In any case, use of HPAs may also have implications in terms of access to information and access to environmental information legislation but this issue has not been explored further (see Section 9.9).

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[123] The proposed use of HPAs in relation to large sites containing several elements subject to separate development controls (e.g. a listed building set within a registered park and accompanied by a scheduled archaeological site) is seen as a step towards more effective heritage management through elimination of repetitive, overlapping consent applications (for alterations, extensions, demolitions, etc.).

[124] In response to negative feedback received after the publication of the *Draft Heritage Bill*, DCMS stated that, as part of its Heritage at Risk initiative EH will 'initiate a rolling programme to identify those assets likely to benefit most from prioritised withdrawal from CC1, and will seek to negotiate alternative management solutions with their owners [such as an Environmental Stewardship scheme or a HPA], as an alternative to returning such assets to the standard consents regime' (DCMS 2008c, point 58).

Another issue was the proposal to abolish the Ecclesiastical Exemption as a factor increasing risks to archaeological heritage. For example, RESCUE argued that current levels of protection required for ecclesiastical sites were inadequate, with many projects contributing to the destruction of cemeteries and churchyards, or at least failing to include adequate provision for archaeology and thus leading to loss of valuable information (RESCUE 2004; RESCUE 2007a and 2008). However, the proposed Heritage Bill retains the Exemption[125] since it

> reduces burdens on the planning system while maintaining protection and reflecting the particular need of ecclesiastical registered heritage structures in use as places of worship to be able slowly to adapt to changing needs over time to ensure their survival in their intended use. It is widely acknowledged that keeping a building in use is more likely to result in the proper maintenance of that building and its sustainability. (DCMS 2008f, p. 14)

Another result of the ongoing review of heritage management system is the substitution of Sites and Monuments Records (SMRs) with a network of Historic Environment Records (HERs) – publicly available 'dynamic information services' providing access to 'comprehensive resources relating to the historic environment of their locality for public benefit and use' and encouragement of research (DCMS 2004, 2007a and 2008e). Section 210 of the *Draft Heritage Bill* places an obligation to create and maintain HERs and keep them up-to-date on local planning authorities. Their content should complement that of the Heritage Register and include, as a minimum, records of designated, locally designated and non-designated heritage assets, heritage assets with archaeological interest that are neither 'registered' nor 'locally designated', findspots (e. g. recorded by PAS) and investigations of the archaeological, architectural, historic or artistic

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[125] According to Section 153, works to relevant registered heritage structures ecclesiastical in nature and in use for ecclesiastical purposes will not require HAC. The Government also expressed intention to publish regulation similar in terms to the current *Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994*.

interest of a place as well as landscape historic characterisation studies, conservation area appraisals and historic area assessments (DCMS 2008e, p. 10).[126]

HERs should also hold reference collections, including historic maps, photographs and reports of fieldwork (DCMS 2008d, p. 20). Draft guidance for LPAs states that while original archives should be deposited with an appropriate repository (e.g. a museum, record office or digital archive), 'it may still be desirable for an HER to hold substantial collections of reference materials or sources that supplement the digital information contained in its database'. This includes investigation reports and unpublished 'grey literature' to ensure that information generated as part of the planning process contributes to the knowledge on historic environment (DCMS 2008e, p. 12). However, neither the Bill or the draft guidance or HERs say how the said records should be collected, nor make provision for depositing site archives/ post-excavation reports.

Creation of HERs was generally endorsed by the archaeological community, albeit not without some reservations. Main concerns relate to ways of managing access to records, placing too much focus on the built heritage and the failure to provide a solution (and adequate funding) for incorporation of information generated as a result of archaeological surveys and excavations undertaken under the PPG16 (RESCUE 2004, 2007a and 2008; MLA 2007). Secondly, the *White Paper* (DCMS 2007a) stipulated that if HERs were to be used effectively, their content would need to be made as accessible as possible, and available for public consultation. Yet, the aim of increasing public involvement in the field of heritage protection – one of the key goals of the reform – while generally welcomed, is seen as a potentially double-edged sword. In this context, it raised concerns among archaeologists fearing that greater public access to information about the

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[126] Including entries for monuments and sites that are known to have been demolished or destroyed or known only from antiquarian sources. HERs should also hold information on historic assets that do not meet the criteria for 'registration' or 'local designation' or which have yet to be formally assessed by the relevant designating authority (DCMS 2008e, p. 10).

precise location of archaeological sites could place them in jeopardy from artefact hunters (RESCUE 2007a).[127]

Finally, like in the case of the proposed introduction of 'heritage asset consent', there were concerns about the lack of visible commitment to ensure availability of expert curatorial advice within LPAs (and HERs) dependent on provision of adequate resources and expert staff (RESCUE 2008). During the consultation process, the 2006 inquiry by the Culture, Media and Sport Committee (CMSC) found that local authorities were responsible for over 90% of the task of managing and improving the UK's built and archaeological heritage. According to the report (CMSC, 2006, pp. 34-7), while most local authorities employed one or more conservation officers, there was a wide discrepancy in the size of heritage teams and availability of professional advice, and even cases where there was little or no core provision. For that reason, the proposed increase of competences on local level and delegation of additional responsibilities to LPAs, CMSC (and its consultees from within the heritage sector) expressed 'grave concerns that there will not be sufficient conservation officers in place to implement the reforms that the Bill will introduce' (CMSC, 2008, p. 11).[128]

The *White Paper* (DCMS 2007a) also promised to improve the protection of World Heritage Sites and strengthen consideration for WHS within the planning system. However, details of prospective changes have not been specified. In July 2008, the World Heritage Committee officially criticised the UK Government for putting a number of

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[127] This problem is by no means limited to England and Wales. For instance, in the 1980s and 1990s, at the peak of treasure-hunting outbreak in Ireland, monument inventories were used as 'hit lists' by the looters, with records designed to protect sites and monuments ironically turning into an aid in their destruction (Kelly 1993). Similarly, in Poland, the national heritage service decided to restrict public access to the archaeological sites and finds database (e-Archeo) in fear of it becoming a source of information for metal-detectorists.

[128] CMSC's report also referred to the declared intention 'to treat the historic environment holistically' – one of main principles underpinning the heritage reform. CMSC pointed out that, in order to fulfil this task, training would have to 'extend well beyond the legislative reforms themselves, and beyond merely the specialists in the sector', including councillors, planning officers, administrators, etc. However, the Impact Assessment did not specify whether allowance has been made for training such non-specialists or whether projected costs covered wider needs of heritage services (CMSC, 2008, p. 12).

World Heritage Sites in danger from building developments and even ignoring legal obligations to protect them. Most negative comments related to the failure to create appropriate buffer zones around sites, allowing unsympathetic development in the vicinity of the World Heritage property and lack of clarity in assessing the conflicts between conservation and development (UNESCO 2008b; Carrell 2008). Sites that were a matter of concern are mainly located in urban context and include the Tower of London, Westminster Palace, Westminster Abbey and Saint Margaret's Church, City of Bath and Old and New Towns of Edinburgh. In consequence, UNESCO threatened with inscribing the Tower of London on the List of World Heritage in Danger (UNESCO 2008b).

A more general criticism included a degree of frustration at the slow progress of the reform, lack of urgency (e.g. in updating planning-related regulations) and a limited scope of the review outlined in the final stages of the process (*White Paper* and the *Draft Bill*). Numerous comments showed disappointment in the lack of clear commitment to improve the co-operation with the private sector operating under the PPG15/16 regime and boost archaeological research. Submissions made by archaeological organisations repeatedly called for a simultaneous review of PPGs 15 and 16 to 'ensure that the key protection that PPG16 provides for the archaeological heritage is not reduced' (ALGAO: England, CMSC 2008, Evidence 8; IFA, CBA, RESCUE, Archaeological Forum and SCOLA *ibid.*).

For instance, Nigel Hewitson, former EH Legal Director, stated that the main advance brought by the Draft Bill was 'to stitch together existing listing and scheduling systems' (2008) – and therefore, from a planning practitioner's point of view, he did not see how the proposed system would be significantly different from the current one. A too technocratic approach and a lack of major conceptual changes was also criticised by Smith and Waterton, who argued that while the goals of the reform (as outlined in the *White Paper*) made 'laudable and useful attempts at streamlining and clarifying the management

and protection process, many of its proposed changes operate at the rhetorical level only' (Smith and Waterton 2008, p. 197). In their opinion, in consequence, the focus on technical details (process of designating, selection criteria, etc.) overshadowed considerations for a better understanding for 'what constitutes those things we value from the past and present' and attempt at a broader interpretation of 'heritage' and 'historic environment' (p. 199).

Of course, the Draft Bill together with draft regulations of the Ecclesiastical Exemption and Conservation Areas have to include technical details to work as effective pieces of revised legislation. Nevertheless, the observation made by Smith and Waterton in relation to the change of language used in the *White Paper* and the uncertainty about delivering the wider aims of the reform (the 'challenge of incorporating wider governmental commitments for tackling social exclusion and recognising cultural diversity and public value into their remit', and attempt 'to make the heritage sector appear modern', 'relevant' and 'for for purpose' and intending to generate a better understanding of heritage and increase involvement, ownership and participation at community levels) was shared by a number of representatives of the heritage sector, especially amenity societies and voluntary organisations (CMSC 2008).

## 7.4. Archaeological heritage and the social agenda – 'combating social exclusion'

The discussion on the inclusive/exclusive character of cultural heritage and its potential for inducing social changes is associated with the broader political agenda. While traditionally these issues belonged to the sphere of nationalism and nation-building efforts (see Chapter 8), in the modern-day Europe 'uses of heritage' are increasingly adopted as means of integration, creating identity and promoting social inclusion. Therefore, there is a strong desire to demonstrate the non-elitist, progressive nature of cultural heritage and its

relevance to current social problems. In the UK, this is particularly visible in the case of urban archaeology and built heritage (Newman and McLean 1998; Pendlebury *et al.* 2004; Symonds 2004).

Since the 1990s (more or less at the same time as the EU's involvement with heritage, see Chapter 8), the UK government has been pursuing an agenda to make heritage issues more pluralist and relevant to contemporary problems. Several government reports, for instance, *Towards a Strong Urban Renaissance* (2005), *The State of the English Cities* (ODPM 2006) or *The Lyons Inquiry into Local Government* (2007) and policies, e.g. *People and Places: Social Inclusion Policy for the Built and Historic Environment* (DCMS 2002) emphasised the importance of the historic environment and cultural heritage, 'place-shaping', 'urban renaissance', 'neighbourhood renewal' and sustainable regeneration of built heritage as means of reducing (or even 'combating') social exclusion. For example, *Force for the Future* defined historic environment as 'a vital part of the social and cultural identity of the nation', 'something from which we can learn, something which can bring communities together in a shared sense of belonging' and 'a force for regeneration and a powerful contributor to people's quality of life' (DCMS 2001, p. 4 and 12). Stating that

> the historic environment should be seen as something which all sections of the community can identify with and take pride in, rather than something valued only by narrow specialist interests (DCMS 2001, p. 25)

the Government declared that

> making everyone feel comfortable with their historic environment and achieving a higher level of involvement and engagement must therefore be a high priority for the [heritage] sector as a whole. (DCMS 2001, p. 31)

At the same time, *Force for the Future* highlighted 'the importance of tapping to the economic and social potential of the historic environment' by developing tourism, creating jobs, tackling social exclusion and bringing change to deprived communities

(DCMS 2001, p. 12 and 15). According to *People and Places,* a policy developing themes

and ideas embedded in the previous document,

> high quality, well-managed built environment improves the relationship between
> citizens and their environment and contributes significantly to social and economic
> regeneration [...] The built and historic environment can also help connect people to
> their culture, both past and present [...] A high quality, safe, welcoming public
> realm invites better behaviour from its users. It creates interaction between people
> and this leads to a greater sense of community. (DCMS 2002, pp. 4 and 6)

English Heritage also adopted a series of social inclusion goals and principles

related to issues of access, pluralism and multiculturalism linking historic environment

and cultural heritage conservation to sustainability, the sense of place, community and

'neighbourhood renewal'. The new approach resulting from the acknowledgement that the

expert-led value judgments underpinning definitions of heritage and its management may

not reflect wider views in society was manifested, for instance, in the *Power of Place* (EH

2000).

Undeniably, the adoption of new approaches towards the historic environment had

to have an effect on archaeological heritage management. On one hand, archaeologists

were at the forefront of the theoretical debate on inclusivity, participation and widening

access to cultural heritage, leading to the development of community and public

archaeology (Marshall 2002; Merriman 2004), recognising roles and responsibilities

associated with the wider social agenda. For instance, new themes and theoretical

questions explored by historical archaeology, especially in relation to scale, agency,

representation or the 'ambiguous nature' of medieval and post-medieval urban deposits

(Murray and Crook 2005, p. 106), are often associated with issues of migration,

industrialisation, identity, poverty and even slavery, investigating roles that cities have

played in the movement of goods and people or looking for innovative ways to analyse

domestic assemblages or mass finds (e.g. medieval and post-medieval potter, clay pipes) (Murray and Crook 2005; Hall and Silliman 2006).

Archaeological excavations are a social activity, capable of inspiring people to create new interpretations and narratives, producing their own, meaningful 'pasts' (Tilley 1989). For instance, the increasing preference for the reuse of redundant historic buildings and brownfield sites (see Annex 15) means that a lot of archaeological investigations take place in run-down areas, often inhabited by a diverse range of ethnic and racial groups or characterised by high unemployment. In such cases, archaeology can be used to engage local residents and visitors in exploring the changing nature urban landscape and communities (Symonds 2004, p. 43).

On the other hand, it seems that the current cultural heritage management agenda and interpretation of sustainable development (as, for instance, presented in the *Power of Place*) is somewhat biased towards the built and urban environment and does not represent a fully holistic approach to the historic environment (or its complexity), neglecting, for instance, risks to rural landscapes and sites under cultivation (Annex 16). Moreover, there are some reservations to the extent to which archaeological issues are considered in the urban context itself. For example, policy statements highlighting the importance of public involvement and supporting co-operation with local communities, included in documents such as *Power of Place* and *Force for Our Future* do not necessarily correspond with the reality of privately-funded development-led archaeological projects, notably working within strict timescales and budgets, with strict insurance and health and safety issues restricting (or even precluding) public access to construction sites or failure to provide adequate solutions for enhancing research output and publication of results (Cumberpatch 2001; RESCUE 2007a). Finally, an increase in social responsibilities and growing expectations towards archaeology are not matched by provision of adequate financial support. What is more, the chronically underfunded heritage sector has been significantly

affected by the recent economic downturn now facing cutting of funding from both public and private sources.

Because of the sudden change in the economic (and political) climate, the implementation of the Bill and a new PPS in England and Wales has been deferred (DCMS 2008b).[129] Thus, it is hard to predict the final shape or results of the reorganisation of the heritage reform. English Heritage expressed its intention to carry on with a number of changes and initiatives outlined in the *White Paper* (EH 2008c). However, the delay in formal publication of the new Bill and associated documents, apart from causing a general disappointment, may have serious consequences. For instance, the deferment of UNESCO's decisions related to abovementioned UK World Heritage Sites put under pressure by development and regeneration projects depended on the anticipated reform and were to be revisited in 2009. The recent action against Germany and the subsequent removal of the Dresden's Elbe Valley from the WH List in June 2009[130] suggests that it may not be just an empty threat. In this context, the publication of the *Circular on the Protection of World Heritage Sites* (providing 'an updated policy guidance on the level of protection and management required for WHS' but limited to England)[131] appears to be an urgent measure to address UNESCO's criticism and fulfil the commitment to issue a dedicated planning circular promised in the *White Paper*.

It is worth noting that simultaneous review of heritage management was taking place in Scotland. A recently (July 2009) published revised *Scottish Historic Environment Policy* (SHEP) set out policy directions for the Scottish Government, local authorities and

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[129] The Impact Assessment published in April 2008 together with the draft Bill estimated immediate costs of implementation at £6.2 million, making the Bill (at the time) 'pretty cost-neutral' (DCMS 2008d). However, the CMSC together with many consulting organisations, though that the cost was largely unrealistic and largely underestimated, not providing enough founds for delivery of the reform (CMSC, 2008, p. 10).

[130] The World Heritage Committee decided to remove the Dresden Elbe Valley (inscribed in 2004) because of the construction of a four-lane bridge in the heart of the cultural landscape which meant that the site failed to keep its 'outstanding universal value as inscribed' (it is only the second property ever to have been deleted from the List).

[131] *Communities and Local Government Circular 07/2009* published 24 July 2009 by publication DCMS and DCLG.

Historic Scotland, complementing, *inter alia,* existing Planning Policies, scheduling and listing legislation and EIA and SEA regulations. With sustainability as an underpinning principle, SHEP draws attention to issues including new risks arising from the progressing coastal erosion or the development of renewable energy infrastructure, a need to consider biodiversity of historic sites and landscapes, carbon footprint reduction and energy conservation (e.g. reuse of building materials in conservation or use of local resources) and continuation of traditional skills (Historic Scotland 2009).

## 7.5. Summary

Following the issues and context outlined in Chapter 6, this Chapter has examined recent policy shifts and the proposed reform of legislation in England and Wales. Its aim is to explore the changing attitudes, new approaches and advances in archaeological theory and heritage management policy, especially in relation to the concepts of historic environment, cultural landscapes, integrated conservation and sustainable development, to analyse in a critical manner the promises and potential benefits associated with the reform as well as its weaknesses and possible pitfalls of the proposed regulations, and to think about the future influence on the archaeological heritage management in other European countries.

It has been demonstrated that despite some important innovations, such as the creation of a more coherent designation system, the establishment of integrated heritage archives (HERs) and the adoption of a holistic approach to the historic environment, the draft bill did not foresee a complete overhaul of the archaeological heritage management system in England and Wales and thus did not guarantee a great improvement in long-term protection. Major concerns include the emphasis on built heritage and a number of significant omissions (such as provisions for conservation areas management, Ecclesiastical Exemption, Class Consent Orders or a review of buffer zones for World

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Heritage Sites). Another issue was the lack of a strong commitment to ensure availability of expert curatorial advice within LPAs (and HERs) as well as to assure the provision of adequate resources and expert staff that has to follow the delegation of tasks and responsibilities.

A more general criticism included the frustration of the archaeological community in Britain with the slow progress of the reform, delays in updating planning-related regulations and the limited scope of the heritage review compared with the initial outline, all of which suggest that the historic environment management was not a high priority on the government's agenda. A disappointment with the lack of clear commitment to improving co-operation between 'research-oriented' archaeologists and the private sector, as well as a failure to address emerging problems related to issues of environmental change and sustainability, have also been noted.

Furthermore, this chapter has looked at the relationship between archaeological heritage management and a wider social agenda in the UK. Indeed, the analysis of the numerous governmental policies, review papers and consultation documents published in the last decade confirms the growing tendency to focus on utilitarian 'uses' of cultural heritage, e.g. as means of creating cultural identity, 'combating social exclusion', supporting urban regeneration or boosting tourism revenue, and a visible bias towards built and urban environment. Consequently, this chapter has raised the question of the true nature of the interpretation of 'sustainable development', understanding of the integrated conservation and the concept of a holistic approach to the historic environment and, as a result, the need to justify protection of archaeological heritage in terms of wider policies and anticipated outcomes rather than for its own sake.

# 8. Chapter Eight: 'Archaeology for Europe'? European archaeological heritage management in theory and practice

## 8.1. 'Archaeology for Europe' or 'European archaeology'

In 1990, in the light of the collapse of the Soviet Bloc and subsequent democratisation process of central European countries in his prominent paper *National archaeology in the age of European integration* Kristian Kristiansen (1990) analysed perspectives for and the future of archaeology in Europe. Firstly, he noted that archaeologists trying to work within wider, regional or pan-European, research objectives and methods not only run into the paradox of being constrained by national legal and economic frameworks but also faced the gulf of the former Iron Curtain. Looking at the development of archaeology in the second half of the 20th century Kristiansen noticed the 'unwillingness to accept modern theoretical framework in Central Europe' by national and ethnic frameworks already operating in the region. He criticised the traditional cultural-historical approach, the explosion of ethnic movements and national chauvinism after the collapse of the Soviet regime as well as 'a post-war tendency to restrict references and publications to the national level and increased regional and local scope' (Kristiansen 1990, p. 827). He also identified the green movement, tourism, regionalism and nationalism as major factors which would have a significant impact on the development of the discipline at the turn of millennia. Looking at problems such as regionalism, nationalism and chauvinism and their potentially adverse consequences for research and social functions of archaeology, Kristiansen decided that answers should be sought outside the discipline – in the social, political and economic conditions of the changing Continent. Consequently, he postulated creation of a common 'European policy' for archaeology (Kristiansen 1990, p. 827).

In Kristiansen's opinion, such 'common European policy' was vital to adjusting traditional national approaches and institutions to 'the needs of the future'. He set four objectives for the 1990s: 1) establishing framework for European co-operation (journals, conferences, societies) and redirection of research programmes; 2) establishing common minimum standards of legislation and new funding schemes within the EU/Council of Europe (CoE) to support large-scale European rescue programmes and cultural research; 3) reorganising academic training to include heritage and the political context of archaeology as well as to ensure that a historical framework and cultural values were added to environmental programmes; and 4) creating a strategy to 'ensure that history, including archaeology, would play a constructive role in the formation of the new European identity that rests upon both national and common European heritage'.

Some of these postulates have been fulfilled (at least to some extent): in terms of international, pan-European academic collaboration, the situation has greatly improved since 1990. We now have a number of networking opportunities supported by organisations such as the EAA, the Rafael programme, the Socrates programme and other EU initiatives. There are also some attempts to improve trans-frontier co-operation. The Valetta Convention set basic standards of archaeological heritage management. The EU environmental directives, the Landscape Convention and initiatives such as Historic Landscape Characterisation (HLC) introduced historical and cultural perception of the environment – although there is still a long way to go, for Kristiansen's vision of making environmental history a basic parameter in all ecological decision to be met (Kristiansen 1990, p. 826). Finally, the 'new European identity', a buzzword from EU jargon, has entered the realm of archaeology and cultural heritage management.

Almost two decades later, Kristiansen revisited the concept of European archaeology policy. This time, he noted that historical and archaeological knowledge was used to construct modern identities on all levels – local, national and European

(Kristiansen 2008a, p. 6). Moreover, looking at developments in European archaeology, Kristiansen argued that broad trends in heritage management and archaeological theory follow a 'pendulum model' which swings between rationalism (generalised interpretation, supranational scope) and romanticism (local and national scope). According to this concept, the 'last 25 years were dominated by a renewed focus on historical origins and local histories' (Kristiansen 2008a, p. 10).

The concept of heritage became politically 'tainted' after the WWII through the association with ethno-archaeology and nationalistic interpretations in the first half of the 20th century. In the 1950s and 1960s archaeologists reacted by separating themselves from concepts of 'origins' and 'nationality.'[132] The ideological climate changed again in 1980s and 'heritage' was re-introduced to academic, legal and political circulation (e.g. as seen in the creation of the English Heritage).[133] Cultural heritage has thus become an accepted term employed on national and international level including UNESCO and CoE, and was even discussed as a component of human rights (as discussed in Chapter 3).

Kristiansen also brought attention to an interesting fact: in the 1980s and 1990s, the role of national heritage was strengthened throughout Europe when cultural tourism became a growing international economic force attracting attention to countries' culture and history (Kristiansen 2008a, p. 9). It is clear that archaeological theory, terminology and ideas behind archaeological conservation are the ideological barometer representing the discipline's political role in society (Kristiansen 2008a, p. 10). I would also argue that to some extent they are linked (implicitly or not) to attempts at social engineering and

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[132] Ascherson disagreed saying that it was not a universal process but depended on the country, and therefore should not be generalised (Ascherson 2008, p. 26). Also, in Central and Eastern Europe (e.g. Poland), there was a very strong pressure towards 'national' heritage – not just political (*i.e.*, Soviet-driven) but also social and academic.

[133] E.g. in late 1990s, the Polish Ministry of Culture was replaced with the Ministry of Culture *and National Heritage*, and terms 'cultural property' and 'cultural goods' were substituted with 'cultural heritage'. This represented the ideological shift and abandonment of the old Soviet nomenclature.

political wishful thinking, with the concept of the 'new European identity' serving as an example.

To a large extent, archaeology is still far from a European perspective, sometimes even narrowing back to national and regional frameworks in research and teaching (and in some cases it has never fully embraced the supranational perspective). According to Kristiansen, this implies a dangerous decline of learning and a decline in basic academic skills. Although there are actions supporting the opposite trend, *i.e.*, moving away from practising 'archaeology of nations' (e.g. through the EAA or the European Journal of Archaeology), their impact is still limited.[134] The 'archaeology of Europe' is still also caught up in the conflict between the traditional national structure and the supranational aims of research into the 'common' past. Thus, the discipline seems to be 'serving two demanding but very different mistresses' trying to reconcile the management of national heritage with wider, pan-European or even global research framework.

Hence, Kristiansen gave a rather bitter diagnosis: the humanities (including archaeology) are today losing academic and political impact, largely due to the dominant national focus, thus giving way to 'global scope' disciplines such as environmental studies, social sciences and political economy.[135] He subsequently offered some specific measures to improve the state of affairs, 'to address big questions that face humanity and politics today' (Kristiansen 2008a, p. 24): 1) the creation of 'archaeology without

[134] It is true that archaeology (as much as it is e.g. involved in the political national and regional agenda) focuses on national research, localities, local communities, etc. However, archaeology's relationship with a wider European framework, especially the EU and CoE socio-political agenda, serves as a counter-argument, with the main focus upon broader 'supranational issues', a 'common European heritage' and shared past (e.g. Tzanidaki 2000). Obviously, the perspective will be also different in the West and in post-Soviet countries. Yet, some progress is visible (e.g. networking, international co-operation, the EAA, etc.) and some attempts to overcome the 'locality' issue can be noticed.

[135] Bartu-Candan agrees that humanities are losing their importance but believes that archaeology and anthropology can only remain relevant and maintain their academic prestige 'as long as they critically and simultaneously engage with local, national and international issues' (Bartu-Candan 2008, p. 30). In his opinion, focus on the 'local' (in relation to politics of heritage) but local contextualized within the 'global' should be the postprocessualist approach. Kristiansen uses a dichotomy (like in 1990 article): humanities v. environmental sciences, local (regional) v. global (supra-national). Bartu-Candan argues that we should 'go beyond dichotomies' in rethinking the archaeology of Europe as a much more complex and intertwined concept.

borders', from the Prehistory to the medieval and historical period; 2) the need to replace

the prevailing national archaeologies of Europe with European archaeology; and 3) the

reorientation of archaeological publications and teaching so that they are more

interdisciplinary and international in scope.[136]

At first sight, all three suggestions may seem to be a foolproof solution. In order to

be less 'detached' and become more relevant to the modern world, archaeology has to

abandon its ivory tower and engage more in contemporary social problems. In

consequence, read between the lines, Kristiansen's essay implies that – as we are swinging

back towards the rationalistic parameter – there is room for even more (?!) political impact

on the discipline – this time not associated with 'harmful' nationalism but with the

'constructive' Europeanism.

Both above-mentioned papers introduced new themes to European archaeology

and triggered fierce debates on the international forum. I used these examples to

summarise various issues inspiring contemporary archaeological and heritage discourse

and to create a context for further discussion of concepts of the 'Europeisation of Europe',

'common European identity', 'one European cultural heritage policy', cultural

environment and 'ecologism' and their relevance to archaeological heritage management.

## 8.2. The definition of Europe

Although Kristiansen, putting forward the concept of a 'common European policy' noticed

the problem of defining 'Europe' and 'European' (Kristiansen 2008a), he offered no clear-

cut approach that could be indisputably agreed by archaeologists, historians, politicians,

etc. As it is hard to define the geographical, linguistic or even political boarders of Europe

(Davies 1996; van Gorp and Renes 2000; Hamilakis and Momigliano 2006; Kristiansen

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[136] At many universities undergraduate teaching still primarily focuses on archaeology and history of individual countries (and in fact, from personal experience I know that sometimes students can be even discouraged from pursuing a broader approach).

2008a, etc.), there is a growing emphasis on Europe as a distinctive cultural entity united by shared values, culture and identity. Thus the dominant theme is the self-emphasis on the historical development of social, political, and cultural values, and their propagation throughout the world (Champion 1990). This concept is based on Europe's heritage of Classical Greco-Roman civilisation, Christianity and the ideas of the Enlightenment: Science, Reason, Progress and Democracy as the core elements of this claimed European legacy (e.g. Davies 1996; Gramsch 2000; van Gorp and Renes 2000). To some extent Europe's definition is also constituted in opposition to 'others': areas, peoples and cultures seen as non-European – predominantly Asian, African and American (Champion 1990; Pluciennik 1998; Hopkins and Murdoch 1999; McNeill 2004).

The problem of defining Europe is visible in the case of establishing membership of political organisations, particularly while delineating boundaries for the purpose of the European integration. After 1989, political élites had to re-define and re-work the concept of Europe to address increasing cultural, ethnic and religious diversity (Hudson 2000). In addition, subsequent enlargements of the EU (with the most recent ones in 2004 and 2007 including the former Eastern Bloc, Malta and Cyprus) expanded the membership to 27 member states with over 20 official languages.

However, a political concept of Europe is restrictive, as the EU may never unite the *whole* Continent (van Gorp and Renes 2000). For example, in 1994, over 52% of Norwegians voted against accession, in 1995 Greenland gave up its membership and some member states oppose the Euro currency or implementation of the European Constitution. At the same time, while Turkey is a founding member of the Council of Europe, member of NATO (since 1952) and G-20 and since 1995 has been in a customs union with the EU, its applications for the EEC and now the EU membership have been so far unsuccessful. As Turkey is an important economic, military and political ally, the debate on the EU accession seems to focus on matters of culture and identity (van Gorp and Renes 2000, p.

407) and the concept of European integration modelled on principles of liberal capitalism

within a Christian-Enlightenment European tradition (Hudson 2000, p. 413).

## 8.3. Archaeology and nationalism

One of Kristiansen's arguments in favour of creating a common European policy for

archaeology was the prevention of the revival of pre-war chauvinism and involvement of

history and archaeology in nationalistic ideologies in the wake of changes taking place in

Europe – both Eastern and Western (Kristiansen 1990, p. 828). This link between

archaeology and nationalism is a well-established phenomenon. To some extent

archaeology as an independent academic discipline owes its existence to European

nationalisms – or at least is closely associated with the process in which modern European

nation states emerged in 19th and 20th centuries.

It has even been argued that a bond between politics and archaeology exists in

every nation and that this relationship is not only unavoidable but even 'natural' (Galaty

and Watkinson 2004b; Díaz-Andreu and Champion 1996b; Kohl and Fawcett 1995b;

Novaković 2008, Silberman 2007). From the outset, archaeological research has been

attracting public attention providing entertainment, satisfying natural curiosity,

strengthening national or regional pride and distinguishing historic identities of particular

countries from their neighbours. Significant or 'extraordinary' discoveries, and sites and

artefacts tagged as 'unique', 'oldest' or 'word-scale' are particularly rewarding to a

nation's self-esteem. Usually they also become subject of political interest and are

allocated with significant funds for research (Clark 2005; Tainter and Bagley 2005).

Ultimately, interest in archaeology expressed both by the public and political élites can be

a double-edged sword. While public support facilitates the protection of cultural heritage,

a narrow focus upon specific sites or particular research topics can lead to a selective

approach towards archaeological record and the creation of misinterpreted, 'edited',

versions of the past. Furthermore, financial dependence on the state makes archaeology especially vulnerable to the influence of political powers (Arnold 2004, p. 191).

Undeniably, the archaeological record can be used for political ends. Germany under Nazi rule, the former Soviet Bloc or Franco's Spain are only a few cases in which the past was deliberately and systematically manipulated, where certain historical approaches and 'versions of the past' were favoured over others and used to influence a nation's identity and perception of history. There are some extreme examples of such nationalism-driven interest in archaeology and European prehistory (e.g. German and Polish propaganda in relation to Biskupin – an Iron Age fortified settlement mistakenly taken for an early medieval site – see Annex 22). Such political 'uses of the past' and the link between cultural heritage and nationalistic movements became an important subject of research in the end of the 20th century. A critical analysis of the relationship between archaeology and nationalism and dictatorship in Europe was presented in three edited volumes: *Nationalism, Politics and the Practice of Archaeology* (Kohl and Fawcett 1995a), *Nationalism and Archaeology in Europe* (Díaz-Andreu and Champion 1996a) and *Archaeology Under Dictatorship* (Galaty and Watkinson 2004a).

There are multiple ways in which interpretations of archaeological heritage can be manipulated: by controlling the cultural environment and all forms of social, cultural and political life; through media; political propaganda; through art and architecture (e.g. the Social Realism of Stalin's era). This can also take form of creating the myth of a 'glorious' or 'dreadful' past expressed by ideologically programmed museum displays, monument restoration and archaeological reconstructions (e.g. like in the case of Central European historic towns destroyed during the WWII or the Biskupin site described in Annex 22 or Saddam Hussein's exploitation of ancient Iraqi heritage).

It can be even said that 'archaeologists are useful to dictators' (Galaty and Watkinson 2004b, p. 3). Under dictatorship or in a totalitarian system archaeologists are

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often bullied into working for political élites to convey fabricated or manipulated versions of the past. However, as Galaty and Watkinson pointed out (2004b, p. 5), some archaeologists co-operate with authorities willingly for their own gains and 'in many cases they are very well rewarded for their services'. For example, several Nazi prehistorians played a very important political role and become high-ranking party officials (Arnold 2004). Yet, Nazi propaganda, the 'Faustian bargain' struck by archaeologists with National Socialists and the subsequent deformation of archaeological theory in the 1930s and 1940s (Kohl and Fawcett 1995b; Arnold 2004) had a profound, long-lasting impact on German archaeology. After 1945, the discipline in many ways became 'tainted' because of its association with the disgraceful ideology. In consequence, post-war German researchers were reluctant to engage in any 'nationalist' or 'theoretical' debates. In Poland, in the 1950s and 1960s, many archaeologists paid lip-service to communist authorities to get resources for their own research projects or pass them through the censorship (Lech 1998; Buko 2005) which at present constitutes a considerable problem for the re-evaluation of medieval sites excavated in the communist period (see Annex 21).

It thus can be argued that after the experiences of the 20th century archaeologists are now aware that their actions can be used to serve political agenda. However, it seems that neither the trauma of WWII and the experience of the two totalitarianisms nor five decades of academic development can prevent archaeology and heritage from being yet again entangled with politics and ideology. The Past is still 'the prize, a resource to covet and for which to contend' (Kaiser 1995, p. 99) and archaeological sites are potent symbols of national identity. Indeed, some of them are so significant that even in our times people are willing to fight over them, as proven by the Greek-Macedonian argument over the name, flag and heritage of classical Macedonia (Kohl and Fawcett 1995b, p. 11; Lowenthal 1998, p. 236). In the former Yugoslavia, various territorial claims and ethnic conflicts have encouraged a revival of medieval archaeology (Kaiser 1995). For example,

in the Kosovo province – by Serb nationalists treated as the 'heart' of the medieval Old

Serbia and inhabited mainly by an Albanian ethnic majority – the volume and tempo of

archaeological works increased significantly in the 1980s. Investigations focused upon the

search for the 'Slavic' heritage. There were even concerns that, as in the case of Nazi

Germany, archaeology in some ways provided the intellectual justification for ethnic

cleansing and repression of the Albanians during the Balkan conflict (Kaiser 1995, p.

114).

In a sense, dramatic events in the Balkan Peninsula (see Annex 19) were a wake-up

call to the international community celebrating the collapse of the Iron Curtain and

looking forward to speeding up the European integration process. For many Euro-

optimists a civil war so 'close to home' brought the realisation that mythologised

interpretations of prehistory and nationalistic visions of medieval history are alive and

well in various parts of Europe and may have dangerous political implications. The Balkan

conflict also highlighted the great importance of archaeological heritage to individuals,

ethnic groups and nations, reminding that interpretations of archaeological evidence and

attitudes to cultural heritage still have more to do with the present than with the past. In

modern Europe, the question of ethnicity is back on the intellectual agenda, largely

because of the resurgence of nationalistic and ethnic sentiments in the 1990s (Härke

1998). The above-mentioned cases are rather extreme examples. However, one must

remember that while under dictatorships or in totalitarian systems the relationship between

archaeology and ideology is usually strongly and openly expressed, in democratic

countries this relationship is more subtle (Galaty and Watkinson 2004b). It is a genuine

problem and for that reason in the next part of this chapter I shall focus on contemporary

uses of heritage in the quest for political legitimacy and analyse archaeology's ambiguous

role in the process of European integration.

## 8.4.The new European Identity

### 8.4.1. EU and European Identity

As noted above, Kristian Kristiansen called for the creation of the strategy to 'ensure that history, including archaeology, would pay a constructive role in the formation of the new European identity that rests upon both national and common European heritage' (Kristiansen 1990, p. 828) – although he notably failed to define the key phrase itself. Given that 'European identity' along with the 'common/shared heritage' by now have been embraced by archaeology and heritage management theory, I think it is necessary to analyse the meaning, context and implications of this phenomenon for both disciplines.

Whether a European identity of some sort already exists or has yet to be created, is a matter of a fierce debate. Some claim that it is an artificial concept conjured up by political élites and that the emergence of 'Europe beyond nations' is neither feasible nor possible (Lowenthal 2000; Stråth 2006). Others, like Kristiansen, assume that there is already a sense of shared patrimony and some sort of 'European spirit' or even a supranational continent-wide identity structure – albeit rather tentative and fragile (De Schutter 2007). Moreover, the ongoing processes of globalisation and Europeisation not only develop new identity structures but also create a new supranational 'civil society'. Thus, the important question is how people negotiate their memberships in various groups and how they build their identities. In general, this phenomenon is based on the paradigm that individuals are capable of assuming multiple identities simultaneously – taking on new identities *in addition to* or *instead of* their original national identity – and that it is possible to foster a new identity ('European') on top of existing ('national') identities (De Schutter 2007, p. 389; Lowenthal 2000, p. 319).

For the process of European integration, the issue of common supranational identity and the criteria used to denote 'Europeans' are critical. Many modern European

states could be described as 'multinational' (*i.e.*, containing more than one nation) or at least multicultural and multilingual. At the same time, they continue to engage in supranational forms of decision-making – notably by the developing process of the European integration. From the perspective of Eurocrats and Euro-enthusiasts, the notion of a singular, truly European, civil society transcending existing national and regional differences in culture and identity, with a unified regulatory system and enclosed within a homogenised political-economic space of the EU (or even an EU super-state) has a very strong appeal (Hudson 2000, p. 419). Thus, the sense of shared patrimony has been enthusiastically embraced by the EU and CoE and become institutionalised in the last few decades (Lowenthal 2000, pp. 319; Hudson 2000, p. 419). For the same reason, identifying a potential source of unity in the nationally divided Community and devising mechanisms to bring together member states has become one of major issues in the process of European integration.

European identity has been constructed through a process similar to that involved in nation-building and the creation of national identities in the 19th and 20th centuries (Silberman 2007). While in the past the aim was to build national identities, now it was to transcend them; whereas previously the 'imagined community' was national, now it was to be European (Hudson 2000, p. 419). In the light of the nation state perspective and the paramount notion of national unity social inequalities and linguistic or cultural differences were played down and regions were seen as backward remnants of tradition (Stråth 2006, pp. 427-8). Similarly, it was believed that as a result of European integration and formation of the European identity, the Continent should move away from nation states towards a supra-national organism based on EU citizenship and united by shared values and common heritage. Therefore, it is implied that a strong European identity would significantly contribute to building social justice and a more balanced development of various regions (De Schutter 2007).

In legal terms, the notion of European identity was officially introduced in 1973,[137] and later was further developed by the Council of Europe, the European Community, and, subsequently, the European Union. The *Declaration on European Identity* defined European identity as based on three factors: (1) common heritage, interests, special obligations and the degree of unity within the Community; (2) the extent to which the member states act together in relation to the rest of the world and the responsibilities which result from this, and (3) the dynamic nature of European unification.

There are a number of key points related to the origin of the 'European identity' phenomenon. Firstly, it was born as a political concept. Secondly, at the beginning it had a limited scope – *sensu stricto* the Declaration was created and applicable to the nine member states of the enlarged European Community (Belgium, Denmark, Ireland, Italy, France, Luxembourg, the Netherlands, the United Kingdom and the Federal Republic of Germany) and not to the whole continent. Moreover, initially the focus was upon *foreign* and not *internal* relations. It can be also argued that the political career of the 'European identity' was built upon the absence of such identity in the first place – a lack of which was painfully experienced by the expanding EC: 'if there had been a sense of identity, there would have been no need to invent the concept as a means by which to induce a new community in the European Community' (Stråth 2006, pp. 429-430). Finally, from the outset the concept was rather hazy and undefined.

'European identity' re-emerged in 1992 in the *Treaty on European Union*. According to the preamble to the Maastricht Treaty, member states resolved 'to implement a common foreign and security policy including the eventual framing of a common defence policy [...] *thereby reinforcing the European identity* and its independence in

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[137] The *Declaration on European Identity* was signed the Copenhagen European Summit of 14 and 15 December 1973 by the Heads of State or Government of the nine Member States of the enlarged European Community to 'affirm their determination to introduce the concept of European identity into their common foreign relations'.

order to promote peace, security and progress in Europe and in the world' (emphasis added).[138] Thus, the cultural identity issue was put into what may seem a rather unlikely context – the common foreign and security policy (the 'second pillar' of the EU) – and was associated with clearly defined political means (Burgess 2002, p. 479).

On their own, any form of legislation or views on the 'pan-European politesse' do not have enough influence to overcome national and regional disparities and subdue differences of policy, culture and philosophy that make European people treasure their traditional uniqueness. The enlarged European Union has a very complex multi-level system of governance with an integrated but unevenly developed economy and common market. Even if we consider only the conservative Christian-Enlightenment common characteristics, there is a noticeable diversity and variety of national cultures and identities. Furthermore, the majority of member states are multi-ethnic and multi-cultural societies with cultural and ethnic variation on local, regional and national level and such cultural diversification is still growing. In this situation, there are two burning questions: to what extent political and cultural diversity and variety of identities are accepted and respected in the EU, and how the increasing homogenisation on the political-economic level can be reconciled with tendencies towards regionalisation and cultural diversification (Hudson 2000, p. 419).

### 8.4.2. European Citizenship

The next stage of European integration is the development of a post-national European civil society and active citizenship; a process which depends heavily on the further development of pan-European symbolism and the EU's practices and regulations concerning policy-making on intergovernmental and supranational level (Enjolras 2008). The institution of EU citizenship was established by the *Treaty of the European Union*

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[138] *The Treaty on European Union*, 1992, (92/C 191/01).

('the Maastricht Treaty' of 1992). It entails, *inter alia*, the freedom of movement and residence and passive and active political rights. European citizenship is being advocated as an inclusive and expansive post-national model of membership – where rights are held by individuals on the basis of personhood rather than nationality (Rigo 2006, p. 6). However, the concept of European citizenship is not just a legal status defined by a set of rights and obligations but, since it expresses membership in a political community (EU), it is also an *identity* (Enjolras 2008, p. 495).

In modern-day Europe, the issues of citizenship and civil society are perceived as crucial for the process of democratisation, legitimization of the EU and development of identity and solidarity on a European level in a post-national reality (Enjolras 2008).[139] There are two rival concepts of the future of the European constitution and citizenship: *liberal nationalism* – which believes that setting-up European level of decision-making will require a shared European identity and nationality, which at the moment does not exist but is likely to emerge in a near future, and *national pluralism* – a contrary point of view, according to which national identities can be politically (and mentally) accommodated alongside supranational identities (De Schutter 2007). The question is, whether the development of the post-national Europe in a foreseeable future is at all possible, taking under consideration the multiple perceptions of the term 'European', diverse aims, interests and aspirations that could be attributed to different countries and,

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[139] There are three competing trends in European political models: nationalism, federalism and supranationalism, which all have both ethno-cultural and civic variants. **Nationalism** – *ethno-cultural nationalism* sees citizenship rights as exclusive to nationals and uniquely ethno-cultural. Thus the idea of a 'transnational' EU citizenship is questioned. *Civic nationalism* operates on basis of civic rather than ethno-cultural values. However, it also excludes concepts of 'European' citizenship and identity questioning existence of strong shared European values (Hilson 2007, p. 530). **Federalism** – *ethno-cultural federalism* focuses on creating cultural identity based on shared history, arts and literature, religion and symbols such as the EU anthem and flag, at the same time underlines Europe's distinctiveness from other parts of the world. *Civic federalism* – sees European identity as rooted in shared European rights and values, a form of constitutional patriotism (Hilson 2007, p. 530). **Supranationalism** – keen on promoting EU democracy and emphasises the need for developing a shared identity to create a European *demos* or *nation* as an alternative for national states (Hilson 2007, p. 531).

last but not least, the visible rebirth of nationalisms and regionalisms in the end of the last century.

Indeed, solely political, economic and legal efforts to build European unity are not powerful enough on their own to prevail over centuries of particularisms and nationalisms. Similarly, invented traditions and supranational emblems, such as the European anthem, European flag and Euro (see Annex 20), are not rooted deeply enough in the European mentality and are generally perceived as artificial (van Gorp and Renes 2000; Stråth 2002). Although a pan-European identity is weakly developed at the moment (if it exists at all), it is obvious that European Union is not able to succeed without a joint force exceeding political and economic ties. Most Europeans have a high regard for their history, traditions, monuments and artefacts, built environment and cultural landscapes, a memory of past achievements, celebration of important events and source of identity on local and national levels (Lowenthal 2000). For that reason, European élites endeavour to capitalise on old myths, symbols and memories embedded in the popular (often nationalistic) belief: the Roman law, Christian ethics, rationalism, ideas of the Enlightenment, common values, parliamentary institutions, etc. and market them back to the Europeans as their shared heritage.

### 8.4.3. The concept of the European heritage: EU and cultural heritage

The most visible current socio-cultural initiatives carried out under the close guidance of the CoE include a variety of topics, from European citizenship or the European driving licence to European landscapes and European cultural heritage. The development of the common European identity is also facilitated by various EU cultural and heritage policies and initiatives, e.g. medieval urban centres revitalisation or Valetta and Florence Conventions. The relationship between actions of the European political élites and policies

and regulations concerning the cultural heritage is a very complex issue in which archaeology and archaeological heritage management also have their place.

Since the enhancement and protection of Europe's cultural heritage and the development of a European cultural identity are issues covered by the remit of the Council of Europe, the management of European archaeological heritage also falls within the Council's scope of interests. As a result, in the last few decades CoE members have agreed a series of frameworks related to archaeology, such as the *European Cultural Convention* (1954) and the *European Convention on the Protection of the Archaeological Heritage* (1992), and launched several awareness-raising archaeological campaigns such as the 'Year of the Bronze Age',[140] the European Archaeology Plan and major international exhibitions. The belief that archaeology can potentially demonstrate the pan-European character of cultural heritage and shared past of prehistoric and early cultures made the discipline attractive for the European élites trying to create a supranational European identity to replace existing national characteristics (Facing Europeanism 2000). Consequently, in the last few decades, archaeological heritage has been used for political ends. While in the past, archaeological research was adopted to support the creation of national identities, especially at the end of 19th and the beginning of 20th centuries (e.g. Kohl and Fawcett 1995a; Díaz-Andreu and Champion 1996a; Gramsch 2000; Kobyliński 2008), in modern Europe it again seems to be involved in the formation of the imagined community but this time it is the European, not a national, population.

Johanna Tzanidaki, who has looked at the development of the European Community and the phases of European integration, noticed that 'politically, as soon as the EC set the target of its transformation to a Union, it sought to provide a common ground for its members' identification, a common heritage' (Tzanidaki 2000, p. 26).

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[140] The 'Bronze Age Campaign' presenting the Bronze Age as the first Golden Age in Europe was launched in 1993, drawing attention to the common past and a new concept of common European Heritage.

According to the Treaty of Rome (1957), the EC did not have competences in the cultural sector and consequently refrained from direct involvement in heritage and culture – also because these two sectors were firmly placed within national prerogatives. At the time, like today, the social and political climate did not favour any actions which might be seen as an attempt to hijack or threaten national identity. Instead, actions of the EC focused on enhancing the economic and social environment for the development of European culture (e.g. free movement of cultural goods and cultural workers). Member states were advised on their national cultural policies but no common framework was adopted. However, Tzanidaki identified a number of steps in which the EC/EU has gradually become involved in the cultural sector not specified within its competence and put cultural heritage on the political agenda:

- in the period of **1969-80** stress was put on European architectural and natural heritage perceived as reflecting 'Europe's cultural identity'. This is the early stage of the EC's involvement in the cultural sector marked by interest in economic values of heritage;

- **1981-5** – a gradual politicisation of heritage. The idea of a common European identity, born in the 1970s, was used as means of revitalising the EC and tightening collaboration within the Community. The European Commission and the European Parliament promoted investments in architectural heritage conservation projects to boost tourism, regional development and employment (*inter alia* manifested by the contents of the World Heritage List – majority of early entries were examples of monumental European architecture). National heritage was expected to evolve in the future into the common European heritage. Archaeological assets were perceived as associated with architecture rather than valuable in their own right, as tourist attractions, economy boosters, etc.;

- **1992-4** – in this period the first two legally binding EU-wide acts with a direct impact on national cultural heritage were adopted by the EU: the 1992 *Council Regulation on export of cultural goods* and the 1993 *Council directive on the return of cultural goods unlawfully removed from the territory of a member state;*

- **1994-6** – in the post-Maastricht climate and intensified integration efforts and in the light of the collapse of the Soviet Bloc, the EU launched a series of cultural initiatives including the Bronze Age campaign;

- **1996-9** – financial support and technical assistance as well as policies in tourism, employment and competition were used to influence national cultural sectors without a direct adoption of a EU-wide cultural policy: e.g. grants for restoration works awarded only to projects and heritage sites of 'European significance'. As a result, although there is no EU heritage regulation, there are regulations with a real impact on heritage (Tzanidaki 2000, p. 27).

The EU's traditional lack of competence to regulate the cultural sector is not the only reason why there still no explicitly formulated 'European cultural directive' or 'common policy'. As discussed in Chapter 3, it can be argued that another important issue is the multilingualism of the European Union. Words such as 'heritage', 'cultural property', 'value' or 'significance' convey different messages and have different meaning potential in various countries and/or legal traditions (Marková *et al.* 1998, p. 827). Since there are 23 official languages of the EU (with Scottish Gaelic to be added soon), this undoubtedly would complicate any attempt to create a common European regulation on cultural heritage management. Creation of such policy or law applicable to whole Europe (or at least EU members) would also require revision of national heritage regulations. One of the first problems would be finding the correct equivalents of words in different

languages and agree their meaning (see Section 8.4.4). At the same time, we ought to ask ourselves whether such new policy/framework should be based on existing national regulations and theoretical approaches striving for an unlikely compromise (highlighting national/regional differences and traditional animosities and inevitably leading to some heated debates), or rather try to innovate upon them.

Finally, the endorsement of the 'common European heritage' by the EU in its official policy and further regulation of the cultural sector can become a Trojan horse for archaeological heritage management (Tzanidaki 2000, p. 27). On one hand, progressive unification of national heritage regulations, adoption of international conventions, policies and standards as well as improved collaboration in the cultural field should contribute to a better protection of archaeological heritage on a national and supranational level. However, at the same time there is already a visible politicisation of the heritage. Common European culture, shared heritage and European identity are a means to enhance the integration process and strengthen bonds between the EU citizens, but to a large extent these are invented concepts. While the 'European' characteristics is emphasised, national, regional and local aspects are downplayed (e.g. controlling and subsidising economic aid to cultural affairs; the discrimination between projects of European and local significance in terms of awarding grants, financial and political support). Due to this tension, instead of promulgating official documents claiming regulatory rights to the heritage sector, the EU adopts more covert ways of influencing national cultural policies. For example, European research funding focuses on international collaboration, staff mobility and projects with an international scope. International programmes such as Erasmus and Socrates, Marie Curie and Researchers' Mobility Portal aim at creating a Europe-wide academic network and more 'Europeanised' curricula through the promotion of staff and student movement between the EU member-states (Hudson 2000, p. 420).

## 8.4.4. The Valetta Convention

The roots of the modern-day approach to archaeological heritage management date back to around 1970 when environmental concerns became an important part of the public debate. Although the diminishing natural resources were initially at the heart of discussion, it was soon also recognised that cultural assets were in danger and, like the natural environment, they required careful management. The need to address the problem of rapid change in urban and rural landscapes led to the popularisation of the concept of sustainable development. The direct threat to archaeological heritage became even more visible in the next decade. While archaeological sites were disappearing to give way to new industrial parks, motorways and housing estates, it became apparent that conventional rescue excavation schemes could salvage only a small part of the information which was otherwise irretrievably lost. Consequently, in the 1980s, two major ideas were introduced to the heritage debate. The first advocated the need to incorporate archaeology into the planning process in order to achieve a more effective protection and better survival rate of archaeological resources endangered by development projects. The second trend picked up the achievements of the ecological debate and focused upon the ideas developed in the Green Movement. The 'polluter pays' concept was subsequently translated into the 'developer pays' principle and it was accepted that developers should contribute to the cost of rescue excavation works (Willems 2007, p. 59). Subsequently, this new approach, pioneered in Britain and the USA in the 1980s (e.g. 'Rescue' in the UK) spread to other parts of Europe.

Gradually, traditional conservation and protection models based on 'ancient monuments' and so-called 'national antiquities' were replaced by more dynamic ideas of managing archaeological heritage resources within the framework of spatial planning. For instance, in France, like a decade earlier in the UK, the dramatic speed with which

archaeological heritage diminished was also noticed. The direct threat to archaeology and apparently unsatisfactory provision of rescue works were interpreted as symptoms of a wider cultural crisis. A number of major politicians expressed personal interest in the issue, including President François Mitterrand. In his 1985 speech delivered at Mount-Beuvray opening the excavation of Bibracte, an Iron Age hillfort where Vercingetorix was named the leader of the anti-Roman Gallic uprising, Mitterrand invoked Gallic ancestors of the French nation and called for national unity (Cleziou *et al.* 1991, p. 107; fig. 21). Scientific rationale aside, the aim of the project was to support French identity. President Mitterrand became a patron of the Bibracte excavation and the project attracted substantial funds (Fleury-Ilett 1996). Because of this newly-gained political and public interest and the change in government's cultural policy, in the 1980s rescue archaeology funds and resources increased significantly.



**Figure 21:** Caricature of François Mitterrand giving his speech at Mount-Beuvray (source: Fleury-Ilett 1996, fig. 13.3).

The need to bring together different legal frameworks and national contexts was recognised jointly by the CoE, the EC/EU and heritage organisations (mainly ICOMOS

and ICHAM). As noted above, over the years various initiatives such as the European Conservation Year (1970) or the European Architectural Heritage Year (1975) have undertaken to improve international co-operation and develop a new approach to the protection and management of cultural heritage (including archaeological heritage). This issue became especially pressing in the 1980s, when the economic boom in Europe together with the increasing volume of major public works and big development projects had clearly negative consequences for archaeological heritage. In response, the Valetta Convention was introduced as well as the *Charter for the Protection and Management of the Archaeological Heritage* prepared by ICHAM.[141] These two documents were designed to counteract threats to the archaeological heritage and increase its protection, as well as to improve co-operation within Europe and tighten contacts within the heritage sector. It was also the time of the collapse of the Soviet Bloc which brought Central European and Balkan countries into the orbit of pan-European regulations and research frameworks.

Along with the change of conservation priorities and national approaches to cultural heritage management came a need to revise international principles and policies. The focus of the original *Convention on the Protection of the Archaeological Heritage*, signed in 1969 in London, was concentrated on threats such as illicit excavations and inadequate legal protection of sites, as well as problems concerning distribution of information and the control and cataloguing of excavated objects. Two decades later, the general view was that some of the most serious threats to the archaeological heritage had been overlooked and works on the updated version of the convention, the future Valetta Convention, begun.

The adoption of the revised *European Convention on the Protection of the Archaeological Heritage* in 1992 was hailed 'a watershed in the development of European archaeology' (Willems 2007, p. 57). However, as reported by J. H. Willems, member of

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[141] Approved in Lausanne in 1990.

the CoE's Archaeology and Planning Committee, involved in the revision process, preparations of the Valetta Convention and reaching a consensus on the final draft was indeed a thorny road. Firstly, the committee had to balance various national preoccupations and often conflicting interests, for example, the issue of illicit trafficking of archaeological finds. While Greece, Turkey, Italy, and Cyprus, where looting is an ongoing problem, opted for a more regulatory approach, the United Kingdom, Switzerland, and the Netherlands disagreed. Indeed, according to Willems, representatives of countries with an interest in the antiquities trade were explicitly instructed to oppose any strong wording in the text of new Convention (Willems 2007, pp. 60-1). As already mentioned in Chapter 2, for the same reason none of these countries had ratified the 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

The issue of metal detecting was equally controversial. While many countries opted for a ban on the unlicensed use of metal detectors, a few disagreed and the British representative allegedly warned members of the working group that such article would have prevented the UK from signing the Convention. According to Willems, a strong draft wording was subsequently replaced with 'a rather watered down paragraph, hidden in Article 3, that still says what the standard should be but that does not really oblige state parties to do anything' (Willems 2007, p. 62).[142]

Willems also remarked on the problem of multilingualism and disparity between understanding of archaeological concepts in different languages and national laws (Willems 2007, p. 65). One of the issues faced by the working group was the use of the French *biens culturels*, a phrase and concept that simply do not have a direct English equivalent. It was finally translated as 'cultural properties', which is not the same and

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[142] In its final version Article 3.3 of the Valetta Convention reads: [Each Party undertakes] 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.

indeed has some very different connotations (see discussion in Chapter 3). Also, the French text uses the term *l'archéologie preventive*,[143] preventive archaeology, which, according to Willems, is true to the spirit of the revised convention. The English text, however, speaks of 'rescue archaeology' (e.g. art. 6). In French that would be *l'archéologie de sauvetage*, 'which is precisely what the Convention was designed to prevent in future by integrating archaeology in the planning process!' (Willems 2007, p. 64).

The committee that drafted the Valetta Convention was not disbanded but continued working until 1996. Its main priority became the promotion and effective communication of the importance and relevance of archaeology to the European audience (Willems 2007, p. 65). Efforts and ideas were channelled into the so-called 'European Plan for Archaeology' launched in 1994, and sponsored and supported by the Council of Europe. The Plan was based on standards and principles set by the Valetta Convention and involved several activities and pilot projects such as the core data standard for archaeology (consequently developed as the *International Core Data Standard for Archaeological Sites and Monuments*), a comparative study of the situation of urban archaeology in the member states, and a glossary of archaeological terminology. The pilot project was restricted to the Bronze Age and has resulted in a glossary compiled in English, French, Danish and Dutch (and later also in Romanian). The Bronze Age was chosen because it related to another activity agreed at Malta by the Council of Ministers. This was the so-called 'Bronze Age campaign', a public awareness programme launched by the CoE.

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[143] L'archéologie preventive is also the term used in French legislation and name of INRAP – L'Institut national de recherches archéologiques preventives.

## 8.4.5. The Bronze Age Campaign

As mentioned above, the aim of the *European Plan for Archaeology* was to communicate the role of archaeology and concepts of common heritage to the European public on a supra-national scale. To carry out this task, the CoE needed a common theme that could be used as symbol of the common European heritage and serve as a practical demonstration of European heritage co-operation, and at the same time would be universally acceptable. Roman and Viking topics had been considered but were subsequently dismissed as not suitable enough. Finally, the Plan was carried out in conjunction with exhibitions on the Bronze Age. According to Willems, the Bronze Age was proposed because it was 'sufficiently vague and pan-European in character, at the same time having sufficient numbers of attractive artefacts which would be appealing to a large audience' (Willems 2007, p. 66). The theme apparently 'struck many delegates as an apt and effective choice [because] Bronze Age sites are found throughout Europe, and Bronze Age artefacts are everywhere, evocative, enlightening, and often aesthetically alluring' (Lowenthal 1995, p. 378). Ultimately, the campaign was entitled 'The Bronze Age – the First Golden Age in Europe' and had a number of active participants (including Austria, Denmark, UK, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Romania, Slovenia, Sweden, Switzerland and Turkey) and its most visible achievement was the exhibition *Gods and Heroes of the Bronze Age Europe: Europe at the time of Ulysses* held in Copenhagen, Bonn, Paris and Athens (European Archaeologist 1994; Lowenthal 1995; Bronze Age Campaign 1999; Willems 2007; fig. 22).[144]

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[144] According to the press release issued on the launch of the 'Gods and Heroes of the Bronze Age' exhibition in Bonn in 1999, the Bronze Age 'was an epoch of change and renewal in Europe' when 'despite considerable geographical, economic, cultural, religious and social differences, a form of cultural unity developed in a large region extending from the Urals in the east to the Atlantic in the west, from the Scandinavian countries in the north to the Mediterranean countries in the south' (*Bronze Age Campaign* 1999). There were over 250 artefacts displayed, most of them on loan from 70 museums in 23 European countries, including unique Bronze Age treasures such as gold from the royal Mycenaean tombs, the Chariot of the Sun from Trundholm and 'the magnificent weaponry of the Greek Bronze Age heroes'.

The works on the European Plan slowed down in 1996 and finally came to an end in the end of 1990s when, along with the change of the CoE's priorities, European funding for archaeology decreased. Although fairly short-lived, the campaign is a very interesting illustration of the ways in which archaeology is ascribed a role in the political processes of Europe integration. At the same time, the fact that in searching for a common European identity the decision-makers had to reach back as far as the Bronze Age is rather telling. Noticeably, the shared European vision becomes more and more problematic as we move forward in time with local and national cultural patrimonies, biases, prejudices and stereotypes of the 19th and 20th centuries profoundly at odds. Events of that time, for example the deliberate destruction of cultural heritage in former Yugoslavia, reminded political élites about the importance of cultural identities in Europe and clearly demonstrated the degree to which cultural heritage becomes hostage in conflicts about identity and politics. It can be thus argued that the situation not only justified CoE's policy but even dictated the need to intensify its efforts.

While the EU tries to forge a spirit of unity and co-operation between various European nations, one of the ways it uses to achieve its goal is through the funding system. For example, the European Science Foundation (ESF) in years 1993 to 1998 sponsored a project titled 'The Transformation of the Roman World'[145] encouraging the interdisciplinary research on the transition period of the Roman Empire to the Early Middle Ages in 4th to 8th centuries. The aim of the programme was to 'study the origins of Europe and the emergence of European Nations, going back to the crossroads of the end of the ancient world' (ESF 2009). Another instance of the use of archaeology in the construction of the European myth was the exhibition on the Merovingians: *Die Franken – Wegbereiter Europas* (The Franks – Precursors of Europe) organised in 1996 in

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[145] The FSE programme was concluded with the publication of fourteen volumes published within the *Transformation of the Roman World* series (Brill Academic Publishers, 1997-2004).

Mannheim and Berlin (Gramsch 2000; fig. 22). The Franks, who adopted Christianity and other 'Roman' ways of life, were presented as common ancestors of the modern-day French and Germans. However, the intention of the exhibition was not only to overcome nationalist French and German histories but also to present the origins of the European Community. The Merovingian empire was pictured as open and multicultural, based on Romano-German culture and Latin Christianity. Clovis and Charlemagne, 'the precursors of Europe', were shown next to General de Gaulle and Konrad Adenauer and the familiar phrase 'from diversity to unity' was also used (Gramsch 2000, p. 12; Wieczorek 1996).

These two examples demonstrate the connection between contemporary views on politics, economy, society, etc., modern preconceptions and the creation of interpretations of the past. It can be argued that the change of the scholarly perspectives on the Late Antiquity and the 'Dark Ages' and the subsequent rehabilitation of Germanic peoples in the eyes of the European public are the result of transformed socio-political attitudes as much as knowledge development *per se*. Within a few decades the traditional vision of barbaric hordes plundering the Roman Empire and the 'Goths at the gate' mentality reinforced by the events of the WWII have gradually grown weaker. Since the 1980s Germanic peoples have even been perceived as peaceful settlers and Roman collaborators rather than bloodthirsty invaders. According to this new vision of the Late Antiquity, ironically labelled as 'Euro-Barbarianism', 'Romans and Germans jointly carried forward much that was Roman into a new Romano-Germanic world' (e.g. Ward-Perkins 2006, p. 175):

> There is certainly a link between interpretations of the Germanic invaders as primarily peaceful, and the remarkable (and deserved) success that modern Germany has had at constructing a new and positive identity within Europe, after the disastrous Nazi years. Images of the fifth-century Germanic peoples and their settlement in the western empire have changed dramatically since the Second World War, as ideas

about modern Germans and their role in the new Europe have altered. (Ward-Perkins 2006, p. 173)

In the post-war period, the Romano-Germanic roots of European civilisation were augmented by the addition of Celtic ancestors (Arnold 1998b) who became especially attractive because of the apparently 'pan-European' character of their culture and their presence in regions that did not belong to the Roman or Frankish Empire.

As demonstrated in this chapter, the Council of Europe struggled hard to find an uncontested foundation for common heritage in the still divided Europe. It had to go all the way back to prehistory before it finally came up with the Bronze Age – a theme which could be celebrated by all Europeans because it predated national states and transcended ethnic enmities. But even this topic was challenged by some Baltic and East European representatives who denied having any common heritage with the Russians (Lowenthal 2000). The 'European question in archaeology' has been considered e.g. by Kristiansen (1990), Willems (1998) and Gramsch (2000) and became a subject of heated debates on the forum of *Antiquity* (1990) and later *Archaeological Dialogues* (2000). The attempt to develop European prehistory over national archaeologies (often rooted in the ethnocentric medieval myth of 'origins') was directly related to search for European identity. Arguably, the notion of 'Europeanness' presented in this context by the EU through cultural campaigns is as ideologically charged as national archaeologies so criticised by advocates of the 'European archaeology' concept.

The support for the Malta 'reform' of European archaeology principles also largely originated from transformed socio-political context. For countries of the central European region, which finally escaped from the Soviet hegemony, the driving force was to free themselves from the imposed internationalist socialist ideology in the cultural and educational field. The need to deconstruct identity and create new national self-consciousness (Gramsch 2000) was complemented by the aspiration of becoming more

'European' (*i.e.*, westernised). At the same time, new tendencies in archaeological theory and the 'pan-European spirit' underpinning the reform of protection and conservation principles matched the desire to break free from nationalistic, political and ideological legacies which haunted the former Eastern Bloc, the Balkans and Western Europe (e.g. Spain and Germany).

The desire to construct a modern supra-national, common 'European' identity is a significant element of the 'Europeisation of Europe' (Davies 1996; Gramsch 2000; McNeill 2004). On one hand, this process requires overcoming deeply-rooted regional, ethnic and national particularisms. For that reason European political élites promote invented 'new traditions' and symbols such as the European flag or anthem. On the other hand, the very same icons of 'Europeanism', ideals of 'typically European features' in history, a common set of values, a common heritage, etc. are based on old nationalistic symbolism reinvented to suit integration needs. Noticeably, archaeology through its relation to cultural issues, tourism, regional development and economy has become part of the 'European' ideology. A discipline with origins closely related to nationalism today faces the demand to create a non-nationalistic, European identity. Moreover, I would argue that gradual changes in legal frameworks, conservation policies and organisation of funding schemes will entail even greater involvement of archaeology in vital 'European' issues such as sustainable development, cultural environment protection, trans-frontier co-operation, equality, diversity and social empowerment.

**Figure 22:** Council of Europe exhibition catalogues and publications: *Die Franken – Wegbereiter Europas 1996; Mensch und Umwelt in der Bronzezeit Europas. Abschlußtagung der Kampagne des Europarates: Die Bronzezeit: das erste goldene Zeitalter Europas* 1997; *Gods and Heroes of the e Bronze Age Europe: Europe at the time of Ulysses*; 1999.

### 8.4.6. European Association of Archaeologists (EAA)

The establishment of the European Association of Archaeologists (EAA) was another initiative related to the process of European integration and a response to the climate of change enhanced by the collapse of the Eastern Bloc, the signing of the Maastricht Treaty and the enlargements of the EC/EU. The EAA was established and formally launched in Ljubljana in 1994 as an organisation dedicated to improving collaboration and exchange of information between archaeologists in Europe. From the outset, it had close ties to the CoE and in 1999 it was even granted an official consultative status as a non-governmental organization (NGO) with the Council. The EAA also awards (since 1999) the annual European Archaeological Heritage Prize to individuals, institutions or local or regional governments for 'an outstanding contribution to the protection and presentation of the European archaeological heritage'. The rationale behind the prize is to promote archaeology and archaeological heritage on wider international forum but it also represents the vision of the CoE (and the EAA) of a common European identity (Marciniak 2000, p. 209).

Undeniably, the EAA contributes to the transformation of archaeology and heritage management in Europe and actively supports the development of integrated heritage legislation. Principles, good practice guides and regulatory documents created and adopted by the EAA, such as the *EAA Code of Practice* (1997) and the *Principles of Conduct for Archaeologists Involved in Contract Archaeological Works* (1998) are now often seen as common standards of professional conduct (Marciniak 2000; Willems 2000). They jointly impose on the Association's members an obligation to 'ensure the protection of the archaeological heritage by every legal means', stress the professional responsibility of archaeologists, and remind them of their duty towards communities they work with. Importantly, the *Principles of Conduct* attempt to regulate and coordinate rules of rescue archaeology and provide a set of minimum standards for archaeological contractors in response to the variety of organisational models, quality control regulations and levels of protection adopted in Europe. The Association also postulates that training in heritage management issues and in legislation should become an essential part of academic curricula (Marciniak 2000, p. 211).

The role of the Association as an advisory body to the CoE is to supply the Council with information about developments in European archaeology, especially archaeological heritage management, and help in formulating opinions (Marciniak 2000; Willems 2000). This function is associated with the social role of archaeology and the position of archaeological heritage in a wider (supranational) environmental and cultural context, and thus also with its relevance to policies and strategies developed by the Council in areas such as development, agriculture, transport, trade, etc. In principle, the EAA should alert the Council about threats to the cultural heritage and the destruction of archaeological sites, advise on conservation needs, create recommendations on heritage protection and assist the CoE and the EU in developing policies and legal frameworks integrating environmental, planning and heritage issues.

Consequently, the consultative status with the CoE was welcomed by the Association as a potential means to promote the interests of archaeology. Some of the most important initiatives and actions undertaken by the EAA so far have included responses to looting and illicit antiquities trade or reactions to direct threats to archaeological heritage caused by development projects, e.g. dam construction in Allanoi (Turkey) and the Côa Valley (Portugal) or the motorway project near the Hill of Tara (Republic of Ireland). But disappointingly, the influence of the EAA on the decision-making centre in Strasbourg has not been great in recent years. Since the EAA has only an advisory status and is a voluntary NGO representing individual archaeologists it does not have the authority to directly prevent destruction of endangered sites. While the pressure of the international heritage management community on the Portuguese government caused the Côa Valley dam project to be stopped in accordance with the Valetta Convention and finally abandoned in 1996, in the case of the Irish M3 motorway scheme the EAA proved to be toothless (see Chapter 5).

This recognised weakness was supposed to be addressed (and to some degree compensated for) by the establishment of the Europae Archaeologiae Consilium (EAC) in 1999 (Willems 2007, p. 67). Like the EAA, EAC acts as an advisory and monitoring body to the CoE and the EU. One of its objectives is to improve international co-operation in the heritage sector and to work on common goals related to archaeological heritage management in Europe. It is supposed to be 'one coordinated voice to speak out on specific issues that impact on archaeological heritage management, and to influence the development of policies by European agencies' (Olivier 2001, p. 9). To fulfil this task, the EAC aims to concentrate its actions on four key areas: 1) development of professional standards in archaeological heritage management; 2) the academic field (e.g. promoting pan-European research programmes); 3) politics – influencing development of Europe-wide policies with impact on archaeological heritage; and 4) raising the awareness of the

social role of archaeology in the public life. Unlike the EAA, the EAC is an association of the heads of national organizations for archaeological heritage management (potentially with a greater influence on the decision-making process). However, because of its corporate nature and association with national governments, its membership and mission are more limited comparing to those of the EAA.

It seems that, through the achievements of the EAA and the EAC, archaeologists have finally gained a foothold in the realm of European politics and thus have a better-than-ever chance to promote cultural heritage issues. Yet after the initial few years of intensive collaboration with the CoE and considerable gains in the heritage management field some members of the European archaeological lobby feel let down. Following the increased interest in archaeological heritage in the 1990s and the completion of initiatives such as the Bronze Age campaign and the Malta Convention, the role of the Council of Europe in archaeology has gradually decreased and it is now mostly passive. There is also a growing realisation that archaeology and cultural heritage management are becoming more and more dependent on the initiatives and activities undertaken by the European Union: 'it is clear that the interests of archaeology need to be represented at the EU in Brussels, not in Strasbourg' [with the CoE] (Willems 2007, p. 68).

Until recently, culture has been specifically excluded from Community's competences. However, this changed in 1992, with the adoption of the Treaty on the European Union (Treaty of Maastricht). According to Article 128, 'the Community shall contribute to the flowering of the cultures of the member states, *while respecting their national and regional diversity* and at the same time bringing the common cultural heritage to the fore'. By giving the EU a legal competence in field of culture for the first time in history, this specific piece of legislation increased significantly the extent to which the Community may be involved with heritage. However, although the scope for direct involvement under this article is significant, the effects are still rather limited. Firstly, the

cultural sector has always been a sensitive area purposefully placed outside EU's competences. Secondly, the EU is restricted by its own subsidiarity principle, according to which the Community should support or supplement actions undertaken by member states rather than intervene directly. Finally, under Article 128, the EU's actions are limited to 'incentive measures' and 'recommendations', with harmonisation of law in the cultural sector still specifically excluded (Willems 1998, p. 299).

Because of these limitations to the EU's legislative powers in the heritage sector, the drive for the pan-European cultural collaboration still comes largely from the Council of Europe. There is a considerable degree of overlap and co-operation with the EU, for example, through the 'improvement of knowledge and dissemination of the culture and history of the European peoples' or 'conservation and safeguarding of cultural heritage of European significance'.[146] In consequence, while the EU places emphasis on culture as a means to political and economic ends (Pluciennik 1998, p. 821) without directly regulating the sector, legislation and policies in other areas, together with targeted financial schemes and research grants, continue to have a growing impact on both the archaeological heritage management and academia.

## 8.5. European 'postcolonialism'

In this section, I would like to draw attention to yet another controversial issue within current archaeological discourse. There are a number of publications (e.g. Nowicka 2007) discussing the idea of former Eastern Bloc countries as 'postcolonial' situation. Until recently (1980s), this term has usually been used in relation to countries, societies and peoples who have gone through the process of formal decolonisation. However, in current debates it also extends to societies that were subject to imperial power and political and cultural domination, but were not formal colonies, e.g. the above-mentioned Eastern Bloc,

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[146] Article 128 of the Treaty of Maastricht.

former Yugoslav republics or Ireland and Finland (Sidaway 2000, p. 594-5; Horning 2006; Orser 2006; Scham 2006; O'Keeffee 2006). From these arguments stems the proposal to call the Soviet occupation of Central/Eastern Europe a colonial venture (Korek 2007; Boss 2008).

In the Polish case, the main postcolonial argument reaches back to the 18th century and two hundred years of foreign rule (the so-called 'Partitions' period 1772 – 1918, when Poland lost independence and was divided between Prussia, Russia and Austria, and especially the Bismarckian plantations of German Protestant settlers). A short period of sovereignty (1918-1939) was then followed by the German and Soviet occupation during WWII and nearly half a century of communist government. Some sociologists consequently see Polish society as actually suffering from the postcolonial syndrome (e.g. Nowicka 2007). The same can be said about Czechs and Slovaks, who for 300 years (until 1918) were part of the Austro-Hungarian empire and like Poland, after the period of Nazi occupation, became part of the Soviet Bloc, losing independence for almost fifty years (Marková *et al.* 1998).

The main symptoms of this 'postcolonial flu' are similar to those troubling countries that emerged after the collapse of the British Empire or as a result of the African independence movement; for example:

- people are used to the fact that they did not have any influence on history or politics, so

- even after regaining independence they are not prepared to take responsibility for the fate of their country,

- there is a visible lack of active citizenship, and

- there is a tendency to commemorate and mythologise the past rather than look to the future.

Although the majority of Poles, Czechs or Slovaks would dismiss such a thesis as false or even may find it insulting, in Finland, which experienced a similar fate (700 years of Swedish rule and a century under Russian influence), the postcolonial theory was not only accepted but even further developed (Nowicka 2007). If we get past initial doubts and reservations and assume that, indeed, the postcolonial theory (to some extent) can apply to eastern European countries, we could now consider its relevance to heritage management issues. Is archaeology in Central Europe affected in any way? According to my observations the answer would be 'yes'.

### 8.5.1. Eastern Europe - a dubious case of "postcoloniality"

In the last century, Central Europeans endured two totalitarian regimes and a totalitarian collectivism. The ideology imposed by communist authorities rejected ideas of individualism and individual rights (including private property), self-governance or freedom of choice. Instead, people were forced to conform to the 'dictatorship of the masses', a collective and directed economy, impersonality and political dependence. Consequently, in fifty years, the citizens of the Eastern Bloc must have adopted (even if unwittingly) at least some aspects of the Soviet ideology and social reality imposed on them (Marková *et al.* 1998, p. 803).

Analysis of social attitudes based on the study of the social representation of the individual from a post-communist perspective indicated that representatives of Central European nations (Czechs, Slovaks and Hungarians) associated the term 'individual' with values such as 'freedom', 'human rights' and 'self-determination'. Despite years of imposed totalitarian collectivism and political indoctrination Central Europeans believe in similar values as their Western counterparts (democracy, human rights, freedom, etc.). However, citizens of post-communist countries ascribe more importance to the market economy, private ownership and freedom of choice as rights not available to them before

1989, and evaluate them against the ideology of the Soviet regime (Marková *et al.* 1998, pp. 821-22).

The consequences of such attitudes for archaeology and cultural heritage management are significant. While respondents from Western Europe (France, Scotland and England) rated 'community', 'collective values' and 'wealth' (welfare) rather positively, *i.e.*, as important for the well-being of the individual, participants from Central Europe indicated 'the self', 'the individual in a market economy' and 'the state' as most important factors. At the same time, they placed 'local community' further away on the values scale, in the same cluster as 'communism', 'dictatorship', 'socialism' and 'ideology'. It is also interesting that Hungarians showed more appreciation for community values than Czechs and Slovaks, who were subject to more extreme forms of totalitarian collectivism (Marková *et al.* 1998, pp. 813, 822). This indicates a clear backlash against the recent social reality of the communist experience.

The transition process and rapid political, economical and social changes in Central Europe has had a significant impact on heritage management, and new demands for identification, legitimation and commodification are being made upon cultural resources (Ashworth and Tunbridge 1999, p. 105). For example, in Poland, despite declaratory admiration for history and tradition, there is a visible lack of engagement with archaeology and cultural heritage in general, as well as a relatively low regard for physical elements of heritage (both cultural and natural). This is manifested by the plague of vandalism and thefts affecting historic places, archaeological sites, parks, natural reserves, etc. and the outbreak of metal-detecting, nighthawking and illicit antiquities trade.

The Soviet regime experience (or let it be 'colonisation') had negative psychological effects on the cultural and economic potential of the region, forcing cultures and societies to look backwards and inwards. Some of the major aspects of the transition period include the contestation and rejection of particular events and experiences from the

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past and the glorification of others, and harnessing history, myths, memories and cultural heritage in the service of contemporary needs (Ashworth and Tunbridge 1999, p. 105; see Annexes 21 and 23). There is also a tendency to mythologise the past, e.g. by way of creating fairy-tale reconstructions, drawing upon national heroes, famous historical events and Slavic ethnicity in public life and popular culture, and an extreme sensitivity about belonging to 'central' and *not* 'eastern' Europe – which also seems to be a major issue for other countries of the former Soviet Bloc (e.g. Venclova 1991).

In consequence, since the collapse of the Soviet regime in 1989, countries of Central and Eastern Europe have been struggling to redefine senses of their national identity (Light 2008, p. 157). This process is associated with the enforced rejection of identities during almost half a century of communism and subsequent attempt to erase the memory of the Soviet occupation. At the same time, there is a strong desire to construct new post-communist identities (democratic, capitalist, Westward-looking and 'European'). This process involves deconstruction of identities assumed and/or imposed during the communist era. While the legitimacy of former interpretations of the past are being consciously rejected, the pre-communist interpretations (themselves contested by Soviet authorities) are being rediscovered and revived (Light 2008, p. 158).

### 8.5.2. Historic towns and the post-communist heritage

The process of transition in Central and Eastern Europe followed by rapid political, economical and social changes had a significant impact on heritage management in the region. Attempts to correct 'injustices' of former regimes are manifested in, amongst other things, the restitution of property to dispossessed owners (Ashworth and Tunbridge 1999, p. 106). Individuals, descendants of aristocratic families, religious organisations, etc. are now able to claim their title to confiscated or 'nationalised' real estates, historic buildings

and collections. While it is hard to deny former owners their rights to lost property, we cannot forget about consequences for the cultural heritage. In addition, regeneration plans encounter problems resulting from e.g. uncertain ownership of buildings and plots, holding many historic town districts in a state of progressing devastation. The return of major historic buildings and objects from museum collections to their former owners also raises doubts about privatisation of a collective past and public access to cultural heritage and tourist resources as well as the financial costs associated with the preservation, conservation and management of cultural property.

National heritage is one of major ways in which a country can present itself to its population, to visitors and on a wider international level. Museums and heritage sites can be used to tell a 'national story' and simultaneously to reinforce national identity and self-esteem (Light 2008), and presentation of heritage is largely an ideological process. In the case of post-Soviet countries, there is a visible trend towards exploitation of cultural resources and the commodification of heritage by the tourist industry and local authorities as well as celebration and re-enactment of historic events from the 'glorious past' (see Annexes 21 and 23). However, in addition to dealing with re-evaluations of the past and the deconstruction of communist identities, Eastern Europeans have to engage with less intangible issues – material remains of the Soviet era (the Berlin Wall, statues and buildings, Cold War bunkers, industrial architecture, etc.),[147] which remind people of years of repression and dominance. Ironically, unwanted heritage to the locals, these objects and places are becoming increasingly perceived as tourist attractions (Ashworth and Tunbridge 1999; Light 2008; Glass 2008). This interest in the contested communist past is a rather unwelcome, problematic challenge.

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[147] For examples of problems faced by the Cold War archaeology, see Schofield and Anderton 2000 and Uzzell and Ballantyne 2008.

As a result, new demands are constantly being made upon cultural heritage, particularly those directly associated with important historic events or people. Conflicts, myths and ideas rooted in the complex past of the region ascribe special meaning to medieval buildings and sites (as e.g. demonstrated by the 'Grunwald battle' described in Annex 23). This phenomenon is especially visible in the case of historic towns which are largely perceived as national or regional symbols and important elements of cultural identity.

For instance, in Poland, the post-WWII period, the restoration, preservation and archaeology of medieval towns was a highly politicised issue. In the centre of the dispute was the Warsaw Old Town totally razed to the ground by German troops after the 1944 Uprising. In some cases it had been decided that ruins of historic monuments should not be rebuilt (e.g. Coventry Cathedral; St Peter's church, Bristol; Christ Church on Newgate Street, London; the village of Oradour-sur-Glane, France). Similarly, there were voices in favour of keeping the historic centre of Warsaw in a form of permanent ruin to commemorate the events and act as a symbol against barbarism (Kobyliński 2008, p. 223). In the end, a decision was made to rebuild the majority of the historic centres of medieval towns and it was decided that the Warsaw Old Town should be reconstructed in the exact form. In 1952, the Commission for the study of Old Warsaw was established, setting up a framework for all future medieval investigations and the so-called 'Polish school of conservation' (Lech 2002). Although subsequently the reconstruction programme was used for political means by the communist authorities of the Peoples' Republic of Poland, the original idea was not political, and patriotic feelings and emotional values associated with monuments served as explanation and justification for rebuilding (Kobyliński 2008, p. 223), prevailing over the authenticity argument. By demolishing the historic centre of Warsaw the Nazis tried to obliterate a symbol of national identity. The restoration of the Old Town was one of first key decision of the Polish authorities in the post-war period.

The capital, rising like a Phoenix from the ashes, embodied the nation's revival and became an icon of communal care and collective sacrifice (Lowenthal 1998, p. 26). In 1980, the restored Historic Centre of Warsaw was put on the World Heritage List. Interestingly, the ICOMOS' recommendation to inscribe the site stated that 'the reconstruction of the historic centre so that it is identical with the original, symbolises the will to ensure survival of one of the prime settings of Polish culture and illustrates, in exemplary fashion, the efficiency of the restoration techniques of the 20th century' (ICOMOS, 7 June 1978). In this case, the authenticity criterion was not applied to the preservation of the historic centre itself but to the restoration project carried out in years 1945 to 1966 (fig. 23).



**Figure 23:** Warsaw Old Town: 1-2 – Ruins of the Royal Castle and the Old Town Square in 1945 (source: State Archive of the Capital City of Warsaw); 3-4 – The Royal Castle and the Old Town Square at present (source: Poland.pl).

While ruined historic centres were reminders of the 'foreign occupation' all signs of the multicultural German-Polish heritage were deemed undesirable. In Elbląg (Germ.

*Elbing*), where the historic centre was almost completely destroyed as a result of war activities, the ruins of the Old Town were demolished, the whole area levelled and left deserted for almost half a century (excavation and reconstruction works accelerated significantly in the late 1990s). In other historic towns located in the so-called 'Recovered Territories', especially in the region of Warmia and Mazury, the unwanted remains of the German/Prussian heritage were either demolished or left to crumble. Some of the original building materials and architectonic elements were shipped to Warsaw and used in the reconstruction of capital's monuments (Wielgus 1998, p. 52).

Archaeologists excavating historic towns in 1950s and 1960s largely ignored later medieval and post-medieval contexts. This was based on a few factors. Firstly, Polish archaeology was at the time still focused upon the study of Prehistory and 'modern' finds were rendered to be of no significant value and thus expendable (historical archaeology was *in statu nascendi*). Secondly, investigations focused upon searching for 'Slavic origins' and Early Medieval 'Polish' culture. Finally, the new regime (as well as some archaeologists and historians) interpreted the process of the so-called 'German colonisation' of Central European towns in 13th and 14th centuries as the beginning of a foreign oppression and loss of national identity.[148] Therefore, in many cases, contexts and artefacts younger than 13th century were given minimum attention or even excavated and discarded without recording. Such attitude, combined with the intensive programme of the 'Millennium' works, caused significant loss of archaeological data and permanent damage to Polish cultural heritage and science.[149] Consequently, in many towns traditional

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[148] The genesis of Polish (and Central European urban centres in a wider perspective) towns and their development in the medieval period was one of key issues of history and archaeology after WWII. For many years, the dominant theory argued spontaneous, autochthonous development from proto-urban settlements. In many ways, such an approach was a response to the view of German historians advocating introduction of the German law and locations in 13th and 14th centuries as the beginning of town development in the region (see e.g. Moździoch 1994). It is worth noting that the question of 'origins' is still one of the most important issues and recurring themes in Polish medieval studies.

[149] In the case of historic towns of northern and western Poland (e.g. Gdańsk, Wrocław, Opole, Kołobrzeg, etc.) it was hoped (and desired) that Early Medieval deposits would reveal 'Polish' or at least Slavic

medieval urban layouts have been purposefully eradicated, their architectural designs

completely transformed and historic buildings replaced with new multi-occupied Soviet

architecture, e.g. Malbork, Ostróda, Morąg.[150] In some cases, especially in the 'Recovered

Territories', historic centres purposefully have not been rebuilt (e.g. Elbląg and Silesian

towns Głogów and Gubin) (fig. 25). After 1989, the developing economy generated

increased interest in historic town districts. This means more building works,

redevelopments, modifications to old structures and increased use of rescue archaeological

works (fig. 24). In the case of Elbląg, open-plan archaeological works were a prelude to

creating a 'new' Old Town. Since regional conservation authorities ordered preservation

of historic remains, urban design has been amended to match the traditional layout of the

'planted' town and modern buildings were constructed largely on medieval foundations in

accordance with the original planted-town layout (Lubocka-Hoffmann 1998; Młynarska-

Kaletynowa 2000). Whether this Disneyfied replica was a successful development is a

completely different matter (fig. 25).

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settlement evidence. In order to reach those contexts, archaeologists inevitably had to dig through later medieval and post-medieval deposits, in most cases associated with the 'German colonisation' and centuries of continuous urban development. Sadly, these deposits were rarely properly excavated. Most evidence was discarded as 'unimportant' with minimal or no attempt of recording. For that reason, most information on the development of towns in the later medieval and post-medieval times was seldom studied or published and is now largely lost. According to researchers who participated in the 'jubilee' programme, this manner of treating of the late medieval material did not necessarily reflect a conscious effort to cover-up the German past of the settlements, but rather reflected a typical trend in European archaeology, which at the time was seldom interested in epochs later than early Middle Ages (Kobyliński 2005, p. 62). In 2001, grants were allocated to reassess and publish within a few next years some of the archival material from the 'jubilee' programme (Buko 2005). According to the anecdotal evidence obtained from colleagues working on excavation sites in Israel, similar approach is common in relation to medieval and post-medieval Arab deposits. As many of these archaeologists are foreigners not involved directly in the Israeli-Palestinian conflict, neglect of post-Roman contexts is not based on political or nationalistic convictions but rather demonstrates disregard for material that is not a primary focus of research. However, the damage and loss of information resulting from such an approach is irreparable.

[150] Similar 'redesign' of traditional historic centres affected also a number of German towns like Ulm, Stuttgart and Pforzheim in Germany (Buśko and Piekalski 1999) as well as a number of British towns in the 1950s, for instance Worcester, Bristol, King's Lynn and Chichester (Gerrard 2003).
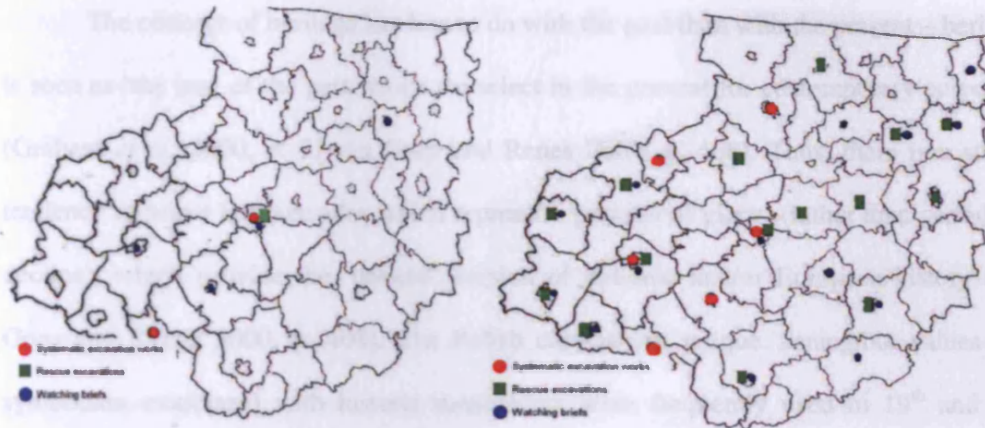
**Figure 24:** Archaeological investigations of historic towns in Warmia and Mazury region before 1990 and in the period of 1990-1997 (source: Wielgus 1998, figures 3 and 4).



**Figure 25:** Elbląg Old Town: 1-2 – Old Town panorama in 1943 and in 1945; 3 – Demolished Old Town converted into a green open space in the post-war period; 4 – 1990s redevelopment on medieval foundations (source: www.elblag.eu).

The concept of heritage has less to do with the past than with the present – heritage is seen as 'the part of the past which we select in the present for contemporary purposes' (Graham *et al.* 2000, p. 2; van Gorp and Renes 2000, p. 408). Thus, there is a strong tendency to select heritage sites which represent 'periods of glory' (rather than periods of decline), which provide the 'desired' version of national and/or European history (van Gorp and Renes 2000, p. 408). The Polish case is not unique. Intangible values and symbolism associated with historic monuments were frequently used in 19th and 20th centuries for political and ideological means. Some other examples of ethnic-oriented research, nationalistic approaches and glorification of medieval past include investigations into urban development and early 'royal seats' of Central and Eastern Europe: Slavic and German Lübeck (Slav stronghold and royal residence of Lübice-Old Lübeck located in the area of the ethnic overlap of Slavs and Germans; Fehring 1990), Prague (Huml 1990) or medieval Kiev (especially Dukes Vladimir and Yaroslav the Wise and the origins of Rus; Ioannisyan 1990). Likewise, in modern times, reconstructions of historic buildings and sites are still undertaken (Kobyliński 2008), although the conservation doctrine favours authenticity and original fabric. For example, in the case of the Dresden Frauenkirche destroyed in a 1945 bombing, a decision to rebuild it was made after the collapse of the Berlin Wall and the reunification of Germany. The Mostar Bridge was rebuilt and listed as a World Heritage Site in 2004.

In a review of the World Heritage List, so far the only list available on supra-international level, van Gorp and Renes (2000) calculated that almost a third of WH sites in the EU are historic towns, historic urban centres and archaeological remains of urban architecture. At the same time, rural sites and landscapes are relatively few. It is a clear emphasis on urban heritage, drawing attention to shared (or desired) European history and symbols of economic integration. It seems that one of most popular themes is the Hanseatic League, which acts both as a symbol of the past and represents modern

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economic and cultural relations between European countries (van Gorp and Renes 2000, p. 411). Former Hanseatic towns of the Baltic region constitute a significant number of heritage sites inscribed on the UNESCO list, representing Germany (Lübeck, Wismar and Stralsund), Poland (Kraków, Toruń), Sweden (Visby), Estonia (Tallin) and Latvia (Riga).

One of historic towns that put its Hanseatic heritage in the centre of attention is Gdańsk (Danzig). For centuries, Gdańsk (fig. 26), with its strategic location and multi-ethnic community, oscillated between Polish and German rule. Historically, a Slavic ('Polish') foundation, it was granted Lübeck law privileges in 1235 and became part of the Hansa. In 1308, the town was captured by the Teutonic Knights and remained in the Order's domain until 1454. In 15$^{th}$ and 16$^{th}$ centuries, it became the most important Polish port and one of the major trading centres of the Baltic region. In the end of the 18$^{th}$ century, Gdańsk became a part of the Kingdom of Prussia, and consequently the Wilhelmian German Empire. In 1919, it was proclaimed a 'Free City' and in 1945 it was finally incorporated to the Polish territory. With its complex history and cityscape loaded with symbolism and multi-cultural heritage (Polish, German, Jewish, Dutch, etc.). Gdańsk can be seen as an example of suffering and lost national pride (by the Germans) or, on the contrary, the symbol of overthrowing the foreign dominance (by the Poles). But it can also be interpreted as the model for a more general European experience, representing regional themes and events such as medieval town culture, Baltic maritime character, or war and displacement (Ashworth and Tunbridge 1999). In the case of Gdańsk, its Hanseatic identity and palimpsest of cultures indeed reflect a multinational, universal Northern European heritage but equally are an important selling point to the cultural tourism market (pragmatically advertised on every occasion by local authorities).

**Figure 26:** Gdansk Old Town (source: Poland.pl).

The example of Poland summarised in this section and discussed in detail in Annex 21 provides some insight into the historic context and problems facing archaeological heritage management in the countries of the former Soviet Bloc. Despite cultural, historical and geographical diversity, Central European countries have a considerable common characteristic and shared experiences influencing heritage management processes in the region (Ashworth and Tunbridge 1999, pp. 105-6). These are, for instance, their geopolitical location between the German and Russian dominance, frequent wars and territorial changes, the outburst of nationalisms and regionalisms in the 19$^{th}$ century and their violent suppression under the Soviet yoke, and finally the collapse of the USSR and the subsequent 'transformation' in the 1990s.

Eastern European 'postcoloniality discourse' may be compared with discussion of Irish postcolonial experience (especially in relation to Northern Ireland) and relevance of such issues to heritage management (e.g. Horning 2006; O'Keeffe 2006; Ascherson 2006). Prior to the 1980s, archaeology in Ireland focused upon Prehistoric, Celtic, and Early Christian periods – the Golden Age, according to the nationalistic sentiment of the young Irish state. At the same time, later medieval and post-medieval times were associated with the loss of independence and British colonialism (Horning 2006, p. 185). It was also in the 1980s that the term 'postcolonial' became associated with Ireland (O'Keeffe 2006). For

instance, drawing upon the North American, Caribbean and African experiences and comparing it to e.g. the Plantation sites, Audrey Horning called for a 'theoretically informed yet responsible and publicly engaged historical archaeology' for Ireland (Horning 2006, pp. 190, 195). She also criticised Irish archaeologists for 'telling people about their past from the outmoded and privileged standpoint of a supposedly objective scientist' and argued that in places, where colonialism took place, archaeologists have to acknowledge the ambiguity of historical narratives and interpretations and explain them to the public (2006, p. 185).

While the call for more theory in medieval and post-medieval archaeology (e.g. as expressed in the Irish discussion) is justified (see Austin 1990; Austin and Alcock 1990), this manifesto also stresses ideas of American-style historical archaeology and its political aims. It is arguable whether incidents in Irish, Finnish or Polish, Hungarian, Slovak and Czech history (or any other European country's) can be seen as 'colonial' and interpreted through the same paradigm appropriate as is for e.g. India, the Caribbean, the Philippines or African countries (Ascherson 2006, p. 202; O'Keeffe 2006, p. 211). These are rather ambiguous cases of 'postcoloniality'. Indeed, one may say that history of Europe is full of 'colonial' episodes: Italian Fascism, German Nazism, Habsburg and Ottoman imperialism, the Spanish Reconquista, Roman, Frankish, Norman and Viking expansionism, etc. It can be even argued that in its long history Poland (in popular nationalistic vision always portrayed as a 'martyr' fighting for freedom), has also experienced a number of 'colonial' episodes not only as a victim but also as a perpetrator (e.g. post-medieval settlements in Belarus and Ukraine).[151] In fact, in the closing paragraph of his famous history of Europe Robert Bartlett stated that 'Europe, the initiator of the world's major processes of conquest, colonisation and cultural transformation, was also the product of one' (Bartlett

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[151] Occasionally, colonised European countries were former colonisers as well (e.g. the case of Polish settlement in *Kresy*). See e.g. Ascherson 2006; Korek 2007; Boss 2008.

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1994, p. 314). Therefore, I think that while Central European societies struggle with their own demons of the past and are still in the process of transformation, it would be more appropriate to see these problems as a post-communist legacy and a part of a universal European experience rather than interpret them through the postcolonial theory.

## 8.6. Summary

The theory and practice of archaeological heritage management can be put into a wider context by analysing the relationship between archaeology and past and current political and socio-economic issues. This involves the analysis of different 'uses of the past', the critique of the traditional 'national' (or 'state-centred') approaches to archaeological heritage management and the 'pan-European' concept employed by the processual theory, and a critique of concepts of 'archaeology for Europe' or 'European archaeology' postulated in the last two decades by some archaeologists.

Consequently, this chapter has analysed the formation of the concept of the 'European cultural heritage' and considered motivations underpinning the move towards the 'Europeisation' of cultural heritage in the recent years. It looked at the relationship between 'European cultural heritage' and creation of collective narratives (European, regional, national, ethnic) and other 'European' initiatives (European integration, cultural identity and citizenship). It has also explored differences between approaches to archaeology and archaeological heritage management applied in Western and Eastern Europe and looked at possible advantages, disadvantages and problems associated with a move towards a more integrated, 'European', policy on cultural heritage management.

It emerges clearly that archaeological theory, terminology and ideas behind archaeological conservation are, to a large extent, an ideological barometer representing the discipline's political role in society and linked (implicitly or not) to political agenda

and attempts at social engineering. This is made especially clear by an analysis of the concept of the 'new European identity', discussed in detail in Section 8.4. Consequences of the European élites' efforts to construct a modern supra-national, common 'European' identity as a significant element of the 'Europeisation of Europe' appear both potentially beneficial and dangerous to the future development of archaeological heritage on the Continent.

A further internationalisation of European archaeology could help overcome the incoherence and patchiness of heritage management policies, minimise the impact of traditional regional and national idiosyncrasies, and facilitate collaboration on vital 'European' issues such as sustainable development, cultural environment protection, trans-frontier co-operation, equality, diversity and social empowerment. On the other hand, the same process may result in an even greater emphasis upon utilitarian approaches to the archaeological heritage as a means to political and economic ends, streaming financial resources and grants towards research and heritage assets of 'European importance' and supporting research into 'European' rather than 'local' themes.

It must be concluded, then, that a truly international, universal, theory and practice of archaeological heritage (the so-called 'archaeology for Europe' or 'European archaeology') is not a feasible concept. It may be suggested, instead, that better prospects for the future development of archaeology in Europe could be sought in increased research collaboration and co-operation within thematic groups, in regional and trans-frontier projects, improving communication between archaeologists and heritage managers from different countries (e.g. through the membership of professional associations or creating linguistic and recording tools), raising awareness of heritage management topics amongst archaeologists and other professionals (e.g. through making these issues a compulsory part of university curricula and professional development) and training archaeologists to be

more confident and active participants of the planning process as well as policy- and

decision-making activities related to the management of the cultural environment.

# 9. Chapter Nine: Conclusions – drawing the themes together

## 9.1. Archaeological heritage and the 'Europeanness'

This thesis has sought to demonstrate the complexities of the management of the archaeological heritage in Europe in order to provide a critical perspective on current approaches to the historic environment, heritage regulations, conservation principles and archaeological practice. The principle aims have been to identify and examine common threats to the archaeological heritage, to look at the complexities of managing archaeological heritage in the integrating Europe, devising heritage policies and carrying out projects at an international, trans-frontier, level, to analyse the effectiveness of responses provided on a national and international level, and to explore the potential for change to improve the efficiency, sustainability and acceptance of the management policies and decisions in a regional and transnational dimension. The universal theme, which is the canvas for all research questions and topics presented in this study and which connects all chapters, is the problem of the internationalisation or, to be more precise, 'Europeisation' of the cultural heritage.

One of key findings of this study has been the growing relationship between archaeology and archaeological heritage and the process of the European integration, discussed in detail in Chapter 8. The search for a 'shared cultural heritage', the common European' identity or the 'European citizenship' not only suggest the existence of 'Europeanness' of some sort (an 'EU culture'?) and a set of meanings and values common to the EU member states and their citizens but also have a very real, tangible impact on policy making, legislation and management decisions in the heritage sector. One of

consequences is the debate on the concepts of 'European archaeology' and 'European identity' which have been gaining importance since the fall of the Iron Curtain.

When Kristiansen (1990) argued the need for a common European policy for archaeology, he saw it as a way of preventing a revival of pre-war chauvinistic attitudes to history and archaeology, overcoming the limitations of national frameworks and preparing the discipline for changes resulting from political and cultural transformations taking place in Europe after the collapse of the Eastern Bloc. This thesis has attempted to explore this topic further by looking at challenges and obstacles to the development of the archaeological heritage management, such as the diversity of legal systems, concepts and terminology adopted across the Continent, differences between cultural to the archaeological heritage and archaeological theory in the 'old' EU and the countries of the former Eastern Bloc, and consequences of past and present political and ideological uses of the archaeological material.

I tried to demonstrate that the first stepping stones for this imagined common policy (although still unwritten) have already been laid by the work of the CoE and EU; the creation of documents such as the revised Valetta Convention and the *European Landscape Convention,* by encouraging transnational academic collaboration through various cultural heritage projects, researchers' mobility schemes, students' exchange programmes and by EU funding mechanisms designed to shift the balance from 'national' to 'European'.

However, a critical analysis of the 'European archaeology' leads to the conclusion that this concept is still in *status nascendi.* Although some archaeologists had predicted (or rather hoped) that the new European identity might in time outgrow nation state boundaries (Kohl and Fawcett 1995b; Kristiansen 1990) and, at least partially, free the discipline from the burden of past abuses of totalitarian regimes and nationalisms of the 20$^{th}$ century (see Annex 21), it seems that at the beginning of the 21$^{st}$ century the EU has

seen the rebirth of nationalisms and regionalisms and a strong opposition towards the 'cultural melting pot' of a common European identity. Furthermore, despite efforts at unification, archaeology and cultural heritage management in Europe are still a 'diverse landscape', a mixture of very different traditions, organisational structures and competing national and regional interests (Ascherson 2008). Scepticism and disappointment creep in. Almost twenty years after publication of his original article, Kristiansen wondered whether 'European archaeology' or the 'archaeology of Europe' was 'simply a modern political concept' (2008a, p. 6). J. H. Willems, predicting that managing archaeological heritage will become increasingly dependent on EU legislation (e.g. related to the spatial planning and the environment), worried that there is no adequate and effective representation of archaeology's interest as a discipline and as a profession in Brussels (2007, p. 68).

In my opinion, the concept of the 'European archaeology' cannot be accepted uncritically. First of all, as it is discussed in Chapter 8, not only is there no clear definition of the 'European' attribute but that determining something as European (or not) has major political and legal consequences. Secondly, there are significant doubts over the existence of the community of Europeans *per se*, and thus the existence of the common European cultural heritage. Therefore, an important question which needs to be considered by archaeologists is the extent to which these concepts are real phenomena and/or a political creation supported by the EU political powers. Consequently, it can be argued whether there is, indeed, a need for a 'European archaeology', and if so, what the benefits – and risks – of adopting such a perspective on a wider scale would be for the protection of the cultural heritage. This, potentially could lead to a paradox, by which problems and dilemmas currently criticised (with issues such as the susceptibility to ideological influences, favouring specific concepts and research topics over others or even discrimination of a 'wrong' cultural material being the drivers of the trans-national

approach) are repeated in reference to non-European issues (e.g. by neglecting local themes or directing funds primarily at collaborative projects or the homogenisation of the form and content of archaeological interpretations).

Willingly or not, archaeologists already participate in the European socio-politics and actions towards creation of the European heritage and identity (Sørensen 2008, p. 55). This process takes place both on a personal level (through the EU citizenship of individual archaeologists) and in the professional field (through available funding schemes, research strategies, membership in the EAA, etc.). In this situation, I think it is necessary to look at the consequences of such involvement for the discipline, to identify most pressing issues and to consider the future development of and perspectives for archaeological heritage management in Europe.

## 9.2. Criticism of the 'European citizenship'

Because European cultural identity lacks strong roots such as a common language or shared traditions and customs, the EU's political identity is chiefly established on the basis of the public sphere, law and civil institutions. For example, as I tried to demonstrate in Chapter 8, Central European political societies, after the collapse of the Soviet Bloc, create their collective characteristics largely in opposition to the communist past. In this case, Europeanness is seen as a symbolic value, a set of future-oriented political goals for both politicians and citizens. The concept of the European identity is also aimed at weakening (with ostensibly mixed results) those myths and ideologies which threatened to reinvent nationalist politics on the basis of historic territorial and ethnic claims (Přibáň 2005, p. 142).

Indeed, the assertion of a European citizenship and the taming of nationalisms (especially ethnic separatisms) is vital for both economic and political integration within

the region. For that reason, another political expression of a common European identity is the concept of EU citizenship based on a further integration and a future European constitution. According to the 'functionalist' argument, European politics must change because separately European nation states can no longer effectively influence the global economy and regulate environmental and political processes. On the other hand, the 'identity' argument stresses the function of European integration as a factor neutralising nationalist tensions and separatist tendencies (Přibáň 2005, pp. 137-8). Yet, the European citizenship concept has been criticised for its dependence on the individual member states' nationality – there is a concern that different rules implemented by the nation states (*ius soli, ius sanguinis*)[152] would cause legal inequalities. That, in turn, could be counterproductive, potentially leading to the escalation of antagonisms within the European community. But it is primarily the notion of European identity itself that is being questioned.

The 'European popular identity' is supposed to be the opposite of nationalism and its political tradition. Thus, it could be used as a base to create a civil European *demos* in order to tame the *ethnos*, built upon shared cultural heritage and collective characteristics. However, many researchers argue that while there are partially-shared legacies, so far, no pan-European equivalent to national myths can be found despite Eurocratic rhetoric, symbols and invented traditions (Prentoulis 2001; Kostakopoulou 2007; see Annex 20). Arguably, in spite of – or perhaps because of – the pressure of globalisation and 'Europeisation', national cultural identities and nationalisms are not weakening or dissolving to make way for the 'Europe beyond nations'. In the view of the resurgence of national and regional independence movements and the revival of the 'historic

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[152] *Ius soli* (right of soil) is a principle by which nationality or citizenship can be attributed to any individual born in the territory of the state. *Ius sanguinis* (right of blood) is a principle according to which one's nationality or citizenship is recognised on the basis of having an ancestor who is/was a national or citizen of the state.

nationalities' (e.g. in the Balkans, in Scotland and Wales or in the Basque Country), it can even be said that 'the European people that had been conjured up in the identity discourse never appeared' (Stråth 2006, p. 434). To highlight their uniqueness and legitimise their existence, regional and ethnic cultural identities often look to history and archaeology. Predictably, archaeological heritage in the form of 'national monuments', historic (or even 'sacred') places and portable antiquities often serves as a tangible link to the origin myths, national heroes and important political events.

This trend, sometimes described as 'neo-medievalism' (see Annexes 23-25), is strongly associated with contemporary uses of the past and creates a challenge for archaeologists, historians and heritage managers. Examples discussed in some more detail in Annex 25 demonstrate that, like nationalism, modern regionalisms with language differences and mutual grievances can remain sources of deep discord or even xenophobia. Since these sentiments, metaphors and paradigms are often – or are at least perceived to be – rooted in the Middle Ages (Austin 1990; Lowenthal 1998; McNeill 2004), they create a dilemma for medieval studies: to what extent should they be challenged or supported? At the same time, the quest for the European identity and attempts to provide a super-ordinate level of identification in the process of European integration raise concerns about the possible impact of the new multi-level European identity on the attitudes towards minorities and people perceived as 'non-Europeans', for example non-EU citizens, migrants, Jews and Muslims (Hudson 2000; Licata and Klein 2002), and towards their heritage.

## 9.3. 'Old' and 'new' nationalism

The traditional organisation of heritage services and research institutions means that archaeologists generally work within nation state boundaries rather than across them. For

these reasons, and because of ingrained research traditions, management approaches, language differences and publication issues, they also tend to focus on national or even regional topics. At the same time however, funding opportunities for archaeology and the cultural heritage sector depend increasingly on the 'European' theme. This is especially visible in the case of the EU-related funding sources and programmes supporting integration and collaborative efforts and promoting particular views of European heritage. Although one may argue that generally archaeologists, historians and other heritage professionals are 'not so naïve as to take these positive pro-European claims at face value' (Pluciennik 1998, p. 817) and treat the Eurocrats' rhetoric with caution, 'it would be arrogant to assume' that they are completely immune to current political contexts (Pluciennik 1998, p. 821). The sheer availability of financial grants and research opportunities encourages many to take up a 'European theme', to participate in a collaborative project or integrate their work within Europe-focused framework.

Past abuses of the cultural heritage by politics and nationalistic propaganda in the last two centuries have been well researched and discredited in the academic forum. Yet, nationalism is still only too often a dominant paradigm within which the past is understood and popularly presented (see e.g. Pluciennik 1998; Kohl 2008) and even some archaeologists believe that the discipline cannot exist without it (Novaković 2008). This phenomenon is usually analysed on a nation state level or sometimes in relation to specific conflicts, regions or ethnic groups (e.g. former Yugoslavian or Walloon/Flemish issues). At the same time, potential threats associated with the supranational, 'European' chauvinism are much less discussed. Since the conditions under which archaeological narratives are being produced inevitably change to include European dimensions, many archaeologists become concerned about the steadily growing use of the term 'Europe' or 'European' in relation to cultural heritage and academic research.

The most obvious danger of the extreme 'Europeisation' is the loss of a 'local' focus, potentially leading to marginalisation or even exclusion of archaeologies, histories and cultures that lie outside the scope of the 'common European identity' and 'shared cultural heritage' or simply are not visible enough. Another possible negative effect is the homogenisation of the form and content of archaeological interpretations (Pluciennik 1998). Finally, the concept of Europeanism and European cultural identity advocated by political institutions as the remedy to chauvinism and xenophobia, but exploiting recycled myths, emblems and rhetoric, is close to becoming value-charged and as exclusive as 'old' nationalisms (Gramsch 2000).

## 9.4. Cultural diversity: Muslim, Jewish and Orthodox heritage

Under the influence of the EU and the CoE, Europe's distinctive cultural entity has become a fundamental theme supporting integration efforts. From this positive perspective Europe is presented as an entity built upon the tradition of Classical Graeco-Roman civilisation, Judaeo-Christian heritage and the ideals of the Enlightenment (see Section 8.2). The idea of 'Europeanness' and a sense of what 'European' cultural heritage means is built upon a mélange of numerous national histories, contributions and characteristics (Pluciennik 1998, p. 817). This has triggered attempts to further incorporate national heritage traditions into a shared European heritage. These concepts and values also affect the heritage management field. Patterns formerly tested by nation building movements of the 19th and 20th centuries are now being reused to support the creation of a European civil society and, as in the past, archaeology and cultural heritage are inescapably involved in the process.

We do not have a separate list of the 'important' European heritage (if one is at all needed is another issue) and for that reason entries on the World Heritage List are

sometimes treated as an sign of a common cultural identity and shared histories within the European community (van Gorp and Renes 2000). The largest category of European and Northern American entries on the World Heritage List are cultural sites (86%), with natural and mixed sites constituting 12% and 2% respectively (fig. 27). Of 359 European World Heritage Sites, historic towns and urban sites amount to almost a third, and monumental religious buildings constitute nearly 25%. These are followed by Classical and Graeco-Roman sites (10%) and castles, palaces and aristocratic residences (8%) (fig. 28).[153]
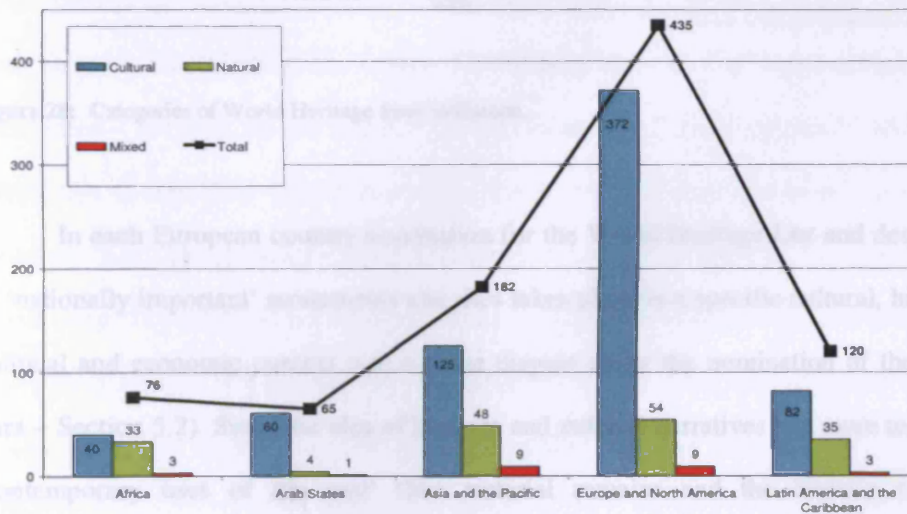


| Regions | Cultural | Natural | Mixed | Total | % |
|---|---|---|---|---|---|
| Africa | 40 | 33 | 3 | 76 | 9% |
| Arab States | 60 | 4 | 1 | 65 | 7% |
| Asia and the Pacific | 125 | 48 | 9 | 182 | 21% |
| Europe and North America | 372 | 54 | 9 | 435 | 50% |
| Latin America and the Caribbean | 82 | 35 | 3 | 120 | 14% |
| Total | 679 | 174 | 25 | 878 | 100% |

**Figure 27:** World Heritage Sites: Cultural, Natural and Mixed heritage sites by region.

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[153] Since there may be more than one reason for inscribing sites and cultural landscapes onto the World Heritage List these statistics are based on the main characteristics or defining element.

Pie chart categories (legend):
- Historic Towns and Urban Landscapes
- Other Civic Monuments and Sites
- Religious Sites
- Cultural Landscapes and Rural Sites
- Greco-Roman/Antiquity
- Castles, Palaces and Aristocratic Residences
- Industrial Sites
- Prehistoric Sites
- Fortifications
- Other

Percentages shown: 26%, 5%, 23%, 10%, 10%, 8%, 8%, 6%, 1%, 3%
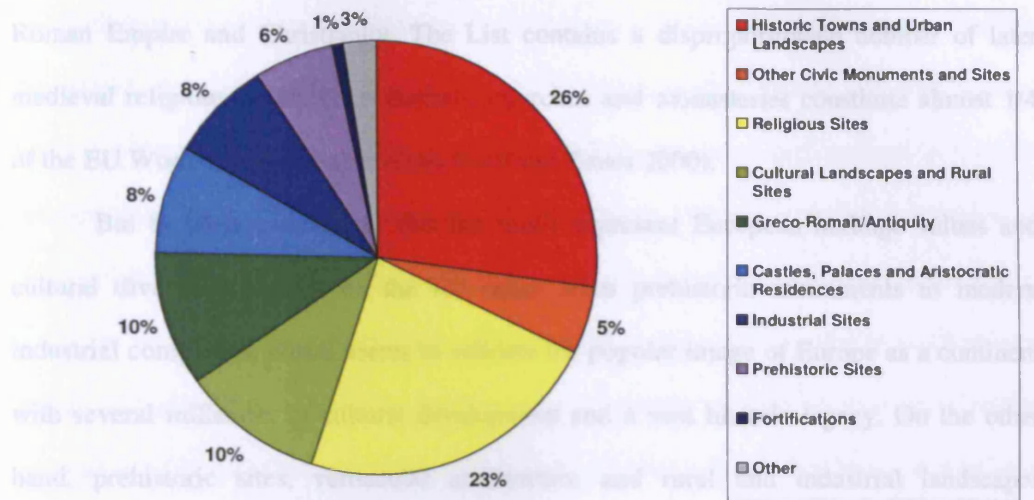
**Figure 28:** Categories of World Heritage Sites in Europe.

In each European country nomination for the World Heritage List and designation of 'nationally important' monuments and sites takes place in a specific cultural, historical, political and economic context (see e.g. the dispute about the nomination of the Hill of Tara – Section 5.2). Since the idea of heritage and cultural narratives has more to do with 'contemporary uses of the past' than material remains and the historic fabric of monuments, sites and artefacts (Lowenthal 1998; Ashworth and Tunbridge 1999; Smith 2006), cultural heritage is often used to highlight specific episodes in national histories and to underline particular aspects of cultural group identity. Consequently, material remains and cultural narratives promoted within the European milieu by the CoE, the EU and nation states are themselves perceived as especially significant in European history or heritage and have a particular relationship with the integration tendencies. In the case of Scandinavian and Northern European countries this may be a shared legacy of the Viking expansion and trade (see Annex 19). For Eastern Germany, Poland and the Baltic Republics these would be Hanseatic historic towns (see Section 8.5). The World Heritage

List also reflects the idea of a European *universitas* symbolised by the inheritance of the Roman Empire and Christianity. The List contains a disproportionate number of later medieval religious buildings: cathedrals, churches and monasteries constitute almost 1/4 of the EU World Heritage entries (van Gorp and Renes 2000).

But to what extent does this list *really* represent European heritage values and cultural diversity? Entries on the list range from prehistoric monuments to modern industrial complexes, which seems to validate the popular image of Europe as a continent with several millennia of cultural development and a vast historic legacy. On the other hand, prehistoric sites, vernacular architecture and rural and industrial landscapes constitute only about 25% of the entries. The 'World' Heritage List is also geographically unbalanced – not only are the majority of sites located in Europe (figures 27 and 28) but within this group, over 2/3 of sites are situated in only four countries: Italy, Spain, Germany and France, with the total sum of Central and Eastern European entries constituting only about 30%.[154] These noticeable disproportions in the List's composition prompted a critique of the selection process as an 'undemocratic activity, done by small groups of experts [mainly art historians] and politicians' (van Gorp and Renes 2000, p. 409).

The language of official documents and political statements emphasises the existence of a community of Europeans united by culture shared values and common identity – one may argue that so far, this is still an *imagined community* (Anderson 1983; Rich 1999; Pluciennik 1998; Lowenthal 1998; van Gorp and Renes 2000; McNeill 2004; Přibáň 2005; Stråth 2006). 'Heritage' becomes 'nostalgia'. Dark events from Europe's troubled past such as fascism, racism, mutual hostilities and colonialism are ignored (Lowenthal 2000). The social and political benefits of the European citizenship and a common identity with their promise of overcoming national differences and regional and

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[154] See also van Gorp and Renes 2000.

ethnic particularisms are numerous: it is enough to summon up the Balkan conflict based on ethnic and religious components, one of the most serious crises in the recent past that threatened Europe's stability – as well as Europe's archaeological and architectural heritage. Equally, there are several dangers. While medieval archaeology is used to promote the myth of a European identity and classic (though nationalistic) notion of 'origins', it risks contributing to building a yet another exclusive system (see Annex 25).

In order to achieve their goals of integration political élites refer to supranational values and allusions. But in the 21$^{st}$ century the popular notion of Romano-Christian heritage is often deemed unsuitable. Christianity is currently as divisive as it was once unifying (at least until the Reformation) – as proven by the recent dispute about including reference to the 'common Christian heritage' in the preamble to the future EU constitution.[155] Also, the appeal of the Roman Empire – with its notion of unity reinforced by ideas of a universal currency, common market or one official language – seems to be less alluring in a modern context given that Eastern and Northern Europe were never part of it (notably the majority of the new EU member states).

However, identity may not only be defined from 'within', solely in reference to values and features shared by the group, but also through the differentiation from 'others'. Issues of inter-group comparisons, self-definition and the meaning of identity associated with growing cultural diversity, European integration and globalisation, have become an important subject of contemporary debate about the nature of 'Europeanness' (Hopkins and Murdoch 1999, p. 335). What does it actually mean to be 'European' and what is definitely 'non-European'? Do we define ourselves as having a lot in common, or rather a lot in opposition to 'others', non-Europeans? Many researchers concerned with the

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[155] The controversy is caused by the idea of referring to 'Christian values' in the preamble to the European Constitution. According to the proponents of such reference, Christianity had a foremost influence on the history of the Continent thus creating the identity of all Europeans (including non-Christians). For that reason, they argue that the Judaeo-Christian tradition and heritage should be mentioned in the document and that a secular preamble would be inadequate (Menéndez 2005).

concept of shared cultural heritage and common identity argue that the latter is the case. Those striving to mark the difference and highlight their 'uniqueness' often define their heritage by describing what it is *not*; often what matters most is 'being unlike some rival or oppressor' (Lowenthal 1998, p. 234). Also the concept of 'Europe' and being 'European' to a large extent acquires 'distinction and salience when pitted against the Other' (Stråth 2002, p. 388), especially 'not-American' (Pluciennik 1998) and not-Islamic (McNeill 2004). It also seems that the increasing number of immigrants from outside Europe and the alleged 'Islamic threat' have replaced the communist menace as a unifying force for the West (Rich 1999, p. 436). In consequence, such populist views lead to subtexts of racial and cultural chauvinism.

While in some countries the focus on nation state minimised the role of Jewish, Orthodox Christian and Muslim culture in the heritage discourse, the modern pan-European framework is often guilty of the same fault, e.g. failing to include the Muslim legacy in al-Andalus, Cyprus, Greece, Sicily and the Balkans or Jewish quarters of European historic towns in the mainstream vision of a common identity. Research on irrigation systems in Andalusia, excavations of Islamic urban forms or study of medieval synagogues is rather limited (Graham-Campbell and Valor 2007). Preservation of cultural heritage sites and the publication of results of archaeological surveys and excavations conducted throughout the Balkans still primarily depend on international politics, ethnic tensions and warfare – issues far beyond the power either of archaeologists or cultural heritage managers to control (Silberman 2005).

Given the growing involvement of the European Community in cultural issues and the increasing importance of heritage and cultural environment on the international and national forum, in my opinion the ability to address the abovementioned problems ethically and responsibly will become one of major challenges faced by the archaeological community and the archaeological heritage management professionals. This will require

development of new tools and approaches but, primarily, a better engagement with theory – especially on the part of medieval archaeology, which has traditionally dwelled on the peripheries of the theoretical debate. Moreover, if the concept of 'European archaeology' is to be taken any further, it has to address the diversity of existing frameworks and traditions. For instance, in its current form, this concept largely fails to integrate Central and Eastern Europe (see Annex 25).

## 9.5. Archaeological heritage management – the vision, the mission and the reality check

In my research, I have tried to analyse the theoretical and legal framework for the management of archaeological heritage in Europe by looking at the concepts, principles and intentions enshrined in the most important international treaties, conservation policies and good practice guides as well as in the recommendations and declarations of various international organisations and professional bodies (Chapters 3 and 4). At the same time, I have looked at a number of practical aspects, such as the protection of portable antiquities (Chapter 2), the organisation of development-led, planning-related archaeological works, the management of cultural landscapes (Chapters 5, 6 and 7), and the influence of historic context and current economic, social and political issues (Chapter 8). I was interested to see to what extent ideas and the values developed in the course of the theoretical debate on European archaeological heritage management and the principles underpinning the international legal framework are implemented on a national (regional) level – and whether they are reflected in national legislations or routinely applied to heritage management plans, decisions, public participation schemes and educational programmes.

My first conclusion is rather positive: as it appears today, the international legal framework (including 'European' regulations) provides a wide range of principles and tools supporting the effective management of archaeological heritage (protection of historic landscapes, designation of cultural assets, protection of sites endangered by development process, restitution of looted and stolen artefacts, etc.). Also, the emphasis put on safeguarding and promoting the common European cultural heritage by the Council of Europe and the European Union can be read as a vision and mission statement promising future improvements. Although in some cases the zeal in pursuing 'European' themes (e.g. the Bronze Age Campaign) may seem misguided or controversial, other efforts bring much-needed changes (e.g. the implementation of guidelines on environmental impact assessments or facilitation of research collaboration). Also, at a local level, there are a number of encouraging developments – e.g. the proposed reform of heritage law in England in Wales putting the historic environment and sustainable development in the centre of attention of the public authorities.

However, the analysis of actual decisions, legal challenges, varied approaches and conflicting interests and controversies associated with the case studies and examples discussed in this thesis in my opinion illustrates a wide gap between the theory and practice of archaeological heritage management in Europe. First of all, it is important to remember that while conventions are important tools of the international co-operation and powerful legal instruments, the road to their creation and signing is rarely easy or free from controversy. Hence, such documents are always a result of a compromise between different parties and their interests. In consequence, as discussed earlier, their final shape does not always fully reflect the intention with which the legislative process had started; the subsequent level of signatures and support for such treaties is also often less than expected. This was, for instance, the case in the disagreement around the international antiquities trade regulations, described in Chapter 2, where the overwhelming number of

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'source countries' pushed for a restrictive approach and the major 'market states' postponed (at least until recently) ratifications. Another issue is the equal political, geographical and theoretic representation in the process of creating international documents. For instance, the original working group which prepared the text of the Valetta Convention did not include representatives from Eastern Europe. This was explained on the basis that many states became members during the early 1990s after the collapse of the Soviet Bloc (Willems 2007). But even in the later stage their participation was limited. However, it is worth mentioning that many of these countries joined the ministerial conference at Malta and were among the first ones to sign the Convention upon its acceptance by the Council of Ministers, e.g. Bulgaria (1993), Hungary (1993), Estonia (1996) and Poland (1996).[156]

Furthermore, it is often the case that the principles of archaeological heritage management remain on paper, as the international regulations often are not effectively enforced at the operational level. This problem is associated with the character of such documents, which have to consider differences in legal systems and vocabulary. Thus, while their principal role is to set common objectives and general rules, the technical and practical issues of implementation are left to individual countries. Such an approach eliminates overregulation and micromanagement. Yet, for the same reasons, international heritage regulations lack strict and easily enforceable sanctions and are often treated as a 'soft law'. In consequence, if they allow a great flexibility in interpretation (also political) or clash with more 'regulatory' norms (e.g. of the domestic law or environmental legislation) – or more 'significant' interests (e.g. economic) – they are frequently overlooked or disregarded. The same difficulty is associated with the role and authority of international professional bodies, such as UNESCO and ICOMOS or the EAA and EAC,

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[156] It is worth noting that a number of Western European countries took around a decade to become parties to the Convention, e.g. Germany (2003), Denmark (2005) or the UK (ratified in 2005).

which, while responsible for providing expert guidance, have in fact a very limited practical influence on individual countries' actions (unlike the case of the EU regulations, for example, they lack the executive powers of the European Commission).

According to the Council of Europe (2000c), a model heritage legislation should consist of simpler, shorter laws focused on specific problems, e.g. through detailed subsidiary regulations developing in detail principles laid out in general international treaties or national bills, complemented (and sanctioned) by the norms of the administrative, civil and criminal law. While this is increasingly the case of the European legislation in the area of the environment, consumers and health protection,[157] we need to wait for similar developments in the heritage field. Laws ought to penalise offences against cultural heritage, but at the same time, sanctions should be enforceable and discouraging, focused on preventing and deterring offences rather than being reactive (depending on the context, this may be, for instance, a proportionately high fine, withdrawal of a planning consent, refusal to grant an excavation licence or confiscation of banned metal-detector). Legislation should not be just punitive but must also promote positive actions and behaviour related to heritage, e.g. provide financial incentives, administrative and technical support and encouragement for the owners and users of historic assets. In every case, there should be a strategy for the implementation of heritage laws and appropriate guidance (and interpretations) available for heritage professionals, administrators and members of the public (CoE 2005). Chapter 7 looked at the incorporation of these principles in the UK, particularly in relation to the proposed heritage reform in England and Wales. It seems that despite some setbacks (e.g. the potential for a bias towards economic interests and development activities or the failure to

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[157] There are two major types of the EU legislative acts: a directive is a regulation which requires member states to achieve a particular result without dictating the means of achieving that result. It has to be transposed into national law and can be adopted through a variety of legislative procedures (depending on their subject matter). A regulation becomes immediately enforceable as a law in all member states. It does not require implementation into national law and it overrides all national legislation dealing with the same subject matter.

resolve issues associated with agricultural threats) this is a step in the right direction.

Certainly, the heritage debate and recent policy shifts in the UK (explored in Chapters 6

and 7), the growing concern about the sustainable development and a more holistic

approach to the historic environment as well as the critique of the planning-related

archaeology are a very important contribution to the discussion on improving the

protection of the archaeological heritage in Europe.

## 9.6. Archaeological heritage management – 'valued' or 'valuated'

The problem of the public engagement, which is signalled throughout this thesis, is

another vital issue. The theory of cultural heritage management (as expressed, for

example, by UNESCO, ICOMOS and the EU) perceives 'heritage' as comprising both

physical relics of the past (or the so-called 'material culture') and a cultural construct,

stating that the 'heritage importance' and 'archaeological significance' as features of a

site, building, landscape or artefact are not intrinsic to the material object but are products

of perception, contemporary state of knowledge, philosophy, ethics and aesthetics,

individual interpretation or even emotions. Therefore, effective archaeological heritage

management is not possible without involvement with current social issues and cannot be

solely based on a 'top-down approach' and legislation. It is also believed that a better

understanding of cultural heritage topics (by the wider public, local communities and

authorities) would lead to economic development, sustainability and a better quality of life

in general, at the same time as providing for the increased protection of archaeological

resources.

Yet, as I have tried to demonstrate in my thesis, the practical application of these

principles is far from ideal. For instance, if we look at the case of the cultural landscape

described in Chapter 5 (Carrickmines, Woodstown and Tara), it becomes clear that

implementation of values and standards as laid out in the *European Landscape Convention* and the EU environmental directives can create legal difficulties (e.g. the interpretation of the object of protection in the context of the existing heritage law), interfere with economic and political agenda, development processes and environmental protection, and, in addition, can raise questions about the real level of the authorities' commitment to issues such as sustainable development, democratisation of planning procedures, public participation and active citizenship.

Part of the problem lies in the character of the definition of the cultural landscape ('an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors'), which is broad enough to confuse the traditionally monument-oriented heritage systems (as in general the law favours precise language, clear rules and strict classifications). Therefore, in many countries the historic (or 'archaeological') landscape, as well as the historic environment and the cultural environment, largely remain intellectual concepts (which is, in my opinion, still the case of e.g. the Republic of Ireland or Poland). The long tradition of focusing on the protection of particular archaeological sites and 'nationally important' monuments has left many 'less significant' cultural places unattended, unknown to a wider public and often even unrecognised by their neighbouring communities (Hodges and Watson 2000). Consequently, these sites easily become threatened by looting, vandalism or destruction. In addition, since official bodies ignore or attach a low value to the local archaeological or historical heritage, communities become detached from their history and the *genius loci* is lost.

I encountered these problems first hand while preparing a research project for a medieval site in Sicily, where a beautifully preserved cultural landscape (Villari 1981 and 1995) is gradually being transformed in the name of an ill-conceived development. My work concentrated on the Norman castle and medieval village of Fiumedinisi (fig. 29)

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which are endangered by recent infrastructure 'improvements' and a prospective development project: construction of a holiday bungalow complex located immediately next to the castle, which would result in the flooding the valley with tons of concrete and the destruction of a nature reserve. The representatives of the local authorities seemed to be very proud of their cultural landscape. However, they valued it mainly for 'nice views' and its usefulness as hunting grounds and a tourist attraction. They were also very interested in launching a community archaeology project – seen as a good way of attracting more visitors, creating new job opportunities and acquiring archaeological artefacts that would fill up the new museum building (now almost empty).

Noticeably, this seems to be a problem not only of Fiumedinisi or Sicily but holiday destination places in general. Traditional architecture is being replaced with modern buildings, whose style and form do not fit with the landscape. For instance, in many parts of Europe an observant visitor will notice multiple cement shells and iron skeletons of abandoned unfinished houses, hotels and restaurants protruding from the panorama of coastal villages (such is the case of some regions of Spain, the Balkans and Italy). As a result many tourists leave disappointed by this disregard for the local style and heritage. To build a holiday village in the shadow of a medieval castle is one thing but to guarantee a measurable profit based on a constant flow of visitors to a remote and hardly accessible location may be a completely different issue.

**Figure 29:** Castello Monte Belvedere di Fiumedinisi (source: author's archive).

This experience, as well as the analysis of the material collated in the course of my research, drew my attention to the question of values in cultural heritage management and the 'uses' of the past. It seems that, as in the case of the sobering diagnosis of the engagement with the sustainable development principle (where development seems to be the key word), the interest in 'heritage value' is largely limited to the utilitarian approach. I agree with archaeologists expressing the critical view that – at least in the official heritage discourse, manifested e.g. in the attitude towards cultural tourism, planning-related issues or the preservation and presentation of cultural sites and artefacts – heritage assets have to prove their 'usefulness' to receive national and regional authorities' attention and support (e.g. Carman 2004; Smith 2006).

Cultural tourism is one of such obvious 'uses' of archaeological heritage. It seems that, increasingly, the protection, preservation and conservation of cultural sites are justified not so much by their intellectual or archaeological value but rather by their ability to generate benefits for society. This is marked by the perception of important archaeological and historical sites as 'sustainable' engines of local and regional economic growth and development, and stimuli of regional tourism, trade and employment opportunities (Silberman 2007; Smith 2006; Lowenthal 1998). Local, national and

European authorities spend significant amounts of money to support the creation and improvement of 'heritage attractions' (such as the EU Interreg programmes and CoE Culture 2000 for trans-frontier initiatives): building dedicated visitor centres, access routes and multimedia displays, using new technologies (e.g. Cadw's experiments with installing Bluetooth in a number of medieval castles). Indeed, it is argued that making heritage places more tourist-friendly increases the number of visitors, promotes heritage and educational values, and propagates social inclusion goals. Yet, for many archaeologists the growing commercialisation of cultural assets is also a source of major concern: the increased influx of visitors constitutes a threat to heritage sites and makes site management more difficult and/or divert funds towards improving tourist facilities rather than conservation and research (see Section 2.2). Secondly, there is a danger that places which cannot become tourist attractions (e.g. those in remote locations, with poor transport links or those perceived as less interesting, less important or less marketable) will be neglected (Fyall and Garrod 1998; Merriman 2004 and 2008; Silberman 2007). Finally, examples of some medieval-themed site developments (especially those in private ownership) raise a question of the real intellectual, educational and cultural value of such tourist-traps. As a result, the general public is increasingly presented with a commercialised, 'Disneyfied' version of archaeological heritage. This increased 'consumption' and commodification of cultural heritage subsequently intensifies difficulties such as looting, vandalism and illicit trade in antiquities.

## 9.7. A way forward?

Increasing the effectiveness of archaeological heritage management in Europe requires finding solutions to theoretical and practical problems identified and discussed in this thesis. In my opinion, one of the most pressing issues is raising the profile of

archaeological heritage management. The gap between the declared and the actual commitment to the protection of the historic environment and its elements was a recurring theme in my research. According to the language of the international conventions, cultural policies and national heritage laws, the public authorities of all levels in Europe stress the importance of cultural heritage as a non-renewable resource, a source of cultural identity and wellbeing that should be preserved for future generations. Yet, in practice, heritage issues are frequently downplayed in the decision-making processes. For instance, this is acutely visible in the discussion on planning-related 'rescue archaeology' and cultural landscape management where archaeological heritage is seldom given the same level of attention as e.g. environmental issues (see Chapter 5 and Annex 11). At the same time, although the harmonisation of cultural policies and legislation within the EU is critical, this process is slowed down by a number of political and economic issues, such as different approaches to the ownership of archaeological finds and sites (as signalled in Section 2.3), profits from the antiquities trade or facilitation of large-scale development projects and, last but not least, the concerns about the loss of the cultural distinctiveness. Hence any attempt to harmonise legal instruments and procedures related to heritage on the international level is treated with caution and – very often – with a noticeable reluctance (see Chapters 3 and 8).

In my view, raising the status of the archaeological heritage requires raising the profile of the archaeological profession itself. This change of perception should take place on two levels: in the public forum and within the archaeological profession. First of all, I think that many problems result from the popular stereotype of the archaeologist as a romantic, artefact-seeker armed with a brush and a trowel or an 'ivory-tower' academic. In addition, the social role of archaeologists is usually seen as passive and commemorative – they are caretakers of the past (of the ancient world, ancestors, etc.) responsible for ensuring the preservation of the heritage for future generations (Kintz 2001; Hamilakis

2007). On a professional level, as discussed in Chapter 6, archaeologists are not treated as equal partners in the cultural environment management process, and their input, skills and services are valued less (also economically) than that of other experts. Finally, it is my feeling that the archaeological community has some difficulty keeping pace with the shifts in theoretical and legal approaches and adjusting to challenges created by the process of European integration and globalisation. It is necessary to empower archaeologists (as individuals and as a group) by transforming their image from poorly paid enthusiasts excluded from mainstream discussions into well-educated highly skilled experts representing issues relevant to the presence (and the future). In brief, we need to create a strong expert lobby able to establish its presence in major public debates and participate actively in decision-making processes.

One of the most important ways of achieving this goal and assuming more responsibility is to work towards a better understanding of the archaeological heritage by the wider public. Experience proves that legislation and policies (no matter how modern or restrictive) do not work without public acceptance and support. Heritage regulations and export bans can always be evaded, planning policies bent, law enforcement authorities outsmarted. However, if we want the public to understand and share the ethics and values associated with archaeological heritage we must make sure that these are understood and shared by archaeologists themselves. By teaching our students we provide them with basic archaeological knowledge and a set of transferable skills such as recording, map reading, surveying or computer literacy. We try to create 'informed citizens', give our students training and tools that are necessary to get a successful university graduate through the recruitment process and first stages of archaeological career (Fagan 2000; Colwell-Chanthaphonh and Ferguson 2006; Cooper 2006; Dingli 2006). However, in my view, this is not enough.

Archaeologist should: carry out work to the highest professional standards, draw the attention of the competent authorities to threats to the archaeological heritage, should recognise the need to demonstrate, to developers and to the public at large, the benefits of support for archaeological work and should ensure the preservation of the archaeological heritage by every legal means. (*EAA Code of Practice* and *EAA Principles of Conduct*)

These principles may seem obvious to university tutors and we assume that all archaeology students (all *our* students) share similar values. Yet, perhaps we should not take it for granted that every person taking a degree in archaeology will automatically behave responsibly. Ethical behaviour, good research practice and conservation law must become a fundamental part of every archaeology-related university course and must become an elementary aspect of professional training, so that the new generation of archaeologists will be better prepared for the challenges of the 21$^{st}$ century (Altekamp 2000; Marciniak 2000). This can be done, for instance, through allowing students to participate in community projects and observe the planning process, enable them to attend planning committees' sessions and invite planners and politicians to give lectures (Davies *et al.* 1999). A further way of working towards increasing professional standards should be encouraging students and professionals to join archaeological associations such as EAA or IFA.

Moreover, we need to acknowledge that, by its own nature, modern archaeology is – whether we want it or not – involved in a number of social and political issues. In fact, in the modern world archaeology often mixes with politics. This may be obvious in some cases, e.g. the use of ancient monuments and sites as political symbols and nationalistic icons (the Hill of Tara or Biskupin have played such a role many times in the past). However, most examples of such a relationship are less obvious. Planning policies, cultural resource management, tourism or even the trade in antiquities – all these issues are strongly influenced by political and economic interests and opinions. For that reason,

archaeologists and heritage managers have a responsibility to take part (and take a position) in current debates and conflicts and in judging the relative merits various socio-political agendas. Furthermore, if archaeologists are to gain more input and influence, they must try to engage more with current problems and begin thinking more of contemporary issues such as European structures, international law, the trans-national global economy, sustainable development and ecology (Chadwick 2003; Silberman 2007). However, they must be able to maintain their professional ethics and critical autonomy (Kintz 2001; Chadwick 2003; Hamilakis 2007). This in turn, requires a further development of archaeological theory, bridging the gap between theory and practice, introducing more reflective ways of working within the development-led archaeology and organising a debate on the international (European) scale. For instance, Hamilakis suggests adopting an explicitly 'political ethic approach' (which he calls 'political ethics') always asking who wants to conserve and why? Who wants to destroy and why? What interests are being served by the destruction or the conservation of the material traces of the past? (Hamilakis 2007, p. 29). Such an approach should result in a more critical thinking and raise the awareness of the influence of current socio-political issues on the management of the historic environment. However, it does not solve the initial problem – how are we going to decide on values, interpretations and dominating approaches to avoid yet another bias?

## 9.8. Public participation

In recent decades, archaeologists have been increasingly growing aware about the limitations of the traditional approach to cultural heritage management focusing on administrative and legislative actions (e.g. Carman 2005b; Boyd *et al.* 2005; Smith 2006). This resulted, *inter alia*, in the critique of the restrictive categorisation of cultural assets (legally, culturally, temporally and geographically) and the 'top-down' approach focused

more on 'performance' than on 'purpose'. As Carman summarised it, since the public use of heritage has been divorced from people and absorbed by bureaucratic agencies, it now primarily depends on specialists, who 'work on behalf of (but not for) the public they serve' (2005b, p. 53).

Fortunately, this situation seems to be changing. The increased interest in the social theory, heritage values and value-led approaches to conservation and site management has resulted in the acknowledgment of the archaeological heritage as an evolving cultural and social construct. In consequence, modern approaches to cultural heritage management call for a refocus from 'object' to 'subject' and an exploration of the wider values associated with heritage places (in addition to core values guiding the designation practice) (Boyd *et al.* 2005; Clark 2005; Pomeroy 2005; Waterton 2005). The recognition of multiple meanings (and diverse readings) of cultural heritage, its shifting nature and the evolving public perception of it has also broadened the scope of archaeological conservation and site management. The modern approach highlights the importance of understanding a place and its value as factors critical not only for its initial assessment and designation but also for its subsequent management. It also acknowledges that local communities and other interest groups have a great influence on the preservation of cultural remains (e.g. land-use, reporting finds) and have a growing need to express their opinions and play an active role. At the same time, if sites are not valued by the community or by society, it is hard to justify their importance and conservation or secure their preservation. Thus, the involvement of a wide range of stakeholders is an essential element of effective archaeological heritage management.

These issues require giving consideration to the range of relationships people may have with the place and addressing multiple value types (e.g. ecology, tourism) and stakeholders' interests (often conflicting) associated with different elements of the cultural environment. One of the first official representations of such an approach was the

ICOMOS *Burra Charter* adopted in 1979 (revised in 2000). Similar principles were also enshrined in the *European Landscape Convention* (2000) and, recently, in the draft European *Framework Convention on the Value of Cultural Heritage for Society* (2005). On a national level, the wider understanding of the cultural heritage concept inspired, for instance, the creation of the *Stirling Charter* (Historic Scotland, 2000), which replaced the idea of 'buildings' and 'sites' with 'places', developed the definition of significance to include diverse value types and put it in the centre of the decision-making process.

The concept of the active citizenship and the right to participate in the conduct of public affairs are the pillars of the democratic society and one of the most important matters on the common European agenda. They were also highlighted in the preamble to the *European Landscape Convention* in relation to cultural heritage issues and have become parts of national legal policies and legislations (e.g. as in the proposed reform of the heritage law in England and Wales). However, the scrutiny of specific cases of controversial development projects (such as those presented in this thesis) reveals the major flaw and limitation of the 'democratisation' agenda: the authorities, which declare a strong commitment to active citizenship, are actually not prepared to deal with the consequences of such social engagement, either not being able – or willing – to cope with situations when experts and the general public express wishes somewhat different from or even opposing the political plans. This was visible in the cases of the Carrickmines Castle, Woodstown and Tara, which attracted a lot of public interest and set in motion organised protest campaigns, challenging the authorities over the right to decide about the future of the heritage and the cultural landscape and demanding a greater influence in the planning process (fig. 30). The Irish debate clearly demonstrated the importance of considering the wishes and feelings of the local community. For instance, in the case of the M3, commuters from Navan and Dunshaughlin complained that the most pressing issue was

not the improvement of the road network but primarily the development of public

transport and re-establishing railway connections between Dublin and Drogheda.



**Figure 30:** Family meeting at the top of the Hill of Tara, Co. Meath, Ireland (source: author's archive). Tara is not only a national monument, important historic site or a tourist attraction. It is a 'living landscape' – a central meeting place and traditional family trips destination of the local community.

There are, however, some practical difficulties associated with widening participation in the archaeological heritage. One of them is finding ways of balancing multiple values and interests and negotiating management plans for cultural places. Here, an effective communication between different groups of stakeholders is a key issue. While in recent years we have seen the development of public and community archaeology theory and an increased interest in public-oriented projects, to many archaeologists (especially those associated with the 'professional' or commercial sector) involving the public and stakeholders means 'educating', 'making aware' and 'telling what matters and why' from the expert position rather than simply allowing a free discussion (Clark 2005, p. 321; Waterton 2005; these issues were discussed in Chapter 6 in relation to the development-led archaeology in the UK). In my view this problem was best illustrated by the panel discussion on the future of public archaeology during the 2006 TAG conference: whilst academics and professional archaeologists were exchanging arguments, 'the public' gathered in the Exeter Royal Albert Memorial Museum was hardly allowed to speak.

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At the same time, while the recognition of multiple values and interests associated with the cultural environments is a *conditio sine qua non*, it raises the question about balancing these diverse approaches. If a compromise cannot be found, which (or whose) values or interest should dictate the final decision? What principles should archaeologists and heritage managers adopt? Many fear that abandoning the expert approach in favour of wider public consultation poses a risk to the archaeological heritage. Indeed, the economic interests and short-term benefits (a new road, shopping centre, extended cultivation area, etc.), which already only too often override archaeological considerations, would be a major source of concern. However, this problem extends to more intangible issues, such as religion and belief. For instance, the discovery of the Bronze Age timber-post circle (2050 BC) on a beach at Holme-next-the-Sea (Norfolk) in 1998 sparked a heated debate about the future of the archaeological material (Corfield 2004). The neo-pagan groups and New Age believers considered the site as sacred. In their opinion, the 'Seahenge' was not to be disturbed but should have been allowed to be swept out to the sea and 'die naturally'. As a result, they occupied the beach trying to prevent excavation (eventually it took a High Court injunction to start archaeological works).[158]

Understandably, cases like this inspire archaeologists and heritage managers to defend their leading expert role. Yet, it is also important to remember that the cultural heritage discourse is a two-way process. It may happen that a prospective express road has to give way to the preservation of archaeological sites or a nature reserve – if the

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[158] A similar debate was associated with the restoration of the West Front of the Cathedral of Wells (Caroe 1985 and 1987), in particular, the conservation of almost 300 free-standing Gothic statues severely damaged from exposure to weather and pollution. The Advisory Committee appointed to devise the best conservation strategy was offered a number of very different opinions and suggestions. For instance, the art historical opinion favoured the removal of all figures to museum conditions and their replacement by copies (this idea was found unfeasible because of the prohibitive cost of building a big enough space to store the collection, problems with finding skilled craftsmen to produce good quality copies and, finally, the risk of damaging sculptures had the removal been attempted). The opposite recommendation was to leave the statues *in situ* and limit interventions to the very minimum (even if that would mean allowing for the further decay) in order to preserve the artistic and 'historic' value of the stonework. The latter argument was supported by the concern about the lack of experience on the consolidation of external limestone at the time, hope that a better and lasting solution would be found by future generations as well as the critique of any active, intrusive actions that would disturb the original fabric and the character of the figures.

development project interferes e.g. with the 'feelgood factor' and amenity values. At the same time, it is possible that the benefit of a new road prevails when confronted with the safeguarding of a cultural landscape. The task of various professionals involved in the archaeological heritage (or generally 'cultural heritage') management process would be to advise all stakeholders, to present opinions and potential consequences, to negotiate – instead of simply imposing 'expert' solutions. In most cases a reasonable compromise should be achievable, e.g. the new road designed to ease congestion could be rerouted to avoid sensitive heritage areas.

### 9.8.1. Managing conflating interests an balancing stakeholder issues

Some key problems in planning theory include the application of the stakeholder theory: identification of stakeholders, balancing multiple interests and managing stakeholder participation in decision making. Therefore, planning theory explores the concepts of stakeholders and communities searching for a more holistic, comprehensive definitions. Current trends describe 'stakeholders' as individuals, groups or organizations who are, in one way or another, interested, involved or affected (positively or negatively) by a particular project or action toward resource use (Pomeroy and Douvere 2009, p. 818).[159] Another commonly used but rather ambiguous term is 'community', which can have several meanings. Conventionally, it is defined geographically by political or resource boundaries as citizens within a given locality (e.g. a town, county, state). Increasingly, this spatially-based approach is matched by a broader, stake-based perspective, with the

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[159] Application of the stakeholder theory to the planning process resulted in a scholarly interest in identifying and classifying 'stakeholders', recognising predicting and resolving areas of conflict and discovering patterns of interaction. Thus, the first step would be to identify groups with interests in the landscape/ecosystem and then to try to 'weight' the stakeholders according to the level of their interest or stake in the area or its resources (primary, secondary or tertiary). The stakeholder theory offers various considerations and criteria which, for instance in the case of the marine spatial planning, include (Pomeroy and Douvere 2009): existing rights to marine and coastal resources and the continuity of relationship to resource (for example: resident fisher *v.* migratory fisher); the unique knowledge and skills for the management of the resources at stake; losses and damage incurred in the management process; historical and cultural relations to the resources; the degree of effort and interest in management; the degree of economic and social reliance on the resources; the compatibility of the interests and activities of the stakeholders and present or potential impact of the activities of the stakeholders on the resource base.

community defined socially as a group of individuals with common interests (Campbell and Feinstein 2003, p. 171). For instance, a social community may be an agricultural co-operative, a fishing organization, an amenity society, etc. The difference in approach is considerable. Let us consider the case of a village – according to the 'geographical' definition, it would be perceived as a community, a smallest administrative unit. At the same time, however, because of the diversity within the group of local inhabitants (gender, class, ethnic and economic variations) and, in consequence, the variety of interests, in some respects an administrative unit is not a community (which, depending on the stake issue, can be smaller or greater than the number of local inhabitants). Furthermore, the 'common interest approach' often leads to using the business sector as the representative of the local community, with a bias towards economic factors (Aas *et al.* 2005, p. 31).

Consequently, modern approaches to planning are increasingly involved with the socio-political theory. For instance, 'advocacy planning' questions the concept of a single, consensual 'public interest,' suggesting instead a promotion of particular interests of disadvantaged groups (Campbell and Feinstein 2003, p. 170). 'Equity planning' model is focused on the redistribution, inclusion and equality. A 'communicative approach' challenges the traditional 'comprehensive' master planning's (a rational model based on setting far-reaching goal and objectives) preoccupation with the plan as a formal, expert document and offers the vision of planning as an activity facilitating public dialogue to define community issues and priorities (Campbell and Feinstein 2003, p. 170).

Accordingly, these new trends dictate changes in the perception of planning as a profession (a required set of skills and knowledge, methods of work, relation with other disciplines, etc.) and a social role. Consequently, the responsibilities of modern planners are now becoming more sophisticated. Planners 'need to reconcile at least three conflicting interests: to "grow" the economy, distribute this growth fairly and, in the process, not disregard the ecosystem' (Campbell and Feinstein 2003, p. 436). Thus, in

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addition to the traditional function as a source of information (a technician providing data to formulate decisions) and a regulator and law-enforcer, the planner is also seen as a facilitator of public involvement, builder of community and champion of citizenship empowerment; a negotiator among interests and mediator of conflicts; a political advisor (or a politician); a designer (or a 'visionary') and an advocate (Campbell and Feinstein 2003; Randolph 2004; Pomeroy and Douvere 2009). For example, facilitating public involvement and promoting citizenship empowerment entail working towards the prevention (or overcoming) of the long-established bias toward development at the expense of the environment through improving stakeholders' participation, joint decision making, education, community action, etc. As 'a negotiator among interests and mediator of conflicts' the planner needs to co-operate with all stakeholders and act as a neutral arbiter between disputing parties (e.g. a developer, local authorities, local community and environmental activists). Therefore, to be most effective, planners need to recognise the political context in which they operate (Randolph 2004, p. 31). As a visionary and an advocate, a planner should use their authority to promote certain programmes, plans and patterns of development (and non-development), such as planning for the sustainable development and help designing communities' future.

Prompted by the increasing number and complexity of difficult decisions which have to be made in the context of multiple stakeholders representing issues that often go beyond business, economy and government, the critical trend in the planning theory is particularly dynamic in relation to environmental problems, with the concept of the sustainable development and the question of effective, ethical decision making and managing stakeholder involvement being among key issues. Accordingly, new approaches in the land use management theory, governance, public policy and the research underpinning regional development, urban politics environmental planning are largely dedicated to exploring major challenges in meeting sustainability goals, primarily the

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politicisation of the decision making process (with the expert judgement often overshadowed by political and economic interests and/or driven by a narrow interpretation of the costs and benefits), the strong preference for development and the dominating sectoral bias in policies and planning (see Annex 26).

This trend has led to a critique of the established approaches to the decision making process in multi-stakeholder contexts to make them more transparent and inclusive and to improve stakeholder participation and co-ordination, and to increase mediation and commitment to balancing different interests and priorities (Benn *et al.* 2009; Pomeroy and Douvere 2009; Thabrew *et al.* 2009).

It can be argued that the most difficult element of the planning is the fact that evaluations used to assign values to options, compare trade-offs, resolve conflicts, and make choices about the best course of action attempt to create objective assessments and apply scientific techniques to combine and compare different types of information: objective, measurable economic factors (e.g. the cost of construction works, damage reparations, improved transport capacity, etc.) and non-utilitarian, often unquantifiable and subjective values such as the visual quality of a landscape, or the amenity value of a woodland (Randolph 2004).

This observation results in a greater scrutiny of evaluation tools, methods and analyses used in planning, e.g., environmental assessment methods, such as environmental impact assessment (EIA), social impact assessment (SIA), risk assessment (RA) and life cycle assessment (LCA). For instance, a cost-benefit analysis, which sees the environment as a 'resource', is primarily based on the economic efficiency, quantifiable costs and benefits, measurable in pounds, euros, dollars, etc. It also tends to focus on relatively short-time results rather than assess how the effects of specific planning decisions can change over time (Randolph 2004, p. 21). This is especially the case for the non-economic effects (e.g. a wild habitat destruction, or, in our case, a damage to the historic landscape).

The major criticism against EIA includes its limited ability to deal with cross-sectorial issues, failure to consider holistic views and, in consequence, a rather narrow consideration of alternatives as well as scientifically inadequate impact predictions. Another problem is the difficulty associated with involving stakeholders in a meaningful and productive manner to build a consensus (Thabrew *et al.* 2009, p. 70). As discussed in earlier chapters, many EIA applications are single-project-based and with a limited involvement of the public and different interest groups (the the EIA does not require a stakeholders' engagement in all stages and, in practice, the assessment primarily considers input from 'direct', or 'primary' stakeholders – planning authorities, environmental agencies, developers, etc. – see Annex 11). The SIA (Social Impact Assessment), which is usually carried out under the EIA legislation, has similar weaknesses.

In the case of the environmental planning, the flaws of a cost-benefit analysis have been partly addressed by the development of the 'ecological economics' that aims to improve the valuation of environmental resources 'so that they can be better accounted for' (with environmental and amenity values usually measured in terms of their use and option value) (Randolph 2004, p. 21). However, methods used to quantify these values still have significant limitations – in particular, some societal values cannot be expressed and measured in economic terms. For these reasons, some researchers suggest the adoption of a 'life cycle assessment', a method for assessing the overall environmental impact of planning decisions, products, processes or services (e.g. Thabrew *et al.* 2009).[160] This, concept which examines environmental impacts of particular activities, can be applied to produce simple, yet comprehensive assessments made in co-operation with various interest groups, to visualise a broader set of consequences of decisions in the

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[160] Life Cycle Assessment (LCA), or Life Cycle Analysis, is a technique for assessing the environmental aspects associated with a product, process or service (the impacts on the environment, sometimes referred to as the 'environmental footprint', may be beneficial or adverse) across its entire lifecycle, *i.e.*, from design to disposal (a so-called 'cradle to grave approach'). LCA is a relatively young technique, which gained popularity in the early 1990s and in recent years has become a key focus in environmental policy making and the sustainability reporting movement.

development planning and implementation and to compare the alternatives designed to achieve similar objectives in order to discover which of them is the most environmentally sound.

It is also assumed that public participation promotes environmental justice and enhances the accountability and acceptability of environmental decisions: engaging stakeholders in environmentally responsible decision making not only allows identifying public interest concerns (a value-based information from the participating public allows planning agencies to determine what the public 'wants') but is a key prerequisite for the public to assume a greater role in the development process and, generally, to improve our capacity to care for the environment. It creates an opportunity to deepen mutual understanding, to jointly explore and integrate ideas, generate new options and solutions that may not have been considered individually and to ensure a long-term availability of resources to achieve mutual goals (Ananda and Herath 2003; Reed 2008; Benn *et al.* 2009; Pomeroy and Douvere 2009; Thabrew *et al.* 2009). At the same time, however, it is recognised that despite the growing consensus on greater public participation in environmental policy, there is a lack of tested methods to incorporate stakeholder values explicitly in decision making and that the public input, gathered through traditional consultation mode, is difficult to manage and respond to, in comparison to technical information (Ananda and Herath 2003).

Management of the cultural environment, particularly the planning process, often entails making difficult decisions. Therefore, there is a great need to develop a more comprehensive, holistic approach to the cultural environment, especially, through an increased input of heritage specialists in policy- and decision-making processes, through the improvement of assessment methods related to the cultural heritage, and, consequently, asserting the adequately high rank of these issues in evaluation activities. Another problem that needs to be explored further is the cost (and cost-effectiveness) of

heritage management projects. This issue entails making economic considerations, for instance, measuring and comparing costs resulting from implementing stricter regulations (as some planning or conservation activities would become more expensive), the cost of a non-development (e.g. if the project is to be abandoned) and costs arising from re-designing or re-locating projects, as well as the question of funding and payments for archaeological investigations, mitigation measures and environmental improvement.

Furthermore, if the management of the cultural environment (and thus the archaeological heritage) it is to be effective, not only has it to be based on high quality technical information but it also requires the participation of interested parties. This is one of the key principles underpinning the modern environmental planning theory, which gives 'both philosophical and pragmatic' rationale for the wide stakeholders' consultation: the requirements of the democracy and the modern civil society and the increased level of acceptability in the case of planning decisions where the stakeholders had an considerable input and an active role (Randolph 2004, p. 27). Thus the current ideas on conflict resolution go beyond the goal to achieve a compromise (which often leaves majority of parties dissatisfied) exploring collaborative approaches, involvement of stakeholder in a process of collective understanding, reducing the likelihood of conflict and searching for innovative solutions and to ensure that sound plans remain intact over time.

Environmental management, like archaeological heritage management, depends on society's culture and values (Campbell and Feinstein 2003; Randolph 2004; Thabrew *et al.* 2009). Therefore, in my opinion, recent developments in environmental planning described in the previous paragraphs could be used as a canvas for an interdisciplinary research and collaboration aimed at a better integration of archaeological heritage management in the planning process, policy making and cultural environment strategy. These new trends are being incorporated into national and international environmental policies and successfully applied to other environment-related disciplines, e.g. the marine

policy, coastal management and forestry, and to some extent, to the management of the cultural landscape and cultural tourism, which, as discussed in Chapter 2, is perceived as a one of major threats to the cultural heritage (Aas *et al.* 2005).

In the current tourism literature, more and more researchers argue the need for an increased collaboration in the planning process, turning their attention towards the concept of the sustainable development and the stakeholder theory, which requires tourism planners 'to have a full appreciation of all the persons or groups who have interests in the planning, process(es), delivery and/or outcomes of the tourism service' (Truly Sautter and Leisen 1999; also Fyall and Garrod 1998; UNESCO 1999; Aas *et al.* 2005). It is believed that the identification and legitimisation of all potential stakeholders and a collaborative planning approach based on dialogue and co-operation among the various groups involved should minimise threats and conflicts resulting from the clash of interests (e.g. with the heritage tourism often perceived as compromising conservation goals for profit), increase the quality of planning and help develop tourism-oriented projects in a way that preserves the resources of the local community (Aas *et al.* 2005, pp. 29-30). In addition, taking local interests and concerns into account at an early stage should inform project design about local needs and, in this way, raise the likelihood that local priorities are successfully met (Reed 2008). The participatory processes has also the capacity to increase the community's sense of ownership of its cultural heritage (through participation in making decisions, education, community archaeology projects and other awareness creating campaigns) and increase chances of the cultural assets' survival and the enhance the trust in heritage management.

At the same time, however, managing diverse stakeholders groups is not an easy task. The heritage managers should offer their expert judgement but also maintain a good rapport with participants (avoid condescending attitudes) and a good level of communication (the availability of information or publicity for consultation events being

often a problem). Likewise, increasing the participation level is not a panacea and should be treated critically (Reed 2008). The role of heritage professionals ought to be to encourage realistic choices and avoid raising expectations beyond what can practically be delivered (Aas *et al.* 2005, p. 33). The latter issue is particularly problematic and, to some extent, there is a grooving disillusionment among the environmental lobby, cultural environment managers, heritage practitioners and the wider public, who feel let down when participation claims, benefits and promises are not realised (Reed 2008), with cases such as the Hill of Tara being a painful reminder of the 'consultation' fiasco.

The cultural identity of Europe is a dynamic phenomenon and the integration of diverse minority groups and communities into the heritage discourse is a necessary condition of widening the perspective. Also the role of archaeology and heritage management is not static, nor is it confined to scientific ('ivory tower') research, the preservation of fossilised remains of the past or the display of monuments, sites and artefacts. Equally, any selective, mythologised or sanitised versions of the past should be discarded. We have an important role not only as guardians of the past, but as producers, consumers, mediators and critical commentators on cultural narratives. 'Heritage', as an archaeological arena of increasing importance (Kristiansen 1996), is where European policies and pan-European 'propaganda' are most likely to have a direct impact, and consequently where archaeologists must ensure that their voices are heard (Pluciennik 1998, p. 822). If the 'European identity' and 'European archaeology' are to be successful concepts, they need to be all-inclusive and embrace the cultural heritage of all past and present communities. If there is a community of Europeans, its key attribute is diversity. Thus the cultural heritage sector (including archaeology) should embrace the national and regional cultural traditions, the diverse ethnicities and the mix of connections and ideas that are so characteristic of the continent's past and present (Silberman 2005, p. 100).

## 9.9. Archaeology and the greening of Europe

There is one more issue, which in my view will become one of major challenges for the management of the archaeological heritage in the next decade: the increased involvement of European countries with ecology and 'green' issues. The public authorities' focus on the protection of the environment can result in a number of problems for archaeology – from diverting funds away from the 'humanities' to intensifying direct threats to archaeological deposits or even creating new risks.

One of such relatively new threats is the development of renewable energy facilities associated with the 'green energy' agenda. This problem can be illustrated by recent cases from the UK, particularly discussions around the construction of wind turbines in Orkney and the installation to harness tidal power in the Severn Estuary. In the case of the Heart of Neolithic Orkney World Heritage Site, it was believed that the proposed wind farm development (Merranblo, Stromness) would not only cause large numbers of bird fatalities but also have an adverse impact on the historic environment of the heritage site and its setting. There were also concerns about the long-term cumulative effects of the scheme on local environmental systems, landscape aesthetics and archaeology (e.g. 'bog-burst' experienced in Derrybrien in Co. Galway, Republic of Ireland, subtle drying of peatlands and an accelerated decay) with implications for tourism, for the local communities' quality of life and for the future of heritage resources (see e.g. Clarke 2009). In the view of a strong opposition from both natural and cultural conservation lobbies (including ICOMOS-UK, Historic Scotland, Orkney Archaeological Trust, Orkney Skyline Concern and Scottish Natural Heritage), in January 2008 the Scottish Ministers decided to refuse planning permission.

The proposed Severn Barrage project, currently under discussion, would hugely contribute to lowering the $CO_2$ emission providing an estimated 5% of UK electricity

consumption by 2020 (WAC 2007, p. 16). However, it would also have significant adverse effects, causing the loss of a protected mudflat habitat (conservation areas and SSSIs), an important area for migrating birdlife, and significantly altering the nature of the cultural landscape (WAC 2007, p. 17; Bell 2008; Horton 2009). The proposed development would result in immediate impacts on landscape/seascape character and visual amenity of the area, and cause further long-term, indirect changes such as creation of new transport links, power transmission infrastructure, industrial estates or recreational facilities (Natural England 2007). From the archaeological heritage point of view, construction of a barrage and reduction of the tidal range would affect a number of SAMs and a unique historic landscape with rich cultural deposits. The projected risks include increased erosion in some areas and sediment deposition in others, burying some sites and exposing others to destruction, permanent submerging the lowest Palaeolithic and Mesolithic sites and drying out higher sites (Bronze Age, Iron Age, Romano-British, medieval and post-medieval) (Natural England 2007; Bell 2008; Horton 2009).

Like other major development schemes, terrestrial and offshore renewable energy projects must undergo scrutiny of the EIA and SEA process required under European Directives 85/337/EC, 97/11/EC and 2001/42/EC (COWRIE 2008). However, examples discussed in this thesis demonstrate that, in general, the consideration of the historic environment (and the coverage of cumulative impacts on archaeological heritage in particular) either does not feature in the EIA/SEA discussions or, at best, is regarded as less important than environmental and social issues. Bearing in mind that, for instance, the UK Government's *Renewable Energy Strategy* (RES) includes a target of 15% energy produced from renewable sources by 2020, 'almost a seven-fold increase in scarcely more than a decade' (DECC 2009), we can assume that there will be a substantial rise in the number of 'green energy' installations and, therefore, in the volume of threats to the historic environment – a new problem that archaeologists will have to address.

Indeed, in the draft nuclear national policy statement revealed in November 2009 by the Energy Secretary, Ed Miliband, the UK government announced its plans to build a new fleet of nuclear power stations to begin operating within the next decade and to fast-track major energy infrastructure projects, also including 'clean coal' power stations and windfarms (a target 10,000 new wind turbines was set in July 2009) (BBC News 2009; New Statesman 2009; Vaughan 2009; Woodhouse 2009). At the same time, the Secretary called for an overhaul of the planning system to encourage new low-carbon energy developments. Under proposed changes to the planning regulations, the Infrastructure Planning Commission (IPC) would be able to 'fast-track' the proposals for new schemes, if it decides they fit in with the policy statements. Mr Miliband justified this decision stating that 'the threat of climate change means we need to make a transition from a system that relies heavily on high-carbon fossil fuels, to a radically different system that includes nuclear, renewable and clean coal power. The current planning system is a barrier to this shift' (Vaughan 2009). These plans are criticised by the environmental lobby expressing concerns about the prospective limitations to the public participation in the decision making process and individuals' ability to comment on major projects such as new power stations, since such schemes carried out through the updated planning process will not be open to public inquiry. It is possible that the pressure towards low-carbon installations and the acquiescence to circumvent the planning legislation would result in playing down cultural landscape and archaeological heritage considerations.

Another challenge faced by the heritage sector is responding to threats posed by climate change (e.g. the coastal erosion and rising sea levels which are already major issue in Scotland, Wales, the Netherlands, Poland or Italy), and indirectly, by the need to accommodate projects such as the creation of retention basins to manage flood risks or even to adapt to restrictive energy strategies (e.g. mitigating the contribution to the $CO_2$ emissions through the improvement of the energy efficiency of historic buildings). For

instance, one result of the commitment to renewable energy sources for the historic environment may be the increased production of biofuels and the spread of the energy forestry, which could involve large-scale land use changes (Robinson and Clayton 2008).[161]

Archaeologists started to notice symptoms of the environmental crisis already in the 1980s. They became aware of the escalating pressures on the cultural and natural heritage and realised that ecology and biology would influence the heritage management system (Kristiansen 1990; Macinnes and Wickham-Jones 1992a). This, in turn, sparked interest in exploring the link between cultural heritage conservation and environmental issues and searching for ways to manage the environment in a more sustainable way. At the same time, conservationists realised that the past was a vital dimension of the holistic approach, turning their thoughts to archaeology as a key to understanding the interaction between human and natural forces (Greeves 1989; Macinnes and Wickham-Jones 1992b). Along came the recognition that there were very few truly 'natural' places left in Europe untouched by human hand and that contemporary landscapes are predominantly the result of the interaction between human activities and natural processes. This was followed by the discovery of the landscape as a fluid concept, relative and open to multiple interpretations, having different meanings to different groups (Coones 1992). Finally, a claim has been put forward to include time-depth in conservation policies and management strategies to give them a 'more secure footing' and to guarantee long-term success (Greeves 1989; Macinnes and Wickham-Jones 1992b). Subsequently, these ideas

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[161] In its report published in November 2009, the Forestry Commission suggested that the woodland cover in the UK should be increased by at least 4% (to 16%) over the next 40 years. The Commission has recommended planting of 23,000 hectares a year to absorb 10% of the UK's target of slashing its emissions of greenhouse gases by 80% by 2050. This plan, which would involve substantial changes of the land use, has met with the Government's support, with the Environment Secretary Hilary Benn declaring that 'the government would work to ensure the planting programme happened' (Forestry Commission 2009; Woodland Trust 2009).

have been inscribed in key international documents related to the management of cultural heritage such as the Valletta Convention and the *European Landscape Convention.*

In 1989, a number of British archaeologists called for a more holistic approach towards conservation. In the spirit of a true *perestroika,* the future of the discipline was seen 'at the forefront of green activity' in order to help 'weaning society from its wasteful and insensitive cult of the new to one which plans for the future' (Greeves 1989, p. 665). Nonetheless, in the 1990s, many archaeologists still considered sustainable development as a conservationist buzzword and voiced concerns about 'jumping on to a conservation bandwagon that was designed for coal and whales rather than rotting warehouses' (Clark 1993, p. 87). While this alliance between archaeologists and environmentalists transcending the division between 'natural' and 'cultural' features has been enthusiastically adopted by some researchers, it also met with significant criticism. For example, in Kristiansen's opinion, anxiety over 'green' issues and the environment was replacing the concern over cultural and heritage values, potentially leading to a lack of cultural and historical awareness, inefficient policies designed by 'ecotechnocrats' and raising 'new generations to understand and care for plants and animals rather than for people' (Kristiansen 1990, pp. 826, 828). In consequence, the fear of cultural issues being swept away by the advance of the green movement in many respects contributed to upholding the traditional nature-culture dichotomy.

Nevertheless, I think that by refusing sternly to 'jump on to a conservation bandwagon' archaeologists risk 'missing the conservation boat'. Heritage regulations, conservation policies, decisions to schedule a monument or list a building are only too often regarded as a minority interest, or are criticised for imposing unreasonable and restrictive rules on developers, farmers and entrepreneurs to preserve 'useless' (and often 'invisible') structures. This situation is similar to the attitude faced two decades ago by the environmental lobby (Altekamp 2000, p. 218). However, while environmentalists and

green campaigners learned to promote their agenda in a public forum, to influence decision-makers and even present ecology as a fashionable topic, archaeologists and heritage managers seem still to be less skilled in this domain (or at least less visible and considerably quieter) and, consequently, fail to convey their messages successfully. Two decades ago, archaeology was predominantly associated with excavations, great monuments and exotic discoveries. Whilst the holistic approach was gaining recognition in academic and conservation circles, it did not yet reach a wider non-expert audience.

Failure to attract public interest and achieve a wider engagement with heritage issues was seen as the failure of the archaeologists themselves and was attributed to the inward-looking, elitist character of the profession at the time (Pryor 1990). Nowadays archaeologists are more aware of the need for community involvement and public support, which have been recognised as essential factors for securing effective management of cultural heritage. Arguably, this change of approach was influenced by the experience of the green lobby. As in the case of environmental protection, the successful conservation of archaeological heritage cannot be restricted to regulations and administrative actions. Cultural environment management cannot succeed without links to the experience of local communities and without addressing local concerns. Yet, the public will not be willing to support heritage conservation and management schemes without understanding those issues.

> Since the sixties, ordinary people have protested about farmers' use of chemicals, and ordinary governments have listened and done something about it [...] How many ordinary people ever protested about farmers ploughing up medieval ridge-and-furrow? How many even know it exists, still less why? (Fine 1992, p. 201)

Certainly, we have come a long way in the last two decades. Thanks to the development of public archaeology and community archaeology (Marshall 2002; Merriman 2004), through multiple outreach projects and due to popular TV shows such as

*Meet the Ancestors* and *Time Team*, awareness and interest in the past have significantly increased. We are also much better at interacting with the non-professionals. However, there are still many issues related to archaeological heritage management that need urgent attention. I would argue that archaeology in Europe should try to capitalise on the general interest in the past as well as the growing popularity of 'green issues' to communicate more actively with the general public, politicians and authorities and enhance effectiveness of cultural heritage management.

Although harmonisation of law within the EU is a critical issue, cultural heritage is a specific area in which all actions taken by the Community are restrained by the 'subsidiarity principle' and article 151 of the 1957 *Treaty Establishing the European Community* (the Treaty of Rome, TEC). However, the European Treaty (1992) states that the Community's actions should be aimed at encouraging co-operation between member states in the cultural field. The European Commission can also influence cultural heritage issues through consideration of cultural heritage in its own policies (article 167, point 4; ex art. 151 TEC)[162] and supporting and supplementing actions in the area of conservation and safeguarding of cultural heritage of European significance (art. 167.2). As a developing organism, a hybrid of different countries, traditions and cultures and a combination of national and supranational laws and forms of governance, the EU pays a great deal of attention to the identification and articulation of shared values and legitimisation of principles that can help rally support for integration projects (Baker 2007). Consequently, it actively promotes integration and building of the 'European cultural identity' while supporting 'cultural diversity' and protection of cultural heritage on local level.

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[162] The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore' and 'the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures (points 1 and 4).

As I tried to demonstrate in Chapter 8, the European symbolism and attempts to define the 'common European identity' have traditionally rotated around the concept of shared ideas and cultural heritage. In recent years, this phenomenon has been increasingly associated with 'green' issues. As a result, environmental protection has experienced a gradual shift upwards on the list of the EU priorities becoming an essential part of the European integration project. Indeed, ecology and the concept of sustainable development have become key objectives of the EU community, a new paradigm in public policy and a guiding principle of the unification process (Baker 2007, p. 304) enshrined in European treaties and cultural heritage documents (such as the *Landscape Convention*). In my view, this phenomenon is likely to intensify within a next decade (see Annex 26). According to the new vision of the united Europe, these are no longer constraints to economic development and financial gains or chasing after some 'elusive environmental objective' (Lenschow 2002, p. 31). On the contrary, sustainable development, which integrates objectives of economy, social equity, cultural diversity and environmental protection, calls upon modern 'European' values and is used in the formation of the new EU cultural identity. Care for the environment ('cultural' and 'natural') and protection of the 'common good' are presented to the Europeans as their social responsibility (Lenschow 2002, p. 21; Baker 2007, pp. 298, 311-12). At the same time, some experts in heritage management are eager to see these developments in environmental law in the last two decades as a solution to the European cultural policy paradox (Teller and Bond 2002) with cultural issues, although indirectly, becoming increasingly integrated through environmental legislation (Teller and Bond 2002; Dupagne *et al.* 2005; Jones *et al.* 2006). For instance, the Aarhus Convention and both Environmental Assessment directives are an important step towards the harmonisation of European conservation regulations and procedures.

Ecological problems also have an impact on and consequences for domestic politics of the EU member states (Hamilton 2002, p. 28). In fact, there is a noticeable

political and ideological relationship between nationalism and green movements in modern day Europe. In recent years, we could observe the emergence of strategic alliances between the 'green' parties and political forces representing civic nationalism (a 'legal-rational' form of nationalism as opposed to 'ethnic nationalism'), such as Plaid Cymru and the Scottish National Party. These coalitions are based on a territorial concept of identity and collective solidarity and associate a civic and ethnic ethos with a concept of nature and place (Hamilton 2002, p. 33). The civic version of nationalism shares many features with 'ecologism', especially in their perception of diversity. In this context, threats to the ecosystem diversity are seen as parallel to those to the cultural diversity (e.g. the decline of human languages).

In the past, archaeologists animated by the original 'green debate' of the 1990s censured ecological movements for losing historical and anthropological perspective (Fine 1992). However, even then it was already understood that archaeology had to find its own voice in environmental issues or risk being overshadowed by the green lobby or left behind entirely (Weldrake 1992). And indeed, the proliferation of European policies and legislation can have negative consequences for heritage management, if archaeological issues are not adequately promoted, as in the case of the Environmental Impact Assessment process, in which air pollution or wildlife protection often have priority over the preservation of archaeological sites. Another example is the Common Agricultural Policy (CAP) that is at the core of the European integration. CAP has been used to stimulate agricultural growth but simultaneously, over the years, has had a significantly negative impact on archaeological heritage, affecting the survival of sites and historic landscapes in Western Europe (see Section 2.1 and Annex 16). Therefore, I think that in the light of the growing importance of ecology and the noticeable 'greening' of EU policies (see Annex 26), archaeologists should become much more interested in sustainable development issues and look more closely at regulations, principles, policies

and methods related environment management that, at the moment, are not being effectively used.

One of recent achievements of the green lobby, which could be effectively used in relation to the historic environment, has been the implementation of the already mentioned *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. Let us look at a short case study:

> A small village featured a hazardous waste site containing a large number of corroded barrels of chlorine. A developer offered to build a modern incinerator at the same location and local residents approved. However, neighbouring communities feared that such facility would threaten their businesses based on natural products, vineyards, farms and spa, and opposed the development. The request for a planning permit was finally filed and the information about the plan, together with the environmental impact statement, was disseminated to the public. Open hearings and a public debate involved a large coalition of NGOs, community groups, stakeholders with economic and tourism as well as representatives of political parties. Because of a negative response from the local community, the developer was not granted a consent – a decision later upheld by the court. Ultimately, the investor and the community negotiated modernisation of an already-existing facility to burn the hazardous waste instead.

This example, not so different from the debates around the road the schemes described in Chapter 5, illustrates the scope and objectives of the Aarhus Convention (UNECE 2006). Signed in 1998, the Convention recognises that the 'adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself', and seeks to ensure that 'every person has the right to live in an environment adequate to his or her health and well-being' (preamble). At the same time, the document highlights the duty to protect and improve the environment for the benefit of present and future generations – both as a common responsibility of all people and the duty of every individual. The effectiveness of the Convention and its objective – a healthy environment for all people – are based on three rights: the right to

know, the right to participate and the right of access to justice. These three rights are regarded to be the 'pillars of environmental democracy' (UNECE 2006).

The 'right to know' relies on a broad definition of 'environmental information', which covers, *inter alia,* air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, and genetically modified organisms (GMOs). In principle, every member of the public can ask for any information related to the environment which is processed by any public authority or private body serving a public function. The authorities must provide the requested information as soon as possible and without imposing 'unreasonable charges' (art. 4).

The 'right to participate' refers to public participation in the decision-making process. One of the aims of the Convention is to give individuals an opportunity to express their concerns and opinions, and ensure that the authorities take public views under consideration. Therefore, the information about the planned activities or development projects must be disseminated early, allowing sufficient time for informing the stakeholders, and for the public to prepare and participate effectively during the environmental decision-making when all options are still open (art. 6). The authorities have to provide – free of charge – access to the relevant information, including possible effects of the project on the environment and main alternatives. They also must consider the result of public consultation in their final decision. However, the system created by the Aarhus Convention is not meant to be only a tool for facilitating responsive actions to adverse effects of already existing facilities and projects or interventions in cases of controversial administrative decisions. Apart from facilitating mitigation, the Convention supports public participation in the preparation of future plans and programmes related to the environment. The parties to the treaty (this includes European Community) are also obliged to involve the public in the preparatory and executive phase of law-making. This provision refers to all regulations, decrees, rules and norms, plans, policies and

programmes which may have significant effects on the environment (articles 7 and 8).

The 'right of access to justice' enables members of the public to challenge any violation (both acts and omissions) of national law relating to environment, even if they have not suffered personal harm (art. 9). Concerned with wider participation and access to information and justice, the Aarhus Convention employs a broad definition of 'the public concerned' which should be deemed to have a 'sufficient interest'. It is 'the public affected or likely to be affected by, or having an interest in, the environmental decision-making', especially non-governmental organisations promoting environmental protection (art. 2.5). General provisions of the Convention also state that 'the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities' (art. 3.9) – the information and participation in environmental matters should not be restricted to those with legal standing on a specific matter, but should be accessible to all those involved in promoting the public interest. Secondly, the access to justice cannot be 'prohibitively expensive', which means that authorities are required to reduce financial barriers to going to court (UNECE 2006).

Implementation of the Aarhus Convention by the European Community and the majority of non-associated European countries can have significant implications for the protection and preservation of the cultural heritage. The definition of 'environmental information' includes landscapes and monuments, which fall within the scope of the Convention, and their safeguarding has been explicitly recognised as an environmental issue (Teller and Bond 2002, p. 618). In practice, the norms of the Convention focused on the public interest, public participation, legal standing and access to justice could be invoked e.g. in the case of planning disputes similar to those described in Chapter 5.

I would like to summon the Tara debate for the last time. Looking for arguments and means of protecting the historic environment of the Hill's environs, the heritage campaigners, including a number of well-known Irish archaeologists co-operated with ecologists, environmental specialists and wild-life activists (with some even adopting the 'eco-warriors' approach as the last resort)[163] – proving that interests and values presented by archaeology (or more broadly preservation of cultural heritage) and ecology (care for 'natural' heritage) do not have to be mutually exclusive. This case also drew attention to the level of public interest in the protection of the cultural landscape and the ability of cultural issues to start a nation-wide (or even international) movement. One aspect of this phenomenon was the establishment of a link between the campaigner groups in Ireland and Poland. Placed on the opposite sides of the continent, the activists faced similar problems challenging the public authorities' decisions in relation to controversial road developments. Like in the case of Tara, the plan to lead a highway through the culturally and environmentally sensitive landscape of the Rospuda Valley[164] triggered a wave of civil protests supported by Greenpeace, environmental NGOs, celebrities, academics and the national press. While the green lobby in Poland had been paying close attention to the events taking place in the Republic of Ireland, the campaigners also lent each other support, shared information and ideas, and even participated in joint protests (fig. 31). The

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[163] For instance, Dr Muireann Ni Bhrolchain, a senior lecturer in medieval Irish studies, was arrested during a protest in July 2007.

[164] The controversy arose in 2007 and 2008 around the road development project (the so-called Via Baltica). The Polish government decided to build an express road carrying heavy traffic from western to eastern and northern Europe. The project, designed to facilitate international trade and transport, was supported and partly funded by the European Union. One the completion of the planning phase environmental analysis revealed that a section of the road would go right through a protected wildlife area, putting at risk habitats of lynx and wolf as well as nesting sites of some of the most important European populations of globally-threatened birds. National authorities insisted on the continuation of works claiming that the environmental damage would be minimal, and dismissed the allegation that planning project was flawed and that the chosen route was the cheapest but the most destructive option. They argued that the prospective bypass would also reduce the congestion around a little spa town and improve the well-being of the local community. As the threatened area was a part of the European conservation programme Nature 2000, the campaign gained a support from the European Commission, which warned that the country could lose hundreds of millions of Euros if went ahead with the project. Finally, when the EU asked the European Court of Justice to issue an injunction to prevent the destruction of a unique environmental site (The Ecologist 2007; Mardell 2007), the government decided to stop the scheme and to re-route the questionable bypass away from the nature reserve.

Polish campaign focused on drawing attention of the European Commission, which eventually pressured the government to redesign the expressway scheme. There is a good chance that similar actions would be successful also in the case of the threatened archaeological heritage, especially in relation to development projects co-financed from EU sources, which have to comply with heritage protection regulations and policies to be eligible for funding grants. This approach had been also adopted by the Tara group (see Section 5.2).



**Figure 31:** Irish and Polish campaigners in joined protests against the M3 motorway and the Via Baltica (source: Gazeta.pl).

International heritage conventions and policies recommend considering the archaeological heritage as a local and global value. Secondly, there is an increasing tendency to combine the protection of natural and cultural heritage and to talk not only about sites and monuments but whole landscapes. This enables archaeologists to join their forces with ecologists, local communities' representatives and other interest groups. The EEA *Code of Practice* (2000) says that 'it is the duty of every archaeologist to ensure the preservation of the archaeological heritage by every legal means'. These legal means may involve invoking natural heritage protection regulations, environmental acts and cultural landscape conservation and participation tools provided by the Aarhus Convention and the *European Landscape Convention*. Moreover, if we want to raise the profile of archaeology on the political agenda, heritage management must open up even more to other disciplines

and appeal directly to policy-makers and the public. Unfortunately, these new roles and responsibilities (storytellers, 'biographers of cultural landscape'[165] planners, ecologists, etc.) are not always willingly undertaken by archaeologists. These are also roles to which archaeologists are rarely prepared by universities still largely favouring a hermetic vision of archaeology as a scholarly discipline and professional training schemes focused on vocational qualifications. Perhaps the knowledge of environmental issues and planning regulations should also be part of archaeological training. Finally, if the archaeologists decide to engage actively in the sustainability strategy, they will require a good understanding of and critical approach to the modern environmental, legal and socio-political issues – so that they are not limited to borrowing concepts from the green movement but would be able to develop their own ideas.

## 9.10. The 'East' and 'West' theory split

Before I conclude this dissertation I would like to mention one more option that archaeologists should consider, which is to take advantage of the opportunities provided by the growing globalisation. While this phenomenon has a number of negative consequences for the archaeological heritage, such as unsustainable cultural tourism, clandestine excavations and the illicit trafficking of looted artefacts, it can also be beneficial. The availability of the new communication technologies and the birth of the information society facilitate the access to research resources, networking, sharing information and experiences and can be effective tools of international collaboration, dissemination of expertise and lobbying heritage issues.

Kristian Kristiansen (2008a) suggested that 'European archaeology' should replace 'national archaeologies of Europe', so that archaeology can free itself from limitations of

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[165] A term proposed by Dutch archaeologists (Kolen 1995; Bloemers 2002).

borders and nationalism and becomes 'based upon a study of forces of history as they unfold locally, regionally and as a world history'. The fall of the Iron Curtain triggered fundamental changes to archaeology in Europe, opening new channels of international collaboration and interdisciplinary research but also bringing diversity of theoretical approaches and highlighting differences between Western theory (e.g. processual and postprocessual archaeology),[166] the Marxist influence in Eastern Europe, and the neglect of theoretical reflections (or at least reluctance to discuss theory on a wider scale) in Germany (Härke 1991; Hodder 1991; Arnold 1998a; Meier 2008). However, while many researchers would concur with the opinion that there is a need for a new theoretical agenda, few could actually agree on the definition and principles of such 'European archaeology'.

Many Eastern and Central European archaeologists strongly oppose being subjected to 'Western intellectual dominance' (or, more explicitly, the British or American theory), evaluated against the Western approach and urged to 'catch-up' with it (Bogucki 2002; Lozny 2002; Gheorghiu 2003). These arguments usually relate to two issues: that the principles of the 'western' school are foreign to the local tradition (Lozny 2002) and that Central and Eastern Europe need an opportunity to 'develop a post-communist archaeology which still has a scientific basis' (Gheorghiu 2003, p. 170). At the same time, researchers from the former Eastern Bloc are criticised for inertia and marginalisation 'having failed to produce one single globally-accepted theory' (Gheorghiu 2003, p. 171). Thus, we have come full circle. In my opinion the most important question is whether, indeed, we must adopt one universal pan-European framework, facing the risk that the 'European archaeology', as many other European-themed socio-political contexts, will

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[166] Hodder 1993 – argues that during the 1960s, 1970s and early 1980s archaeology came to be seen as a resource. This resource interpretation took place on two levels: 1) within the New Archaeology – archaeological data came to be seen as a resource for hypothesis testing; 2) with the rise of the RESCUE movement, archaeological data came to be seen as a cultural resource to be saved and preserved. However, Hodder argues that in both cases the notion of a 'resource' created a utilitarian view of the past as a passive material (Hodder 1993, p. 13).

result in the interpretation of the 'new Europe' as 'the old Western Europe with the east-central part tacked on almost haphazardly' (McNeill 2004, p. 5).

Archaeological theory and discussions will inevitably have to touch upon the issue of Europeanness. The creation of an integrated research framework would entail defining 'Europe', its borders (in space and time), and its culture (Novaković 2008) – a task that so far proved to be not only controversial but almost impossible. We also need to remember that archaeology itself is very much a cultural product (Hamilakis 2007; Meier 2008). While moderate political uses of the past seem almost unavoidable and may be perceived as acceptable (as long as they do not involve deliberate misrepresentation of research findings), the concept of Europeanism and European cultural identity promoted by political institutions is in danger of becoming value-charged and as exclusive as old nationalisms (Gramsch 2000; Lozny 2002). Secondly, although attempts to capitalise on the current political agenda (external to archaeology) might seem like a great opportunity for the discipline, they may also lead to the situation where archaeology would be required to prove its 'relevance' to contemporary issues to get funding for research. That in turn might be a significant threat to research ethics.

Furthermore, it is doubtful whether a common definition of 'European archaeology' can be agreed anytime in the near future, since efforts to overcome particularisms in archaeological research have thus far been rather unsuccessful. For example, in the former Yugoslavia, despite a common federal structure and comparable administrative frameworks, education systems and heritage protection legislation as well as (or perhaps because of) great ideological pressure of the communist regime, there is not (and many argue that there never have been) a 'Yugoslav archaeology'.[167] 'Since there was no such thing as the Yugoslav nation, there could be no Yugoslav national or united

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[167] Extensive discussions on the topic of Yugoslav archaeology took place at the 2007 EAA conference at Zadar (Novaković 2008).

archaeology' (Novaković 2008, p. 37). Half a century of archaeological research in the Balkans is now perceived as a cluster of national archaeologies forced to co-exist under one authority, 'artificially' joined together only by existence within the same state. Similar observations have been made also in relation to Czech and Slovak archaeologies and the former USSR (Novaković 2008).

At the moment, although political borders have dissolved (at least within the EU), the local focus in archaeology still prevails. The majority of academics traditionally conduct their research and produce most publications primarily within their local, regional or national frameworks (Bogucki 2002). Also, the development of postprocessual archaeology (and more generally postmodernism) is a manifestation of disenchantment with Eurocentric perspectives and loss of faith in 'big questions and big explanations' (Paludan-Müller 2008; Pearce 2008). Archaeology follows a wider trend of reverting back to local, regional and national narratives. It can be argued that this tendency is likely to continue in the future – 'as long as we live in a world of bounded nation states' (Kohl 2008, p. 33). The failure of efforts to create a unified supranational archaeology in the case of former Yugoslavia or Czechoslovakia can be read as a warning to the future of the 'pan-European' discipline:

> Different traditions in the development of discipline, different administrative/financial frameworks, close sub-state (republican) networks, the perception of archaeology as a discipline which primarily works within a national framework and which is responsible for its part in the construction of national cultural and historical heritage, archaeology as primarily concerned with the past of national territories, the lack of common research topics, the lack of efficient coordination in research topics on federal level, the lack of 'federal' resources and funds, the fact that the very heterogeneous nature of the archaeological past and heritage makes it almost impossible to organise it into a stronger and more coherent framework. (Novaković 2008, p. 38)

This, however, does not mean that we should not try to move things forward. Certainly, there are issues that could (or even should) be addressed. While the focus upon local issues enlarges the pool of archaeological data and means that certain parts of the continent are extremely well known, at the same time research may become too narrow and risk failing to see a 'larger picture'. Indeed, some archaeologists can spend their entire careers investigating one particular site or research problem (Bogucki 2002, p. 130). The post-transformation impasse that still seems to be troubling archaeologies in the former Eastern Bloc (Tabaczyński 2007; Kobyliński 2008) also calls for a change. However, this does not necessary mean imposing existing 'blueprints' based on western models but rather adapting modern archaeological theory, past experiences and research traditions to the local context. There is definitely a need for a more active participation in the European research network. Academics from all parts of the continent should share knowledge and experience through participation in international associations and conferences (such as EAA, TAG or WAC) and publish more in international journals. There is also an opportunity for archaeologists in the process of the European integration and development of EU institutions: they should pay a closer attention to the potential of European regulations and policies to help 'transcend the limits imposed by the institutional and mental obstacles derived from the national organization of archaeology' (Paludan-Müller 2008, p. 50). However, they should tread carefully. Since archaeology is always to some degree associated with politics (even if unintentionally), 'Europeisation' – like any other case of political claims – perhaps ought to be taken with a pinch of salt. Finally, it might be that the opinion on archaeology's importance in the integrating Europe (Kristiansen 2008s) is exaggerated. Although cultural heritage and sentiments about the past still play an important role in the European psyche, their relevance to modern political questions may soon become rather limited (and perhaps rightly so) because other social sciences deal more directly with contemporary problems (Kohl 2008, p. 31).

Finally, it can be argued that the intellectual exchange in the field of archaeological theory and practice takes place naturally as a result of the increased mobility of the European archaeologists in the last few years (see Section 6.2.1 and Annex 14), facilitated greatly by the enlargement of the European Union. In my experience, the 'free flow of workers' also means a free flow of ideas. Innovations, professional standards and the good practice are often disseminated informally between archaeologists working together on field assignments and research projects. For instance, archaeologists in Europe routinely use the single context recording method developed in the UK, with different variations of the Museum of London Archaeology Service (MoLAS) Archaeological Site Manual (1994) translated into national languages and adopted to regional needs (e.g. in Iceland and Poland) and/or apply project management principles established in MAP2 and *Management of Research Projects in the Historic Environment* (MoRPHE).

## 9.11. Conclusion

This thesis has examined a wide variety of problems related to the development of archaeology and archaeological heritage management in Europe in the last few decades, such as the growing influence of planning and environmental regulations, the emergence of the planning-related commercial sector and the diversity of approaches to archaeological theory and practice in different countries and regions. In particular, I looked at the consequences of the gradual internationalisation (or 'Europeisation') of these two disciplines and the relationship between cultural heritage and current political, legislative, economic and sociological issues.

In the course of my research I identified a number of problems and challenges (summarised in this chapter), which in my view should be addressed by the 'European' archaeological community in order to improve the level of protection and the effectiveness

of the management of the archaeological heritage and move the discipline forward. Because of the complex nature of issues discussed in this thesis, it is not possible to offer 'easy solutions' or suggest immediate 'improvements'. However, I would like to conclude this work by drawing attention to a number of ideas that could be considered as contributions to the debate on the development of the archaeological theory and practice in the next decade. This list, by no means exhaustive, summarises some major findings resulting from my research project outlined in this thesis. Thus, in my view, it is necessary to:

- Improve the engagement of heritage management professionals with archaeological theory, raise the profile of archaeological heritage management in public debates and, consequently, to increase archaeologists' input in the national and international policy-making and legislative affairs and in the decision-making processes on local and regional levels. This could be done in several ways, primarily by making the awareness and discussion of principles of heritage management a compulsory part of archaeological training and through encouraging collaborative research and professional co-operation between experts representing all disciplines involved in the management of the historic environment, including planners, lawyers, architects, natural scientist and conservationists.

- Keep track of and respond to changing trends in planning theory and planning legislation as well as developments in the environmental sector. In my view, in the next few years the increasingly visible focus on ecological issues and the growing role of the environmental planning may have a significant impact on the archaeological heritage in Europe, for instance through prompting changes in land use or downplaying 'cultural' aspects of the landscape management in favour of the environmental protection. At the same time, an increased interest in environmental issues may become an opportunity to translate the declaratory commitment to the

sustainable development into practice and to raise the profile of the archaeological heritage as a fundamental part of the environment.

- Look closely at the policy- and law-making recipes developed by the environmental sector, especially in terms of creating a more holistic approach to the cultural environment, removing contradictions between sectorial policies and legislation and making them mutually supportive.

- Improve the execution of norms and principles enshrined in heritage policies and regulations on a local, practical, level through increasing the involvement of national and regional heritage authorities and archaeological consultants in the planning process. This means that heritage regulations should be accompanied by an adequate strategy for their implementation and an appropriate guidance and advice for heritage professionals, planning authorities and members of the public. Secondly, it is necessary to provide suitable information about the historic environment such as, for instance, the network of Historic Environment Records in England and Wales, models for predicting the likely occurrence of buried archaeological deposits (used e.g. in the Netherlands) and historic landscape characterisation projects. A wide availability of such resources would contribute to broadening the knowledge, understanding and appreciation of the archaeological heritage management and facilitate making informed decisions in the planning process (for example, this is the case of well-thought-out urban regeneration projects in historic towns using the existing cultural urban landscape and cultural assets as a framework for change). A successful management of landscape transformation, seeking suitable mitigation strategies and working towards innovative solutions would also require a much closer co-operation between all specialists involved in the planning process (with archaeologists treated as equal partners), facilitated and coordinated by the local authorities. The authorities should also promote positive actions and behaviour

towards cultural heritage providing, for instance, adequate financial incentives, administrative and technical support and comprehensive information for developers, owners and users of historic assets. Finally, making planning and heritage management decisions related to the historic environment should be a transparent and inclusive process based on a genuine engagement with local communities and their needs.

- Work towards a better understanding of the archaeological heritage by the wider public, looking for more inclusive and transparent methods of balancing multiple stakeholders' interests and encouraging public participation in the landscape-related decision making process. This could be partly achieved through adopting a better structured and more comprehensive approach to awareness-building activities (such as educational programmes, public archaeology projects and heritage campaign), possibly using patterns developed by the environmental lobby.

- Finally, to improve the international co-operation between archaeologists and heritage managers from different regions of Europe in order to facilitate the exchange of experiences and ideas, promote good archaeological practice and professional standards, to address the difficulties arising from differences between approaches to archaeological management, national heritage regulations and conservation policies. This could be done through encouraging individuals to join professional associations, supporting collaborative and transfrontier projects and by facilitating further the trans-national mobility of the archaeological workforce, researchers and students. An extensive international co-operation should result in a better knowledge of shared problems (as well as a better understanding of differences) and lead to more coherent responses to current threats to the European archaeological heritage. Building a strong international lobby of heritage experts

would also empower the archaeological community on the European and regional

public debate forum.

# 10. Annexes

## 10.1. *Annex 1 – 'Save Allianoi' campaign – archaeological heritage and dam construction*

Large dams can have a very negative effect on cultural landscapes, causing degradation of archaeological deposits and flooding of sites. They also can result in the loss or damage of cultural deposits through land reclamation, irrigation projects and the associated infrastructure: construction of power lines, roads, railways and workers' towns. In addition, they may lead to shoreline erosion resulting in exposing subsurface archaeological remains and, in some situations, encourage looting and illicit digging for artefacts. For example, in Turkey only 25 of almost 300 existing dam projects have been surveyed for impacts on cultural heritage, and of these only five have had systematic rescue examinations conducted prior to construction works. Given that river valleys were very often territories of ancient civilisations, threats posed by existing and planned dams and the consequent loss of cultural heritage are considerable, as it was illustrated by the Aswan High Dam and Three Gorges Dam projects (Niasse and Wallace 2001; The World Commission on Dams, 2000, pp. 116-117).

One of recent examples of such a threat to the archaeological heritage is the Turkish site of Allianoi (Save Allianoi 2005; Eisenberg and Kingsley 2005). This Roman thermal bath complex (fig. 32) built under the reign of the Roman Emperor Hadrian (AD 117-138), located in modern Turkey, has a high archaeological importance due to the fact that a large part of the complex is very well preserved (with some architectural remain reaching two storeys). There are also beautiful floor mosaics and a Roman bridge (still in use). In 1994, Turkish State Hydraulic Works (DSI) ordered construction of a dam on the River Ilya to create an irrigation reservoir and thus intensify agricultural activity in the

area. Despite strong economic argumentation (a need to develop agriculture), the project receives mixed reception within the local community – the most affected group. While some villagers support irrigation plans and believe that the region would become wealthier than it could do through tourism, others insist that the local economy would benefit much more, if Allianoi stays opened to tourism (Bozyap 2008).

Since the scheme would result in flooding of a major part of the valley, including the Roman Spa of Allianoi, it was strongly criticised by the heritage lobby in Turkey and throughout Europe. A petition to save the site distributed among the visitors yielded some 35,000 signatures. In addition to local actions and protests, Europa Nostra, ICOMOS and the European Association of Archaeologists (EAA) launched in 2005 an international campaign 'Save Allianoi'. The dam project was also a source of disagreement between Ankara and Brussels. Far from being a cause for a 'diplomatic war' (Bozyap 2008) itself, it is nevertheless associated with a major political agenda: Turkey's application for the EU membership. The lobby campaigning for the preservation of Allianoi argued that the destruction of the site breaches EU rules on heritage protection and hoped that the EU would raise strong enough objections to make the Turkish government change its mind. However, despite warnings from the European Parliament's Culture Commissioners, EU's objections so far have been ineffective.

There are a number of ongoing legal cases aimed at saving Allianoi. In addition, in 2008 the Allianoi Initiative (an NGO) decided to approach the European Court of Human Rights on this issue demanding permission for the excavation team to continue their work for another five years, hoping that this may also buy the site some more time (Bozyap 2008).
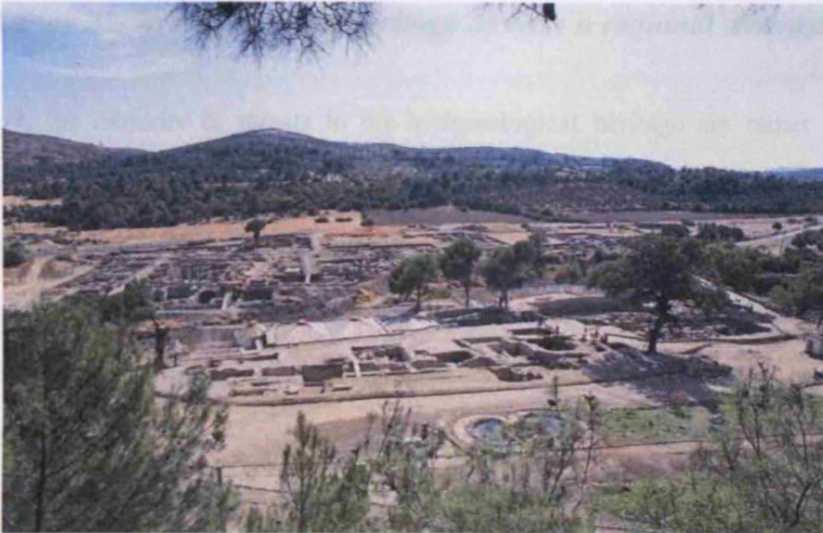
**Figure 32:** Allianoi, Turkey. An important Roman site threatened by the construction of zoned earth fill dam (source: Save Allianoi 2005).

## 10.2.  *Annex 2 – Archaeological heritage at risk: a regional dimension*

In general, the majority of threats to the archaeological heritage are rather universal, resulting from various natural processes and human-induced activities. However, there are some regional differences in terms of intensity and significance of harmful factors. This is illustrated, for instance, by a 2005 report on monuments and sites in danger (ICOMOS 2005) prepared by the International Committee on Archaeological Heritage Management (ICAHM).[168] According to this study, depending on the region (Eastern Europe, East Asia and Northern America) a number of major threats that may be observed in different countries:

-   Eastern Europe (Czech Republic, Latvia, Poland and Russia): illegal excavations and looting, intensive development and 'flawed' spatial planning, agricultural activities, changes in water systems, ineffectual public authorities and heritage agencies;

-   East Asia (Japan): increasing number of rescue excavations replacing preservation *in situ*;

-   North America: urban development.

In Eastern Europe, looting of sites and clandestine excavations have been identified as the most pressing problem. Uncontrolled use and easy access to metal detectors followed by a lack of proper education leads to deliberate or unintended devastation of heritage resources. Although the law provides proper protection of archaeological sites, practical solutions as to how prevent illicit digging for artefacts are scarce. Another common threat in all former Eastern Bloc countries is a rapidly increasing

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[168] The International Committee on Archaeological Heritage Management (ICAHM) (a committee of ICOMOS) was established in 1990 to promote international co-operation in the field of archaeological heritage management and to advise ICOMOS on archaeological heritage management issues.

number of developments, in both urban and rural areas.[169] Not all national regulations

require including the protection of archaeological sites in planning documents at an early

stage or, in many cases, development takes place too quickly to be properly controlled by

the conservation authorities.[170] Another important risk factor is ploughing. In spite of

appropriate legal regulations, which theoretically take care of unscheduled heritage places,

cumulative effects of agricultural activities still strongly affect archaeological remains.[171]

Sites located in rural areas are also at risk from changes in hydrological systems, which

often cause (directly or indirectly) damages to cultural deposits. For example, it has been

estimated that many archaeological sites in Latvia and Poland have suffered from the

building of hydro-electric plants or drainage of wetlands (ICOMOS 2005, p. 257).

In my view, however, the most important and most pressing issue in Central and

Eastern Europe is the insufficient funding and the ineffectiveness of agencies and bodies

responsible for the protection of cultural heritage. All post-Soviet countries experience

shortage of qualified staff, lack of proper equipment, vehicles, educational programmes

and materials, etc. In consequence, although national regulations provide satisfactory legal

protection, the real problem is the enforcement and the practical application of the law.[172]

In some countries developers are not legally obliged to pay for the cost of research and

funds provided by governmental bodies for rescue works are insufficient (e.g. in the Czech

Republic, ICOMOS 2000c). Inadequate financing can also lead to lack of maintenance and

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[169] For example, according to the Slovakian ICOMOS National Committee, archaeological resources are continuously affected by building activities, including those directly affecting designated monuments. The problem is amplified by the absence of a central fund to cover rescue archaeology and by the pressure of time associated with large building projects, such as highways (ICOMOS 2000h).

[170] E.g. Czech Republic and Latvia (ICOMOS 2005, p. 256).

[171] For example, in Poland approximately 400,000 sites have been recorded on agricultural lands, most of them regularly ploughed (ICOMOS 2005, p. 256).

[172] This is clearly visible e.g. in Poland, where the *Act on Protection and Preservation of Monuments* of 2003 implemented many modern tools and regulations concerning heritage protection. However, application of some new solutions, like subsidies for conservation works or controlling the use of metal detectors, encounters serious obstacles. Also in Czech Republic archaeological sites are at risk from theft, especially from plunders using metal-detectors. Government has no chance to prosecute perpetrators due to inadequate law and the situation is additionally complicated by the insufficient police resources, particularly in rural areas (ICOMOS 2000c).

conservation of remains excavated *in situ.* Cultural deposits and artefacts left without proper protection not only suffer physical deterioration caused by environmental conditions, but they are also an easy prey for vandals and looters.[173] Another serious problem is the public's ignorance and low esteem for archaeological heritage. It often happens that developers and investors consider paying a relatively small fine for the destruction of a site to be better option than delaying construction works to conduct expensive archaeological excavations.[174] As a result, conservation and protection activities are usually reactive and not proactive in character (ICOMOS 2005, p. 257).

In the case of Asia, ICAHM and ICOMOS expressed concerns about the alarming increase of site 'salvaging' – misinterpreted rescue excavations. For example, in Japan in the period between 1973 and 2004 a number of excavations per year rose eight times (ICOMOS 2005, p. 257). In Japan, as a rule, the developer covers the cost of rescue works and cultural deposits are rarely destroyed without any prior archaeological works. However, this has led to a very worrying phenomenon when preservation of the site *in situ* has less priority than a development project.[175] Misinterpreted 'salvage' archaeology can be particularly destructive: on one hand time pressure, insufficient staff and funding may result in a lack of proper archaeological practice and documentation. Secondly, excavation of an entire site does not leave any place for future investigation or analysis.

Urban development was identified as a major problem in the case of North America. According to ICAHM, majority of planners in Canada and the United States lack knowledge of the applicable heritage legislation and many of them often assume that

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[173] Countries that report this threat are, for example, Bulgaria, the Czech Republic, Israel, Italy and former Yugoslavian republics (ICOMOS 2001a).

[174] These cases can be e.g. observed in Poland or in Czech Republic. For instance, during the construction of a supermarket near Prague, the developer intentionally destroyed an Early Bronze Age settlement because the estimated cost of the rescue archaeology was 'too high' (ICOMOS 2000c).

[175] The same situation can be observed in China, where according to the National ICOMOS Committee most dangers to cultural heritage result from the improvement of infrastructure associated with dynamic economic development, e.g. road construction or large projects such as the Three Gorges Dam on the Yangtse River, (ICOMOS 2000b).

because a location has been developed to some degree in the past, these areas no longer

have archaeological potential. Therefore, in many North American cities protection of

archaeological heritage also gives way to development (ICOMOS 2005, pp. 257-258).

## 10.3. *Annex 3 − A quest for the Thracian gold: looting of archaeological sites in Bulgaria*

Clandestine excavations and metal-detecting are a major threat to archaeological heritage protection in many European countries, especially those of the former Eastern Bloc. To exemplify this, let us look at Bulgaria, a country which in recent years have experienced a real 'plague' of illicit activities and therefore is named among the so-called 'source countries' − countries that being rich in valuable cultural property objects are not able to provide for their proper protection and therefore involuntarily supply the international art market with illicit antiquities. Due to its long and complex history, Bulgaria has a very rich archaeological heritage. Unfortunately, many of these treasures of the past are neglected, destroyed or stolen, primarily because of shortage of funds for protection and conservation. In consequence, according to Interpol, Bulgaria is the main victim of cultural property theft among all European countries.

In years 2003-2004, Bulgarian authorities reported 565 cases of stolen cultural property objects: 329 of them concerned looted archaeological sites. At the same time, other European countries reported 226 goods looted from archaeological monuments, with the Balkans, Central and Eastern Europe, Italy and Greece being most affected (see numbers provided in fig. 34 and tab. 4). One may argue whether Interpol's official statistic is a reliable source (e.g. because of differences in collecting data or scrupulousness in reporting crimes by national governments) but in my view it at least is a hint of the real scale of the problem. Considering that in most cases looting is never detected or reported, we may easily assume that actual figures would be much higher.

The problem of modern looting is illustrated by the plunder of Thracian monuments in Bulgaria. In the last fifteen years, several important tombs and cemeteries were discovered in the so-called 'Valley of the Kings' in the Kazanlyk region, including

some major finds: the 'Shishmanetes' Sepulchral Tumulus (4th c. BC), 'the Small Naked

Tumulus' (4th c. BC), a Thracian cemetery near the Village of Alexandrovo (4th c. BC), a

'royal' tomb in Shipka (5th c. BC) and a burial mound in Golyamata Kosmatka (from 5th c.

BC). According to Bulgarian archaeologists, 'several thousand sites have yet to be

explored, although thousands more have fallen prey to treasure hunters'. It has been

estimated that about 90% of the 15,000 Thracian burial tombs have been ravaged while

only 70 tombs were explored by official expeditions (Sofia Echo Com 2004; Brunwasser

2006).

In July 2004, an expedition lead by Professor Georgi Kitov discovered near the

town of Shipka a burial of a Thracian chieftain from the 5th c. BC containing, *inter alia*, a

unique golden mask and a hoard of weapons (Ilieva 2004). The site was looted just one

night after the finding of a burial golden mask. A couple of weeks later, Kitov made

second important discovery – another rich burial of a Thracian aristocrat in Golyamata

Kosmatka. This tomb contained 74 precious artefacts, 20 of which were made of pure

gold. Professor Kitov, who claims to have found nearly 40 Thracian tombs, is well known

as a publicist of archaeological discoveries in the media (fig. 33). However, he has also

been criticised for using 'controversial and unorthodox practises' (e.g. earthmoving

machines) and, particularly, for failing to properly record and publish results of his work.

This gives an impression that Kitov, while concentrating on retaining his image as the

'Bulgarian Indiana Jones', limits efforts only to hunting for treasures and displaying them

in the media. These concerns were recently followed by accusations of collaboration with

looters. Yet, despite eviction from the National Archaeological Institute Kitov continues to

walk a fine line and evade the law (Brunwasser 2005; Nowacki 2006).
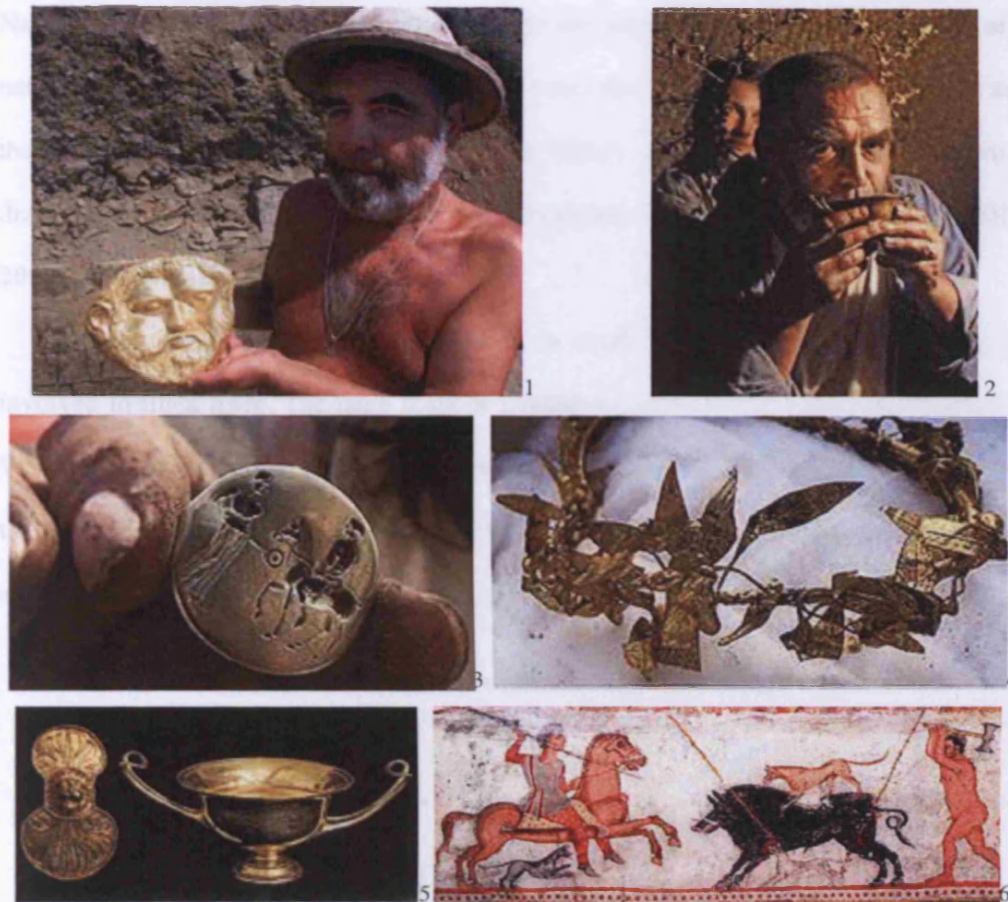
**Figure 33:** Thracian gold: 1 – Professor Georgi Kitov with a golden mask found in Shipka (source: Nowacki 2006); 2 – Georgi Kitov sips wine from a gold drinking cup found in the tomb of Thracian king Seuthes III (source: Brunwasser 2005); 3-5 – Golden artefacts from a Thracian tomb discovered by Professor Kitov (source: Nowacki 2006; Brunwasser 2005); 6 – Main chamber fresco from the Alexandrovo kurgan (source: Brunwasser 2005).

According to the national legislation, all archaeological sites are the property of the Bulgarian State. In the case of any illicit activity, the state must immediately provide funds for securing, consolidation and emergency conservation of archaeological deposits. Unfortunately, such *ad hoc* interventions decrease the general budget for sites and monuments at risk and thus make the problem of heritage preservation even more acute (ICOMOS 2002a). For example, a number of important Thracian sites mentioned above require urgent stabilisation and total restoration as well as protection from harmful atmospheric influences and vandalism. Three sites (the Shishmanetes and 'the Small

Naked' tumuli and the Alexandrovo cemetery) are listed as Monuments of Culture of a national importance. However, within last 10 years their condition has not improved and they are gradually disintegrating. Like many others, these monuments suffer from a dramatic lack of funds for restoration and surveillance (ICOMOS 2000a; 2000i; 2001a; 2001b and 2002a).

It has been estimated that even one in every twenty five Bulgarians may be involved in illicit trade. The huge scale of looting is caused by the increasing interest of Western European art collectors and dealers in Bulgarian antiquities. Moreover, according to looters, clandestine excavating is not a risky business because 'no-one can recall anyone ever having gone to jail for digging, buying or selling antiquities' (Brunwasser 2006).

**Cultural Property Stolen From Archaeological Sites (Europe)**
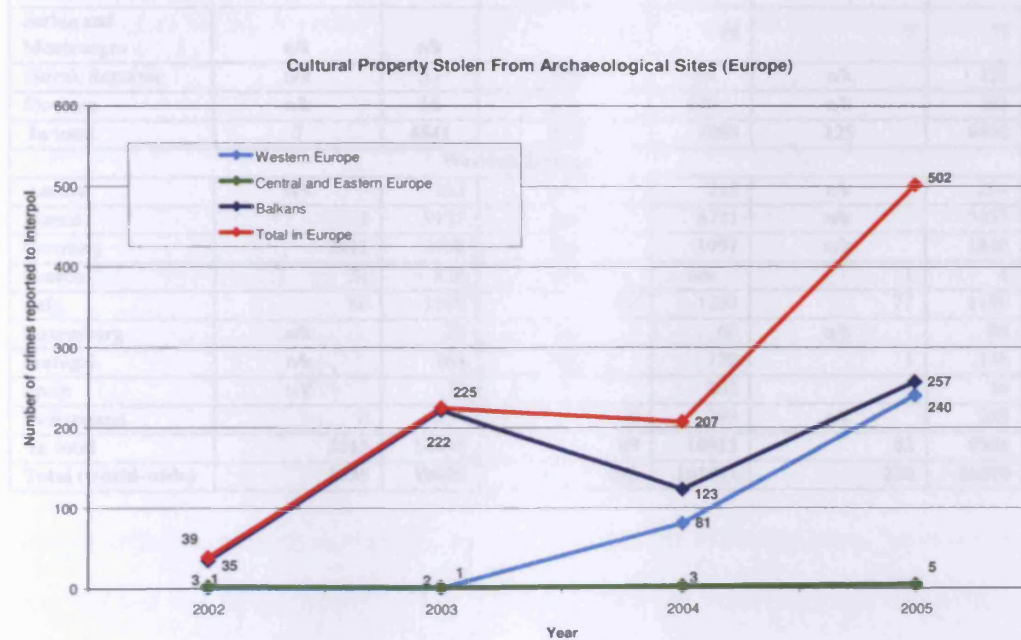


**Figure 34:** Chart illustrating number of thefts of cultural property objects from archaeological sites reported in years 2002-2004 (source: Interpol).

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**Table 4:** Table illustrating number of thefts of cultural property objects reported to Interpol in years 2002-2004 (source: Interpol).[176]

| Country | Works of art stolen in 2002 | | Works of art stolen in 2003 | | Works of art stolen in 2004 | |
|---|---|---|---|---|---|---|
| | From archaeological sites | In total | From archaeological sites | In total | From archaeological sites | In total |
| **Central and Eastern Europe** | | | | | | |
| Armenia | n/k | 5 | n/k | 5 | n/k | 4 |
| Belarus | 0 | 86 | 0 | 121 | n/k | 104 |
| Bulgaria | n/k | n/k | 215 | 281 | 114 | 284 |
| Croatia | 4 | 67 | 2 | 59 | 1 | 38 |
| Czech Republic | 0 | 620 | 1 | 539 | 2 | 254 |
| Estonia | n/k | 1 | n/k | 2 | n/k | n/k |
| Hungary | n/k | 869 | n/k | 779 | n/k | 792 |
| Latvia | n/k | n/k | n/k | 54 | n/k | 46 |
| Lithuania | n/k | 40 | 1 | 38 | 1 | 28 |
| Poland | 3 | 946 | n/k | 1140 | n/k | 2577 |
| Romania | n/k | 111 | n/k | 125 | n/k | 73 |
| Russian Federation | n/k | 1687 | n/k | 1758 | n/k | 1855 |
| Serbia and Montenegro | n/k | n/k | 11 | 19 | 7 | 75 |
| Slovak Republic | n/k | 53 | n/k | 38 | n/k | 121 |
| Slovenia | n/k | 56 | n/k | 130 | n/k | 181 |
| **In total** | 7 | 4541 | 230 | 5088 | 125 | 6432 |
| **Western Europe** | | | | | | |
| Austria | n/k | 163 | n/k | 218 | n/k | 284 |
| France | 1 | 9135 | n/k | 6721 | n/k | 5453 |
| Germany | 2411 | 2508 | n/k | 1997 | n/k | 1840 |
| Greece | 21 | 126 | n/k | n/k | 1 | 4 |
| Italy | 80 | 1559 | 88 | 1293 | 77 | 1190 |
| Luxemburg | n/k | 33 | n/k | 68 | n/k | 94 |
| Portugal | n/k | 264 | n/k | 120 | 1 | 146 |
| Spain | n/k | 77 | 1 | 202 | 3 | 46 |
| Switzerland | 0 | 233 | 0 | 293 | n/k | 289 |
| **In total** | 2513 | 14098 | 89 | 10912 | 82 | 9346 |
| **Total (world-wide)** | 2535 | 19030 | 335 | 161997 | 220 | 16678 |

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[176] This is an official statistic created on the basis of data received from Interpol member countries (184) (information was provided directly by the Interpol press office). It contains information sent every year to the General Secretariat in a form of a completed questionnaire. However, not all countries provide Interpol with data in question (that is why e.g. United Kingdom is not listed in the table 4). Moreover, the means of data collection in different countries are not harmonized (in many countries specific statistics for thefts of cultural property do not exist at all). Therefore, it is not possible to reliably compare the information from different countries. In addition, for entire regions, such as Africa or Asia, very few statistical data is available. Interpol does not have figures for some specific problems, such as illicit excavations because the incidents and the items are regularly not detected or recorded. Interpol does not have information on the monetary value of stolen art, mainly because member countries themselves do not possess this information. Thus it can be easily assumed that official records reveal only a very small percentage of looting and cultural property theft cases.

## 10.4. *Annex 4 – Export of antiquities from the UK*

The policy concerning the export of antiquities from the UK is based on the *Council Regulation (EEC) No 3911/92 on the export of cultural goods* but the domestic law deals also with cases of export where the EU licence is not required. As mentioned in Chapter 2, according to the Council Regulation, a permission to export is essential for the removal of certain cultural goods outside the EEC territory including, *inter alia,* 'archaeological objects more than 100 years old which are the products of excavations and finds on land or under water, archaeological sites and archaeological collections' (art. 2). There is no threshold value for exportation of such artefacts; therefore this definition extends to all archaeological items, together with numismatic objects, regardless of their pecuniary value and the location of the site from which they have been excavated. In consequence, a dispatch of any item falling within this category from the UK outside EU area requires an export licence. These are issued by the Department for Culture, Media and Sport (DCMS). Reviewing applications, DCMS considers both the Council Regulation and the UK national legislation. As a result, an EC export licence automatically qualifies as a permit under UK domestic law.

However, the Council Regulation enables member states to exclude 'objects of limited archaeological or scientific interest' from the EU licensing rules, 'provided that they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful' (art. 2.2), *i.e.,* provided that they have not come straight onto market after being recently discovered and have not been looted or stolen. In the case of the UK, these exceptions include numismatic items of a standard type which are published in a reference work on numismatics, and objects, other than numismatic items, which possess no special or rare features of form, size, material,

decoration, inscription or iconography and which are not in an especially fine condition for the type of object (DCMS 2005).

There are two cases when an EC licence is not needed: first, when the object falls into the category of goods that are excluded from licensing, or secondly, when the object is to be dispatched to the territory of another EU member state. However, the legal exportation of an archaeological artefact from the UK may require a permit under UK domestic law. This applies to any archaeological material from UK soil or UK territorial waters regardless of its monetary value and regardless of its prospective destination. Moreover, a national licence is essential for the export of any archaeological object of a non-UK origin that has been in the UK for over 50 years, if its value is £65,000 or higher.

In consequence, any archaeological object more than 50 years old found in the UK soil or its territorial waters, regardless of its value, requires an export licence from the DCMS Export Licensing Unit (ELC) and is subject to an expert judgement. The application together with a statement of provenance is forwarded to an expert adviser and is considered in compliance with the so-called 'Waverley criteria'. A licence may be granted, if the object in question fails to fulfil following conditions: (1) it is so closely connected with the UK history and national life that its departure would be a misfortune; (2) it is of outstanding aesthetic importance; or (3) it is of outstanding significance for the study of some particular branch of art, learning or history (fig. 35). However, if the 'Waverley standards' are satisfied (in other words the answer to at least one of criteria was positive), the licence application is referred to the Reviewing Committee on the Export of Works of Art for further judgement, which may either sustain ELC's opinion or decide otherwise and recommend granting an export licence.

**The Waverley Criteria:**

✓  Is the object so closely connected with our history and national life that its departure would be a misfortune?

✓  Is it of outstanding aesthetic importance?

✓  Is it of outstanding significance for the study of some particular branch of art, learning or history?
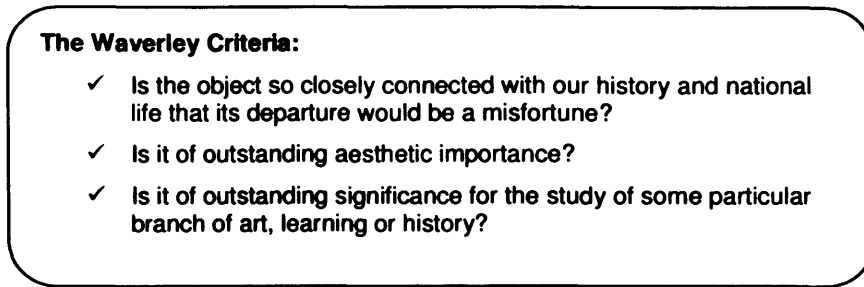
**Figure 35:** The 'Waverley criteria' used to assess cultural and historical importance of antiquities that are to be exported from the UK.

The fifty-year time limit has also been established as a key criterion for the procedure of licensing the export of non-UK origin antiquities. In this case, there are two main categories of cultural objects of a foreign provenance to be considered: antiquities that have been in the UK for more than 50 years, and artefacts imported to the UK within that time. If the value of an object falling within the first group exceeds the national threshold of £65,000, the licence application will also be a subject to the 'Waverley judgement' (fig. 36).
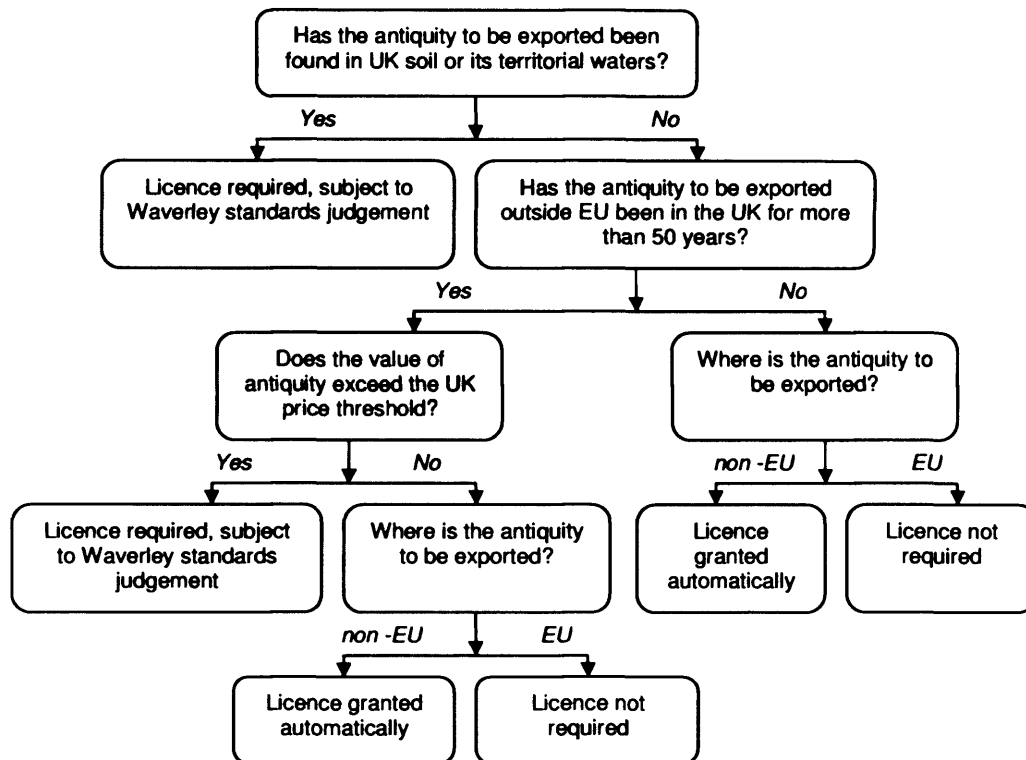
**Figure 36:** Chart illustrating requirements concerning exporting archaeological antiquities from the United Kingdom.

The export policy described above is often criticised, primarily as designed to protect national heritage and thus favouring antiquities that are of the UK origin or at least have been in the country for more than five decades. Consequently, requirements for objects of non-UK provenance are less strict and such material receives an export licence almost automatically. The effectiveness (or rather the ineffectiveness) of the system is another concern. According to a survey conducted by Neil Brodie (2002b), a large quantity of archaeological material (or even a majority of it) is exported from the UK without a licence and without any control. Brodie suggested that sometimes the failure to obtain a licence may result from unawareness rather than deliberate breach of law. However, he attributed the majority of cases to the intentional evasion of export regulations, permissiveness of UK policy, failure in verifying original documentation and

lack of necessary due diligence of dealers. Brodie was not the first or the only

archaeologist to point out weak points of the British system (see e.g. Gill and Chippindale

2002; Gaimster 2004). In the view of the increased threat to the cultural heritage posed by

looting and unsupervised trade in tainted artefacts, in 2000, the Culture, Media and Sport

Select Committee of the House of Commons (CMSC) and the Illicit Trade Advisory Panel

(ITAP) established by DCMS recommended an immediate accession to the 1970

UNESCO Convention and establishing a new criminal offence of dealing in tainted

cultural objects.[177] These suggestions resulted in ratification of the UNESCO treaty in

2002 and passing of the *Dealing in Cultural Objects (Offences) Act* in 2003.

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[177] ITAP advised against accession to the UNIDROIT Convention on the basis that it would be possible to claim stolen cultural property up to 50 years after the theft had occurred and the ratification of the treaty would require additional legislation thus delaying the implementation of new rules (Gaimster 2004).

## 10.5. Annex 5 – Antiquities on eBay

Looting and the illicit trade in archaeological finds are among most serious threats to the cultural heritage. In recent years, these problems have been aggravated by the popularization of on-line antiquities sale, making the Internet the biggest, practically unsupervised, marketplace for tainted artefacts. In order to explore how the development of technology changed the face of crime against the cultural property, I monitored eBay, the most popular auction portal, for eight consecutive weeks in 2007 looking for listings of European antiquities on British, German, Dutch, French, Italian, Spanish and American national sites. The amount of artefacts offered for sale was enormous. For example, a simple search on eBay.com returned on average almost 5000 listings of 'Roman antiquities' and nearly 2000 for 'medieval'. A more specific query for British archaeological artefacts resulted in smaller, but still impressive numbers, e.g.:

**Table 5:**   British archaeological artefacts sold on eBay.

| | 30.04.07 | | 07.05.07 | | 14.05.07 | | 21.05.07 | | 28.05.07 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | British | All | British | All | British | All | British | All | British | All |
| Prehistoric | 4 | 144 | 6 | 241 | 6 | 243 | 9 | 259 | 9 | 265 |
| Celtic | 64 | 151 | 59 | 430 | 62 | 461 | 68 | 539 | 65 | 543 |
| Roman | 136 | 1220 | 163 | 1538 | 175 | 4934 | 168 | 4888 | 159 | 4862 |
| Anglo-Saxon/ Saxon | 119 | 158 | 118 | 118 | 144 | 271 | 138 | 267 | 136 | 250 |
| Viking | 32 | 124 | 35 | 146 | 53 | 292 | 46 | 267 | 45 | 269 |
| Medieval | 326 | 1485 | 344 | 1353 | 431 | 1901 | 407 | 1925 | 400 | 1874 |

Surveillance of all auctions on every internet marketplace would be a heroic task, if at all feasible. To say the least, it would require a substantial amount of time and manpower. Therefore, instead of trying to achieve the impossible, I decided to focus only on one very specific category – 'Roman fibulae'. These artefacts have the advantage of being a fairly common find in many European countries and a very popular collectable item at the same time. Furthermore, 'fibula' is a universal word, which – in the original or

slightly modified form – occurs in the majority of European languages (e.g. German *Fibel*,

French *Fibule*), which significantly simplifies searching and comparing of results.

The number of auctions listed between 12 March and 01 May 2007 oscillated

between 615 (week 1) and 265 (week 3). Although these figures do not represent a total

number of artefacts offered for sale (some auctions have been opened for over 14 days

or/and included 'lots', 'hoards' and 'collections'), they still can be used to indicate the size

of the electronic market. The average price of a single fibula fluctuated between 24 and 40

GBP, with some items sold for as little as 99p and others reaching prices in four digit

numbers. In consequence, it is clear that even in the case of just one specific category of

archaeological artefacts, the value of on-line trade in unprovenanced antiquities is

measured in hundreds of thousands pounds a year (fig. 37).
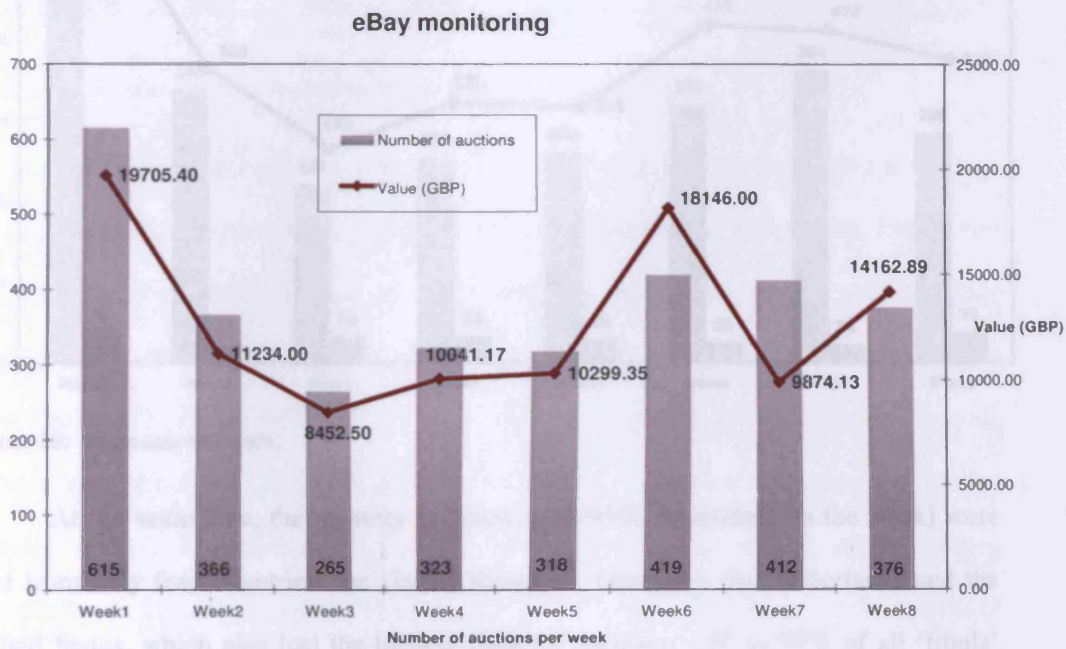


**Figure 37:** Number of auctions and value of 'Roman fibulae' listed on eBay between 12 March and 01 May 2007.

The majority of finds were unprovenanced as vendors avoid providing such

information to hide the fact that objects may have been looted and illicitly trafficked from

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their country of origin. In those few cases where provenance was given, most objects came from the Balkans or, generally, from Southern-Eastern Europe (fig. 38). However, even an approximate location (e.g. the Balkans, Southern/Eastern Europe) can be used to identify tainted antiquities – as almost all countries in this region have very restrictive heritage laws, prohibiting any unauthorised metal-detecting, excavating or exporting archaeological finds. Moreover, in many countries all archaeological objects *ex lege* belong to the state and cannot legally become an article of trade.
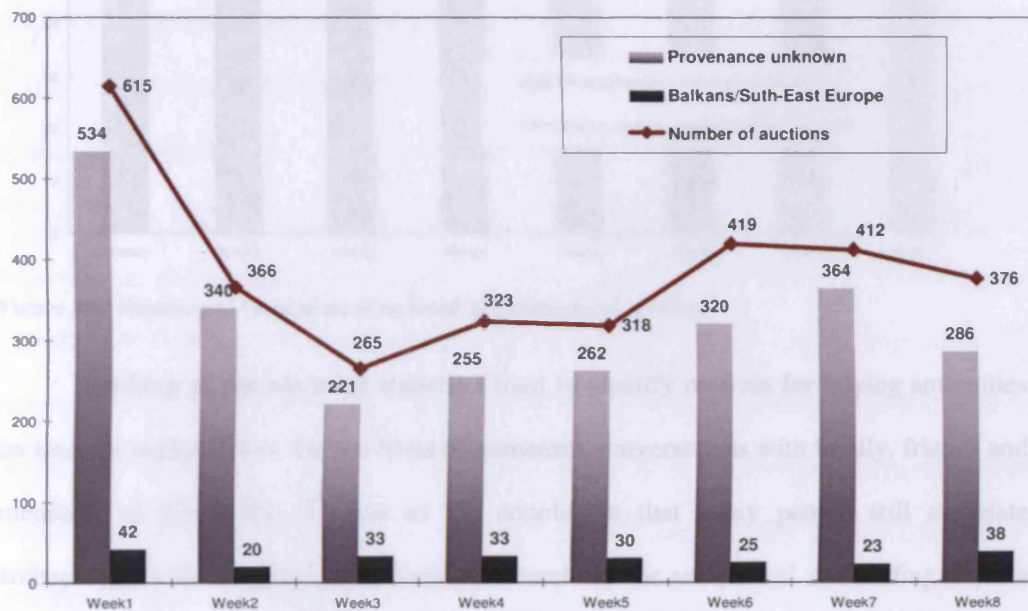


**Figure 38:** Provenance of finds.

At the same time, the majority of fibulae (70-95%, depending on the week) were sold from only four countries: the United Kingdom, Germany, the Netherlands and the United States, which also had the highest value of auctions – 80 to 97% of all 'fibula' listings. Notably, these are states with established 'traditional' antiquities markets. My research also demonstrated that the on-line trade is dominated by 'professional' vendors, who offer tens, hundreds or even thousands of archaeological finds on a daily basis. In the

period of 8 weeks such 'professional' dealers put on sale between 40% and 70% of all Roman fibulae with the total value of auctions oscillating between 75 and 95% of the market (fig. 39).
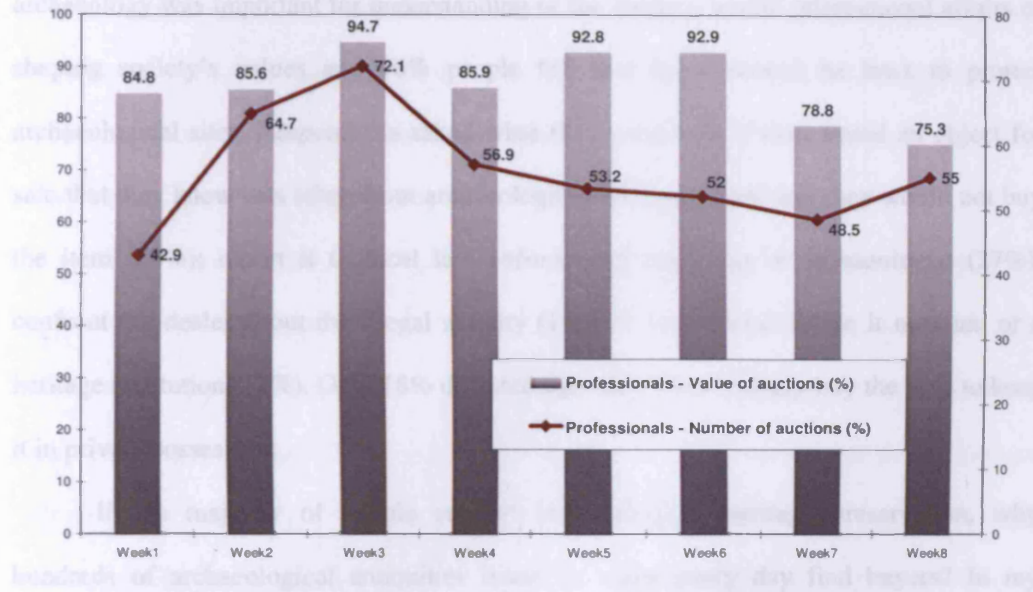


**Figure 39:** Number and value of auctions listed by 'professional' vendors.

Looking at this alarming statistic I tried to identify motives for buying antiquities on internet marketplaces. On the basis of numerous conversations with family, friends and members of the public, I came to the conclusion that many people still associate archaeology with 'digging', 'excavating', 'searching for antiquities' or 'finding objects from the past' and with well-known tourist attractions, such as the Colosseum, Pompeii, Stonehenge, Pyramids or Acropolis. Top-of-mind responses to questions about archaeologist include Heinrich Schliemann and Howard Carter and, unsurprisingly, Indiana Jones, Lara Croft and the *Time Team*. My observations correspond with results of Canadian and American surveys on public perceptions and attitudes about archaeology (Pokotylo and Guppy 1999; Ramos and Duganne 2000), which mentioned television, magazines and newspapers as primary sources of information and confirmed the deep

influence of the popular culture. I am convinced that if such research were to be conducted today, the Internet would take a major position as an information source.

Interestingly, according to Pokotylo and Guppy (1999), most respondents felt that archaeology was important for understanding of the modern world, international affairs or shaping society's values and 96% people felt that there should be laws to protect archaeological sites. Respondents asked what they would do if they found an object for sale that they knew was taken from archaeological site responded that they would not buy the item (36%); report it to local law enforcement authority or archaeologist (27%); confront the dealer about the illegal activity (1%); or buy it and donate it museum or a heritage institution (12%). Only 18% declared that they would simply buy the item to keep it in private possession.

If the majority of people support archaeological heritage preservation, why hundreds of archaeological antiquities listed on eBay every day find buyers? In my opinion, this is largely the influence of the Internet itself. Buying from an auction house, gallery or even a flea market usually requires *a prior* conscious decision 'I want to acquire an antique' and involves some effort of going to the shop or a market as well as a physical contact with the object itself. However, internet portals are not only tools for collectors looking for specific items but also inspire 'impulse purchase'. For example, many buyers can be redirected to e-shops from popular search engines like Google or Yahoo. Hence, looking for information about Roman legionnaire brooches they may end up acquiring one of them. Vendors encourage such 'chance' acquisitions by smart advertisements and catchphrases associating buying and owning artefacts with nostalgia, popular culture, adventure, treasure-hunt, etc.[178] In addition, the popular culture offers a much glamorised

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[178] Just to name a few catchphrases used by eBay sellers: *The ultimate treasure hunt! Take advantage of the chance to bid today for this unique item today, before it vanishes into history forever!; Own a piece of history!; Reminds of a statue in the Indiana Jones movie: Raiders of the Lost Ark!; Share the gift of history today!; Ideal gift for special occasions or simply a great item to your collection!; Uncleaned Ancient Roman*

version of the antiquities trade and promotes the image of archaeologists, looters and smugglers as audacious, intelligent and charismatic treasure-hunters. Looting and art thefts are frequently presented with the air of mystery and adventure (Kaiser 1991; Hall 2004). In my opinion, antiquities sold on the Internet become a part of a 'virtual reality' and therefore on-line dealing in illicit artefacts in the public perception is not seen as a criminal offence against the cultural property (in the same ways as sharing and downloading files is not a 'real' crime).

There are a few possible ways of decreasing the illicit trade in archaeological finds on the Internet. First approach involves enforcement of restrictive auction regulations and monitoring of the on-line market. Indeed, countries with very strict regulations on owning and trading archaeological finds (e.g. Italy and Poland) have much less (or almost no) listings. Such solution has been implemented in Poland, where the heritage service co-operates with the police art squad. According to the Polish heritage regulation all archaeological finds have to be reported to proper authorities and *ex lege* belong to the Polish State. Therefore, they cannot be legally merchandised. In consequence, the most popular Polish auction portal *Allegro.pl* added archaeological artefacts to its list of prohibited items. Additionally, according to the portal's rules, all suspicious listings are immediately removed by the administrator. Similarly, in case of the Italian eBay the majority of listings contained information that the artefact was of 'a foreign origin'.

However, this solution seems to be feasible only in case of countries where appropriate legal regulations restricting antiquities market are in place and can be enforced without too much difficulty. Although this does not mean that there is no looting or selling of archaeological finds, they are not as easily accessible to the public as they are in countries with more liberal cultural property laws. Additionally, in many cases

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*Coins straight from the digs of Europe!; To the collector of the Roman history! A beautiful fibula from Roman times, as can be seen only in museum!*

prosecuting the offence would be an unsolvable legal puzzle. What do we do with a case of an auction registered in the US, with the artefact looted from an unidentified Balkan country, located in London and sold to France? Which country would be entitled to take legal action? Hence, given the limited ability of official authorities to control the illicit trade in archaeological heritage on Internet, the line of defence must be laid somewhere else.

An alternative method would be implementing mechanisms of self-regulation based on the internet auctions' anti-fraud practice, such as building positive feedback or encouraging users to report suspected listings. However, this method depends on the good will of users and the management of on-line marketplaces. Most of the European internet auction portals already include archaeological finds in their lists of prohibited and restricted items and encourage all users to report unlawful listings. Portals usually warn users that illicit auctions will be removed and threat dishonest sellers with cancelling positive feedback, taking away the status of a 'PowerSeller' or even closing down the account. Such self-regulations seem to be beneficial for portal administrators, as they prevent the intervention of the authorities. Secondly, this should be favourable for legitimate dealers, as they would be more likely to get a higher price for antiquities with a well-documented provenance: as I said before, the average value of a 'fibula' auction was 24-40 GBP but in many cases finds were sold for as little as the equivalent of 50-99p. However, in the case of auctions of 'provenanced' brooches with documents confirming their legitimate origin the price was much higher, usually starting from 100 GBP, on average 250-350 GBP (depending on the state of preservation and rarity), with a few examples reaching 700-1400 GBP.

Unfortunately, in reality portals do not exercise their right (and obligation) to scrutinise dishonest sellers. Hence tainted artefacts are still a significant group of traded groups. Another weakness of this method is the fact that many vendors offering illicit

finds are not interested in building up a positive reputation. Their actions usually concentrate on selling as many objects as possible in a short period of time and quickly vanish in the cyberspace. They offer numerous finds at a low price and their profit comes mainly from the volume of sold objects and a large turnover. Recent studies from the UK also confirm that it is very easy to sell illicit finds to dealers and collectors who buy artefacts without checking their provenance (Bland 2005, p. 270) or knowingly accept illicit items. There are even suggestions that some dealers may be funding groups of 'nighthawks' or offer incentives, such as discounted equipment, to finders (OA 2009, p. 100).

Although I do not claim that all antiquities listed on internet marketplaces are illicit – there were few cases where dealers offered certificates of the legitimate provenance – the majority of auctions looked at least suspicious. Massive scale of sale, low prices, the fact that most vendors did not have a long user history and disappeared shortly after selling all items, the practice of not disclosing the country of origin or, on the contrary, advertising objects as coming directly from archaeological sites convinced me that most of objects covered by my research were tainted.

On-line dealers are aware that people learn about archaeology from popular media and many of them associate archaeology with searching for finds/ precious objects and they use this knowledge to encourage the public to acquire antiquities. Therefore, one way of tackling the illegal market would be using the same popular media to educate the public and raise the awareness of cultural property crime, especially in 'market countries' receiving most illicit artefacts, such as the UK, Germany, the US, the Netherlands or France. There should be more advice on buying antiquities on-line (such as guidance developed by the British Museum and eBay.co.uk, DCMS and the Portable Antiquities Scheme), e.g. displayed next to antiquities listings on internet auction portals.

In October 2006, the British Museum and eBay.co.uk launched a co-operation scheme aiming to educate eBay users – both sellers and buyers. The catalyst for the Memorandum of Understanding was passing of the *Dealing in Cultural Objects (Offences) Act 2003* (Bland 2008; OA 2009). According to the MoU, eBay agreed to implement a procedure to discourage the illegal trade of antiquities on the portal. Thus, the Museum monitors British eBay for tainted antiquities and notifies the police and the administrator of about suspicious listings and the portal removes illicit objects from the website. One of main objectives is to raise public awareness and to remind eBay users about their legal obligations, e.g. reporting of the Treasure Trove or applications for export licenses.

The British Museum and the Portable Antiquities Scheme are very careful in making comments on the effectiveness of the Memorandum but it seems that there has been a slight decrease in the number of unprovenanced antiquities listed on eBay.co.uk. Unfortunately, the Memorandum has a limited capacity. In practice eBay does not remove suspicious listings unless they are proved to be an unreported Treasure. Yet, it is very hard to provide evidence, especially with the minimum information given by vendors. Additionally, eBay imposed a restrictive policy on contacting sellers, which makes gathering evidence even harder. In case of discovering a potential tainted object the British Museum has to notify in writing the Metropolitan Police or relevant law enforcement authority. Only if the authority decides to investigate further the matter and sends a written notification to eBay, the portal is obliged to remove the listing within next 48 hours. Thus, the main problem lies in obtaining enough evidence to support the accusation that an offence has been committed. Secondly, some auctions are held for only 2-3 days and may end before the whole procedure is completed. Thirdly, this agreement applies chiefly to archaeological finds from the soil of England and Wales – potential unreported items of the Treasure Trove and only those listed on eBay.co.uk. eBay claims to be protecting portal users by assuming their good faith and limiting possibilities of contacting vendors

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(Lewis 2007). However, it is also protecting own interests, as the portal earns significant amount of money by charging sellers with commissions.

The British Museum MoU is a significant step forward but it will work most effectively in the case of users who are ignorant of legal obligations and restrictions related to the trade and export of archaeological artefacts. I would argue that most sellers are well-informed and they consciously choose to evade the law (Lewis 2007). This particularly applies to professionals – established dealers selling through their on-line shops, vendors listing hundreds of archaeological artefacts or metal-detectorists openly advertising their finds. It is hard to imagine that they willingly give up a profitable trade. Therefore, it is necessary to remove the notion of impunity. Incentives to self-regulate should be supported by the adoption of rules similar to those used against internet auction frauds (Huang Chua and Wareham 2002). On-line marketplaces ought to be forced to require more due diligence from vendors. For instance, a number of European countries (e.g. Germany, Switzerland and Austria) signed agreements with eBay restricting sale on national portals to antiquities from their own territories and with a legitimate provenance. At the same time, archaeologists should liaise more with portals, law enforcement authorities and courts to provide them with their expertise on the impact of looting, gathering evidence and potential ways of combating the problem.[179]

In response to the plague of metal-detecting and theft of archaeological artefacts in the late 1970s and 1980s many European countries decided to ban or at least restrict the use of detectors. This was, e.g., the case of the Republic of Ireland, where many important sites were targeted by treasure hunters (favourite locations included monastic sites and early medieval settlements on crannogs) and a number of important medieval artefacts

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[179] For example, according to the German eBay restrictions from 1st July 2008, selling archaeological artefacts is only possible if the trader can provide a certificate of provenance. A group of experts, in a 'close partnership' with eBay Germany, assesses the authenticity of such provenance statements issued with any archaeological object offered on eBay and has the right to cancel offers they fail the authenticity test. Listings of objects from a non-EU country require information on the name of the authority that issued the export licence (not just a customs certificate) and the authority's reference number for the artefact.

being illicitly excavated and offered to art dealers, museums and private collectors outside

Ireland. The legislation passed in 1994 rendered all archaeological finds the property of

the state and thus made metal-detecting without a licence illegal (Kelly 1994).[180] As

demonstrated in the Bulgarian case study, a ban on unlicensed excavations and an

obligation to report finds on their own do not necessarily lead to an improved protection of

sites. The Irish example suggests that one of major factors is the attitude of the local

population to their past and sense of communal ownership of the cultural heritage.

Changes to the law had been supported by the general public and reports confirm that in

many cases individuals (e.g. farmers) react to looting and are ready to involve the police

(OA 2009, p. 42).

In Britain, where the restrictive approach has not been implemented, the focus has

been placed on educating the public. The considerable success of various regional

initiatives and pilot schemes encouraging detectorists to adopt a more responsible

approach (e.g. to avoid scheduled monuments) and to report their finds resulted in

launching the Portable Antiquities Scheme (PAS) on a countrywide scale (in England and

Wales) in 1997. Over the years the PAS team, especially Finds Liaison Officers (FLOs),

has been working towards raising public awareness through the Scheme's website, TV and

popular publications, a range of outreach activities (e.g. the National Archaeology Week,

finds identification days) and developing good relationship with metal-detectorists

(attending clubs meetings, writing articles for the main metal-detecting magazines, etc.)

(Bland 2005; OA 2009). These efforts resulted in a substantial increase in the reporting of

Treasure items (from, on average, 26 cases per year between 1988 and 1996 to 520 and

596 in 2004 and 2005) and in building up an extensive finds database (approximately

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[180] Ireland was also one of first countries to sign the Valetta Convention. Accession to the convention was seen as an important step towards curtailing illicit excavations and trafficking of Irish antiquities (Kelly 1993).

50,000 artefacts reported in 2004-5) which is a valuable source of information on the historic environment in England and Wales.

Although the Scheme is a product of the unusually liberal framework adopted in England and Wales and would be difficult to establish in the majority of countries with stricter cultural heritage and strict control over metal detecting (Bland 2008), it is often considered to be the most practical solution to the problem of unlicensed, unsupervised metal-detecting (e.g. Kampmann 2006).

## 10.6. *Annex 6 – Heritage values*

In his paper on value and meaning in cultural resources, Lipe (1984) analysed ways in which different assumptions deriving from particular context of use influence criteria and processes of heritage assessment and result in preservation of certain categories of archaeological remains. He stated that value of 'cultural resources' is not embedded in objects themselves but constitutes a subjective phenomenon, learned about or discovered by humans, dependent on 'particular cultural, intellectual, historical, and psychological frames of reference held by the particular individuals or groups involved' (p. 2). Thus, material remains of the past are *only potential* cultural resources – their actual resource value to the society, groups and individuals is established within certain context provided by the economy, aesthetic standard, traditional and common knowledge and a formal research (see tab. 6).

Lipe's concept of associative/ symbolic value applicable to artefacts, buildings and sites or even whole landscapes assumes that the 'perishable cultural information' is in a way preserved by embedding it in durable material objects inherited from past generations and secured for the future ones. Therefore, archaeological heritage is very often used as icons of ideologies: for example, both Nazi and Communist regimes exploited archaeology for political reasons providing the 'evidence' to manipulate history. For these reasons, archaeological heritage can pay the highest price as the symbol of unwanted or uncomfortable past, religion, identity or ideology as proven by recent events during the Balkan War and the destruction of Buddha statues in Afghanistan by the Taliban (see Chapter 8).

Lipe also observed that various values associated with heritage interact and, in many cases, clash – e.g. the utilitarian solution to preserve and adapt a building may damage informational or aesthetic aspects; the economic force of cultural tourism can

contribute to the degradation of cultural places, etc., while the destruction of the original fabric and its context obliterates material remains of the past and decreases research possibilities. However, in the case of a conflict, informational values of archaeological material (emerging primarily from research) are the most likely to be sacrificed in favour of 'cost-benefit' decisions: hence, the argument that the *in situ* preservation is the most preferable option.

**Table 6:** Heritage values according to W. D. Lipe (1984).

| 1) | Associative/ symbolic value | Cultural resources serve as 'tangible links to the past from which they have survived' (Lipe 1984, p. 4) – authenticity, contact with the past, resources used to commemorate and symbolise the past. Value of 'cultural resources' (artefacts, deposits, structures) is shaped by the research and knowledge. There is also a difference between research (scholars') perspective and that based on popular culture, and common or traditional knowledge. |
|---|---|---|
| 2) | Informative value | Emerges primarily from formal research |
| 3) | Aesthetic value | Promoted by art dealers (as e.g. 'beauty' of artefacts), in many cases takes disproportionately precedence before informative and/ or associative value. |
| 4) | Economic value | Other cultural resources values (utilitarian, informative and associative) can be translated into economic value (Lipe 1984, p. 8). |

While Lipe concluded his discussion stating that ultimately all cultural resources values can be translated into economic value (1984, p. 8), Darvill focused on 'sociological' aspects. In his opinion, values result from knowledge and understanding and 'a search for what is relevant and acceptable'. The perception of 'value' is based on the attitude to archaeological remains (an object of the valuation process) and the associated set of interests. Archaeologists, experts in their field, influence – or even generate – values associated with cultural resources and contribute to the better understanding of heritage

issues. Professional expertise is therefore in the centre of the process of value formation (Darvill 1995). As a result, judgement applied to archaeological material are 'archaeological values' because they originate from the expert knowledge of what is 'archaeological'. Looking at the theory and practice of British archaeology he identified three main value systems (or 'value gradients') used by the present-day western society: 'use value', 'option value' and 'existence value' (Darvill 1994; see tab. 7).

The two main categories, which co-exist and compete against each other are 'use values' and 'non-use values' because the Western system is based on consumption, *i.e.*, derives from the fact that society perceives archaeological remains, structures, artefacts and their relationships as a *resource* – something of a potential use. Things from the past are given a new temporal context and a set of meanings by the present-day society: *'the focus of this value set is the evident nature of the resource as something which can be exploited to develop some kind of tangible return'* (Darvill 1994, p. 56).

The exploitation of heritage does not have to be destructive or imply solely monetary gain. For example, archaeological material can be an inspiration for artists or can be used as an agent of social solidarity and integration. Non-use values gradients include 'option' and 'existence'. Option value stresses the aspect of 'production' rather than consumption (Darvill 1995, p. 46) and gives priority to the protection of resources for the future. The aim of such formulated value is to fulfil the duty of preserving archaeological remains for the posterity so that next generations will be able to use the 'resource' in the future if they choose to do so (p. 58). It implies 'stability' (conservation and tradition; elements of the past cherished not only for their 'ancient' origin but also celebrated for what they might be in the future) and 'mystery and enigma' (provoking gap in knowledge, the unknown may have its own importance).

Existence value is based not on the desire to use the resource (in the presence or in the future) but on the well-being, contentment and satisfaction of people knowing that the

archaeological remains survive and continue to exist. Darvill compares this value system

to the conservation of the environment and wild life (1994, p. 59). Assuring the existence

of the resource is associated with cultural identity (identity established and reinforced by

referring to the past) and derives from the resistance to change (fear of losing the

knowledge and endangered remains of the past – resulting from the realisation that times

change and remains of the past are being destroyed or forgotten).

Use and non-use value systems are not exclusive: depending on the temporal and

special context, they may be simultaneously applied to understanding and management of

archaeological resources or will collide. One of the examples given by Darvill is the

question of *in situ* preservation (Darvill 1994, pp. 61-2). In his interpretation, use values

are positive, knowledge-driven, and active whereas non-use values are negative,

conservative and passive. Darvill points out that although the modern heritage legislation

is based on the doctrine of 'protectionism' or 'preservationism' favouring option and

existence values (1994, p. 60) the *in situ* perseveration is a common source of conflicts,

with developers often arguing that landscapes cannot be 'fossilised' and archaeology

should give way to present needs. Secondly, while the conservation theory advises

excavation of threatened sites but refraining from interventions for purely scientific

reasons, such an attitude is often criticised as 'anti-intellectual' holding back research and

knowledge of the past (Darvill 1994, p. 61).

**Table 7:** Heritage values according to T. Darvill (1994 and 1995).

| Use value | Option value | Existence value |
|---|---|---|
| Set of values based on consumption (Darvill 1995, p. 43) | Set of values based on preservation of the resource for the future generations | Satisfaction from the existence of the resource (the 'feelgood' factor) |
| 1) Archaeological research<br>2) Scientific research<br>3) Creative arts<br>4) Education<br>5) Recreation and tourism<br>6) Symbolic representation<br>7) Legitimation of action<br>8) Social solidarity and integration<br>9) Monetary and economic gain | 1) Stability<br>2) Mystery and enigma | 1) Cultural identity<br>2) Resistance to change |

Martin Carver (1996) disagreed with abovementioned interpretations of the archaeological value. In his opinion, all archaeological values derive from results of research. He criticised Lipe and Darvill for failing to explain how archaeological values compete with each other and against other values. Instead, he based his analysis on the use of values related to land and its evaluation and suggested that the fate of archaeological sites in modern Europe depends on the outcome of a social debate between developers, planners, taxpayers and academics, and relies on the 'predictive value that each party can put on a piece' (1996, p. 45).

According to Carver, there are three types of values applicable to archaeology (see tab. 8). Market values (e.g. commercial, residential) are generally based on the potential profit gained from the exploitation of land as an economic resource. Community values (measured in votes) are intended as beneficial for the society (e.g. amenity, equality and diversity). They are variable and depend on local situation as the definition of the 'public good' is changed by the community itself. Finally, human values are based on the general

morality. They are linked to the environmental conservation and the assumption that archaeological resource is vulnerable, finite and non-renewable. Carver promotes the research value of unknown and un-assessed archaeological resources presenting archaeological sites as an intellectual concept. However, he argues that archaeological deposits, sites and monuments are invented by humans and therefore analogies to environment conservation and natural resources are useful but limited. 'Simply constructing a value system for archaeology as though it was kind of an environmental asset is a mistake: archaeology cannot deliver the natural, non-human benefits that are the reward for environmental protection' (Carver 1996, p. 48).

**Table 8:** Heritage values according to M. Carver (1996).

| Market values | Community values | Human values |
|---|---|---|
| 1) Capital/ estate value | 1) Amenity value (provides something to be shared by the community) | 1) Environmental value |
| 2) Production value (including agricultural, mineral extraction, etc.) | 2) Political value (a vote winner) | 2) Archaeological value |
| 3) Commercial value | 3) Minority/ disadvantaged/ descendant value (wins the support of disaffected) | |
| 4) Residential value | 4) Local style value (wins the support of the elders) | |

Another voice in the 'value discussion' belongs to John Carman (1996). In his opinion, there are only three values applicable to archaeological heritage: 'money value', 'amenity and use value', and a 'research value', which exist in opposition to each other. Monetary value manifests itself e.g. in the case of export regulations, where various thresholds are used to determine whether artefacts can be exported (or under what conditions). Amenity and use values (related to the 'use now') – e.g. associated with objects on museum display or preserved historic buildings – enhance human existence.

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Scientific value of a heritage resource (a 'future use') is defined by its availability for research. According to Carman, only the law 'mediates' between conflicting interests and places heritage items on the appropriate gradient (1996, p. 114). He goes even further claiming that out of these three values only two are appropriate for legal regulations and that the money value – as an economic category – 'lies outside the heritage law' (Carman 1996, p. 150).

According to Carman, archaeological heritage is fitted into the legal framework and system of values. 'The manner in which laws operate upon archaeological material is a threefold sequence: a selection of coverage; (re)categorisation in terms of the law, including allocation to an appropriate legally-empowered agency; and finally the ascription of a particular kind of value relevant to its particular use' (Carman 2005, pp. 60-1). Carman also argues that using ideas about property and ownership taken from areas external to archaeology (e.g. law and economics) limits our perception. For instance, whilst the value of archaeological artefacts can be defined by their market price, which, like other commercial goods, are given a measurable monetary value, they are not ordinary commodities but works of art, 'remains of the past', 'pieces of history', and elements of cultural heritage. Price of antiquities, their financial value, is much more than a cost of material and labour. It also represents non-monetary ('social') values: artistic, historic, symbolic, etc. (Carman 2005a, p. 73).

## 10.7. *Annex 7 – Definitions and values enshrined in international cultural heritage conventions and charters*

| Cultural Property | Definition | Values |
|---|---|---|
| Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (UNESCO, 1964) | 1. For the purpose of this recommendation, the term 'cultural property' means movable and immovable property of great importance to the cultural heritage of a country, such as works of art and architecture, manuscripts, books and other property of artistic, historical or archaeological interest, ethnological documents, type specimens of flora and fauna, scientific collections and important collections of books and archives, including musical archives.<br><br>2. Each Member State should adopt whatever criteria it deems most suitable for defining which items of cultural property within its territory should receive the protection envisaged in this recommendation by reason of their great importance | **Considering** that it is incumbent upon every State to protect the cultural property existing within its territory and which constitutes its national heritage against the dangers resulting from illicit export, import and transfer of ownership,<br><br>**Considering** that, to avert these dangers, it is essential for every Member State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,<br><br>**Considering** that the objectives in view cannot be achieved without close collaboration among Member States,<br><br>**Convinced** that steps should be taken to encourage the adoption of appropriate measures and to improve the climate of international solidarity without which the objectives in view would not be attained, |
| Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private works (UNESCO 1968) | 1. For the purpose of this recommendation, the term 'cultural property' applies to:<br><br>(a) Immovables, such as archaeological and historic or scientific sites, structures or other features of historic, scientific, artistic or architectural value, whether religious or secular, including -groups of traditional structures, historic quarters in urban or rural built-up areas and the ethnological structures of previous cultures still extant in valid form. It applies to such immovables constituting ruins existing above the earth as well as to archaeological or historic remains found within the earth. The term cultural property also includes the setting of such property;<br><br>(b) Movable property of cultural importance including that existing in or recovered from immovable property and that concealed in the earth, which -may be found' in archaeological or historical sites    or    elsewhere. | **Considering** that contemporary civilization and its future evolution rest upon, among other elements, the cultural traditions of the peoples of the world, their creative force and their social and economic development,<br><br>**Considering** that cultural property is the product and witness of the different traditions and of the spiritual achievements of the past and thus is an essential element in the personality of the peoples of the world,<br><br>**Considering** that it is indispensable to preserve it as much as possible, according to its historical and artistic importance, so that the significance and message of cultural property become a part of the spirit of peoples who thereby may gain consciousness of their own dignity,<br><br>**Considering** that preserving cultural property and rendering it accessible constitute, in the spirit of the Declaration of the Principles of International Cultural Co-operation adopted on 4 November 1966 in the course of its fourteenth session, means of encouraging mutual understanding among peoples and thereby serve the cause of peace,<br><br>**Considering** also that the well-being of all peoples depends, inter alia, upon the existence of a favourable and stimulating environment and that the preservation of cultural property of all periods of history contributes directly to such an environment, |

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| | 2. The term 'cultural property' includes not only the established and scheduled architectural, archaeological and historic sites and structure, but also the unscheduled or unclassified vestiges of the past as well as artistically or historically important recent sites and structures. | **Recognizing,** on the other hand, the role that industrialization, towards which world civilization is moving, plays in the development of peoples and their spiritual and national fulfilment, |
| | | **Considering,** however, that the prehistoric, protohistoric and historic monuments and remains, as well as numerous recent structures having artistic, historic or scientific importance are increasingly threatened by public and private works resulting from industrial development and urbanization. |
| | | **Considering** that it is the duty of governments to ensure the protection and the preservation of the cultural heritage of mankind, as much as to promote social and economic development, |
| | | **Considering** in consequence that it is urgent to harmonize the preservation of the cultural heritage with the changes which follow from social and economic development, making serious efforts to meet both requirements in a broad spirit of understanding, and with reference to appropriate planning, |
| | | **Considering** equally that adequate preservation and accessibility of cultural property constitute a major contribution to the social and economic development of countries and regions which possess such treasures of mankind by means of promoting national and international tourism, |
| | | **Considering** finally that the surest guarantee for the preservation of cultural property rests in the respect and the attachment felt for it by the people themselves, and persuaded that such feelings may be greatly strengthened by adequate measures carried out by Member States. |
| Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970) | 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: [...]<br><br>(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;<br><br>(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;<br><br>(d) elements of artistic or historical monuments or archaeological sites which have been dismembered [...] | **Considering** that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding is origin, history and traditional setting,<br><br>**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,<br><br>**Considering** that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,<br><br>**Considering** that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,<br><br>**Considering** that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of UNESCO's mission to promote by recommending to interested States, international conventions to this end,<br><br>**Considering** that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation, |

| Cultural Objects | Definition | Values |
|---|---|---|
| UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) | For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention:<br><br>(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;<br><br>(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 artists and to events of national importance;<br><br>(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;<br><br>(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;<br><br>(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; | CONVINCED of the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation,<br><br>DEEPLY CONCERNED by the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information,<br><br>DETERMINED to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all,<br><br>EMPHASISING that this Convention is intended to facilitate the restitution and return of cultural objects, and that the provision of any remedies, such as compensation, needed to effect restitution and return in some States, does not imply that such remedies should be adopted in other States, |

| Cultural Heritage | Definition | Values |
|---|---|---|
| Convention concerning the Protection of the World Cultural and Natural Heritage (UNESCO, 1972) | For the purposes of this Convention, the following shall be considered as 'cultural heritage':<br><br>monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;<br><br>groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of | Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction.<br><br>Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,<br><br>Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,<br><br>Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and |

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| | outstanding universal value from the point of view of history, art or science ;<br><br>sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view. | recommending to the nations concerned the necessary international conventions.<br><br>**Considering** that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,<br><br>**Considering** that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,<br><br>**Considering** that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto, |
| Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (UNESCO, 1972) | For the purposes of this Recommendation, the following shall be considered as `cultural heritage':<br><br>monuments: architectural works, works of monumental sculpture and painting, including cave dwellings and inscriptions, and elements, groups of elements or structures of special value from the point of view of archaeology, history, art or science;<br><br>groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of special value from the point of view of history, art or science;<br><br>sites: topographical areas, the combined works of man and of nature, which are of special value by reason of their beauty or their interest from the archaeological, historical, ethnological or anthropological points of view. | **Considering** that such integration into social and economic life must be one of the fundamental aspects of regional development and national planning at every level,<br><br>**Considering** that particularly serious dangers engendered by new phenomena peculiar to our times are threatening the cultural and natural heritage, which constitute an essential feature of mankind's heritage and a source of enrichment and harmonious development for present and future civilization,<br><br>**Considering** that each item of the cultural and natural heritage is unique and . that the disappearance of any one item constitutes a definite loss and an irreversible impoverishment of that heritage.<br><br>**Considering** that every country in whose territory there are components of the cultural and natural heritage has an obligation to safeguard this part of mankind's heritage and to ensure that it is handed down to future generations,<br><br>**Considering** that the study, knowledge and protection of the cultural and natural heritage in the various countries of the world are conducive to mutual understanding among the peoples,<br><br>**Considering** that the cultural and natural heritage forms an harmonious whole, the components of which are indissociable, |
| UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (2003) | | **Recalling** the tragic destruction of the Buddhas of Bamiyan that affected the international community as a whole,<br><br>**Expressing** serious concern about the growing number of acts of intentional destruction of cultural heritage,<br><br>**Referring** to Article I(2)(c) of the Constitution of UNESCO that entrusts UNESCO with the task of maintaining, increasing and diffusing knowledge by "assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and |

| | | recommending to the nations concerned the necessary international conventions", |
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| | | **Recalling** the principles of all UNESCO's conventions, recommendations, declarations and charters for the protection of cultural heritage, |
| | | **Mindful** that cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights, |
| | | **Reiterating** one of the fundamental principles of the Preamble of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict providing that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world". |
| Council of Europe Framework Convention on the Value of Cultural Heritage for Society (2005) | **Article 2 – Definitions**<br><br>a  cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time;<br><br>b  a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations.<br><br>**Article 3 – The common heritage of Europe**<br><br>The Parties agree to promote an understanding of the common heritage of Europe, which consists of:<br><br>a  all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity, and<br><br>b  the ideals, principles and values, derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law. | Considering that one of the aims of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and fostering the ideals and principles, founded upon respect for human rights, democracy and the rule of law, which are their common heritage;<br><br>Recognising the need to put people and human values at the centre of an enlarged and cross-disciplinary concept of cultural heritage;<br><br>Emphasising the value and potential of cultural heritage wisely used as a resource for sustainable development and quality of life in a constantly evolving society;<br><br>Recognising that every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966);<br><br>Convinced of the need to involve everyone in society in the ongoing process of defining and managing cultural heritage;<br><br>Convinced of the soundness of the principle of heritage policies and educational initiatives which treat all cultural heritages equitably and so promote dialogue among cultures and religions;<br><br>Convinced of the importance of creating a pan-European framework for co-operation in the dynamic process of putting these principles into effect;<br><br>The Parties to this Convention agree to:<br><br>a  recognise that rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights;<br><br>b  recognise individual and collective responsibility towards cultural heritage;<br><br>c  emphasise that the conservation of cultural heritage and its sustainable use have human |

| | | development and quality of life as their goal; |
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| | | d take the necessary steps to apply the provisions of this Convention concerning:<br><br>— the role of cultural heritage in the construction of a peaceful and democratic society, and in the processes of sustainable development and the promotion of cultural diversity;<br><br>— greater synergy of competencies among all the public, institutional and private actors concerned. |

| Archaeological Heritage | Definition | Values |
|---|---|---|
| European Convention on the Protection of the Archaeological Heritage (Council of Europe, London, 1969) | For the purposes of this Convention, all remains and objects, or any other traces of human existence, which bear witness to epochs and civilisations for which excavations or discoveries are the main source or one of the main sources of scientific information, shall be considered as archaeological objects | Recognising that while the moral responsibility for protecting the European archaeological heritage, the earliest source of European history, which is seriously threatened with destruction, rests in the first instance with the State directly concerned, it is also the concern of European States jointly;<br><br>Considering that the first step towards protecting this heritage should be to apply the most stringent scientific methods to archaeological research or discoveries, in order to preserve their full historical significance and render impossible the irremediable loss of scientific information that may result from illicit excavation;<br><br>Considering that the scientific protection thus guaranteed to archaeological objects:<br><br>a would be in the interests, in particular, of public collections, and<br><br>b would promote a much-needed reform of the market in archaeological finds;<br><br>Considering that it is necessary to forbid clandestine excavations and to set up a scientific control of archaeological objects as well as to seek through education to give to archaeological excavations their full scientific significance, |
| European Convention on the Protection of the Archaeological Heritage (Valetta, 16.I.1992) | 1. The aim of this (revised) Convention is to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study.<br><br>2. To this end shall be considered to be elements of the archaeological heritage all remains and objects and any other traces of mankind from past epochs:<br><br>   i. the preservation and study of which help to retrace the history of mankind and its relation with the natural environment; | Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose, in particular, of safeguarding and realising the ideals and principles which are their common heritage;<br><br>Recalling that the archaeological heritage is essential to a knowledge of the history of mankind;<br><br>Acknowledging that the European archaeological heritage, which provides evidence of ancient history, is seriously threatened with deterioration because of the increasing number of major planning schemes, natural risks, clandestine or unscientific excavations and insufficient public awareness |

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|  | ii. for which excavations or discoveries and other methods of research into mankind and the related environment are the main sources of information; and<br><br>iii. which are located in any area within the jurisdiction of the Parties.<br><br>3. The archaeological heritage shall include structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water. |  |
| Recommendation of the Committee of Ministers to Member States Concerning the Protection and Enhancement of the Archaeological Heritage in the Context of Town and Country Planning Operations (1989) |  | Stressing that the protection and enhancement of the archaeological heritage are an important factor in cultural and economic development and in the growth of tourism |
| Charter for the Protection and Management of the Archaeological Heritage (ICOMOS, 1990) | The "archaeological heritage" is that part of the material heritage in respect of which archaeological methods provide primary information. It comprises all vestiges of human existence and consists of places relating to all manifestations of human activity, abandoned structures, and remains of all kinds (including subterranean and underwater sites), together with all the portable cultural material associated with them. | It is widely recognized that a knowledge and understanding of the origins and development of human societies is of fundamental importance to humanity in identifying its cultural and social roots.<br><br>The archaeological heritage constitutes the basic record of past human activities. Its protection and proper management is therefore essential to enable archaeologists and other scholars to study and interpret it on behalf of and for the benefit of present and future generations |

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## 10.8. *Annex 8 – Archaeological heritage management – key texts*

### Archaeological heritage

**Council of Europe**

- European Convention on the Protection of the Archaeological Heritage (Valetta Convention) (London, 6 May 1969).

- Recommendation No. R (89) 5 of the Committee of Ministers to member states concerning the protection and enhancement of the archaeological heritage in the context of town and country planning operations (adopted by the Committee of Ministers on 13 April 1989).

- European Convention on the Protection of the Archaeological Heritage (revised) (Malta, 16 January 1992).

- Recommendation No. R (95) 9 of the Committee of Ministers on the integrated conservation of cultural landscape areas as part of landscape policies (adopted by the Committee of Ministers on 11 September 1995).

- Recommendation No. R (96) 6 of the Committee of Ministers on the protection of the cultural heritage against unlawful acts (adopted by the Committee of Ministers on 19 June 1996).

- Recommendation No. R (97) 2 of the Committee of Ministers on sustained care of the cultural heritage against physical deterioration due to pollution and other similar factors (adopted by the Committee of Ministers on 4 February 1997).

- Charter on the use of ancient places of performance (Verona Charter) (adopted at the International Colloquy held in Verona, Italy, August 1997).

- Recommendation No. R (98) 5 of the Committee of Ministers concerning heritage education (adopted by the Committee of Ministers on 17 March 1998).

- European code of good practice: Archaeology and the Urban Project (adopted by the Cultural Heritage Committee in 2000).

**ICOMOS**

- Charter for the Protection and Management of the Archaeological Heritage (1990)

**UNESCO**

- Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private works (Paris, 19 November 1968).

- Recommendation on International Principles Applicable to Archaeological Excavations (New Delhi, 5 December 1956).

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## Architectural heritage

### Council of Europe

- Convention for the Protection of the Architectural Heritage of Europe (Granada, 3 October 1985).

### ICOMOS

- International Charter for the Conservation and Restoration of Monuments and Sites (Venice, 1964).

## Movable heritage

### Council of Europe

- European Convention on Offences Relating to Cultural Property (Delphi, 23 June 1985).

- Recommendation No. R (96) 6 of the Committee of Ministers on the protection of the cultural heritage against unlawful acts (adopted by the Committee of Ministers on 19 June 1996).

- Recommendation No. R (98) 4 on measures to promote the integrated conservation of historic complexes composed of immoveable and moveable property (adopted by the Committee of Ministers on 17 March 1998).

- Recommendation 1372 on the Unidroit Convention on stolen or illegally exported cultural property (adopted by the Parliamentary Assembly on 26 May 1998).

### UNESCO

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970).

- Recommendation for the Protection of Movable Cultural Property (Paris, 28 November 1978).

### Others

- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995).

- EEC: Council Regulation No 3911/92 of 9 December 1992 on the export of cultural goods.

- EEC: Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

## Underwater heritage

### ICOMOS

- Charter on the Protection and Management of Underwater Cultural Heritage (Sofia, 9 October 1996).

### UNESCO

- Convention on the Protection of the Underwater Cultural Heritage (Paris, 2 November 2001).

### UN

- Convention on the Law of the Sea (Montego Bay, 10 December 1982).

### Others

- IMO: The International Convention on Salvage (London, 28 April 1989).

## Cultural environment and sustainable development

### Council of Europe

- European Landscape Convention (Florence, 20 October 2000).
- Recommendation No. R (95) 9 of the Committee of Ministers on the integrated conservation of cultural landscape areas as part of landscape policies (adopted by the Committee of Ministers on 11 September 1995).
- European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid, 21 May 1980).
- Guiding Principles for Sustainable Spatial Development of the European Continent (30 January 2002).
- Recommendation R. (2002) 1 of the Committee of Ministers on the Guiding Principles for Sustainable Spatial Development of the European Continent (adopted on 30 January 2002).
- Recommendation No. R (2003) 1 of the Committee of Ministers to member states on the promotion of tourism to foster the cultural heritage as a factor for sustainable development (adopted by the Committee of Ministers on 15 January 2003).

### UNESCO

- Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972).
- Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (Paris, 16 November 1972).
- Recommendation No. R (97) 2 of the committee of ministers on sustained care of the

cultural heritage against physical deterioration due to pollution and other similar factors (adopted by the Committee of Ministers on 4 February 1997).

**Others**

- UNECE: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998).

- EEC: Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

- UNCED: Convention on Biological Diversity (Rio de Janeiro, 5 June 1992).

## Intangible heritage

**Council of Europe**

- European Cultural Convention (Paris, 19 December 1954).

- The Fifth European Conference of Ministers responsible for the Cultural Heritage (Portorož, 6-7 April 2001).

**UNESCO**

- Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 17 October 2003).

## Cultural heritage and cultural rights

**Council of Europe**

- Council of Europe Framework Convention on the Value ofUltural Heritage for Society (Faro, 27 October 2005).

## 10.9. Annex 9 – Limits of a 'national monument' definition

In the case of Carrickmines Castle, in a number of court cases the judges had to address the question of defining 'national monument' and 'national importance'. When the first legal challenge (*Dunne v. Dún Laoghaire/Rathdown Co. Council*, 2003)[181] was brought before the Supreme Court, the local authority denied that the Carrickmines Castle remains were a national monument. In the next trial (*Mulcreevy v. the Minister for the Environment*, 2004),[182] it was no longer in dispute (the site was declared a national monument). The Supreme Court had to address this issue once again in the final legal case (*Dunne v. the Minister for the Environment*, 2006),[183] as the County Council and the Minister for the Environment argued that only *certain remains* of the site constituted a national monument. In this case, the campaigners sought to have the 2004 amendment to the *National Monuments Act* overturned as unconstitutional and the directions issued by the Minister declared to be void. However, before making any judgment, the court had to decide whether the new legal regime applied at all to the Carrickmines Castle, *i.e.*, whether the site was indeed a 'national monument'. The *1930 National Monuments Act*, defines national monument as

> a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic, or archaeological interest attaching thereto and also includes (but not so as to limit, extend or otherwise influence the construction of the foregoing general definition) every monument in Saorstát Eireann to which the Ancient Monuments Protection Act, 1882, applied immediately before the passing of this Act, and the said expression shall be construed as including, in addition to the monument itself, the site of the monument and the means of access thereto and also such portion of land

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[181] *Dunne & anor v. Dún Laoghaire/Rathdown County Council*, delivered by the Supreme Court on 24 February 2003.
[182] *Mulcreevy v. the Minister for the Environment, Heritage and Local Government & anor*, delivered by the Supreme Court on 27 January 2004.
[183] *Dunne v. the Minister for the Environment, Heritage and Local Government, Ireland, the Attorney General and Dún Laoghaire-Rathdown County Council*, judgment of the Supreme Court delivered on the 25th of July 2006.

adjoining such site as may be required to fence, cover in, or otherwise preserve from injury the monument or to preserve the amenities thereof.

This definition has not changed since the passing the first heritage regulation in the Republic of Ireland in 1930. It is very general and therefore allows a great freedom in interpretation. From the legal point of view, this may be both an advantage and a weakness. Therefore, for example, in the *Mulcreevy v. the Minister for the Environment* case arguments presented by both parties relied heavily on expert evidence. The campaigners presented an opinion which asserted in strong terms that the archaeological remains of the Carrickmines Castle site were 'a national monument'. The document stated, *inter alia*, that the fosse of the castle and the other parts of the defensive structure alone would constitute a national monument within the meaning of the national monuments legislation – as this structure was unique for Ireland and was unknown in Britain or continental Europe. The expert representing the Minister for the Environment and other defendants did not address the main question at all,[184] presumably being unable to present counter-evidence. Consequently, the court ruled that even though there was 'a scope for differences of opinion as to whether the preservation of any particular monument is a matter of national importance', based on the 'strongly expressed and closely argued conclusion' of heritage experts, Carrickmines Castle remains constituted a national monument.[185]

In the case of Woodstown, the problem laid in establishing the extent of the Viking site which, according to archaeologists, exceeded the area of the declared protection zone of the designated national monument (Woodstown Working Group 2008). Aerial photographs and field surveys suggested that the site may have been much larger than originally thought and, despite alterations to the proposed Waterford bypass, would still be

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[184] Dr. Sean Duffy for the plaintiff and Valerie J. Keely on behalf of the defendant, *Dunne & anor v. Dún Laoghaire/Rathdown County Council*, judgment of the Supreme Court delivered on 24th of February 2003.

[185] *Dunne & anor v. Dún Laoghaire/Rathdown County Council*, judgment of the Supreme Court delivered on 24th of February 2003.

threatened by the road development (Downham 2004; Etchingham 2004). Decisions of the Minister for the Environment were challenged by a Waterford-based solicitor complaining about the 'gross incompetence, lack of communication and manipulative dishonesty on the part of elements of the various State authorities involved'. Mr Halley, who owns some farmland in the area of the discovery, was convinced that archaeological remains of the Viking longphort extend to his property and was determined to secure the preservation of the 'enlarged' Woodstown monument. Having received a compulsory purchase order (CPO) for the land, he sought to have it overturned, arguing that since precise boundaries of the archaeological remains were not known, it was not possible to assess the impact of the proposed road on the site nor to 'secure, protect and preserve' it from construction-related threats. Therefore, he refused to grant Waterford Co. Council consent to enter his property in order to carry out an archaeological investigation in advance of the N25 scheme. Instead, he made a successful application for a licence to undertake geophysical investigations at his own expense with an intention to use its results in a future legal challenge against the Department for the Environment.[186] In the meantime, heritage experts (including representatives of the National Museum) accused the Department of the Environment of blocking the discussion on the real extent of the Woodstown site, and presenting an 'unacceptably limited approach' in trying to impose 'artificial boundaries' on archaeological landscape (McDonald 2006c).

Following the non-completion of the CPO process due to the re-routing of the proposed N25 Waterford City By-Pass, the ownership of the site reverted back to Mr Halley. The Woodstown site has been declared a monument of national importance but is not currently (2009) recorded in the Register of Historic Monuments and therefore is awarded only limited legal protection.

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[186] *Interim Report and Preliminary Recommendations of the Woodstown Working Group to the Minister for the Environment*, May 2006.

## 10.10. *Annex 10 – A rocky road to Dublin: controversies around the selection of the M3 motorway route*

Preparing plans for the section of the M3 motorway in the environs of the Hill of Tara the National Roads Authority (NRA) had considered a number of possibilities (figures 40 and 41). The first option – widening of the existing N3 route – was soon rejected because the road was lined with too many houses, business premises and access roads which could not be linked to a motorway. Existing buildings and almost all trees would have had to be removed and the N3 itself would have had to be completely reconstructed. Moreover, there would have to be an alternative route to serve traffic prohibited from or not wishing to use a motorway. This, according to the NRA, would 'essentially mean building a new road significantly closer to Tara than the proposed road but with a far more grater environmental impact' (NRA 2005).

In an early stage of the planning process, the prospective M3 had been subject to an Environmental Impact Assessment which included archaeological evaluation based on desktop and field surveys and geophysical examination. Results of the survey revealed the existence of thirty areas of archaeological potential, together with six important sites, and the road was redesigned to avoid three of those (Cooney 2004). Under the *Code of Practice* agreed between the Minister for the Environment and the NRA,[187] the Authority was committed to avoiding known archaeological sites, where possible, at design stage, mitigating impacts where this could not be avoided, and preserving by record all previously unrecorded archaeological sites discovered during the construction of the

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[187]*Code of Practice Agreed Between The National Roads Authority and The Minister for Arts, Heritage, Gaeltacht and The Islands* is an arrangement between the Department of the Environment (which replaced the Minister of Arts) and the NRA regulating provisions relating to archaeology and the development of national road schemes.

road'.[188] In particular, the NRA was obliged to 'undertake investigation of the archaeological implications of a road proposal at the initial planning stages with a view to informing route selection, ensuring that full weight is given to archaeological implications in identifying the preferred route and seeking to minimise the impact on known archaeological sites or areas of established significant archaeological potential'.

In 2000, the NRA consultants examined possible routes for the M3 including a range of potential locations for the Navan-Dunshaughlin section. Archaeology was considered among various factors and the so-called 'Orange route', situated on the west side of Tara, was quickly rejected because of its severe impact on the natural and cultural heritage of the 'Hill of Tara zone'. From archaeological point of view, the most favourable option was the 'Pink' route, located to the east of the Hill of Skryne, having the least negative impact on archaeological heritage, ecological sites (whereas the finally chosen 'Blue corridor' affected the highest number of sites), built heritage, landscape, noise and air quality. At the same time the report warned that leading the motorway through the Tara/Skryne Valley would have a profound impact on the Hill of Tara and monuments located in its environs and would have multiple 'severe implications from the archaeological perspective' (McDonald 2004c). However, the NRA and the Meath Co. Council discarded the 'Pink route' because, while least damaging to the archaeological landscape, it required building of a new high-level bridge over the river Boyne, had 'serious drawbacks in terms of its ability to serve traffic demand' and would have a 'negative impact on communities and the environment' (McDonald 2004c). Moreover, the proposed 'Pink' corridor was longer and would have negative consequences for a greater number of landowners than the chosen 'Blue 2' option (NRA 2005; Deevy 2005).

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[188] B. Duffy's statement concerning the M3 motorway project near the Hill of Tara, http://www.environ.ie/DOEI/DOEIPol.nsf/0/086035e8bb62739c80256f0f003bc852/$FILE/EAA%20Duffy%20statement.doc .
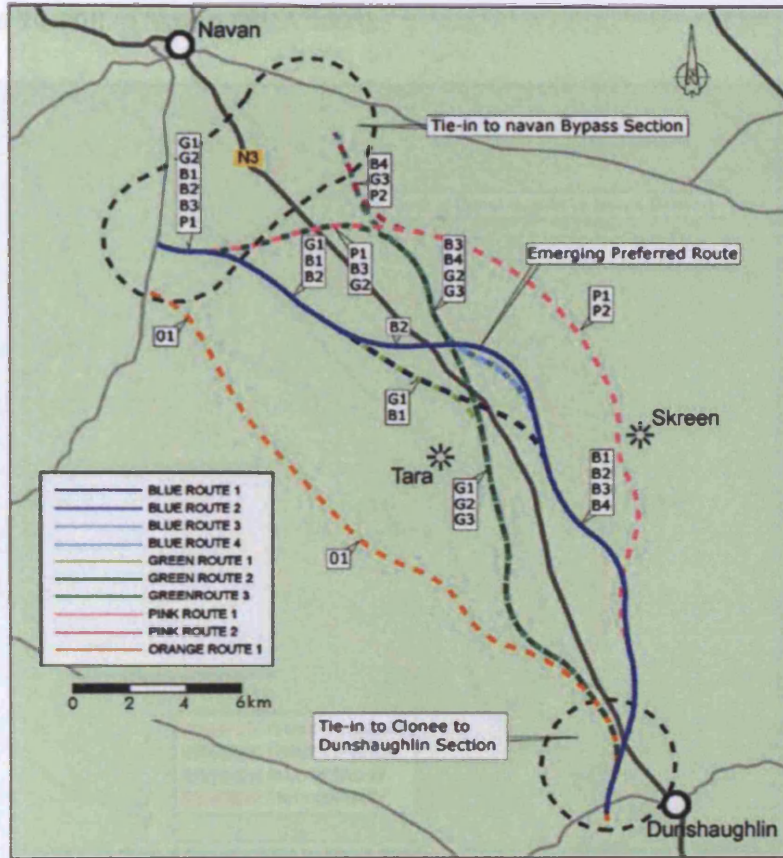
**Figure 40:** Map illustrating planning options for the prospective M3 motorway between Navan and Dunshaughlin considered by the NRA (source: www.m3motorway.ie/DetailedMap, 21.02.2007).

The NRA argued that the selection of the 'Blue 2' corridor (B2) was based on multiple environmental, engineering and economic aspects. Originally, ten possible routes were proposed and assessed in eighteen categories of the EIS (Environmental Impact Statement). While all schemes had disadvantages, the B2 was 'first or joint first in fourteen EIS categories considered including Landscape and Visual Impacts, Community Impacts, Air Quality, Ecology, Geology, Noise and Vibration and Agricultural Impacts' (Deevy 2005). The NRA also stated that the 'Pink' route, preferred by the campaigners because of its greater distance and lesser visibility from the Hill of Tara, would not only

affect undocumented archaeology but also would have a serious impact on the historic

village and the Hill of Skreen (NRA 2005).
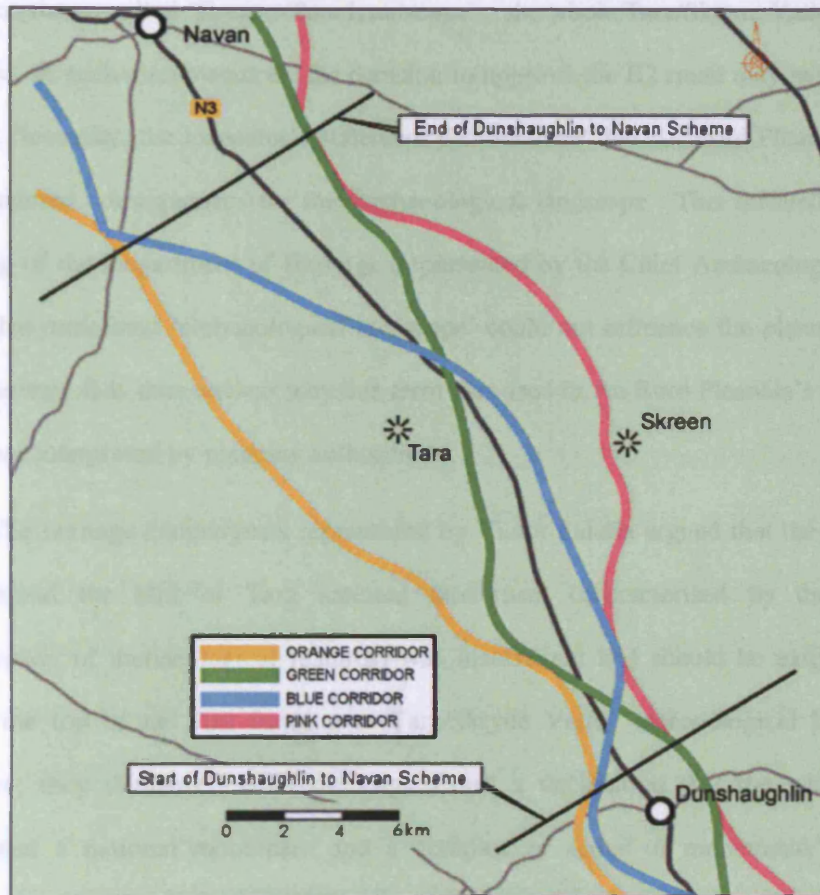


**Figure 41:** Map illustrating planning options for the prospective M3 motorway in the Tara/Skryne valley considered by the NRA (www.m3motorway.ie/DetailedMap/, 21.02.2007).

Finally, the B2 route was approved by An Bord Pleanála in the end of 2002 in the

course of Oral Hearing. In his report, the inspector appointed to conduct the hearing stated

that he was satisfied that the route as proposed would not have a significant impact on the

archaeological landscape associated with the Hill of Tara, indicated by the area designated

as the core zone on the Recorded Monuments and Places (RMP) map. He also considered

that the route would not affect significantly the archaeological landscape associated with

the Hill of Skreen (Deevy 2005). This justification highlights two important issues. Firstly,

that planning authorities focused only on the core areas of the Tara and Skreen national monuments and assessed the impact of the proposed motorway on the Hills themselves and not on the so-called 'Greater Tara Landscape' – the whole Tara/Skryne Valley historic landscape. In such circumstances, the decision to approve the B2 route may have seemed justified. Secondly, the inspector's statement demonstrates that An Bord Pleanála in fact did considered consequences for the 'archaeological landscape'. This differed from the reasoning of the Department of Heritage (represented by the Chief Archaeologist) which argued that undefined 'archaeological landscape' could not influence the planning of the M3 motorway. It is thus unclear why this term was used in An Bord Pleanála's report and how it was interpreted by planning authorities.

The heritage campaigners represented by Victor Salafia argued that the protective zone around the Hill of Tara national monument (characterised by the greatest concentration of archaeological features) was insufficient and should be extended well beyond the top of the Hill forming a 'Tara/Skryne Valley archaeological landscape'. Therefore, they demanded from the High Court a declaration that the whole sector 'constituted a national monument and a complex or series of monuments' (Carolan 2006a). This plaint was dismissed due to insufficient evidence and lack of agreement between the specialists. However, in the course of the court proceedings, the judge decided not to call expert witnesses and subsequently the court did not hear professional opinions. Thus, for example the Director of the National Museum of Ireland, one of the most important experts in the case, was excluded from the trial. It is not exactly clear why independent experts were not asked to take part in the legal debate. Responding to Salafia's complaint that his case had suffered because archaeologists and experts had been prevented from depositing evidence, the judge said that 'there was never any assurance that such oral evidence would be heard' (Carolan 2006e).

The nature of the 'Tara landscape' has been to some extent investigated by the Discovery Programme[189] launched in the 1990s (Newman 1997). In the light of historic and archaeological evidence and new discoveries, researchers participating in the project[190] offered a view of the Tara/Skryne Valley as an 'integrated' cultural landscape (Hickey 2004a; McDonald 2004b). Also the Heritage Council noted that although the Co. Meath Record of Monuments and Places identified only two major archaeological monuments in the area, the Hill of Tara and the Hill of Skreen, this was a result of a traditional approach focused on individual sites. The Council offered a new definition, based on the achievements of the Discovery Programme, describing Tara as part of a wider landscape, with the area to the east of the Hill forming a part of the Royal Demesne in the early medieval period (Heritage Council 2005a). As a result, in 1999, Dúchas (the Heritage Service) proposed expansion of the protection zone to a radius of 6 km imposing archaeological conditions on all planning applications falling within its scope.[191] It has been suggested that plans to extend the zone, allegedly acknowledged in the preliminary environmental impact assessment, were abandoned when it became clear that the M3 motorway would run right through it (McDonald 2004b). In 2002, before approving the scheme by An Board Pleanála, the Heritage Council recommended undertaking a national programme of Landscape Characterisation. Consequently, in a later statement the Council noted that landscape implications of the M3 'could have been assessed in greater detail' had the national process of landscape characterisation taken place (Heritage Council 2005a). It also seems that the NRA and the local authorities ignored negative opinions provided by their own consultants. A report on the archaeological assessment of the N3

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[189] The Discovery Programme operating under the aegis and funding of the Heritage Council for several years has been engaged in a campaign of modern archaeological research on the Hill of Tara and consequently has become a major holder of data and knowledge concerning Tara.

[190] Dr Edel Breathnach, Tara research fellow on the Discovery Programme; Conor Newman, director of the programme's archaeological survey of Tara 1992-'96, and Joe Fenwick, chief field archaeologist on the programme.

[191] Letter to the *Irish Times* from 05.04.2005 signed by a group of specialists from British universities and archaeological research bodies.

corridor between Navan and Dunshaughlin presented to Meath Co. Council in 1999

warned that the route included one of Ireland's best known archaeological complexes and

thus recommended that the Hill of Tara and its environs should be avoided (Salafia 2005;

Ronayne 2008).

Controversies around the M3 motorway scheme were not limited to the selection

of the route. Similarly to the Carrickmines Castle case, there have been accusations of land

speculation and ambiguous business deals (McDonald 2004b). In 2005, the Heritage

Council (2005a) expressed concerns about the future of the Tara/Skryne archaeological

landscape and the pressure associated with the ribbon development along the motorway.

Already in 2006, heritage campaigners were alerted to a prospect of building a recycling

facility next to the planned M3/N3 interchange at Blundelstown and located within the

sight of the Hill of Tara. This was a clear contradiction to an earlier assurance of the

Minister Roche 'that the heritage protection would take priority over development' in the

area (McDonald 2006e).

'Come off it, Mr Dent,' he said, `you can't win you know. You can't lie in front of the bulldozer indefinitely.' [...]
'I'm afraid you're going to have to accept it,' said Mr Prosser gripping his fur hat and rolling it round the top of his head, `this bypass has got to be built and it's going to be built!'
`First I've heard of it,' said Arthur, `why's it got to be built?' [...]
'What do you mean, why's it got to be built?' he said. `It's a bypass. You've got to build bypasses.' [...]
`You were quite entitled to make any suggestions or protests at the appropriate time you know.'
`Appropriate time?' hooted Arthur. `Appropriate time? [...] `Oh yes, well as soon as I heard I went straight round to see them, yesterday afternoon. You hadn't exactly gone out of your way to call attention to them had you? I mean like actually telling anybody or anything.'
`But the plans were on display. ..'
`On display? I eventually had to go down to the cellar to find them.'
`That's the display department.'
`With a torch.'
`Ah, well the lights had probably gone.' `So had the stairs.'
`But look, you found the notice didn't you?'
`Yes,' said Arthur, `yes I did. It was on display in the bottom of a locked filing cabinet stuck in a disused lavatory with a sign on the door saying Beware of the Leopard.'

Douglas Adams, *The Hitch Hiker's Guide to the Galaxy* (1995, pp. 19-20).

## 10.11. *Annex 11 — Environmental Impact Assessments*

Directives 85/337/EEC and 97/11/EC require conducting assessments of public and private projects which are likely to have significant effects on the environment before the development consent can be granted. The environmental impact assessment (EIA) is a technique designed to identify, describe and assess direct and indirect effects of a project on human beings, fauna and flora, soil, water, air, climate and landscape (and on interactions between these factors) as well as on material assets and cultural heritage.[192] The objective is to ensure that no significant development can go ahead without a prior analysis and understanding of consequences to the environment. For some projects EIA is always mandatory (e.g. for construction of motorways and express roads, airports or waste-disposal installations), for others the need of EIA through is defined on the case-by-case basis.

The analysis of practices associated with EIA and results of a survey carried out among EIA specialists and cultural heritage experts revealed a number of weaknesses of the system (Bond *et al.* 2004). First of all, according to the authors of the survey, the majority of specialists felt that cultural heritage issues were not given adequate regard, that consideration of these issues is too limited and generally starts too late in the EIA process. Practitioners from a number of European countries pointed out that the focus of EIAs is very narrow and concentrated on tangible — mainly built and archaeological — assets. Secondly, the scope of the process is limited by exempting certain types of projects and locations, e.g. in urban historic centres with the dominant small-scale development. Problems were aggravated by the lack of sufficiently clear guidelines and assessment techniques related to the cultural heritage and the potential negative effect of development projects (Bond *et al.* 2004, p. 40-41). The inevitable conclusion was that contrary to the

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[192] Art. 3 of the 85/337/EEC directive.

Council of Europe guiding principles, cultural heritage issues were treated far less rigorously than other aspects of the EIA process. This tendency is also demonstrated by a relatively limited scope of research and number of publications in this field (Teller and Bond 2002). Consequently, when archaeological remains are likely to be affected, slight modifications in project locations or rescue excavations are usually considered but the aim of the development scheme itself is rarely questioned (this was the case of road schemes discussed in Chapter 5). Several experts questioned by authors of the survey agreed that in their experience many cultural heritage issues were simply 'side-stepped'. There was not enough participation of the general public and not enough consideration for public's views and values. This is parallel to the paradox identified by Emma Waterton, who pointed out archaeologist constantly refer to the *public heritage,* but there is no distinct role for the *public* within the management process (Waterton 2005).

In the UK, the EIA Directive (85/337/EEC) has been transposed into the national legal system through a number of various 'EIA Regulations', generally in the form of a secondary legislation (Statutory Instruments) associated with existing consent provisions, e.g. the *Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999* (with subsequent amendments), the *Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999,* the *Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006* or the *Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999.* EIA Directives require EISs to identify, describe and assess a proposed project's impacts on 'material assets and the cultural heritage' as well as its interaction with other factors such as landscape and wildlife. Consideration of cultural heritage issues in the EIA process depends on sector-specific regulations and principles, in particular statutory and non-statutory monuments and sites designation schemes (e.g. scheduled monuments, listed buildings and registered parks, gardens and battlefields, World Heritage Sites), planning

policies (PPGs 15 and 16) and natural heritage regulations (national parks, designated landscapes, etc.).[193] According to a good practice guidance on EIA issued in 2006 by the Department of Communities and Local Government, subjects that need to be considered in the course of scoping and preparing an Environmental Statement include 'effects of the development on the architectural and historic heritage, archaeological features, and other human artefacts', 'presence of designated areas of archaeological/cultural heritage value at national, regional or local level', 'visual effects of the development on the surrounding area, visitor and resident populations and landscape', 'presence of designated areas of landscape value at national, regional or local level' and 'presence of other areas of landscape value/scenic quality'.[194] Material and cultural assets to be taken under consideration in the EIA process include archaeological remains, historic buildings and sites (listed buildings, cemeteries and burial grounds, parks and gardens, village greens, bridges, canals, etc.), historic areas (often designated as conservation areas), other structures of architectural and historic merit and historic landscapes in general (Therivel 2009, p. 146).

Transposition of the Directive 85/337/EEC into the UK legal system established the evaluation of heritage issues as a new area of work. Since then and after a slightly turbulent initial period in the early 1990s (Darvill and Russell 2002) archaeological participation in environmental appraisals has been gradually increasing, in last few years reaching over 300 EIAs prepared annually (Morris and Therivel 2009). Although the quality and effectiveness of cultural heritage management issues in the British system is generally seen in positive light, the patchiness of current UK historic environment legislation causes some problems. One of recurring issues is the overlap between landscape and cultural aspects and the difficulty of interpreting and distinguishing

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[193] See Annex 16 for a more detailed list of regulations.
[194] *Environmental impact assessment: a guide to good practice and procedures*, a DCLG consultation paper, p. 86.

between different designations (Therivel 2009, p. 146; Morris and Therivel 2009, p. 126). Moreover, despite a growing awareness of socio-economic issues (such as housing, demographic, amenity and commuting) and their impact on the environment and quality of life and importance to the general population's wellbeing, they often have a low profile in EIA – their role is still undervalued or downplayed (Morris and Therivel 2009). In most cases, different environmental impacts are strongly interlinked. For example, while landscape effects describe changes to the landscape, its character and quality and are assessed as an effect on an environmental resource, visual effects describe the appearance of these changes and the resulting effect on visual amenity, and are treated and evaluated as one of effects on population. Socio-economic impacts can influence or inflict damage on heritage and landscape and visual effects by putting strain on local natural and cultural resources through new housing developments, new roads, reduction of amenity areas, etc. Yet, such complex relations between different groups of effects are rarely comprehensively analysed in EIAs (Morris and Therivel 2009, p. 121).

*Archaeological heritage management in the EIA process*

Archaeological heritage has a transnational character that in most cases does not correspond with nation states boundaries and modern political geography. This rationale steered two trans-frontier projects: *Planarch* (1999 – 2002) and *Planarch 2* (2002 – 2006), which analysed archaeological issues in the context of town and country planning. One of the goals of the first project (carried out in the Netherlands) was to improve the expertise and quality of monitoring methods to reduce the effects of planning on archaeology and assess potentials for the conservation of archaeological remains (Smit 2004). The key objective of *Planarch 2* was to further the integration of archaeology within the spatial planning process across the Interreg North West European (NWE) area consisting of Belgium, England, France, Germany and the Netherlands. Both studies were carried out

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under the auspice of the EU and funded through Interreg IIc and IIIB programmes. They reviewed implementation of EIA Directives in Northern Europe and particularly consider trans-regional perspectives (Jones *et al.* 2006).

*Screening:*

As mentioned above, not all development projects require an EIA. *Planarch* studies suggested that bodies responsible for custodianship of the cultural heritage were not routinely involved in screening discussions (deciding whether EIA is needed at all), and that the use of cultural heritage considerations as a principal reason for requiring an EIA was rare: regional study reports indicated only three examples, all from England (Jones *et al.* 2006). When the EIA is compulsory *ex lege* or becomes required in result of screening, an Environmental Impact Statement (EIS), a document containing information on the completed environmental impact assessment study and its conclusions, has to be prepared.

*Scoping:*

The initial stage of the process called 'scoping' determines which potential environmental effects require a detailed coverage in an EIA and how they should be assessed. It also outlines the extent of detailed impact assessment studies and specifies methods to be used. In cultural heritage terms this implies, firstly, the need to make a series of decisions on whether to include cultural heritage as a topic and what components require coverage (archaeology, individual buildings or whole conservation areas, cultural landscapes, etc.). It is generally considered to be a vital stage of the EIA, as it facilitates planning of later activities in the light of stakeholder consultation. In the case of scoping, *Planarch* results suggested that, in practice, its effectiveness was mixed in relation to cultural heritage issues (Jones *et al.* 2006).

Scoping is important in cultural heritage terms because it allows making an initial assessment of potential effects and deciding about further studies. According to the text of the Directive 85/337/EEC (art. 5) scoping is a voluntary activity. However, in some countries and regions it was made an obligatory stage (e.g. in the Netherlands, Wallonia and Flanders) but in others (such as the UK) scoping can be avoided completely if the developer so desires (Jones *et al.* 2006). However, *Planarch 2* demonstrated that in the UK, although not compulsory, scoping is often prepared because of the recognition for uncertainty of archaeological deposits and the generally known place of cultural assets protection in the planning process. Overall, the *Planarch* study indicated that cultural heritage issues seemed 'at best to play a minor role' in the decision to undertake (or not) an EIA (Jones *et al.* 2006).

An important component of scoping is the involvement (through consultation) of custodial bodies for cultural heritage interests (e.g. English Heritage, Historic Scotland or Cadw). While the *Planarch* study found that, in general, such bodies were not routinely involved at the early stage of the EIA process, it appeared to be common in England (Jones *et al.* 2006). Perhaps for this reason, in most cases in the UK cultural heritage was not 'scoped out' – and if it was, the decision appeared unjustified. This was followed either by a planning permission refusal, requirement for inclusion in the EIA study or need to deal with the problem in the project realisation phase when archaeological deposits were subsequently revealed (Jones *et al.* 2006). While in the Netherlands 40% of the case studies had required further information on cultural heritage issues to be submitted following the review of the EIS, in England, the number was found to be similar (42%), because the baseline data or the impact prediction analysis presented was flawed, inadequate or incomplete. The study in England also identified cases where cultural heritage issues had been important (in two cases, principal) reasons for refusing planning consent (Jones *et al.* 2006).

*Baseline studies:*

Baseline studies are descriptions of the existing state of the environment concerned with gathering information on the presence (or the likelihood of the presence) of cultural heritage sites in the context of a development proposal and with determining their actual or potential value. They are guided by the results of scoping and are often compartmentalised according to acknowledged scientific disciplines and discreet aspects of the environment. Cultural heritage is one such aspect, with archaeology, built heritage and historic landscapes as primary considerations. Therefore, one of aims of a baseline study is to identify and describe the nature, location and extent, dating and importance of archaeological remains likely to be affected by the prospective development. A report should include, *inter alia,* an inventory of archaeological remains on the site and in a wider site setting, evaluation of archaeological remains that are likely to be affected by the development, projection of potential archaeological remains that may be found in further investigation and a map of the project area with the location of archaeological remains (Therivel 2009, p. 155). Key methods used in scoping and baseline studies involve a 'rapid appraisal' of archaeological resources and a desk-based assessment, e.g. review of NMR and HER resources and consultation with local authority archaeologists (this, however, refers to known archaeological sites and not yet unlocated remains which may be affected by the development proposal) as well as field surveys and systematic non-intrusive evaluation (including fieldwalking, geophysical survey, test-pitting, test trenches, etc., often as a combination of different methods) (Jones *et al.* 2006; Therivel 2009). Coverage of archaeological issues in baseline studies varies, often due to problems resulting from sub-divisions within the heritage field (e.g. different types of designations) and overlaps with other study areas (especially with landscape and visual studies) (Jones *et al.* 2006). As a result, it is not unusual to find assessments concerned with more general landscape studies rather than particular components of cultural heritage and their 'setting'.

In consequence, in the case of archaeological heritage, baseline studies can quite reasonably fail to identify its presence (Jones *et al.* 2006), e.g. in relation to projects such as motorway or railway routes, when a number of locations are considered, and where archaeological remains may be not be given enough attention. For such projects more detailed archaeological investigations and field surveys may not be carried out until the route is finally selected and the land acquired. 'This is undesirably late because it does not allow a route to be chosen which would preserve important remains in situ' (Therivel 2009, p. 163).

While uncertainty related to archaeological heritage may potentially affect outcomes of a baseline study, at the same time some key (intrusive) methods of investigation and identification, e.g. trial trenching or boreholes (routinely used in France and in the Netherlands) contribute to the destruction of sites. Consequently, it is always necessary to balance the investigative activity required to understand the archaeological resource against the need for preservation *in situ*. Yet, any damage caused by investigation is unlikely to be on the same scale as that brought about by development itself.

A very important issue that emerged from *Planarch* was the extent to which the potential for a development to affect currently unknown cultural heritage – especially buried archaeological sites – was recognised (Jones *et al.* 2006). Holland was found unusual in having a national model for predicting the likely occurrence of unknown buried archaeology.[195] In the other countries no such national models exist, but in England a few

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[195] A first 'national archaeological sensitivity map' (the Indicative Map of Archaeological Values – Indicatieve Kaart van Archaeologische Waarden) was completed in 1997. The aim of the project was to obtain a synthesis of all known archaeological sites in the Netherlands and to enable the Dutch archaeologists to participate in the planning process and cultural heritage policy making as equal and well-informed partners (Deeben and Groenewoudt 2005, p. 296). Site distribution maps predict occurrence of the unknown archaeological remains (using the analysis of information on recorded cultural assets and relic landscapes, geomorphology, geology, correlations with soil types and distance to water, topographic and historical maps, etc.) and thus are an important tool in evaluation of significance and selective protection of archaeological heritage. They exist on national, regional and local levels and proved extremely useful especially in the case of rural landscapes management and assessing impact of big development projects (e.g. motorways and railroads) (Deeben and Groenewoudt 2005, p. 294).

cases were noted of some attempts at modelling the probability and character of as yet undiscovered archaeological deposits (Historic Landscape Characterisation, the City of York urban deposits modelling, the Scottish Burgh Survey). Development of such prediction model on a wider scale would benefit developers (would know what to expect, time-wise, cost-wise), planning authorities and heritage curators.

*Assessment of effects and Impact predictions:*

The next step of the EIA is the assessment of effects and impact predictions. The range of effects of potential concern includes direct effects such as destruction or loss of a cultural heritage asset (e.g. through construction, demolition or other activities, and changes of or intrusion on its setting) and indirect effects (such as the effect of changes in air quality, drainage or traffic and machinery vibration on the fabric of a standing structure or the condition of buried remains) (Jones *et al.* 2006). Direct impacts are in most cases clear and usually involve the controlled removal of archaeological materials. Less obvious direct impacts involve e.g. dewatering of waterlogged sites, potential damage caused by landscaping operations or use of heavy machinery. Indirect impacts relate to e.g. subsequent dewatering of archaeological remains on adjacent (theoretically undisturbed) sites, increased recreational pressure on sites caused by subsequent residential development or negative impact on visual setting of a site (Therivel 2009, p. 165).

However, like in the case of establishing what to protect (designation schemes, site selection and initial protection), the assessment of cultural heritage impacts involves (to some extent) value judgments (e.g. Clark 2005). In addition, such impacts are often very hard to measure, especially in the case of archaeological remains, where often their location, type and extent are unknown. While in many areas, such as air quality, traffic and noise, there are mathematical and computerised modelling techniques supporting the

prediction of impact magnitudes, but no such techniques are available specifically to the cultural heritage field.

Although the consideration of cultural significance under environmental assessment directives is not restricted to monuments and sites designated under national laws but also covers cultural landscapes and elements of intangible heritage (Teller and Bond 2002, p. 621), in practice, in many cases the assessment is primarily based on a national standard and legislation concerned with designation and therefore is limited in scope. *Planarch*'s results showed that this difficulty in addressing the 'uncertainty' of archaeological deposits is not routinely considered – with the exception of the UK, where an awareness of the problem and its implications were noted and resulted in recommendations for evaluation and implementation of watching briefs, which probably is a consequence of the PPG16 regime. However, the analysis of English EIA also confirmed a visible bias for designation (primarily statutory) (Jones *et al.* 2006).

*Mitigation and enhancement:*

The EIA Directive itself does not specify methods which should be used in the assessment of effects – this largely is left to national regulations and conservation practices. However, in the case of subsequent stages of the EIA process, the EU legislation is more specific, stating that best environmental policy consists of 'preventing [...] nuisances at source, rather than subsequently trying to counteract their effects' and stressing 'the need to take effects on the environment into account at the earliest possible stage' (85/337/EEC). This approach is consistent with key principles of international cultural heritage policy, especially the priority of preservation *in situ* and carrying rescue works in all other cases. Preservation *in situ* is the only measure which fully meets the EIA Directive's principle of preventing environmental harm at source (Therivel 2009, p. 168), with archaeological mitigation considered to have the greatest benefits for the lowest cost when applied early,

and with changes in project design to avoid negative effects altogether being the most favourable option (Jones *et al.* 2006, p. 31).

The findings of the regional *Planarch* studies suggested that there is great variability in the treatment of mitigation within the project study area. For example, while in the Rhineland and England, more than 90% of EISs contained some kind of proposal for mitigation measures for cultural heritage, they were rare in the Netherlands (Jones *et al.* 2006, p. 32). Yet, in the case of identified sites or areas with high probability of archaeological remains the 'need for development' often overrides preference for the *in situ* preservation (Therivel 2009, p. 168). Despite a variety of mitigation options, rescue works carried out prior to or during construction are usually preferred by developers. In consequence, the majority of ESs concentrate on site excavation and recording (fig. 42). Design solutions (zoning, appearance solution, landscaping screening, and preservation through technical measures; see fig. 43) are less common (Hindl and Lambrick 2005). Mitigation often presents an ethical dilemma for the archaeologist as the excavation of archaeological remains entails destruction, and denies the opportunity to future generations of archaeologists, who may have more powerful investigative techniques at their disposal. At the same time, badly designed, flawed or unmonitored *in situ* conservation plans also may not fulfil their primary goal – preservation of archaeological remains (see e.g. the case of Viking Woodstown in Chapter 5).

**Types of Mitigation Proposed**
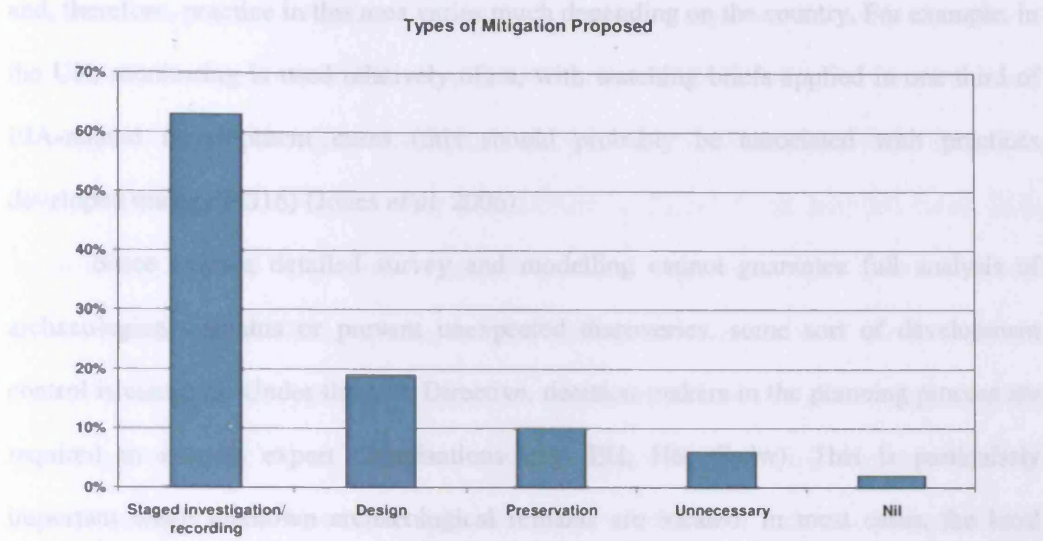


**Figure 42:** Types of post-determination mitigation proposed in the EIAs in the UK (source: Hindl and Lambrick 2005, fig. 7.8a).

**Design-based Mitigation Types**
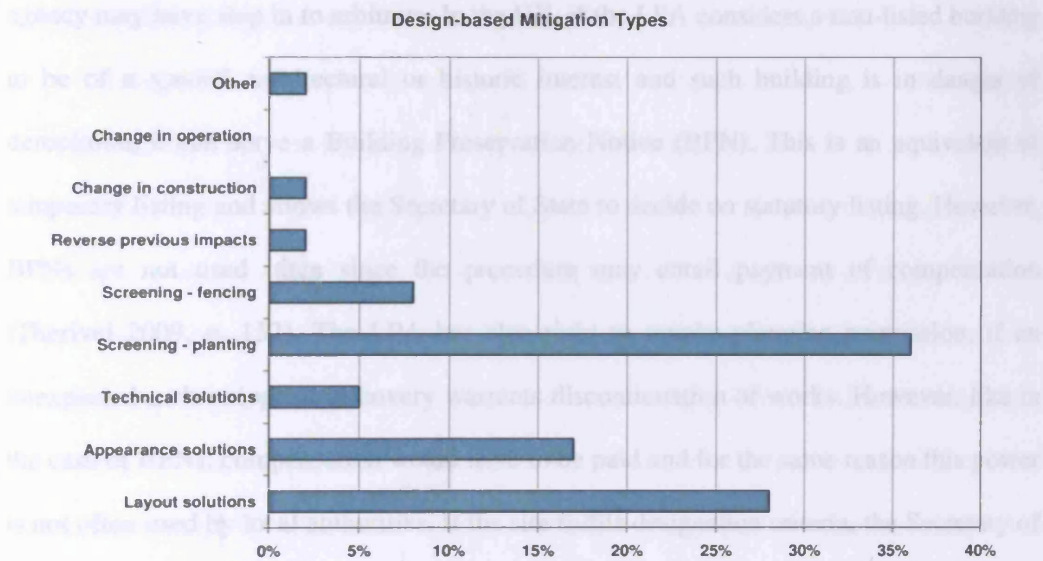


**Figure 43:** Types of design-based mitigation proposed in the EIAs in the UK (source: Hindl and Lambrick 2005, fig. 7.8e).

*Monitoring:*

Another key stage of the EIA process is monitoring of works carried out in course of the development project itself. According to the EIA Directives, this stage is not compulsory

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and, therefore, practice in this area varies much depending on the country. For example, in the UK, monitoring is used relatively often, with watching briefs applied in one third of EIA-related development cases (this should probably be associated with practices developed under PPG16) (Jones *et al.* 2006).

Since even a detailed survey and modelling cannot guarantee full analysis of archaeological remains or prevent unexpected discoveries, some sort of development control is essential. Under the EIA Directive, decision-makers in the planning process are required to consult expert organisations (e.g. EH, HS, Cadw). This is particularly important when unknown archaeological remains are located. In most cases, the local planning authority and archaeologist negotiate with the developer an adequate mitigation solution. However, when no reasonable agreement can be reached, a relevant heritage agency may have step in to arbitrate. In the UK, if the LPA considers a non-listed building to be of a special architectural or historic interest and such building is in danger of demolition, it can serve a Building Preservation Notice (BPN). This is an equivalent of temporary listing and allows the Secretary of State to decide on statutory listing. However, BPNs are not used often since the procedure may entail payment of compensation (Therivel 2009, p. 152). The LPA has also right to revoke planning permission, if an unexpected archaeological discovery warrants discontinuation of works. However, like in the case of BPNs, compensation would have to be paid and for the same reason this power is not often used by local authorities. If the site fulfils designation criteria, the Secretary of State has the power to schedule it (which means that consequently the developer would have to apply for a separate scheduled monument consent to continue work).

The most important find of the *Planarch* project was the overall conclusion that cultural heritage has a relatively low status as a factor in EIA, even though there is national and international legislation supporting the protection of archaeological remains. The strong focus of the various conventions and directives on good practice and

integration of cultural heritage issues in spatial planning seemed to have received relatively little attention (Jones *et al.* 2006). This was followed by a clear statement coming out of all case studies emphasising that the stage at which archaeology enters into negotiations with planners and other stakeholders is critical. In all analysed cases, EIAs worked best where there were specific national regulations and practice guides implemented (e.g. PPG16, making scoping compulsory, etc.). If archaeological and cultural historical management strategies are to have any chance of success within spatial planning procedures, then archaeological considerations and gathering information should take place very early into the consultation process. The later archaeologists enter into negotiations, the less opportunity there is to influence the decision-making (Waugh 2006, p. 7). Yet, while an early participation is almost a rule for motorway projects, it is far less adequately built into other types of development (Hindl and Lambrick 2005).

A flexible approach towards the cultural environment and discretionary archaeological consultations are weak spots of the EIA process in its present form. Archaeologists (or other heritage specialists) generally have limited impact on consultations and decision making. Also, while in most cases baseline studies include archaeological remains, the thoroughness and quality of pre-determination appraisals are not always sufficient and are rarely given sufficient weight (Hindl and Lambrick 2005; Jones *et al.* 2006). While only a few EISs were found to be clearly deficient or non-compliant with the EIA Directive from the cultural heritage point of view, no cases were seen as fully adequate (Hindl and Lambrick 2005).[196] At the same time, authors of the *Planarch* review noted that mere application of the EIA process to a project and a minimum compliance are not enough to ensure satisfactory outcomes for the cultural

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[196] For example, while in Rhineland 71% of EISs studied were considered to meet, or exceed, the minimum demands of the EIA regulations, in England, 58% of EISs were rated as 'satisfactory' or better according to a widely used set of review criteria, though a review of the actual outcomes of some of these EISs suggested that most were less effective at identifying and evaluating effects than had appeared to be the case (Jones *et al.* 2006).

heritage. The quality of professional judgement is a critical factor and, predictably, the involvement of archaeologists (and other heritage consultants) tends to produce much better results than assessments created by engineering and environmental specialists (Hindl and Lambrick 2005; Jones *et al.* 2006).

Openness of the decision-making process and accountability together with the right to accessing environmental information and public consultations are pillars of EIA Directives and have been additionally strengthened by provisions of the Aarhus Convention (Jones *et al.* 2006, p. 37). The decision-making authority is required to take the results of the participation exercise into account in reaching its decision. The *Planarch* project outcomes emphasised the importance of clear communication between all professionals involved in the planning process as well as with the public (Waugh 2006, p. 8). However, the EIA Directive requires public participation only in the decision-making period (after the completion of the EIS). This limitation, proved to be problematic in the case of the 'Hill of Tara' dispute described in Chapter 5.

Because the low profile of cultural heritage in EIAs and the decision-making process, the *Planarch* study demonstrated that, 'unsurprisingly', decisions on development schemes very seldom depended on cultural issues. However, at least in the UK, cultural heritage was among factors cited in planning proposal refusals. Cultural heritage issues also did not seem to feature as a main area of concern for the public (Jones *et al.* 2006). While it is no surprise that other aspects of the environment are a more pressing concern in the public mind, this may also reflect a general failure of the cultural heritage discipline to maintain a suitably high profile and to engage effectively the wider community in recognising the importance of cultural heritage assets.

In general, at this stage cultural heritage issues are not well integrated with other aspects of environmental impact assessment. Archaeological heritage has to be made a less 'stand-alone', 'add-on' item than it is now. The concept of 'mitigation' should not be

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treated as an afterthought but as an iterative process of minimising adverse effects on the historic environment and maximising benefits throughout every stage of the EIA process. There is also a need for developing a more holistic, cross-disciplinary approach and improving co-operation with planners, architects, engineers and nature conservation lobby (Hindl and Lambrick 2005; Jones *et al.* 2006; Waugh 2006).

*Planarch* confirmed that although the EIA Directives set common goals for sustainable development and created an EU-wide unified framework, there are evident differences in approaches to the EIA process itself and treatment of archaeological remains in particular. This closely relates to another problem identified by *Planarch*, namely the patchy input of cultural heritage to screening, resulting from the absence of a common framework for applying the heritage criteria to the EIAs (Hindl and Lambrick 2005), while such detailed regulations exist for other environmental issues (water, air, soils, habitats and species).

In the process of European integration, cultural heritage has been consequently left within member states' remits. Thus, while national legislation and planning regulations in each country or region have some points of comparison (a consequence of Directives implementation), practical execution of norms and procedures vary. Additional problem is the use of different nomenclature and definitions for essentially the same activities and items. As a result, while all countries essentially deal with similar problems, ultimately seeking to achieve the same outcomes (Jones *et al.* 2006). Authors of the *Planarch* study also had 'a clear feeling that the lack of understanding of work being carried out in other regions and countries has led to a certain 'reinvention of the wheel' (Waugh 2006, p. 68). For that reason, findings and recommendations of the *Planarch 2* project were used to create *Guiding Principles for Cultural Heritage in Environmental Impact Assessment* (Planarch 2006). These operational guidelines were launched in 2005 at the European Parliament with the intention of improving the practice of cultural heritage within EIA in

the European Union by providing a 'rigorous, robust and reasonable framework for ensuring that cultural heritage is appropriately treated in the EIA process'.

Finally, one of the key outcomes of the EIA review was a call for a European thesaurus for archaeological and heritage terms and definitions as an essential tool of interaction and exchange of knowledge between countries (Waugh 2006). The idea of a thesaurus is not new. Similar project had been undertaken in the past as a part of the European Plan for Archaeology sponsored by the CoE. Unfortunately, linguistic variety and the scope of this thesaurus remain limited (focused on the Bronze Age) (see Chapter 8).

## 10.12. *Annex 12 – The Rose Theatre*

An important legal and theoretical debate on scheduling, rescue archaeology and values took place a decade ago, following the discovery of the Rose Theatre remains during the re-development project carried out in central London. The Rose, an Elizabethan playhouse built in the end of 16th century on the south bank of the Thames, hosted Christopher Marlowe's plays. It is also believed that this was the theatre where at least two of Shakespeare's dramas – *Titus Andronicus* and *Henry the VI* – were staged, and, possibly, where Shakespeare himself acted (Orrell and Gurr 1989; Greenfield and Gurr 2004).

In response to the threat posed by the ongoing development work, the Rose Theatre Trust Co., a company set up by the members of a public and supported by archaeologists, historians, MPs, local residents and theatrical celebrities, applied to the Secretary of State (SoS) for the Environment for a decision scheduling remains of the theatre under section 1 of the *Ancient Monuments and Archaeological Areas Act 1979*. SoS confirmed that in his opinion the site was of 'national importance' but declined to proceed with administrative actions. The negative decision was, *inter alia*, based on the argument that the remains were not under threat, that scheduling could give raise to claims for compensation, that there was a need to balance the desirability of preservation against the city of London's prosperity, and that the developer was willing to co-operate to secure the remains.

In SoS opinion, protective measures achieved through voluntary means were adequate and approved by the English Heritage while, at that stage, scheduling of the site could result in a claim for compensation assessed at £60-70 million (Wainwright 1989, p. 432; Gurr 1992, p. 11). In the course of the dispute the uncovered remains of the Rose Theatre started to deteriorate. The biggest threat was caused by a rapid aeration and drying out of deposits including organic material. Hence protection of the site and artefacts from

further decay, covering up exposed features and, if possible, returning them to anaerobic conditions became a pressing need (Wainwright 1989, p. 432).

In 1989, the Rose Theatre Trust Co. applied for a judicial review of the Secretary of State's decision, seeking a quashing order and a mandatory order to direct the SoS to 'perform his duty' and to re-consider scheduling of the Rose Theatre.[197] The campaigners claimed the site constituted a monument of national importance and in deciding not to schedule it the Secretary of State took into account irrelevant considerations, misdirected himself in law and 'acted unreasonably'.[198] In his decision letter, the SoS said he was aware of the competing pressures which are likely to arise, particularly when considering possible redevelopment in central London, where, despite the undoubted interest and importance of archaeological remains, there is a need to balance the desirability of preservation against the need to enable a modern capital city to thrive.

The application made by the Rose Theatre Trust Co. was subsequently dismissed by the judge who stated that 'the decision not to schedule is one of those governmental decisions in respect of which the ordinary citizen *does not have a sufficient interest* to entitle him to obtain leave to move for judicial review'. However, in my view, Justice Schiemann's ruling on the issue of standing was in opposition to the general judicial trend on the subject, which has been in favour of widening the class of persons eligible to challenge administrative decisions. Preservation of archaeological heritage was presented as a matter that concerned everyone in general but no-one in particular: neither the Rose Theatre Trust Co. (representing members of public) nor ordinary citizens (individually) had sufficient interest to apply for the review of the administrative decision refusing to schedule the site (Rose Theatre 1990). This was also a judgement against the active citizenship. If campaigners, pressure groups or even individuals are denied a right to act in

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[197] *Regina v. Secretary of State for the Environment, Ex parte Rose Theatre Trust Co.,* Queen's Bench Division, 17 July 1989.
[198] *Ibidem.*

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cases related to the protection of their cultural heritage, landscape or natural environment on grounds of 'not having sufficient interest', the public is prevented from questioning controversial administrative decisions and taking to court unlawful acts of 'public' authorities.

Comments on the Rose Theatre case predicted that along with the increase of general awareness of conservational and environmental issues there would be a raise of public discontentment with law preventing citizens from acting in matters related to the preservation of heritage (e.g. Goyder 1992, p. 356). Indeed, after almost two decades it seems that the Rose Theatre case was a prelude to the whole series of fierce legal disputes originating from the conflict between the governments' discretion to regulate cultural issues and heritage campaigners dissatisfied with decisions made by the public authorities.

## 10.13. *Annex 13 – Contract archaeology in the UK – Consequences for the profession*

Thanks to the data collected over the years through periodic surveys of the archaeological profession in the UK, such as *Profiling the Profession* (e.g. Aitchinson 1999; Aitchinson and Edwards 2003 and 2008), it is now possible to analyse results of the transformations in British archaeology as well as assess the condition of the employment sector itself.

The most important conclusion is that there are more archaeologists working in the UK than ever before. While until the 1970s there were relatively few full-time field archaeologists, in 40 years the total workforce grew to around 7000, thus creating a small but important industry (Aitchison & Edwards 2008; Aitchison 2009b; see fig. 44). However, other findings are much less positive. Although archaeology is a graduate profession, this is not reflected in the career opportunities or remuneration. Poor pay is paired with the insecurity of employment, forced itinerant lifestyle and limited personal development. This is followed by a high staff turnover, frustration and often abandoning the career after a few years. Of course, blaming the dissatisfactory *status quo* on PPG regulations alone is a great simplification but, admittedly, the problems listed above are largely the result of the subsequent commercialisation of development-led archaeology (see e.g. Everill 2007). In the light of my own experience and in result of numerous discussions with colleagues from various parts of Europe, I see the transformation of British archaeology as the benchmark case for other countries supporting (or at least permitting) commercialisation of archaeological services. For that reason, I would like to discuss further consequences of such process.

**Number of professional archaeologists working in UK**
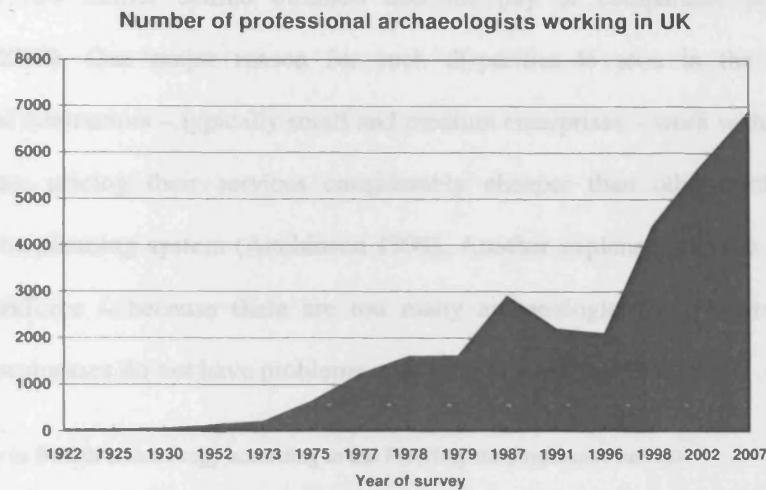


**Figure 44:** Historical growth of archaeology (source: Aitchison & Edwards 2008, p. 17).

One of the first comprehensive reviews of the archaeological profession carried out a few years after the implementation of PPG16 (in 1997-8) signalled problems arising from the commercialisation of planning-related operations. According to the survey, there were 'approximately 4425 poorly paid professional archaeologists in the UK' with the largest group being employees of contractors (Wainwright 2000; Aitchison 1999). Since then, the issue of low pay has been a recurring theme in almost every assessment of British archaeology (e.g. Aitchinson 1999; Wainwright 2000; Darvill and Russell 2002; Price and Geary 2008; Everill 2007).

Comparing to other planning-related professions, such as surveyors, environmental managers, landscape architects, road engineers, geotechnical consultants, etc., archaeological wages are significantly lower (Morris 1999). Using these as a benchmark, a report commissioned by IFA (Price and Geary 2008) identified a considerable pay gap (ranging from 13%-53%) between archaeologists and other staff with similar qualifications, skills, experience and levels of responsibility. Archaeology is also at the bottom of graduate professions' pay-scales (see tab. 9). Furthermore, over the years wages

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continued to fall further behind inflation and the pay of comparable professions (Chadwick 2000). One major reason for such disparities is seen in the fact that archaeological contractors – typically small and medium enterprises – work with very low profit margins, pricing their services considerably cheaper than other professionals involved in the planning system (Aitchinson 1999). Another explanation is the excess of qualified workforce – because there are too many archaeologists, employers running competitive businesses do not have problems with recruitment (Everill 2007).

**Table 9:** Pay in British archaeology according to the *Profiling the Profession* surveys.

| Information source | Estimated total number of archaeologists in the UK | Advertised starting salaries (average) | Average pay in archaeology | UK average pay |
|---|---|---|---|---|
| *Profiling the Profession* 1997-98 (Aitchison 1999) | 4425 | £12,100 (£12,327) (1997) | £17,079 | £19,167 |
| *Profiling the Profession* 2002-03 (Aitchison and Edwards 2003) | 5712 | £15,581 | £19,161 | £24,498. |
| *Profiling the Profession* 2007-08 (Aitchison & Edwards 2008) | 6865 | £18,916 | £23,310 | £29,999 |

Another significant problem is the forced mobility of British archaeologists. Most field workers are employed on very short-term contracts (sometimes even on a weekly basis), often changing jobs a few times each year. For employers, a high turnover of staff is not an incentive to invest in professional development. In consequence, a casual workforce is usually excluded from training opportunities, since this is perceived as an unnecessary (and avoidable) expense. At the same time, even archaeologists working for commercial units on a more permanent basis are often expected to undertake staff development (e.g. through attending conferences or exploring personal research interests) in their own time and at their own expense (Chadwick 2000; Everill 2007; Wheaton 2008)

– this is especially so in the case of small companies run on a tight budget and with minimum staff. As a result, few training opportunities, restricted access to conferences and specialist resources are a significant disadvantage of the commercial sector, limiting job opportunities, access to more senior posts, and oftentimes exacerbating the general dissatisfaction with employment conditions and the career choice.

Accordingly, field archaeologists, especially junior staff, tend to be undervalued. Casual 'site assistants' and 'excavators' are often perceived as 'completely interchangeable' and regarded as 'little more than labourers', 'diggers' or 'trowel fodder' (Chadwick 2000 and 2003; Everill 2007, p. 129). These quotes call on rather extreme examples but none the less indicate a considerable problem. Currently, few universities equip their graduates with the necessary practical skills. Responsibility for training young archaeologists has therefore been passed on to employers. Providing instruction on site requires time and the involvement of more experienced staff, which in the case of commercial units has financial consequences. Thus, unsurprisingly, few employers are willing to bear the cost.[199]

Moreover, looking on the organisation of development-led projects, and especially the separation of excavation, interpretative and post-excavation elements, Everill (2007, p. 131) pointed out that majority of people responsible for exploration do not participate in later phases of the project and do not have 'any say' in the interpretation of features or in the integration of their work into the overall analysis of the site. As a result, 'unskilled' archaeologists start at the minimum salary and are not given much chance of intellectual

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[199] For example, the 2007-08 *Profiling the Profession* survey demonstrated changes in use of unpaid volunteers over five years since the previous study. Data indicated a slight and steady increase in the numbers of unpaid volunteers working with paid staff (Aitchison and Edwards 2008, p. 42). There are two possible explanations. Firstly, the last decade observed an increased interest in archaeology (largely inspired by community projects and popular TV shows such as *Time Team*). Secondly, because of the reduced provision of student training and growing competition on the job market (with 'at least 6 months of professional experience in field work' being now a standard recruitment requirement, see e.g. job offers posted on the BAJR web site) graduates often seek non-paid work experience opportunities. In any case, the data collected by Aitchison and Edwards to some extent challenged the popular view that the participation of non-paid volunteers in the UK continues to decrease.

input or mastering new skills and thus are deprived of the prime motivation for remaining in the profession.

Finally, a major issue highlighted by critiques of the contract-tender system is the heavy reliance of archaeology on the development sector and thus vulnerability to economic fluctuations, especially the periodic rise and fall of the construction and property market (e.g. Darvill and Fulton 1998; Chadwick 2000; Darvill and Russell 2002). Looking from an American perspective, Wheaton argued that private companies hiring only skilled personnel have more staff stability (2008, p. 204-6). However, that is contradictory to the general experience of the majority of British field archaeologists and especially untrue in crisis situations such as the 2001 foot-and-mouth outbreak in the UK or the 'credit crunch' of 2008 and 2009.

Most archaeological companies work on small-scale projects with narrow profit margins and do not have significant capital reserves. This not only means limited investments in facilities and equipment but also strongly affects security of archaeological jobs as the falling number of planning applications inevitably leads to a smaller amount of archaeological contracts. Periodic 'economic downturns' or 'slumps' in the contract archaeology market are nothing new.[200] The outbreak of the foot-and-mouth disease was one such episode. It can be even argued that this particular event served as a warning sign but did not influence much the organisation of the contract sector. It has been estimated that, in recent years, nearly 60% of archaeological posts in the UK were directly funded by income generated by work related to development and the planning process, with approximately one third of field archaeologists working on temporary contracts (but over

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[200] Taking the number of planning applications as a fair indicator of levels of activity, the difference between peak years such as 1980 (526,938 applications) and 1990 (499,100 applications) and lean years such as 1986 (388,248 applications) and 1992 (427,801 applications) represents reductions of 26% and 14% from peak activity in the 1980s and 1990s cycles respectively (Darvill and Russell 2002, p. 53-4). Darvill and Russell (2002, p. 43) recorded a total of 9925 of planning-related post-determination investigations and recording events for the period 1990-99. Overall, the number of investigations recorded rose year-on-year to 1994, after which there was a slight decline in 1995 and 1996, followed by recovery from 1997, to reach an all-time high of more than 2500 investigations in 1999.

70% of those junior employees working on short-time agreements) (Aitchison and Edwards 2008: 84; Aitchison 2009b).

At the moment, it is hard to fully estimate the impact of the recent financial crisis, which consequently led to the crash of the property market and a standstill in the development sector. However, it is already clear that archaeological contractors took a direct hit becoming one of first casualties of the recession. First signs were visible at the end of 2007 and beginning of 2008, when some of major Irish and Northern Irish developments schemes were scaled down or entirely scrapped. Many developers were also trying to cut costs or limit their financial commitment through freezing funding for archaeological work on uncompleted projects. While public funding and super-projects like highways or railway schemes could help archaeological contractors survive, currently there are no plans for major works apart from the 2012 Olympics.[201] Ironically, unlike the case of the Greek Olympiad,[202] preparations for the London Olympic Games are actually drawing money away from archaeology, as the resources of the Heritage Lottery Fund (HLF) are diverted to contribute towards the costs (Aitchison 2009b), with the attempt to slash the Portable Antiquities Scheme's budget in 2007-08, and the freezing of its 2008-09 funds being one of the most visible consequences.[203]

A report prepared in April 2009 for the IFA revealed that 345 British archaeological jobs were lost in the three months from 1 October 2008 to 1 January 2009, with at least a further 195 jobs gone by 1 April 2009 (tab. 10). In total, since the summer

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[201] See negative comments and concerns included in reports of the Culture, Media and Sport Committee (CMSC 2006 and 2008).

[202] In recent years, archaeology in Greece was primarily influenced by the preparations for the Olympic Games in Athens in 2004, with the number of archaeologists growing by 11% in 2002-03 and further 2% in 2004-05 (Aitchison 2009b, p. 13). Interestingly, although 2006-07 registered a 10% decrease in employment, most of archaeologists remained in their posts at least until 2007, after the major development-related works had ended. This may be the consequence of retaining a less flexible (also in terms of employment policies), state-controlled heritage sector.

[203] Freezing the 2008-09 budget (£1.3 million) resulted in the loss of three post-holders and reduction of PAS activities. With funding for next years under review, there were concerns that further cuts would be made (CMSC 2008, Evidence 64).

of 2007, approximately 670 jobs have been lost – 1 in 6 (16.5%) of all commercial

archaeological posts (nearly 10% of all professional archaeology jobs that existed in 2007)

(Aitchison 2009a). A further decline in the archaeological services market was anticipated,

suggesting that 1 in 5 of nearly 7000 British archaeologists (almost a half of those

employed in the commercial sector) could face unemployment (RESCUE 2009).

**Table 10:** Job losses in the UK in 2007-2009 (source: Aitchison 2009a).

| Employer size in August 2007 (number of employees) | Total number employed | | | Change 01/01/09 – 01/04/09 | Change 13/08/07 – 01/01/09 |
|---|---|---|---|---|---|
| | 1 Apr 2009 | 1 Jan 2009 | 13 Aug 2007 | | |
| 100+ | 631 | 666 | 738 | -5.3% | -9.8% |
| 50 – 100 | 471 | 491 | 668 | -4.1% | -26.5% |
| 20 – 50 | 344 | 357.2 | 391.4 | -3.7% | -8.7% |
| - 20 | 251.4 | 273.6 | 277 | -8.1% | -1.2% |
| Total | 1697.4 | 1787.8 | 2074.4 | -5.1% | -13.8% |

As Mike Pitts, the editor of *British Archaeology,* commented, 'no one becomes an

archaeologist because they want to get rich. They become archaeologists because they

want to be archaeologists. To lose their job is a really serious personal blow' (Thomas

2009). This however, is not only a loss to individuals but also a dilemma for the entire

profession. Since many of the archaeologists who were made redundant or cannot find any

contract work, are likely to choose a new career (as was the case with the foot-and-mouth

crises), the profession will be losing skilled individuals, especially junior fieldworkers

(Aitchison 2009a).[204]

It can reasonably be expected that while the economy works in cycles, the

construction sector will revive within a few years, creating an increased demand for

development-oriented archaeological services. Since by then many archaeologists would

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[204] As a consequence of disillusionment with unfavourable pay and employment conditions in the commercial archaeology sector, a significant number of staff drop out after five years in the field. These, according to Everill, are predominantly people in their late twenties, additionally dissatisfied with the level of respect they receive: 'after about five years' experience there is a widespread tendency to re-examine their careers, and this is when many people opt to leave the profession for a more stable, better-paid career – despite still having a passion for archaeology' (Everill 2007, p. 128).

probably have dropped out of the profession, there may be a deficit of experienced practitioners (Aitchison 2009b). Perhaps this will result in creating new opportunities for graduates entering the job market (and possibly increase in wages). However, it may also mean that the UK contract archaeology will simply cover the gap by absorbing a significant number of skilled workers from other countries (just as Ireland did before 2007), leaving field staff still underpaid and without job security.

Negative factors affecting the professional standing of British archaeologists seem to have been well identified in the course of the discussion around the commercialisation of the development-led sector. Yet, the 'employment debate' tends to focus on symptoms and not on causes or potential solutions. For example, it has been noted that archaeologists value their services much lower than other planning-related professions. This does not seem to be justified since, according to the provisions of PPG15 and PPG16, heritage management is an important part of the planning and construction process. Secondly, archaeologists are not the only group operating within the contract-tendering system who are pressurised to lower their prices. Why then is there such disproportion in margins (and consequently in wages and work conditions)? Possibly the explanation lies in the 'ethos' of the profession, still strongly associated with the amateur/volunteer/vagabond stereotype, according to which archaeology is a calling and adventure and not a profitable career, with intangible satisfaction and not financial gain as a reward. It seems that since the input of individual archaeologists (be it experienced professional staff, trainee site assistants or volunteers) is not respected, to some extent the input of the discipline in general is not adequately valued (Morris 1999) – in both pecuniary and social terms. Finally, perhaps indeed, there are more archaeologists than work. Therefore, having an over-supply of potential employees companies do not have to compete for qualified staff. However, at the heights of economic upturns and increased levels of construction industry investments, contractors seem to be willing to hire almost any number of field workers,

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increasingly supporting themselves with non-professionals and archaeologists from other countries (see Section 6.2.1).

According to the findings of the inquiry relating to pay and conditions in archaeology led by the All Party Parliamentary Archaeology Group (APPAG),[205] the improvement of pay and conditions for employment in field archaeology was identified as a matter of urgency. A number of suggestions on how to address imbalances in the contract sector include raising the IFA minimum salaries across the sector (Price and Geary 2008) and raising junior staff wages to match graduate entry level in allied professions (APPAG 2003)[206] – which can only be done through a simultaneous increase in prices of archaeological services (Darvill and Russell 2002). Some, like Everill (2007, p. 134), also advocate unionisation and making the archaeological lobby (CBA, IFA, BAJR users, etc.) responsible for negotiating work and pay conditions. There are also arguments in favour of steering away from the 'profit-driven approach'. For example, the APPAG's report recommended considering replacing contact-tender model with a regional franchise system promoting local knowledge and periodical quality review (APPAG 2003, p. 7). More radical proposals (Cumberpatch 2000; Cumberpatch and Blinkhorn 2001; Everill 2007) call for a complete system transformation – abandonment of competitive tendering and the creation of a state archaeology service (see Annex 16).

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[205] APPAG is an all-party group of MPs and Peers in the Palace of Westminster with an interest in archaeology. The aim of APPAG is to further an understanding of archaeology in Parliament and promote archaeology and archaeological education. In 2003 the group prepared a report on the state of British archaeology (APPAG 2003).

[206] However, this would require addressing the issue of professional training. Whilst universities increasingly structure curricula around the provision of 'transferable skills', commercial units expect graduates to have a set of practical skills and are unwilling to employ staff without field experience (Everill 2007).

## 10.14.*Annex 14 – Contract archaeology in Europe*

*Contract archaeology in Spain:*

In Spain, the increased scope of responsibilities and a growing number of archaeological investigations resulting from the implementation of the 'polluter pays' principle, together with the devolution of competence in heritage matters between 1979 and 1983 and the establishment of regional heritage administrations put a strain on the public authorities and academic institutions. This led to the emergence of small private companies and the creation of a commercial archaeology services market (Parga Dans 2009), a process which consequently reshaped the Spanish heritage sector, with 376 archaeological companies operating in 2007 (Parga Dans 2009, p. 17).

*Development-led archaeology in the new EU Member States:*

The significant growth of the number of archaeologists employed in the Czech Republic (30% in 2002-03, 23% in 2004-05 and 6% in 2006-07; Aitchison 2009b, p. 13) can be associated with the increased number of development-led projects. Although some Czech archaeologists employed by regional or municipal museums also carry out excavations financed by investors, there are also a number of private archaeological companies set up after 1990 (at least ten commercial firms held a licence from the Ministry of Culture in 2007).

In the Slovak Republic, private archaeological companies (operating since 2006) are still a relatively new phenomenon (there were three companies registered in 2007). Like in the Czech Republic, the increased employment numbers in archaeology (20% in 2002-03, 11% in 2004-05 and 2% in 2006-07; Aitchison 2009b, p. 13) are mainly linked to excavations on large-scale commercial development projects.

In Slovenia, the demand for a greater number of field archaeologists (45% in 2002-03, 4% in 2004-05 and -4% in 2006-07; Aitchison 2009b, p. 13) has been created and temporarily stimulated by the modernisation of roads and construction of the motorway network. In the last fifteen years the private sector contracted through public tenders became a part of Slovene archaeology servicing most of development-led excavations (primary road schemes and urban rescue works).

In Hungary, the law does not permit archaeologists to contract directly to developers. However, there are some very small private firms (often a self-employed single operator) working as subcontractors to the local county museums (Aitchison 2009b).

In Poland, the first independent archaeological contractors emerged in the mid-1990s as a result of adopting principles of the Valetta Convention in response to a growing demand for development-led rescue works. Like in the British case, many companies were established by former curators and experienced academic staff, a process which resulted in 'brain drainage' in the public sector. However, unlike in the UK, there was no clear-cut separation of roles (curators, consultants, contractors) and the commercial sector remains largely unregulated including a mixture of independent archaeologists, consortia created by research institutions, services run by universities and private-public partnerships.

*'Profiling the profession'*

The current status of the archaeological profession in the European Union had been recently studied by way of a transnational project *Discovering the Archaeologists of Europe* (DISCO) which ran from 2006-2008 and was funded by the European Commission through the Leonardo da Vinci II fund. DISCO examined employment conditions (such as access to the profession, pay, personal development possibilities, etc.)

focusing specifically on the question of the transnational mobility within archaeology. The project, which ran in collaboration with the European Association of Archaeologists, explored situation across twelve countries of the European Union, all being signatories to the Valletta Convention: Austria, Belgium, Cyprus, the Czech Republic, Germany, Greece, Hungary, Ireland, the Netherlands, the Slovak Republic, Slovenia and the United Kingdom.

One of the first major findings of the survey was the amount of significant differences between national policies regulating the access to the profession and requirements to practice. Primarily, these dissimilarities refer to the type and level of necessary qualifications but also include strict licensing regimes (e.g. Greece, Ireland), language requirements (e.g. Cyprus and Greece) and even different interpretation of the archaeological profession (see tab. 11).

**Table 11:** Legal definition of an archaeologist (source: Collis 2009).

| Austria | A degree in Archaeology at, at least, Masters level (there is also a class of Mitarbeiter – 'co-worker') |
|---|---|
| Belgium | First degree in Archaeology |
| Cyprus | First degree with specialisation in Archaeology |
| Czech Republic | Masters degree in Archaeology or equivalent |
| Germany | A Doctorate or Magister in Archaeology |
| Greece | First degree with specialisation in Archaeology |
| Hungary | Masters degree in Archaeology |
| Ireland | No legal definition |
| Netherlands | A Doctorate, Doctorandus or Magister in Archaeology |
| Slovakia | Magister degree in Archaeology or equivalent |
| Slovenia | Masters degree in Archaeology or equivalent |
| United Kingdom | No legal definition |

According to the report, as a group, European archaeologists demonstrate a high level of transnational mobility with a percentage of professionals living and working in another EU Member state greater than the EU workforce as a whole (6% compared to an average of 2.2% in the Labour Force Survey 2007) (Aitchison 2009b, p. 18, see tables 12 and 13). As discussed in Section 6.2.1, the Republic of Ireland had been identified as a country with the highest percentage of the migrant field staff (with 45% of archaeologists

being non-nationals in 2007, see tab. 14). However, the majority of staff in this group

(71%) were employed as site assistants, with only 16% working as supervisors and 12% as

project managers (tab. 15).

**Table 12:** Mobility of European archaeologists: country of origin (source: Aitchison 2009b, p. 18).

| Country | Total number of individuals for whom data are available | Number of working in home state | | Number from elsewhere in EU | | Number from elsewhere in world | |
|---|---|---|---|---|---|---|---|
| Austria | 479 | 90% | 433 | 8% | 37 | 2% | 9 |
| Belgium | 124 | 98% | 121 | 2% | 3 | 0% | 0 |
| Cyprus | 52 | 79% | 41 | 15% | 9 | 4% | 2 |
| Czech Republic | 313 | 98% | 306 | 2% | 7 | 0% | 0 |
| Germany | 1,858 | 95% | 1,773 | 3% | 56 | 2% | 29 |
| Greece | 1,570 | 99% | 1,560 | 1% | 8 | <1% | 2 |
| Hungary | 508 | 93% | 473 | 5% | 25 | 2% | 10 |
| Ireland | 485 | 55% | 269 | 42% | 202 | 3% | 14 |
| Netherlands | 499 | 95% | 476 | 3% | 16 | 1% | 7 |
| Slovak Republic | 174 | 98% | 171 | 1% | 2 | 1% | 1 |
| Slovenia | 126 | 95% | 120 | 5% | 6 | 0% | 0 |
| United Kingdom | 2,611 | 93% | 2,342 | 5% | 130 | 2% | 49 |
| **Total** | **8,799** | **92%** | **8,085** | **6%** | **501** | **1%** | **123** |

**Table 13:** Country of origin of archaeologists working in the UK (source: Aitchison and Edwards 2008, p. 53).

| Country of origin | Total | % of all reported archaeologists | Country of origin | | | |
|---|---|---|---|---|---|---|
| UK | 2432 | 93% | | | | |
| Non-UK other EU | 130 | 5% | Poland | 40 | Netherlands | 3 |
| | | | Spain | 19 | Denmark | 2 |
| | | | France | 13 | Finland | 2 |
| | | | Ireland | 11 | Belgium | 1 |
| | | | Italy | 11 | Cyprus | 1 |
| | | | Sweden | 8 | Hungary | 1 |
| | | | Germany | 7 | Portugal | 1 |
| | | | Austria | 5 | Polish/German | 1 |
| | | | Greece | 4 | | |
| Non-EU (Europe) | 8 | <1% | Norway | 5 | | |
| | | | Macedonia | 1 | | |
| | | | Russia | 1 | | |
| | | | Switzerland | 1 | | |

**Table 14:** Non-nationals professionals employed in Ireland (source: McDermott and La Piscopia 2008, p. 30).

| Region | Nationality | Total | % of non-national employees |
|---|---|---|---|
| EU | Polish | 114 | 23.5% |
| | British | 26 | 5.4% |
| | Spanish | 13 | 2.7% |
| | Swedish | 13 | 2.7% |
| | German | 7 | 1.4% |
| | Italian | 7 | 1.4% |
| | French | 5 | 1% |
| | Hungarian | 5 | 1% |
| | Slovak | 5 | 1% |
| | Austrian | 2 | 0.4% |
| | Finnish | 2 | 0.4% |
| | Portuguese | 2 | 0.4% |
| | Norwegian | 1 | 0.2% |
| Non-EU | Canadian | 4 | 0.8% |
| | US | 3 | 0.6% |
| | Vietnamese | 2 | 0.4% |
| | Argentinean | 1 | 0.2% |
| | Australian | 1 | 0.2% |
| | Columbian | 1 | 0.2% |
| | New Zealander | 1 | 0.2% |
| | Swiss | 1 | 0.2% |
| Total | | 216 | 44.5% |

**Table 15:** Archaeology in the Republic of Ireland: Non-national employees by post profiles (source: McDermott and La Piscopia 2008, p. 29).

| Post Profile | Non-national staff | % |
|---|---|---|
| Site assistant | 153 | 71% |
| Supervisor | 16 | 7% |
| CEO (senior archaeologist, director, manager) | 12 | 6% |
| Specialist (conservator, illustrator, finds officer, etc.) | 10 | 5% |
| Teaching staff | 10 | 5% |
| Office staff | 4 | 2% |
| Researcher | 4 | 2% |
| Assistant Director | 3 | 1% |
| General operative (GO) | 2 | 1% |
| Cleaner | 2 | 1% |

The authors of the Irish report (McDermott and La Piscopia 2008, p. 28-9) interpreted these figures as positive, 'indicating that immigrants are not exclusively employed in low profile positions' and that 'qualified and experienced professionals from abroad can aspire to managerial positions without discrimination'. Yet, equally, these figures can be read as a confirmation of the undeclared preference for 'local' staff or a nationality-biased inequality. The latter argument is supported by observations made

during my employment in Ireland in 2006 and numerous conversations with junior staff working on development-led projects in the Republic. It seemed that some nationalities were less well represented than others, with the anecdotal evidence gathered e.g. among Polish, Czech and Lithuanian archaeologists strongly pointing towards the 'glass ceiling' phenomenon limiting access to roles of supervisors (and higher) to Irish and British workers. And indeed, the report proved that 75% of the non-nationals employed as project managers were British (including 25% Scottish) with only 25% French, American and Slovakian (with a significant absence of Polish archaeologists in this category who constituted 23.5% of non-national staff) (McDermott and La Piscopia 2008, p. 28-9).

Likewise, although the final DISCO report identified language requirements as one of major factors blocking access to senior jobs (Aitchison 2009b, p. 27), the language barrier cannot be seen as a main obstacle. For example, even though (anecdotally) the high level of demand for archaeological services in Ireland would make it economically viable for a team of Polish archaeologists, working on a major road scheme, to perform all tasks and recording in Polish and have their reports translated into English subsequently (Aitchison 2009b),[207] most Irish organisations that participated in the DISCO survey were generally satisfied with the level of linguistic competence of their non-national employees with only 10% of recognising it as a problem (McDermott and La Piscopia 2008, p. 64). This finding, together with the generally high number of foreign staff, demonstrates that language skills (or rather the lack of them) were not a decisive factor in finding employment in archaeology and, arguably, do not entirely explain the inequality in access to posts on at least a 'supervisor' level.

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[207] This case was reported as a personal comment by Margaret Gowen (of Margaret Gowen & Co. Ltd., Archaeological Consultants and Project Managers) but is not consistent with author's first-hand experience and should be treated as an aberration rather than an acceptable option dictated by the lack of language skills among the staff.

## 10.15. *Annex 15 – Developer's view: rescue archaeology in the City of London and King's Cross Development Project*

A report on development-led archaeology in the City of London (Corporation of London 2001) confirmed that developers' attitudes towards heritage management issues strongly depend on the context of the future construction project and the information available at the early stages of the planning process. In the case of the City, a district with a well-recognised archaeological sensitivity, the general attitude towards heritage issues can be described as, if not quite an active support, an acceptance resulting from acknowledged planning constraints.

According to the report, reactions depended on the developer's size and financial standing as well as previous experiences with carrying out construction projects (especially in the area). Major companies (or occasionally individuals) familiar with planning, organising, managing and designing major developments, were by and large concerned with potential disruption to programmes rather than direct expenses on archaeological work. These sums, oscillating between 1% and 3% of a total construction cost were often regarded as relatively insignificant (Corporation of London 2001, p. 17). Most developers also involved archaeological consultants at an early stage in order to integrate heritage issues into the overall construction process. Indirect costs seemed to be the main concern, especially in cases where the project was financed by a loan. The second biggest worry seemed to be the loss of floor space because of necessary redesign.

At the same time, several developers, while generally accepting design constraints and recognising some potential intangible benefits (e.g. enhancing the environmental quality of offices, PR and marketing), believed that 'the balance of considerations was weighted too heavily in favour of archaeological interests' (Corporation of London 2001, p. 1). The call for 'spreading the burden of archaeology more evenly' was based on the

argument that, while financed by the business sector, heritage considerations did not add anything to the commercial value of the project but were carried out in the name of public interest, with the community (not developers) being the ultimate beneficiary: 'if the community sets a value on archaeology, it should pay for it in a more general way' (Corporation of London 2001, p. 26).

However, there are developers who effectively use cultural heritage to improve their public image and spin off projects. For instance, in its official statements and press releases, Argent, the developer standing behind the King's Cross Central regeneration project, has repeatedly expressed pride in salvaging London cultural heritage and 'giving new uses to some 20 historic buildings' to create 'distinctive retail, leisure, education and workspace within a unique historic setting' (Argent 2009).

Since December 2006 the company has been carrying out a major brownfield 'urban renaissance' project estimated at £2bn, which will cover 27ha creating 20 new streets and a total of 8m $ft^2$ of mixed-use floor space including 25 new office buildings, 2,000 new homes, 50,000$m^2$ of retail space (Stagg 2009). The area affected by the development is in large part located within a conservation area and contains twenty listed buildings and a number of historic structures including a near-complete 19th century railway goods yard ('a microcosm of Victorian industrial London' according to English Heritage). For that reason, rigorous archaeological conditions were attached to the planning permission for the site.

In 2008, a programme of archaeological watching briefs, excavations and standing buildings recording was carried out at the Eastern Goods Yard depot, within the Transit Sheds, Train Assembly Shed and stables – a prospective new campus for Central Saint Martins College of Art and Design (Stagg 2009; Steele 2009). Works revealed some well-preserved remains of industrial installations such as railway turntables, capstans, platforms, rails and hydraulic pipe systems. Subsequently, English Heritage advised

preservation *in situ* and restoration of two railway turntables (fig. 45) discovered in front of the Grade II listed Granary Building (Hawkins 2009).

Accepting the burden of planning constraints and design limitations may simply be a price to pay for the possibility of carrying out a profitable business venture in an extremely attractive location. However, at the same time, the concern for the industrial heritage of the area put the development at the heart of media attention.[208] In turn, the developer benefits from this increased interest to promote the project and create positive publicity (e.g. using marketing slogans such as 'King's Cross is reclaiming its heritage' or 'King's Cross has heritage embedded in its DNA'; Argent 2009). Finally, since English Heritage, after initial misgivings about the project, has listed King's Cross Central as 'one of England's 20 best heritage-led developments' and commended Argent for its 'dedication to integrating and re-using old buildings', this became a welcomed addition to company's PR campaign.

The King's Cross Central redevelopment is one of the major projects reflecting a new approach to the management of historic environment associated with the recognition of cultural heritage as one of key drivers of economy and using conservation-led regeneration projects as generators of social and economic benefits (especially in urban, inner-city areas) (Symonds 2004). Responding to the sustainable development and social inclusion agenda promoted by the UK government since the 1990s, English Heritage has been increasingly supportive towards brownfield developments and urban regeneration schemes. The reuse of redundant historic buildings and sites is seen as a sustainable way of 'unlocking their economic potential' (DCMS 2001, p. 15; Robinson and Clayton 2008):

> Reusing and regenerating empty or redundant buildings prevents them from going waste. Subtle and imaginative upgrading is almost always preferable to letting them go. And in bringing them back to life we not only respect the craftspeople

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[208] Involvement of EH in the restoration of King's Cross station environs was even a subject of BBC documentary *Full Steam Ahead* (first broadcasted on 15 May 2009).

who created them and those who value them today, but also the planet from whose scarce resource they are made [...] Buildings, like glass bottles, newspapers and clothes, can be 'recycled'. (EH 2008a)



**Figure 45:** Excavations of Victorian turntables at King's Cross, London (source: BBC News and PCA).

## 10.16. *Annex 16 – Heritage at risk: the English example*

While the *Monuments at Risk* (MARS) project estimated that at least 22,500 monuments and sites have been lost in England in the post-war period (Darvill and Wainwright 1995; Darvill and Fulton 1998), a subsequent survey (*Heritage at Risk* published in 2008) commissioned by English Heritage demonstrated that over half of Scheduled Ancient Monuments (out of 19,709) were in danger of damage or destruction (21 % at high risk and 33% at medium risk; EH 2008a).

MARS also signalled that even monuments and sites located in rural areas, traditionally regarded as relatively safe environment, have become threatened: 65% of monuments in arable areas were at medium or high risk of damage. The proportion of archaeological earthworks having good survival declined by 20% from 95% in 1945 to about 75% in 1995 with an estimated 63% of earthwork monuments noticeably flattened (Darvill and Wainwright 1995; Darvill and Fulton 1998). Since approximately 27% of all monuments were in arable cultivation, the report identified agricultural activities as one of the major destructing factors to archaeological sites (10% of destruction and 30% of damage). Subsequent campaigns launched by English Heritage (*Ripping up History* and *Heritage at Risk*) provided even more worrying data. In 2008, 34% of high-risk scheduled monuments were located in cultivated land (EH 2008a). Surveys also exposed the scale of threat to the traditional ridge-and-furrow landscape and medieval archaeological remains, with earthworks under plough degrading on average by as much as 2-5 cm a year (CBA 2003). In the case of East Midlands the destruction of sites under cultivation has been estimated at 94% (EH 2003c). Moreover, the study demonstrated that even a significant number of scheduled monuments (approximately 3000) as well as parts of World Heritage Sites (e.g. approximately 25% of SAMs in the Stonehenge and Avebury WHS) were found to be under damaging arable cultivation. Also monuments not directly affected by

intensive ploughing were found to be at risk with many earthworks threatened by erosion, animal burrowing, scrub growth, etc.[209]

Research identified several causes of rural sites' deterioration, including extending areas of land under plough affecting previously undisturbed deposits, the erosive effect of repetitive cultivation and deeper-than-before cultivation practices associated with the introduction of certain crops, fertilisation and drainage. For instance, according to the Portable Antiquities Scheme, almost 90% of recorded finds come from cultivated land (Bland 2005, p. 281). Archaeologists associated with PAS also noted a deteriorating state of artefacts (especially made of metal) retrieved by fieldwalkers and metal detectorists which, in their opinion, is caused by the impact of chemicals used in agriculture (fertilisers, nitrates, and weedkillers and other chemical agents) on buried deposits (OA 2009). The *Conservation of Scheduled Monuments in Cultivation* (COSMIC) study, which assessed 159 scheduled and unscheduled monuments in the East Midlands, found 39% of them to be at serious risk, 31% at high risk and 9% at moderate risk caused by 'same depth' cultivation (permitted by Class Consent Orders) (Oxford Archaeology 2006). According to COSMIC, 66% of land managers underestimated the depth to which their cultivation operations were disturbing sites. The study also confirmed cases of breaching terms of a Class Consent. Many farmers claimed that they were not aware of the damaging effects of agriculture, especially to buried deposits: 49% of landowners and farmers on scheduled sites claimed never to have been spoken to about their sites by any archaeological body, including English Heritage Field Monument Wardens and 37% believed that the archaeological site on their land was not of national importance (Oxford Archaeology 2006). Risk to archaeological sites was magnified by difficulties with the ongoing monitoring of sites' preservation and detecting the damage, with cases of

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[209] In 2008, while 19% of scheduled monuments were at risk from agriculture itself, further 34% suffered from natural processes and 5% were prone to decay and neglect (EH 2008a).

revoking Class Consents or prosecuting deliberate destruction being exceedingly rare (Fairclough 1999, p. 31).

Suggested solutions included two basic means of stopping (or at least decreasing) the rate of cultivation damage: 1) 'setting-aside' or reverting land to grassland, preferably sheep-grazed – the most desirable and most secure option from the archaeological point of view, and 2) adopting sympathetic, archaeologically benign methods of cultivation, such as 'no-till cultivation', direct drilling or other forms of minimum cultivation without deep soil disturbance (EH 2003c, Lambrick 2004, p. 192-3). However, these options were judged as limited, especially in economic terms. According to MARS, in 1995, 32% of all rural archaeological sites and 21% of rural Scheduled Ancient Monuments were still under cultivation. In 2001, the cost of taking setting aside only English SAMs was estimated at about £2,5m per year (Lambrick 2004, p. 189).

## 10.17. *Annex 17 – Archaeological heritage management in England – key legal acts*

**Archaeology**

- *Ancient Monuments and Archaeological Areas Act 1979* (and equivalents: *Historic Monuments and Archaeological Object (NI) Order* 1995)
- *Town and Country Planning Act 1990* (and its Scottish equivalent 1997)
- *Planning Policy Guidance 16: Archaeology and Planning* 1990, *Welsh Office Circular 60/96 Planning and the historic environment – archaeology, Scotland: National Planning Policy Guidance 5: Archaeology and planning, Northern Ireland: Planning Policy Statement 6: Planning, Archaeology and the built heritage*

**Historic buildings and sites**

- *Planning (Listed Buildings and Conservation Areas) Act 1990, Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and planning (Northern Ireland) Order 1991*
- *Planning Policy Guidance 15: Planning and the historic environment, Welsh Office Circular 61/96 Planning and the historic environment – historic buildings and conservation areas, Scotland: National Planning Policy Guidance 18: Planning and the historic environment, Northern Ireland: Planning Policy Statement 6: Planning, Archaeology and the built heritage*

**Historic Landscapes**

- Non-statutory designation in the Register of parks and gardens of special historic interest in England (EH), Inventory of gardens and designated landscapes in Scotland (HS), Register of parks, gardens and demesnes of special historical interest for Northern Ireland (Environment and Heritage Service – EHS) and a Register of landscapes of outstanding historic interest (Cadw in Wales)
- *National Parks and Access to the Countryside Act 1949*
- *National Parks (Scotland) Act 2000*
- Planning policies, e.g. PPG15, *PPS7: Sustainable development in rural areas* and *PPS22: Renewable energy*
- landscapes designated as Areas of Outstanding Natural Beauty (AONBs), Heritage Coast, World Heritage Sites, National Trails, Green Belts, other local landscape designations
- and their Scottish, Welsh and Northern Irish equivalents

## International framework:

Key international agreements relating to the conservation of the historic environment to which the UK is signatory and which influenced the heritage protection reform:

United Nations conventions

- *UNESCO: Convention for the Protection of the World Cultural and Natural Heritage 1972* – 'The World Heritage Convention'

- *UNECE (United Nations Economic Commission for Europe): Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environment Matters* – 'The Aarhus Convention'

Council of Europe conventions

- *European Cultural Convention 1954* – 'The Paris Convention'

- *Convention for the Protection of the Architectural Heritage of Europe 1985* – 'The Granada Convention'

- *European Convention on Protection of the Archaeological Heritage 1992* – 'The Valletta Convention'

- *European Landscape Convention 2000* – 'The Florence Convention' which includes definition of landscape for the EIA process

## 10.18. Annex 18 – Present designation systems in England

(after *Review of Heritage Protection: The way forward*, DCMS 2004)

| Designation | What does the designation mean, and to what does it apply? | Legislative/ Regulatory basis for designation | Statutory? | Designated by... | Principal control regime | Controls administered by... |
|---|---|---|---|---|---|---|
| Listing | Individual buildings and structures of special architectural or historic interest are assessed individually and thematically against national criteria, considering factors such as age, rarity and architectural merit. The purpose of listing is to ensure the preservation of buildings and structures of historic interest and to that end policy advice is directed towards keeping them in active use | Planning (Listed Buildings and Conservation Areas) Act 1990
PPG 15 (gives listing criteria and guidance on planning considerations and enforcement relating to the historic environment) | Yes | Secretary of State, DCMS | Listed building consent | Local authority First Secretary of State (ODPM) for listed building consent appeals Secretary of State, DCMS for urgent works and CPOs |
| Local Listing | Buildings which may not be of sufficient architectural or historic merit to meet the national criteria for listing, but which are of local interest, contribute to the area, or are valued by the community | None, but recognised in other statutory regimes e.g. Building Regulations | No | Local authority | The planning system | Local authority |
| The Schedule of Monuments | The schedule (or list) is of sites of national importance and its existence ensures that the case for preservation is considered where works that may affect the monument are proposed. Sites range from standing stones to deserted medieval villages and include more recent structures such as collieries and wartime pillboxes | Ancient Monuments & Archaeological Areas Act 1979
PPG 16 | Yes | Secretary of State, DCMS | Scheduled monument consent | Secretary of State, DCMS (England); Welsh Ministers; Scottish Government |

| Archaeological Areas | Any area, which appears to merit being treated as an area of archaeological interest may be so designated. There are five such areas in England (Canterbury, Chester, Exeter, Hereford and York). However no designations have been made since 1984 as the guidance set out in PPG 16 is considered to be comprehensive. | Ancient Monuments and Archaeological Areas Act 1979 PPG16 | Yes | Secretary of State, DCMS English Heritage in London (subject to Secretary of State's confirmation) Local authorities (subject to Secretary of State's confirmation) | Notification procedures | Local authority |
|---|---|---|---|---|---|---|
| Conservation areas | Areas 'of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance'. These areas promote the appreciation and conservation of local identity, and are characterised by architectural or historic features of an area (rather than an individual building or structure) that are worth preserving or enhancing. Many other elements can contribute to an area's character, including the historic layout of its roads and the use of distinctive building materials | Planning (Listed Buildings and Conservation Areas) Act 1990 PPG 15 | Yes | Local Authority English Heritage in London Secretary of State, DCMS (Her policy is to use this power only in exceptional circumstances: to date she has not exercised the power) | Conservation area consent | Local authority First Secretary of State (ODPM) |
| Register of Parks and Gardens | Protection of parks and gardens of specific historic interest. These can range from the gardens of country houses to hospital grounds. The main purpose of this register is to help ensure that the features and qualities which make the landscapes of national importance are safeguarded during ongoing management or if any change is being considered which could affect them | Historic Buildings and Ancient Monuments Act 1953 PPG 15 | Yes (Statutory power to compile a register but no statutory controls or enforcement powers) | English Heritage | Material consideration in planning system | Local authority |

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| Register of Historic Battlefields | Identifies the sites where the country's most significant armed conflicts took place | Historic Buildings and Ancient Monuments Act 1953 PPG15 | Yes (As for Parks and Gardens there is a statutory power to compile a register but no statutory controls or enforcement powers) | English Heritage | Material consideration in planning system | Local authority |
|---|---|---|---|---|---|---|
| Historic Wrecks | Designates remains of historic ships/sites of historic shipwrecks and regulates all diving on designated sites | Protection of Wrecks Act 1973 | Yes | Secretary of State, DCMS | Licence for all site activity | Secretary of State, DCMS |
| World Heritage Sites | Special status for sites that are of "outstanding universal value" according to the World Heritage Committee criteria. They add a global dimension to our understanding of the historic and natural environment | Convention concerning the protection of the World Cultural and Natural Heritage (1972) | No | World Heritage Committee | Agreed management plans Material consideration in planning system | Relevant statutory procedure |

## 10.19. *Annex 19 – The Former Yugoslavia*

The civil war in Yugoslavia was a cultural war aimed at the annihilation of historical identities and their material representations as much as at ethnic cleansing of settlements. Numerous monuments and heritage sites were marked for destruction (Chapman 1994, p. 122), for example the Old Town and Archaeological Museum in Zadar, historic centres of Šibenik and Sarajevo or Kosovo's 600-year-old Islamic heritage (including some of the best preserved examples of Muslim architecture and Ottoman-era urban centres in south-east Europe). Moreover, World Heritage Sites and monuments under UNESCO protection were targeted or even attacked in the first instance (Prott 1992): the Old City in Dubrovnik (listed in 1979, now Croatia; 1991-1998 on the UNESCO List of Heritage in Danger), the Historical Complex of Split with the Palace of Diocletian (listed in 1979, now Croatia) and Stari Most (the Old Bridge) in Mostar completed in 1566 and deliberately destroyed by bombardment from a Croatian army tank on 9 November 1993 along with almost 300 badly damaged historic buildings of the Old Town (now rebuilt and listed in 2004). Bombing of historic towns such as Mostar, Sarajevo and Dubrovnik has even been described as "urbicide", "cultural cleansing" or "cultural genocide" (Kaiser 2000; Guttman 2000; Brodie 2005; Coward 2008).

It can be argued that while the destruction of cultural heritage in times of war (a deliberate act or a 'collateral damage') is nothing new or unique (for example, the 'Baedeker raids' in 1942 targeted places of cultural and historical importance in the UK; in 1944, German troops demolished nearly 90% of Warsaw; in 1945, the Nürnberg medieval old town and the Baroque Dresden were severely damaged in consequence of the Allied Forces' bombing raids), the case of the Balkan wars was different as the destructive power came from *within*. Here, the annihilation of cultural heritage also stemmed from the desire to eradicate material representations of contested cultural

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identities (respectively Bosnian, Croatian, Albanian, etc.) but concerned societies which had coexisted in relative peace for centuries. The fate of numerous monuments, mosques, churches, museums, libraries, archives, etc. was sealed by flawed nationalistic ideology and a manipulated belief that in the past the West Balkans region was ethnically homogeneous and could be made so again (Chapman 1994, p. 125). Before the war in Bosnia and Herzegovina, the 16th-century Old Bridge of Mostar was an important landmark highly valued by the local community. Although of Ottoman origin, it was not a 'Muslim' monument until its destruction by Croat tanks turned it into one (Kaiser 2000).

After the end of the Balkan conflict, UNESCO extended international protection of cultural heritage in the area to a further four groups of medieval religious sites. In 2006, the Dečani Monastery, the Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviša located in Serbia were added to the World Heritage List as 'Medieval Monuments in Kosovo'. Simultaneously, because of the region's political instability and consequent difficulties in conservation management, this site was put on the List of World Heritage in Danger. Serbia (as a state party), the United Nations Mission to Kosovo (UNMIK) and the Provisional Institutions of Self-Government in Kosovo were to share responsibility for the site. Since the Assembly of Kosovo declared independence from Serbia on 17 February 2008 the future of cultural heritage in the region is even more uncertain.

## 10.20.*Annex 20 – The Europeisation of Europe - new symbols and invented traditions: the anthem, the European flag and Euro*

After the end of the WWII, in view of the destructive political and military events of the first half of the 20th century, the mixture of nationalisms and conflicting territorial claims was regarded as a grave threat to the political-economic stability of the Continent. In this atmosphere, in 1949, the Council of Europe was established as a response to so defined threat. The creation of this international organisation with pan-European aspirations was intended as way of preventing future escalation of particularisms. However, even today, it is clear that, despite six decades of gradual integration, national identities are still much stronger than any supranational characteristics. Although the official motto of the European Union reads 'united in diversity', too many dissimilar national interests, language and cultural differences, long-lasting conflicts and mutual grievances could not only jeopardise the envisaged European integration but even be a threat to the stability of certain multinational states (e.g. Belgium, Spain and the UK) – with the former Yugoslavia and Czechoslovakia serving as an example. From this perceived threat emerges a cultural engineering argument supporting the creation or reinforcement of the common European identity (De Schutter 2007, p. 388).

First of all, it is worth remembering that different nations see different aims of European integration, perceiving it as, for instance, an economic alliance of choice, and a way of improving competitiveness in the era of a global market, a means to overcome the feeling of inferiority, or as a necessity for survival in changing economy. Sociological research shows, for instance, that while the French build their representation of integration on elements of culture, civilisation and humanism, Greeks associate European integration with principles of economic success, such as discipline, hard work and organisation (Chryssochoou 2000). Consequently, for Greece (as well as Portugal and Spain) the

subsequent accession to the EU meant overcoming economic hardships and an authoritarian past and was a source of national pride. For countries of Central Europe EU membership symbolises breaking with the communist regime and a 'return' to Europe. In addition, with the collapse of the Soviet regime, both East and West had to redefine their identities formed during the Cold War era (Rich 1999, p. 435). Countries of the former Eastern Bloc found themselves in a void, needing to reinvent their internal affairs and international politics. In these cases, becoming 'European' did not contradict or undermine national character; on the contrary, it offered societies a chance to reinvent themselves and to some extent even to enhance national identity (Kumar 2003, p. 6). Similarly, for Scotland, Wales and Ireland the prospect of 'returning to Europe' is also welcomed as 'Europe' represents a way of separating from the longstanding 'English' hegemony (Kumar 2003, p. 12).

The diffusion of pan-European unity ideals (Davies 1996; McNeil 2004) is ostensibly a two-fold process. From the outset, economic, political and legal instruments of integration have been, and still are, supported by the cultural argument based on common European values and shared heritage. Ironically, the problem of a noticeable lack of any stable sense of identity or belonging in the post-war period has been addressed through a variety of initiatives, of which many were based on practices borrowed from the nation state of the 19$^{th}$ century (McNeill 2004, p. 14). For instance, although all individual countries had their own national symbols (flags, anthems, etc.), there was no set of such symbols for the whole Europe. Therefore, over the years the aim of the Council to 'achieve a greater unity between its members' (art. 1 of the Statute of the CoE) has materialised itself in a number of 'invented traditions' and European symbols like the twelve-star flag, the anthem and finally, the common EU currency.

The most prominent symbol of the CoE, the European flag, was born in 1955, its design representing the ideal of 'unity among the peoples of Europe'. In 1972, the CoE

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introduced its own anthem, based on the Ninth Symphony composed by Ludwig van Beethoven in 1823 and *Ode to Joy* written in 1785 by Friedrich von Schiller, and expressing 'the idealistic vision of the human race becoming brothers'. In 1985, the flag and the anthem have been subsequently adopted by the EU, which was then the European Economic Community (EEC), as its official symbols. The last key symbol of European unity – Euro – was introduced on 1 January 2002. Besides having an important economic function (replacing the former European Currency Unit, ECU) it was also a manifestation of European integration and celebration of the birth of the 'new Europe' (Stråth 2006, p. 435). The development of invented symbolic paraphernalia of a pan-European identity reflects a universal tendency to validate contemporary political claims through reference to the past.

## 10.21.*Annex 21 – Archaeological theory and cultural heritage management in the post-war Central and Eastern Europe – Polish example*

In the years that followed the end of WWII, archaeology, conservation and cultural heritage management in countries of the Eastern Bloc became a part of the political agenda and were used in the process of social manipulation. In 1945, Poland – quite literally – lay in ruins. Rebuilding of the country was a priority and a great deal of attention was given to the reconstruction of the cultural heritage. However, not all buildings and sites were treated equally. Restoration works focused upon the reconstruction of historic town centres, which in some cases had been razed to the ground. This process was associated with extensive archaeological investigations of medieval sites and contributed hugely to the development of Polish historical archaeology. At the same time, many buildings and sites were neglected because of their association with the Catholic Church or their importance as historic and national symbols. For example in Warsaw, where big parts of the medieval and post-medieval Old and New Town were excavated and carefully rebuilt (in 1950s and 1960s), the Royal Castle was left in ruins and the communist authorities blocked its restoration until 1971.

In the first decades after the end of WWII, archaeology in Poland focused on two main, interlinked, subjects – Slavic ethnogenesis and the origins of the Polish state. The question of the Slav origin was the continuation of a well-known pre-war dispute over the ethnic identity of peoples inhabiting the territory between the Oder and Vistula rivers before the dawn of the Early Middle Ages. Before WWII, Nazi propaganda questioned a Slavic presence in the region in the early medieval period. Instead, German archaeological research provided 'evidence' for the 'Germanness' of these lands (see Annex 22). At the same time, in 1945, Polish territory was transformed by moving national borders

westwards. The Polish-German boundary was set on the Oder and Lusatian Neisse rivers

to include parts of the former Third Reich provinces, while eastern parts of the pre-war

Polish state (now territories of modern Belarus and Ukraine) were incorporated into the

USSR. This brought modern Poland's territory to a shape similar to that of an early

medieval period established by the first rulers of the Piast dynasty in 10$^{th}$ and 11$^{th}$

centuries. Eventually, problems discussed by archaeology and medieval history were

harnessed by the communist establishment as a part of the official propaganda to prove

Poland's rights to the lands annexed in 1945. The nascent communist government

purposefully supported attempts to discover a 'Slavic heritage' of the 'Recovered

Territories',[210] and very quickly coined a strong link between archaeology and political

state objectives.

Thus, in its early days, Polish medieval archaeology concentrated on issues

undertaken in response to pan-Germanism and Nazi ideology and was motivated by the

desire to demonstrate Slavic and 'proto-Polish' origins of the area in question and to

justify Polish rights to territories acquired under the Yalta and Potsdam treaties (Hodder

1991; Kobyliński 2005). This trend dominated the research agenda until the early 1970s,

when, after the confirmation of the Polish-German border, the government did not have to

rely on archaeologists to justify its western frontier – although some archaeologists, e.g.

Kostrzewski, continued to argue with Kossinna's pan-Germanic ideology (Kostrzewski

1949; Milisauskas 1998, pp. 225-6). The principal proof of politicisation of medieval

archaeology in the Soviet era is the so-called 'jubilee programme' concentrated on

research associated with celebrations of the 'Millennium of the Polish State' carried out in

1950s and 1960s.

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[210] Recovered Territories (Polish: *Ziemie Odzyskane*) was the phrase used by the Polish post-war authorities to designate areas incorporated after the Second World War which before 1945 belonged to the Third Reich: Pomorze Zachodnie (the former *Pommern* and *Stettin* area), Ziemia Lubuska (the former *Land Lebus*) and Dolny Śląsk (*Schlesien*), Gdańsk (the former Free City of *Danzig*) and the regions of Warmia and Mazury (formerly *Ermland und Masuren*).

The period of the so-called 'Real Socialism' in Central and Eastern Europe was characterised by pressure put on archaeologists to take up research designed to achieve specific results desirable from the state's point of view. In the case of post-war Poland, the communist authorities' objective was to steer outcomes of archaeological investigations towards providing a 'scientific justification' for new state borders. Consequently, the choice of research subjects was limited and interpretation of results constrained by the political agenda (Kobyliński 2005, p. 53). At the same time the issue of the origins of the Polish state was used in the campaign against the Catholic Church (Bursche and Taylor 1991, p. 588) or, to be more precise, to diminish the importance of the forthcoming celebrations of the 'baptism of Poland' in 1966. Because according to historic sources, Duke Mieszko I (Mesco) of the Piast dynasty was baptised in 966, secular celebrations prepared by the communist propaganda put year 962 in the spotlight – a possible date for Mieszko's assumption of the leadership of the Polanian tribe.

A millennium research project incorporating historical, archaeological, linguistic and ethnographic studies was supposed to prove that the new shape of Poland corresponded with ethnically 'Polish' territories, the seat of 'proto-Polish' tribes (Kobyliński 2005, p. 75). Communist propaganda and the official line of interpretation of research put forward the idea of 'recovering ancient homeland', according to which in 1945 Poland 'returned to its Piast Patrimony'. State celebrations included regional festivals, political sessions and official speeches. Millennium studies caused a huge social response and interest. In 1950s and 1960s, archaeological research focused on excavating medieval sites related to the 'origins of the Polish state': early medieval ringforts, medieval town centres, churches, cemeteries, battlefields and possible royal seats of the Piast dynasty, especially those dating back to the times of Duke Mieszko I (*c.* 960-992) – so-called *sedes regni principales* (Kostrzewski 1949; Lech 1998, p. 69; Buko 2005). Also

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historical arguments for the 'Polishness' of major towns in the 'Recovered Territories' were actively sought after.

Research on daily life and material culture in the Middle Ages, before the 'German colonisation' (mid-13$^{th}$ -14$^{th}$ centuries),[211] became one of the most important issues widely propagated through popular publications and exhibitions (Kobyliński 2005, p. 108). For example, medieval Opole was declared 'a city long before the German character, a city with a regular urban layout, with concentrated trade and crafts' (Kobyliński 2005, pp. 108, 112). Major excavation works were also associated with the restoration of historic urban centres destroyed during WWII: Warszawa (Warsaw), Kraków (Cracow), Poznań (Germ. *Posen*), Wrocław (Germ. *Breslau*), Gdańsk (Germ. *Danzig*), Frombork (Germ. *Frauenburg*), Elbląg (Germ. *Elbing*), Kołobrzeg (Germ. *Kolberg*), Szczecin (Germ. *Stettin*), Opole (Germ. *Oppeln*), Sieradz (Germ. *Schieratz*), Tczew (Germ. *Dirschau*), Toruń (Germ. *Thorn*) and Zamość (Germ. *Zamosch*).

However, it was not just the 'Millennium Programme' that shaped the approach to medieval archaeology in Poland. In the name of progress and social transformation, in 1949 the communist authorities launched a number of large-scale development projects that required extensive archaeological interventions. Among them was 'Nowa Huta' – a new industrial district (the 'Lenin' steel plant) and a socialist urban planned 'proletarian' utopia for 200,000 inhabitants. Nowa Huta, located on the outskirts of the historic centre of Kraków, was designed to facilitate the development of a 'new socialist man' and outshine the medieval capital of Poland dominated by an 'intellectually unsound' intelligentsia (Bursche and Taylor 1991, p. 588; Lech 1998, p. 227).

Since the development was located in a highly sensitive archaeological area, Nowa Huta set off over five decades of rescue works on an unprecedented scale (indeed the

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[211] While in the case of Western Europe, where the early medieval period traditionally finishes in 10$^{th}$ century, in Central Europe it lasts until mid-13$^{th}$ century.

largest rescue excavations in the history of Polish archaeology). Archaeologists

encountered a vast number of sites ranging from Palaeolithic and Neolithic to medieval

and post-medieval era, including early medieval settlements and cemeteries, a

Romanesque church, a Cistercian monastery and a famous medieval silver hoard.[212] As a

highly prestigious project, an apple of the eye of the communist government, Nowa Huta

was well-funded and widely publicised. For that reason, in 1953, a local branch of Kraków

Archaeological Museum was established and in 1959 the first volume of a new

archaeological journal (_Materiały Archeologiczne Nowej Huty_) was released. However,

due to the volume and intensity of works, a detailed analysis and dissemination of finds

had to wait until the 1970s and large parts of the materials piled up on museum shelves

still awaits publication. By no means is this an isolated case. A similar situation

developed, for example, in Czechoslovakia after the 1950s-60s boom of 'Slavic'

monument excavations and large-scale rescue works associated with industrial activities.

Time pressure, lack of sufficient technical support and censorship prevented large amount

of archaeological data from being adequately analysed and published (Venclova 1991).

Because until the mid-1960s the humanities in Poland were unbalanced in the

direction of Medieval studies, especially Slavic ethnogenesis and the question of 'origins'

(Milisauskas 1998, p. 225), 'historical archaeology' or the archaeology of medieval and

modern times developed rather early. As mentioned before, post-war archaeology in

Poland was used by communist authorities to legitimise territorial claims, and to challenge

the position of the Catholic Church and the Christian roots of the Early Medieval Polish

state (Kobyliński 2005, p. 52). However, it can be also argued that the majority of

archaeologists pragmatically chose to pay lip-service to the official regime and accept

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[212] For summary of forty and fifty years of excavation see _Materiały Archeologiczne Nowej Huty_ vol. XIII (1989) and vol. XXII (2001); for reports and analysis of findings from medieval sites see e.g. _Materiały Archeologiczne Nowej Huty_ volumes: III (1971), V (1976), X (1986), XI (1987), XII (1988), XIX (1996), XXI (1998) and XXIII (2002) and _Materiały Archeologiczne_ volumes: II (1960), VI (1965) and XIII (1972).

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certain compromises without directly falsifying results of their research. Political involvement or even political consciousness among archaeologists does not seem to have been too high: 'the point was to choose a field of studies that the regime could accept officially and which gave the opportunity for doing useful research' (Kobyliński 2005, p. 53). It is even suggested that academics cynically used 'jubilee' studies for their own purposes by way of 'taming the regime' (Kobyliński 2005, p. 53). In a sense, Polish archaeologists 'were presented with a marvellous opportunity to conduct large scale excavations' in ruined centres of historic towns (Bursche and Taylor 1991, p. 588).

Perhaps it was the case that – to some extent – scholars, too, felt a need to find scientific justification for new state borders after WWII (Kobyliński 2005, p. 53). According to archaeologists who were involved in this early post-war research, investigating the history and culture of the 'Recovered Territories' was treated as an intellectual and patriotic obligation (Kobyliński 2005, p. 54). Some of them even welcomed the initiative to study the origins of Polish statehood. It was not so much a response to the authorities' political agenda but as a way of dealing with the trauma of the Nazi era and a need to 'prove their right to their own country' (Kobyliński 2005, p. 61). Although the 'Millennium' project originated under the Stalinist regime and was steered by the communist government, for the community of archaeologists and conservators it was a fairly safe haven. Perhaps because political goals accidentally matched academic objectives, there was no feeling of oppression or need to falsify results to please the political establishment. Although the research programme was carried out in times of acute conflict between the Church and communist authorities, most archaeologists tried not to get involved in politics and the co-operation of the Catholic clergy was rather positive (Lech 1998, p. 73). Most archaeologists did not anticipate that their research would be regarded as an anti-Church sabotage. In fact, many of them were deeply religious people (Kobyliński 2005, p. 71; Kobyliński and Rutkowska 2005).

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It can be argued that Polish medieval archaeology has been built and (until recently) based on the 'Millennium Programme' and its outcomes. A number of prominent medieval archaeologists started their careers at this time (e.g. Zofia Kurnatowska, Aleksander Gieysztor and Stanisław Tabaczyński). Also, new publications dedicated to medieval archaeology or including medieval themes appeared: *Fontes Archaeologici Posnanienses* (1950), *Materiały Archeologiczne* (1959), *Silesia Antiqua* (1959) and *Pomorania Antiqua* (1965). Although since the completion of the programme many of its conclusions have been criticised and revised (which is only natural), its impressive scale and close interdisciplinary co-operation meant that there was a tremendous influx of new information about Early Medieval culture, architecture, society and economy. At the same time, due to sometimes imperfect excavation and recording methods (for instance regarding later medieval and modern context as 'unimportant' or unwanted German culture) or unsatisfactory detail of publication some valuable information is now irreversibly lost (Lech 1998; see Section 8.5).

In early 1960s, a new system for the classification of cultural monuments (architectural and archaeological) or the so-called 'immovable cultural goods' was introduced. Seemingly, it was as a response to war damage and the need to facilitate the restoration of the cultural heritage, a system designed to create a hierarchy of tasks and needs, and evaluate and prioritise conservation works and distribution of funds. The new policy was first introduced in 1961 in the 'instruction' issued by the Director of the Board of Museums and Monuments Protection prepared for the internal use within the Ministry of Culture and the Monuments Preservation Service. Then it was further disseminated by way of a 'circular no. 14' of 30 Dec 1963. It established five 'classes' or 'grades' for recording 'immovable monuments' (including historic buildings and archaeological sites). According to their 'value', monuments had been divided into five grades with class 0

indicating the most 'valuable' monuments and class IV designating the 'least important' ones:

Class 0 – monuments and architectural complexes of the highest artistic, historic and scientific value on a 'worldwide scale';

Class I – monuments characteristic on a national scale, well preserved, unaltered in the modern period;

Class II – characteristic on a regional or local scale, or partly altered with a larger part of the original fabric preserved;

Class III – monuments of average or small but 'undeniable' artistic, historic and scientific value;

Class IV – monuments that originally belonged to one of the higher classes but their poor condition ruled out effective conservation, and monuments of minimal artistic, historic and scientific value.

Only the conservation of monuments classified as grade 0 or I was funded from the central national budget. Group II became a responsibility of regional and local administration, and monuments class III and IV had to be maintained by their owners with only a minimal support from the authorities.

The five-grade classification has become an official cultural policy dictating the approach to historic buildings and sites in the 1960s and mid-1970s. The new system was promoted on various fronts: in newspapers, film chronicles, radio shows and party circulars, during official celebrations and through museum displays. There was also an intensive campaign directed at children and teenagers. Monument protection appeared in the school curriculum as well as in teenage magazines, films and books, cleverly smuggling ideas of the new social order to popular culture (fig. 46). For example, some extremely well-written and thus hugely popular teenage detective stories and comic books captivated young audiences with descriptions of extraordinary adventures, at the same

time portraying heroes and their sidekicks as scouts championing ideals of the 'real socialism'. By such ways and means, the new attitude towards cultural property and 'monuments' had been ingrained in education, tourism, language and the popular culture.



**Figure 46:** Polish films associated with celebrations of the 'Millennium': 1 – *Krzyżacy* (Teutonic Knights) 1960; 2 – *Gniazdo* (Nest) 1974; 3 – *Bolesław Śmiały* (Bolesław the Bold) 1971; 4 – *Pan Samochodzik i Wyspa Złoczyńców* (Mr Samochodzik and the Villains' Island) 1964 (source: http://www.filmpolski.pl).

Another good example of the ideological influence on society and the use of archaeology and medieval history as a political tool was the so-called 'Operation 1001 Frombork' aimed at archaeological investigations and rebuilding of the 'class 0' monuments destroyed during WWII. In the Peoples Republic of Poland (PRL) girls and boys were also encouraged (or made) to contribute to the restoration of the country's heritage and to participate in mass 'civic actions' organised by communist authorities. In years 1966-1973, over 2300 scouts took part in the 'Operation 1001 Frombork' (fig. 47). While the official story highlighted the importance of the town as a former home of Copernicus, it had deeper undertones as well. First of all, the operation celebrated the

millennium of Polish state, challenging the religious anniversary. Secondly, Frombork belonged to the 'germanised Recovered Territories'. Lastly, the Polish ethnicity and identity of the great astronomer had been questioned and had to be re-asserted.[213]



**Figure 47:** Polish Scouts participating in the restoration of Frombork heritage town in 1960s (source: Sekuła and Leśniowski 1973).

It is worth mentioning that the 'circular' of 1963 indeed was not a legally binding instrument but rather a set of internal guidelines for heritage authorities and conservators. Even by 1960s standards this classification was old-fashioned and unscientific, considered as conflicting with international standards, and as such was abandoned only five years after its implementation. Additionally, at that time, according to Polish law, all structures and sites recorded in the inventory of monuments (system similar to scheduling and listing in the UK) had an equal legal protection. Moreover, the classification was introduced by

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[213] After the WWII communist government in Poland celebrated Copernicus as a national icon. At the same time, the great astronomer is also ranked as one of the most eminent Germans. This identity and nationality dispute re-emerged in 2005 when during the excavations carried out inside the Frombork Cathedral archaeologist found human remains consisting of a skull with a broken nose. The computer-generated reconstruction of the facial image created by the police Central Forensic Laboratory bore a very close resemblance to Copernicus's contemporary portraits. The findings have aroused excitement in Poland and the researchers intended to continue investigation in order locate the grave of Lucas Waczenrode, the astronomer's uncle and the former bishop of Warmia to provide a genetic reference sample. However, the validity and feasibility of this project had been questioned because the specific location of Waczenrode's grave was not know and long-term, intrusive and potentially futile excavations were likely to damage other burials underneath the cathedral floor (Whitlock 2006; Andrews and Paradise 2008, p. 227). Finally, a comparison of DNA from the skull and strands of the astronomer's hair found in a book which had belonged to Copernicus and now kept at the Uppsala University confirmed identity of the skeleton form the Frombork Cathedral (Easton 2008). Yet, it worth remembering that despite intensive efforts, accurate identification of named individuals is extremely rare, often being a result of exceptional circumstances, e.g. the presence of an artefact confirming person's identity such as the 'Childeric rex' seal-ring (Webster 1992). Usually, the link between archaeological discoveries and historic personas is debatable.

way of an 'instruction' or a 'circular' issued for the internal use of the heritage authorities. Thus, not being a national act or even a statutory instrument, it was more of a guide for conservators than a legally binding document. This specific management practice imposed on researchers, museum staff, conservators and local authorities was part of a wider campaign intended to change the perception of Polish past and culture. It was set up in such a way as to eliminate all Church or private property (unless subject to nationalisation) and to facilitate destruction of unwanted, ideologically 'incorrect' heritage. Consequently, instead of being a technical manual for heritage authorities and conservators and a guide to the care of monuments, the classification became an 'instruction on what could be demolished in the first instance' (Pruszyński 2001, p. 310). Based primarily on the political agenda of the communist regime and an anti-clerical ideology rather than on any scientific assessment, largely illegitimate and non-compliant with international conservation standards, the management practice supported by the Ministry of Culture and the widespread propaganda campaign and educational projects 'successfully' changed the perception of cultural heritage in Poland.

Although the grading system was officially in force for only about a decade (it was abolished in 1973), it managed to distort the public perception of cultural heritage and caused irreparable damage to Polish heritage, especially to medieval and post-medieval vernacular architecture, industrial heritage and less 'spectacular' buildings. It was later described as a 'razor in a madman's hand' (Pruszyński 2001, p. 306) as in many cases it prevented the preservation of buildings and sites that still could have been rescued. The direct result of imposing the classification of monuments was the destruction of numerous post-medieval rural buildings and traditional town architecture, including unique timber houses and industrial complexes. Countless manor houses, timber buildings, mills, etc. were demolished as 'unimportant' or simply left to crumble as unworthy of preservation.

To this day the idea of 'classes' is deeply rooted in Polish mentality: the 'class zero monument' repeatedly appears in media and public debates to haunt archaeologists and other specialists involved in the cultural heritage management processes. Also local authorities, tourist information leaflets and travel agencies use the 'class 0' designation to highlight the importance of regions' cultural heritage and to attract visitors. Given that in the popular view the cultural heritage is still largely defined as 'monuments' – standing buildings and archaeological sites (less so) which can (or even should) be 'ranked' according to their 'value' and 'importance', ideas such as historic landscape character and cultural environment still have not met with a wide public acceptance and understanding.

To complicate matters even further, post-communist societies have a distorted attitude to public and private ownership. Nationalisation, collective economy and 'communal ownership' have taught people of the former Soviet Bloc a disrespect for 'common' or 'national' property which, belonging to 'everyone', was thus regarded as no-one's. At the same time, the reinstatement of the democratic system and property laws in many cases set off an almost fanatic admiration for private ownership, quite often perceived as an absolute, overriding right. In consequence, one of the biggest problems of cultural heritage management in Poland is the protection of historic buildings and archaeological sites from vandalism and damage caused either by members of the public or private owners themselves. In consequence, one of the major threats is the clandestine destruction of sites associated with construction works or land use. While big development projects such as road schemes or urban district regenerations are put under close scrutiny, small developers or landowners often try to avoid financial costs and delays caused by archaeological interventions by failing to report discoveries or simply destroying cultural remains before authorities are able to react. Another aspect of this problem is the plague of

metal-detectors and looters.[214] Despite increased police efforts and strict regulations against illicit excavations, heritage authorities are still losing the battle against nighthawks and treasure hunters. The massive scale of looting in mid-1990s led to penalising the unauthorised use of metal-detectors. This applies equally to members of the public and archaeologists, and recently the heritage service, in its internal communiqué, banned the use of metal-detectors on archaeological sites in general Whether this is the most effective way of fighting a war against looters is a topic for a separate discussion..

## Even more pressing problems

The consequences of socio-political upheavals for archaeology and cultural heritage management are significant. The collapse of the communist regime was a breaking point in Polish politics and for the economy, and soon changes began to influence academia, culture and heritage sector. Since 1990s the condition and status of Polish archaeology 'deteriorated significantly' and it was facing the 'most drastic restrictions in fifty years' (Lech 1998, p. 145). This was caused by considerable cuts in funding on research and publications, the rule of the market economy and increasing reliance on grants, especially in relation to the humanities and social studies, and, ironically, due to the political élites' losing interest in archaeology as a tool in social engineering. This, in turn, led to a significant decrease in research and excavation projects. The state still had the main responsibility and dominant role as the owner and guardian of cultural heritage resources and museum manager. However, gradually, the rapid increase of development-led (and funded) excavations, historic centres' regenerations and infrastructure projects (e.g. pipelines and motorways) has led to the emergence of private and university-based consultancy companies (see Annex 14).

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[214] See Brzeziński and Kobyliński 1999 for a detailed analysis of the scale of looting and damages caused by metal-detector users in 1990s in Poland.

The problem of dealing with the communist past, and the reappraisal and de-construction of communist/ post-communist identities refers also to medieval archaeology and interpretations and presentations of medieval archaeological heritage. Political events preceding WWII and in the post-war period had a striking impact on medieval archaeology in Central Europe. The memory of the 1920s and 1930s disputes and the subsequent tradition of patriotic archaeology means that scholars struggle to 'come to grips with new theory' and confine research in the region into a self-imposed 'Kossinna Zone' (Ascherson 2008, p. 26; Härke 1991; Hodder 1991; Kobyliński 1991 and 2005; Curta 2007). For example, although largely discredited, the ethnic archaeology and the culture-historical approach legacy is still visible in the case of museum exhibitions which traditionally concentrate on 'Celtic', 'Slavic', 'Viking', 'Germanic' artefacts, etc.

Another legacy of the communist era for archaeology and cultural heritage systems resulting from five decades of ideology policing research in humanities (represented e.g. by the already mentioned grading system and the 'origins' problem) is a strong bias towards 'monuments' such as towns, castles, religious sites, and ignoring rural landscapes, medieval villages, industrial sites, etc. Unlike in many western European countries, there is no dedicated research programme concerning medieval rural settlements. This area of studies has been neglected despite Polish archaeologists' involvement in such projects e.g. in France or Italy. Although every year numerous remains are recorded in the process of rescue excavations, information on this type of site very rarely enters wider circulation (Buko 2005, p. 294). Also, the influence of the post-war period is manifested in a traditional focus on the excavation of individual sites (Milisauskas 1998) and a rather limited interest in cultural landscapes. This is often paired with narrowly-defined research (e.g. on very local issues or specific types of artefacts) and a tendency to ignore finds later than Early Medieval.

Yet, Polish archaeology did not develop in a complete isolation. For example, the ideas of the 'New Archaeology' had been acknowledged (even if with a slight delay) but partly rejected as unfit for the local context. Unlike in the case of Eastern Germany or Czechoslovakia, researchers had access to western publications and were permitted to travel abroad (although to a very limited extent).[215] In the 1960s and 1970s, archaeologists participating in the Millennium Programme became sought after specialists and partners for joint medieval research projects. Polish universities and institutes signed agreements with Italy (e.g. the Lagoon of Venice excavations or research on the Italian Middle Ages), France (deserted villages projects), Spain, Yugoslavia or Bulgaria. Researchers from Poland also played a very important role in Egypt, for instance organising rescue works in advance of the Aswan Dam project and excavating the Tell Atrib settlement, the Hatshepsut temple in Deir el-Bahari, sites in Alexandria, Fayum and Sakkara, etc. (Kobyliński and Rutkowska 2005; Tabaczyński 2007).

However, although archaeological practice generally stands on a good European level, archaeological theory and principles of heritage management are largely ignored in the university curriculum and the main focus of theoretical research is upon the relationship between archaeology and Nazism or socialist ideology (Lech 1998). In the communist era, the omnipotent Party tried to impose Marxist ideology on Polish academia. Although archaeologists were under less pressure to representatives of other social sciences, e.g. historians (Milisauskas 1998, p. 225), some manipulations were unavoidable. For example, under the Soviet influence, a new discipline had been introduced as an essential parts of humanities curricula – the 'history of material culture'. Many years were also spent on discussion whether archaeology was an independent

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[215] Because of the rigid censorship and a strong pressure to include Marxist ideology and culture-materialism in research designs and publications many Czechoslovakian archaeologists were forbidden or chose not to write on archaeological theory, concentrating instead on non-theoretical topics. Theory was deemed dangerous as possibly conflicting with the ideological doctrine (Neustupný 1991, p. 262).

science or an ancillary discipline to history. The debate ended with a compromise stating

that while prehistory was an independent discipline, in the case of later periods (namely

medieval and post-medieval) history was the dominant science and archaeology only an

auxiliary tool lacking its own theory (Kobyliński 1991, p. 225). In addition, Polish

archaeologists were largely preoccupied with the issues of recording and excavating

techniques addressing the needs of intensive large-scale excavations associated with the

'Millennium Programme' (Kobyliński 1991, p. 226). These developments conditioned the

development of the discipline and still have a strong influence on theory, practice and

structure of Polish archaeology. In my experience, after five years of rigorous university

studies and field training, most young archaeologists graduate with no or only a minimal

knowledge of heritage management principles (or even basic legal regulations applicable

to their profession) and only with a very vague idea about theory. To say the least,

concepts of cultural environment, historic landscape or archaeological heritage

management are not obligatory components of BA and MA courses in archaeology.

Just after the collapse of the communist regime, in their analysis of the state of

Polish archaeology, Bursche and Taylor noted that the change of political climate and state

support for ethnically motivated research meant that there was no longer a clear focus for

the public perception of the discipline or a steady flow of funds (Bursche and Taylor 1991,

p. 591).[216] Additionally, they drew attention to the problem of dissonances within the

discipline itself: the conflict of 'young' scholars *v.* an older, 'tainted' generation,

universities *v.* Polish Academy of Science, competition between regional research centres

and strong regionalisms dating back at least to the beginning of 19th century. For almost

two centuries, Poland had been divided between three neighbouring countries. In this

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[216] Countries of the post-Soviet Bloc are not a solitary case. For example, it can be argued that archaeology in Spain in the 20th century gained importance because it produced data that were politically useful for the national discourse. Margarita Díaz-Andreu speculates that perhaps because in modern-day Spain majority of archaeologists do not show interest in nationalist ethno-centric studies anymore the politicians have become less interested in archaeological research. This leads subsequently to problems with obtaining research funds and getting work subsidized (Díaz-Andreu 1995, p. 55).

situation, archaeology had been developing differently in each zone and, despite the reunification of 1918, three separate intellectual traditions and three major schools of archaeology survive to the present day: Warsaw (the former Russian zone), Kraków (formerly part of Austrian sphere) and Poznań (Prussian zone) (Bursche and Taylor 1991, p. 587; Buko 2005). Such rivalry in academia is not a new or unique issue. However, it seems that in the case of Polish archaeology this phenomenon (deliberately sustained by the Soviet establishment) took quite a harmful form. The intellectual divide is so strong that over the years, academics from each research centre established their own zones of influence, which, until recently, were almost no-go areas for colleagues from competitive research institutions. Inevitably, such an arrangement in many ways affected the progress of the discipline.

As a result of the above-mentioned problems, modern Polish archaeology comes across as an erratic mixture of hermetic (under-funded) academic research, commercial rescue works (somewhat still disrespected as a moneymaking 'novelty'), popular open-air fairs and old-fashioned museum displays. There is no clear focus for the public perception of the discipline, which in addition is marked by the conflict and rivalry between regional research centres. It seems that despite two decades of transformation, archaeology, like the rest of the society, still has to overcome problems resulting from nation's troubled past and burdensome communist legacy. Thus, one of the biggest challenges it faces is to reinvent itself in the public imagination. Two short case studies presented in Annexes 22 and 23 signal how urgent and important is this task of 'overhauling' attitudes to medieval archaeology and archaeological heritage management.

## 10.22.*Annex 22 – Multiple creations of Biskupin*

In 1920s, Gustaf Kossinna, a German linguist-turned-archaeologist, pioneered the concept of the *Kulturkreis*, a method of identifying geographical regions with specific ethnic groups based on their material culture. Using patterning in types and distribution of archaeological remains Kossinna tried to match archaeological evidence with prehistoric peoples, identify their ethnicity and demarcate territories occupied in the past (Hodder 1991; Buko 2005). For example, he assumed that pottery was mainly a result of autochthonous developments and equated ceramic traditions with ethnicity (Arnold 1998a, p. 250). Consequently, he argued that the so-called Pommeranian face-urns were associated with the Germanic culture. The presence of these finds in Central and Eastern Europe was then interpreted as a proof of Germanic settlement in this area.

In 1930s, Kossinna's theory gave support to the National Socialists' ideology of reclaiming territories lost by Germany after the Treaty of Versailles. *Drang nach Osten,* the 'drive towards the East', a term which referred to the German expansion into Slavic lands in Central and Eastern Europe, became a motto of the German nationalist movement in late 19$^{th}$ and 20$^{th}$ centuries. It was linked to the concept of the 'living space', *Lebensraum,* and served as a justification for the Third Reich's territorial aggression. Although migrationism and the idea of the Nordic race's superiority were not invented by the Nazis, they corresponded with the nationalistic, right-wing mood spreading across the Weimar Republic. Scholarly theories of Montelius, Kossinna and Schuchhard were also well suited to Hitler's purposes (Härke 1998). Nazi propaganda adapted the concept of the Aryan race and manipulated the past through the popularisation of prehistoric archaeology, the establishment of museums, open-air reconstructions of prehistoric settlements, funding archaeological publications, and generous support for excavation projects.

According to Kossinna's ethnic school and the Nordic race ideology, the Slavs came to the area between Vistula and Oder rivers from the East in $6^{th}$-$7^{th}$ century AD, only after the departure of East Germanic tribes. German prehistorians considered Slavs technologically backward with very few settlements and a primitive culture slightly above the Stone Age level. Slavic people were portrayed as merely 'squatters', an inferior race occupying the primordial Germanic territory identified on the basis of the distribution of archaeological remains (Hodder 1991; Arnold 1998a). Hence the aim of repossessing territories of Poland and Czechoslovakia in order to supply the ethnic Germans, the Aryan race, with adequate living space was justified on academic grounds.

In 1933, the same year as Adolf Hitler became the German Chancellor, a fortified prehistoric settlement was discovered in Biskupin, a small village in the so-called Greater Poland. This particular region was (and still is) traditionally regarded as the cradle of Polish statehood but for almost 150 years constituted a part of Prussia and then the German Reich (in the so-called 'Partitions' era 1772-1918). Biskupin is particularly well known because of its association with mythical proto-Slavs and proto-Germans and the fierce dispute about its ethnic affiliation which antagonised Polish and German prehistorians.

The discovery of ancient remains immediately attracted public attention and became a national sensation. The press called the site the 'Polish Pompeii' or 'Polish Herculaneum'. Excavations begun in 1934 and became a trial ground for innovative methods of recording and excavating such as aerial photography and underwater archaeology. Józef Kostrzewski, the head of the excavation project and the greatest authority on Polish prehistory at the time, determined that the settlement was built between 700 and 400 BC by the so-called Lusatian Culture identified with proto-Slavs. Kostrzewski and his team actively fuelled interest in the site, disseminating the results of the excavations to the public through press, radio and film chronicles. The site was also

visited by numerous representatives of the central government, high military officials and Catholic Church authorities, including the president of the Polish Republic, Ignacy Mościcki, and the commander-in-chief, Marshall Rydz-Śmigły.

The discovery of Biskupin was used to contradict the negative image of Slavs employed by German archaeologists and to argue the proto-Slavic character of the Lusatian Culture associated in German archaeology with Thracians, Illyrians or Germanic tribes (Tabaczyński 2007). In this polemic Kostrzewski, Kossinna's former disciple, also adopted the ethnographical method and similar rhetoric. Using the settlement in Biskupin as a proof of a continuous proto-Slavic occupation, he compared the migration of Germanic tribes to the movement of Gypsies, one of the 'inferior races' according to the Nazi propaganda. In order to demonstrate the durability of Slavic and proto-Slavic occupation of the territory between Vistula and Oder, Kostrzewski also used the example of medieval and 19th-century vernacular architecture from around Biskupin and claimed that the same type of buildings were found in the Iron Age settlement from 2500 years previously.

Although in October 1939 Biskupin together with the rest of western Poland was annexed to the Third Reich, the site did not lose its importance. The village was renamed Urstätt – the 'ancient town' – and excavations interrupted by the outbreak of WWII were reconvened by the Germans as early as the spring of 1940. Works were carried out under the auspices of SS-Ahnenerbe and Heinrich Himmler. The aims were to collect counter-evidence contradicting the proto-Slavic character of the settlement and to prove that Biskupin was not a 'Polish Pompeii' at all but in fact an Illyrian fort destroyed and taken over by heroic Germanic warriors.

The fierce discussion over the 'Indo-European Problem' and the ethnogenesis of proto-Slavs and proto-Germans carried on after the end of the war (e.g. Sulimirski 1945; Kostrzewski 1949) but became rather one-sided as German scholars withdrew from the

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debate after 1945 (Bursche and Taylor 1991; Arnold and Hassman 1995). The theory of autochthonous Slavic development was enthusiastically adopted by the communist establishment as a proof of Poland's rights to the Recovered Territories and was widely used in the official propaganda. The Lusatian culture was officially associated with the proto-Slavs and once more Biskupin was put in the limelight. The archaeological interpretation of Biskupin excavations was influenced by Marxism and principles of historical materialism (Tabaczyński 2007). According to the communist ideology, the settlement became not only a Slavic stronghold but also a cradle of an egalitarian society. The bearers of the Lusatian Culture were presented as a peaceful agrarian population and the reconstruction of the site with its regular plan, rows of identical houses, communal grazing pastures and apparently collective economy became a standard-banner of the utopian uniform 'socialist' society. In this vision, Biskupin was 'a settlement inhabited by a clan community, a human group without class division, working together and sharing the fruits of common labour' (Piotrowska 1998, p. 274). In the eyes of the Marxist researchers, Biskupin gained new importance – it was the evidence, a physical proof, that long before the birth of communism proto-Slavs had built a society based on 'class equity' – no doubt a validation of the existence of the communist People's Republic of Poland (PRL). The author remembers well the tales about a small community of courageous Slav settlers happily sharing all responsibilities and equally distributing goods told by primary school history teacher (*sic!*) – without a doubt it was only a pure coincidence that this prehistoric utopia coincided with the vision of a communist 'brave new world'.

Around the 1970s archaeologists finally accepted that the Slavs came to the Biskupin area in 6th century, thus confirming the opinion expressed by German prehistorians before WWII. This re-interpretation was possible in the light of the gradual improvement of political relations with the DDR under pressure from the Soviet authorities. After 1989 Biskupin lost its political significance but gained a new role – it

has been stripped of all ethnic connotations and has become an open-air museum, educational centre and the location of annual archaeological fair focusing on all sorts of popular culture archaeology icons (Egyptian mummies, medieval knights, Celtic warriors). The results of the latest dating project based primarily on dendrochronology have again changed the perception of the site. It was now confirmed that in fact it is an early Iron Age settlement built *c.* 740 BC. At present, only a small part of the site is open to the public. The display concentrates on a full-scale reconstruction created in the mid-20th century. It is worth noting that the reconstruction (based *inter alia* on similar models of prehistoric lake-dwellings in Germany created in 1930s; see e.g. Schmidt 1999) with its prominent gate and high defensive walls was not supported by relevant archaeological evidence. Inaccurate and created with the use of inappropriate materials, it gives visitors a false impression. Indeed, it is now believed that the supposed defensive wall may be in fact a breakwater.

The site has also become a training ground for experimental archaeology and the conservation of ancient timber remains and waterlogged deposits. For that reason, in 2006 Biskupin was nominated for the Europa Nostra Awards (the so-called 'Heritage Nobel Prize')[217] for outstanding achievements in the conservation and enhancement of cultural heritage. The site won the prize for 'the development of a sustainable system for the conservation of waterlogged timber, and for the interpretation and presentation of one of the most important archaeological sites and open air museums in Central Europe'. Biskupin was also noted for promoting public awareness and appreciation of the cultural heritage (Europa Nostra 2006). It is true that the open-air museum and the annual archaeological festival are major tourist attractions and educational events. The numbers

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[217] The European Union Prize for Cultural Heritage (or the Europa Nostra Awards) was launched in 2002 by the European Commission and Europa Nostra, to 'celebrate outstanding initiatives among the many facets of Europe's cultural heritage in categories ranging from the restoration of buildings and their adaptation to new uses, to urban and rural landscape rehabilitation, archaeological site interpretations, and care for art collections'.

speak for themselves: each year the site attracts over 300,000 visitors. However, it has to

be stressed that the authorities of the Museum and festival organisers are very sensitive to

the site's uncomfortable past and ideological burden, and carefully avoid any associations

with 'Slavs' and 'Germans'. All reflections on the ethnic character of the Lusatian Culture

have been excluded from mainstream archaeology. As a result, the themes of the annual

fair have become increasingly detached from the event's setting and rather curious, too,

including e.g. Native American Indians (2003), Celts (2004), Vikings (2005), Romans and

Barbarians (2006) and the Samurai culture of Japan (2007) (fig. 48).

In academic terms however, after eight decades of misuse, the site has become

'untouchable'. Although the settlement and its well-preserved historic landscape offer an

interesting and potentially ground-breaking research opportunity, no serious archaeologist

wants to engage in politically and ideologically tainted discussions. It may seem that sixty

years after the end of WWII and twenty years after the collapse of communism in Poland

such prudence in site management and its academic ostracism are uncalled for. However,

in 2004, one of the leading weekly magazines in Poland published an update on the

archaeology of Biskupin entitled 'Proto-Slavs are Germans' (Stanisławski 2004). Having

criticised lies disseminated by archaeologists of the 'communist establishment' presenting

Biskupin as a creation of a proto-Slav community, the author – to my great horror and

utter disbelief – revealed the long withhold truth that the settlement was indeed built by...

a Germanic tribe. To prove this thesis he gave the example of exquisite pottery (Lusatian

in fact) found on the site, the quality of which obviously corresponded with the

technologically advanced German ceramics and not with shabby, poorly made Slav pots

(*sic!*). Suddenly, readers were transported back to the first half of the 20th century with its

*Kulturkreis*, *Siedlungarchäologie* and Kossinna-Kostrzewski debates. Perhaps we *do* need

a new generation of archaeologists with a fresh approach and able to distance themselves

from all ideological influences before any new research could be undertaken on the site.
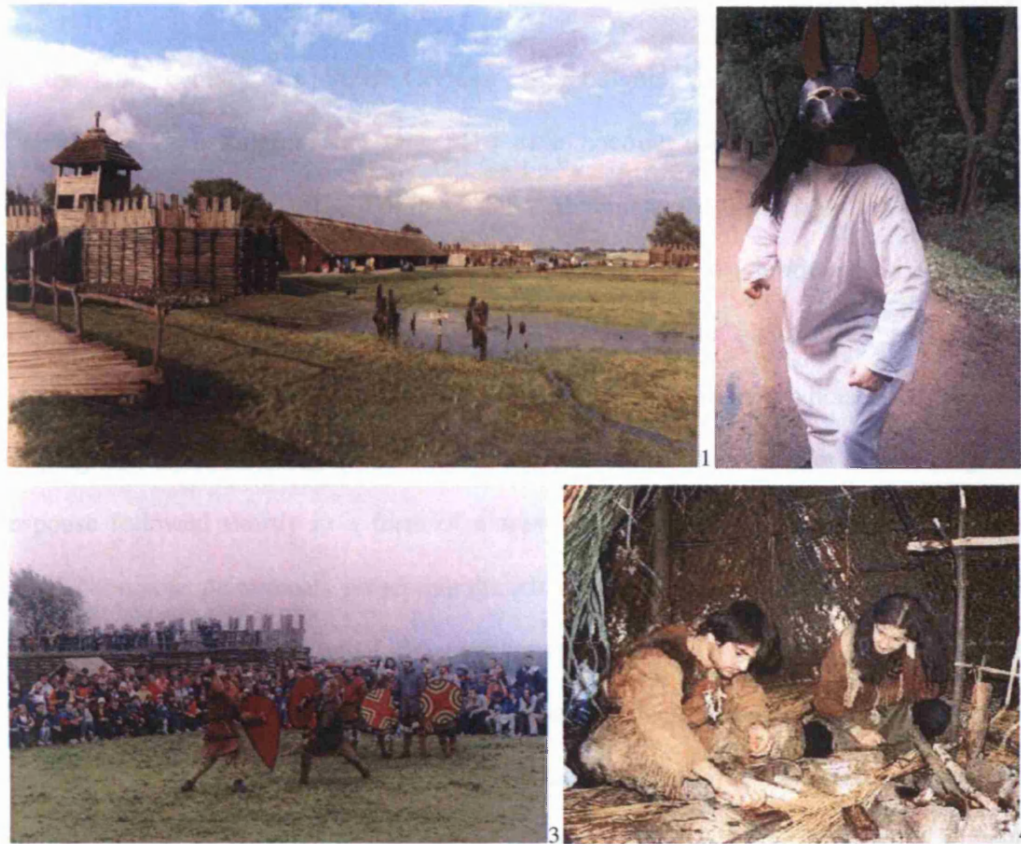
**Figure 48:** Biskupin Open-Air Museum: 1 – Reconstruction of the Early Iron Age fortified settlement; Annual Archaeology Festival: 2 – Egyptian theme; 3 – Medieval battle re-enactment; 4 – Reconstruction of a prehistoric hut (source: author's archive).

## 10.23. *Annex 23 – Battle for the battle – the 'Grunwald Victory'*

In the $20^{th}$ century, as Polish-German antagonisms escalated, Grunwald (*Germ.* Tannenberg, *Lith.* Žalgiris) and year 1410 have become the battle-banner of the long-lasting Polish-German conflict. For Poles and Lithuanians the battle signified victory over the 'Germans' and inspired the renaissance of historical celebrations and sentiments associated with a heroic medieval past, closely related to nationalistic and political agendas. In 1901, German community erected a monument to honour Urlich von Jungingen, Grand Master of the Teutonic order, who died in the battle of Tannenberg. The response followed shortly in a form of a wave of monuments depicting the victorious Poles. Numerous monuments presenting the triumphant King Jagiełło and fallen Teutonic knights appeared in Polish and Lithuanian towns (and even New York during the 1939 World's Fair). The most important was the statue of King Jagiełło unveiled in 1910 in Kraków to celebrate the $500^{th}$ anniversary of the Battle of Grunwald (the memorial was funded by Ignacy Paderewski, a celebrated pianist and future Prime Minister of Poland). During WWII these monuments were identified and methodically demolished by German occupiers (Ekdahl 2008, p. 185). In the post-war period the instrumentalisation of symbols and national sentiments was alive and well – the communist authorities decided to utilise them by commemorating the $550^{th}$ anniversary of the 'Grunwald victoria' (at this point the synonym of Polish triumph over German aggressors). The year 1960 saw large, centrally organised celebrations associated with opening a grand memorial built on the medieval battlefield. At the same time, the 1901 inscription honouring von Jungingen was chiselled out and the stone put face to the ground by order of a communist functionary (Ekdahl 2008, p. 178). In 1992, shortly after the collapse of the Iron Curtain, a group of enthusiasts organised a first re-enactment of the famous battle. In following years numbers of

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participants and spectators grew steadily reaching over 3,500 knights and re-enactors and over 100,000 members of audience in 2007 (fig. 49).

Local politicians perceive Grunwald as the best promotional product of the Warmia and Mazury region (Szydłowski 2008) as the annual event is the biggest meeting of history fans in Europe attracting visitors from Poland, Germany, Lithuania, Belarus, Russia, the UK, Finland, Italy and many other countries. Thus, when Kraków City Council announced that it intended to combine in 2010 the unveiling of the restored monument funded in 1910 by Ignacy Paderewski with the celebrations of the 600th anniversary of the Battle of Grunwald, a fierce debate broke out between Kraków and Grunwald authorities. While Kraków dignitaries supported their motion with a claim that it was right to move the event to the former capital of Poland since Jagiełło 'was from Kraków'[218] (Mielnicki 2008), the authorities of Warmia and Mazury promised their constituents that 'they would not let Grunwald be taken away' or 'stolen' from them (Mielnicki 2008; Jarzębowska and Radłowska 2008; Długosz 2008). It also seems that in this dispute, the organisers of the re-enactment have least to say. They are concerned that the 600th anniversary will cause more harm than good and once more history and heritage will be overshadowed by politics.

This quarrel (by some called sarcastically a 'battle for a Battle') takes place largely in the media and is directed by local agenda, thus revealing the utilitarian approach to history and cultural heritage as a specific mixture of a mythologised past (a double victory over the German enemy, heroes of the Golden Age), political demonstration, civic festivities, tourist attraction and a source of revenue. Grunwald is not a solitary case but rather reflects a wider problem. In recent years, Poland experienced an outburst of similar campaigns to secure 'rights' to historical events or famous people. Warmia and Mazury

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[218] This is a rather dubious argument since before becoming the king of Poland Władysław II Jagiełło ruled Lithuania as the Grand Duke Jogaila (author's note).

already suffer from 'losing' Copernicus to Toruń (the astronomer's place of birth).[219] For

that reason, moving celebrations of the 'Grunwald victory' to Kraków would be an

unacceptable loss for the region.



**Figure 49:** Grunwald battlefield: 1410 battle re-enactment and the monument commemorating 550th anniversary of the 'Grunwald Victoria' (source: author's archive).

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[219] Nicolaus Copernicus, author of *De revolutionibus orbium coelestium (On the Revolutions of the Celestial Spheres)* and one of the fathers of modern astronomy, was born in 1473 in the hanseatic town of Toruń (Thorn) but in his adult life he mostly resided in the Bishopric of Warmia (author's note).

## 10.24. *Annex 24 – We are all Vikings*

The Viking heritage (and heritage tourism associated with it) is a significant European phenomenon in terms of its pan-European scale and its influence on local economies and cultural identities (Halewood and Hannam 2001). Interest in the Viking heritage grew steadily from the 1970s fuelled by the creation of museums and exhibitions, site reconstructions and theme parks, followed by the emergence of numerous Viking re-enactment groups, open-air festivals and fairs. Over the years, the Vikings, previously stereotyped as 'marauding barbarians arriving in their helmeted hordes to pillage their way' (Akbar 2009), have been 'rehabilitated' and became heroic forefathers of modern Europeans: explorers of the Northern Hemisphere and audacious adventurers, pioneers taming wild landscapes of the North, industrious farmers and traders. The Viking myth is deeply rooted in the popular culture. For example, it inspired films like *The 13$^{th}$ Warrior, The Vikings* and *The Long Ships*; books and cartoons: *Valhalla Rising, Thorgal, Hägar the Horrible;* and computer games: *Viking: Battle for Asgard, Beowulf, Rune: Halls of Valhalla.*

Wherever there is a record of a Viking presence various types of activities and heritage sites emerge. They range from conventional museums (e.g. Roskilde Viking Ships' Museum, Hedeby Museum, the Viking Ship Museum, Oslo), heritage centres (e.g. 'Jorvik'), village reconstructions (e.g. Fyrkat Viking Centre in Denmark, Hög and Foteviken in Sweden) and even theme parks (an open-air leisure park 'Viking Land' in Norway). There is also a worldwide network of Viking open-air festivals and re-enactments: in Hafnarfjörður (Iceland), Moesgaard (Denmark), Skravika and Kopervik (Norway), Kirkcudbright, Lerwick and Largs (Scotland), Scarborough (England), York (Jorvik), Amlwch (Wales), the Isle of Man, Annoville (Normandy), Wexford (Ireland) and Wolin (Poland) to name just a few major regular events (figures 50-52). Travelling to

different tourist destinations across Northern Europe and the Baltic Sea region (and even in Texas and California) one can take part in fire festival celebrations, taste medieval food and drink during a 'Viking feast', watch a medieval battle, buy replicas of 'Viking' artefacts, learn one's fate from runic stones or experience life of a longboat crewman.

Because of its close associations with myths related to nations' and states' origins medieval heritage for at least two centuries has played a significant role in building cultural identities in various parts of Europe and I think it is safe to assume that this process will continue in the foreseeable future. An important part of this phenomenon is the 'Vikingness' which is often presented as a major element of the European identity and in the popular perspective has become a universal theme of a shared cultural legacy. This refers both to archaeological sites and their interpretations as well as contemporary communities concerned with 'all things Viking'. For example, members of Viking heritage groups from across the continent themselves stress their 'cultural unity' and a pan-European character. In the case of the Woodstown discovery described in Chapter 5, heritage campaigners blocked the road development scheme and demanded full-scale excavations stressing the local and international importance of the site. In their opinion, research into the Viking Age would enhance 'our recognition that the Vikings brought us together as Europeans (for better or worse) long before the EU' (Etchngham 2004).

Recently the 'Viking community' has received a new scientific tool. Customarily, ethnic and national identities focused on concepts of a mother tongue, folk traditions, rituals, literature, music, etc. using them as means to construct an idea of community transgressing the scope of a single household, family or neighbourhood (Anderson 1983). However, there was another important aspect of group characteristics – the notion of blood ties. In the Western culture 'blood' plays a very special role. It is a substance behind the symbolic notion of unity and shared identity, an element underlying the concept of kinship, nation, fatherland/ motherland, and, sometimes, a justification for claims to

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territory. It seems that in the light of recent scientific discoveries in the field of genetics and the development of DNA-testing technologies, blood ties may now be replaced by 'DNA ties'.

In the last two decades the general public has been increasingly exposed to the information on the decoding of the human genome. Availability of the DNA testing methods and development of interpretative techniques gave way to a number of research projects in population genetics such as the Icelandic DNA Database, the Genographic Project or the People of the British Isles project. This trend was matched by release of popular books (e.g. *Seven Daughters of Eve*, *The Blood of the Isles* or *The Origins of the British: A Genetic Detective Story*),[220] TV shows (*Blood of the Vikings*)[221] and even the commercialisation of DNA research with a number of private companies exploiting the interest in genetics and using DNA analysis in genealogy (e.g. Oxford Ancestors, Family Tree DNA or Relative Genetics). The combination of genetic, genealogical, historic and archaeological information and determinants of identity and heritage has significant implications for concepts of origins, lineage, identity and ancestry myths. It can intensify the confusion between biological and cultural characteristics and create new forms of 'imagined genetic communities', for instance Viking, Celtic, Anglo-Saxon or Basque (see e.g. Juengst 1998; Simpson 2000; Pálsson and Helgason 2003; Tutton 2004). Furthermore, this is a whole new field to consider from the ethical point of view, raising not only questions in bioethics (data protection, storage of information and genetic material, breadth of genetic screening and testing, superimposing biological categories, etc.) but also introducing much wider, universal issues, e.g. matters of social inclusion/ exclusion, stereotyping, racism and discrimination, effects of superimposing biological categories on

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[220] *Seven Daughters of Eve* (Brian Sykes, 2004, Corgi Books); *The Blood of the Isles* (Brian Sykes, 2007, Corgi Books); *The Origins of the British: A Genetic Detective Story* (Stephen Oppenheimer, 2007, Robinson Publishing).
[221] BBC 2001.

socially defined communities, impacts on collective identities and individuals' self-identification, group demarcation and re-defining the notion of nationalism (for instance through questioning the traditional perception of 'Scottish', 'Welsh', 'Irish' or 'English' ancestry or clash indigenous epistemologies).

Finally, it is worth noting that the Viking heritage and Viking heritage tourism are seen as an important contribution to the European integration and a tool for changing people's perceptions (Halewood and Hannam 2001; Pluciennik 1998). In Kristiansen's opinion, when used carefully, archaeology and cultural tourism can influence future views on history and become integrating factors leading to the merger of national histories into a 'proper European framework' at the same time 'teaching us about important cultural and historical differences' (Kristiansen 1990, p. 827). Cultural resources also play a pivotal role in the tourist industry. Museums and heritage places have a double role as education and research centres and tourist attractions. They often act as amenity areas and provide a 'fun factor' (primarily theme parks and fun rides). Many aspects of Vikingness also have a measurable economic value (being a source of revenue for the tourist industry, re-enactors and producers of replicas and other market goods).

Such utilitarian perception of cultural heritage (authentic or not) brings it in turn to attention of authorities and attracts sources of funding. For example, the North Sea Viking Legacy (NSVL) project, a partnership formed to develop 'Viking Age' tourist attractions and to sponsor joint marketing of Viking-theme activities in the North Sea and Baltic Sea region has a budget of approximately €1.2 million, of which 50% are grants from the Interreg IIC programme (NSVL 2008, Halewood and Hannam 2001).[222] The aim of this pilot scheme, involving around 40 projects run by about 20 partners in several countries

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[222] The Interreg IIC programme is a programme for spatial development, and the relationship between heritage management and cultural-touristic development of heritage sites to the spatial development processes is a core element in the NSVL project.

(Scotland, England, Denmark, Norway and Sweden, Iceland and the Isle of Man), is to

'facilitate forging links between various Viking heritage groups'.



**Figure 50:** The Up Helly-Aa festival in Lerwick on the Shetland Isles, the largest fire festival in Europe celebrated for over 100 years (source: The Guardian, 29 January 2009).



**Figure 51:** 1 – Jorvik Viking Centre; 2 – 'Viking' re-enactors at the Biskupin Archaeology Festival (source: author's archive).



**Figure 52:** Fotevikens Museum (source: www.foteviken.se/engelsk/indexe.htm).

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## 10.25. *Annex 25 – Medieval archaeology*

*'Neo-medievalism'*

*'Europeisation'* is a term that has enjoyed an outstanding political career in recent years. It refers to the increasing process of unification that has been taking place since the end of WWII. It is also used to express ideas behind the political, economic and legal integration of the EU. In its modern context, 'Europeisation' implies taking the process of unification to a next, supranational, level by way of developing 'common European identity' (Davies 1996; Gramsch 2000; McNeill 2004). However, the phrase 'Europeisation of Europe' is also used by historians to describe the dramatic transformation of the Continent in the Middle Ages which resulted in the creation of Europe as a socio-cultural construct and an identifiable cultural entity (Bartlett 1994). In the light of noticeable resurgence of national, ethnic and regional sentiments this is an interesting paradox.

The idea of a popular European identity is based on the assumption that in multicultural societies people negotiate multiple memberships on subgroup and superordinate levels (Chryssochoou 2000). Thus, it is possible, for example, to be Welsh and British as well as British and European. In this context, the important question is whether these multiple ethnic, regional, national and European identities can be successfully integrated despite their potential incompatibilities.

First of all, we should dismiss suggestions of an imminent 'death' of the nation or nationalism (Hudson 2000; McNeill 2004; Stråth 2006). Although cultural identities and many political aspects of nation states are becoming more fluid in result of growing globalisation and European integration, the same process has lead to a significant backlash against further erosion of national sovereignty and concerns about the loss of national identities. Simultaneously, many groups such as the Basques, Scottish, Welsh, Flemish and Walloons seek to increase their autonomy (note the recent emergence of the self-

proclaimed Republic of Kosovo). This proves that that traditional ideal of a 'nation state' (a nation with a territory) is still very strong in Europe, and in the most extreme cases separatist movements can cause outbursts of violence as demonstrated by the events in the Balkans in the 1990s. Consequently, the turn of the century saw the re-emergence of nationalisms and transformation from the declaratory 'Europe beyond nations' to a more realistic 'Europe of the nations' (Stråth 2006).

Similarly, on local and regional level various groups seek greater autonomy from central governments putting their regional cultural identity above the national and using history and heritage to support their claims and arguments (e.g. Silesia, Lorrain, Tyrol or Northern Italy). European politics has responded to this trend by putting forward the concept of a 'Europe of the Regions' inscribed within the embrace of a federal EU and the Maastricht Treaty which introduced the principle of 'subsidiarity'. According to this 'Euro-federal' model (McNeill 2004), policy decisions should be taken at the appropriate level, 'closer to the people' and with flexible regional economies. In a sense, the 'Europe of the Regions' is an allusion to the situation of the Middle Ages; it is a vision of the continent united by a common language (possibly English replacing Latin), a common scientific culture (instead of a common religion) and an overarching Brussels-led European government but with regions equipped with additional powers and freedoms to dictate cultural norms (McNeill 2004).

This means, for example, that 'historic nationalities' (Catalonia, the Basque country and Galicia in Spain; Scotland and Wales in the UK; Brittany and Corsica in France, etc.) and regions can more effectively protect their unique identity that has been overshadowed by nation state education, economic and cultural policy and reinstate their own, 'indigenous' traditions – especially of linguistic broadcasting and political self-determination (McNeill 2004, p. 68). One consequence of the 'neo-medievalism' is the increasing importance of bilingualism as a characteristic of the European society.

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Secondly, in many aspects modern cities and regions gradually supersede nation states as focus of loyalty (McNeill 2004, p. 98).

National histories and myths focus upon 'state-making' heroes, such as Charlemagne (France and Germany), Vladimir the Great (Russia) or Mieszko I and Bolesław the Brave (Poland) and ethnic groups (Anglo-Saxons, Franks, Slavs, etc.), often serving as a projection of a mythical cultural homogeneity (of a nation) or political unity (of Europe). However, they can also have an opposite effect, upholding cultural/regional differences and particularisms and involuntary lending support to political claims.

Let us take the case of the Northern League in Italy (Lega Nord per l'Indipendenza della Padania). This political party founded in 1991, treads on the border of advocating secession of the Northern regions (Padania) from Italy, calling for a greater regional autonomy and fiscal federalism. The League repeatedly makes references to the medieval heritage of Padania, with its name adopted after the medieval Lombard League (an alliance of the Northern cities which defeated Frederick I Barbarossa in 1176 in the Battle of Legnano) being the most obvious claim to a historic Lombard tradition. The League also emphasises differences between the North and South of Italy invoking popular (though confused) concepts of imagined ethnicities that inhabited the Apennine Peninsula in the past (the Celts, Etruscans, Venetians, Romans, etc.) and using the Celtic myth as a romantic resource and a unifying force for the creation of a 'Northern Italian' identity (McNeill 2004, p. 83).[223]

Similar mixture of popular culture, historic events, national heroes and political issues was observed e.g. in Scotland, where the release of *Braveheart* (1995) stirred up a sense of national pride. Since the theme of the film coincided with growing demands for independence made by the Scottish National Party, the premiere became a political event

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[223] The Roman-Celt opposition and 'anti-imperialism' (as presented in the popular Asterix series) were also encapsulated in the League's slogan: 'Più lontano da Roma, più vicino all'Europa' (Further from Rome, closer to Europe) (McNeill 2004, p. 83).

(Arendt 2002; McNeill 2004). However, while it had been reported that film's screenings in Scotland were a cause of a few pub brawls between Scottish and English patrons, according to the Scottish Tourist Board, despite its anti-English sentiments *Braveheart* was also responsible for an over 150% increase in tourism (Arendt 2002).

*Theory in medieval archaeology*

The realisation of the importance of the Middle Ages as a source of European myths, metaphors and paradigms draws attention to the debate on the lack of engagement with theoretical issues in medieval archaeology (e.g. Austin and Alcock 1990; Champion 1990; Härke 1991 and 1998, Hodder 1991; Milisauskas 1998; Lech 2000; Buko 2005; Horning 2006; Curta 2007). Unlike prehistorians, many medieval archaeologists do not feel inclination to engage with archaeological, social or anthropological theory (or, in fact, question the need of such involvement). There are a number of reasons driving this reluctance which largely depend on the academic, historic and political context in which the discipline evolved. On one hand, this attitude is based on the availability of numerous written and iconographical sources. It is also associated with the attempts to legitimate the existence of the nascent discipline and to prove its relevance to current academic, political and nationalistic issues by tying archaeological data to documented events and phenomena (Austin 1990) – which, in turn, led to the perception of the discipline as a part of broadly defined 'medieval studies' or even a periphery of the medieval history. To some extent, the negative approach towards theoretical frameworks had been aggravated by the disappointment with the 'New Archaeology' and its failure to challenge medieval archaeology's relationship to documentary history (Austin 1990). In the case of Central and Eastern Europe, it is also the consequence of the backlash against the pre-WWII ethno-centric approach and the post-war influence of Marxist theory and artefact-oriented 'material culture studies'.

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The ultimate upshot of the pursuit of ethnic and cultural identity was the involvement of archaeology in the ethnic discourse between disciples of Gustaf Kossinna and Józef Kostrzewski and subsequently in the Nazi racial superiority propaganda and pan-Slavic ideology proliferated in the Soviet Bloc.[224] Thus, for example, German archaeologists are still haunted by the 'ghosts of the Nazi past' (Härke 1991). As a result, for over half a century, post-war archaeology in the Federal Republic was concerned with material remains and was dominated by chronological and typological artefact studies. Similar situation took place in the Democratic Republic that, like the rest of the Eastern Bloc countries (e.g. Bulgaria, Czechoslovakia, Latvia and Poland), was under the influence of Marxism and historical materialism. In consequence, the position of archaeology (especially medieval) as an independent scientific discipline had been questioned (if not denied), making it an ancillary discipline to medieval history, a part of medieval studies or research on the material culture (this was e.g. the view presented by some leading Polish medievalists even five years ago).

At the same time, ethnic issues have also been important in Western Europe – France, Britain, Norway and Greece – with debates concerning Indo-Europeans, Celts, Germans, Scythians, Slavs, Dacians, Thracians, etc. (Hodder 1991; Cleziou *et al.* 1991; Collis 1996; Díaz-Andreu and Champion 1996a; Kohl and Fawcett 1995a; Fleury-Ilett 1996; Ward-Perkins 2006). For instance, in the 1980s, France saw a growing interest in the late Roman and early medieval transition period followed by increased funding for archaeological investigations. Some sites may have been chosen for excavation on the ideological basis rather than purely on scientific grounds, like in the case of already mentioned Bibracte (Mount-Beuvray) excavations, a project which even at the time caused

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[224] In Central and Eastern Europe, for example, such marriage between archaeology and ideology has been used to foster and exploit a 19th century pan-Slavism myth advocating unity of 'Slav nations'. This illusion of cultural coherence suited political agenda of the Soviet regime imposed on post-war Eastern Germany, Poland, Czechoslovakia, Ukraine and Belarus.

controversy because of its obvious ideological undertones and a less evident research priority (Cleziou *et al.* 1991; Fleury-Ilett 1996). The commemoration of common ancestors and use of archaeology and history to strengthen national unity and French identity concentrated also on early Frankish period and in particular on Clovis – another archetypical national hero and the first king (Fleury-Ilett 1996). Consequently, politics, ideology and government cultural policy had a significant impact on French archaeology through the allocation of funds to particular sites and projects.

In consequence, medieval archaeology is often perceived as a 'handmaiden' to history (Austin 1990, p. 25). In addition, the traditional focus on specific sites, locations, classes of material (deserted villages, pottery, monastic sites, etc.) or events not only contributes to the fragmentation of the subject but also limits research interest to regional or national issues upholding the established divisions in the academia. Moreover, trends in archaeology as a research discipline have a strong impact on heritage management institutions, e.g. manifesting their influence in the process of designation of cultural assets and determination of what should be preserved, legally protected and officially presented as historic sites, 'national monuments', 'world heritage', etc. In many countries, a strong focus on chief political events, important personas and major buildings and sites (e.g. castles, churches and monasteries, early towns) diverted attention from rural landscapes, which were deemed as 'less significant'. For instance, while in the UK, France and Italy researchers carried out extensive studies on medieval villages (e.g. the great contribution of the Deserted Medieval Village Research Group), in the Eastern Bloc rural settlements were largely ignored (focal points being the origin of towns and early medieval royal sites). This attitude is still reflected in the approach towards management of archaeological heritage in the region. For instance, in Poland, medieval villages, suburbs and rural settlements are routinely recorded but seldom protected through the monuments' designation process. Since the majority of hamlets and small villages (especially in the

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Early Medieval period) were open settlements, which, in addition, are often located in areas with a long history of intensive farming, their remains are rarely visible above the ground level and/or had been largely ploughed away. In consequence, in the case of this category of sites, research interest is very limited and the preservation *in situ* is an exception rather than a rule (Buko 2005; Kobyliński 2005 and 2008).

The overtly political context of medieval archaeology may be less marked nowadays but it still exists. Although in recent years archaeological attitudes to questions of migrations, ethnicity, 'origins', conquest and colonisation started changing, these issues remain sensitive and value-loaded, as this is illustrated by numerous examples presented in this thesis, e.g. the Irish debate on historic landscapes, the (mis)use of medieval heritage in the former Eastern Bloc, the Viking revival or political claims of the Lega Nord. One of issues that archaeologists need to consider is the influence that European political élites and administrative authorities have on the discipline through funding, collaborative and educational programmes, exhibitions and publications exploring questions of Celtic, Frankish, Germanic cultural roots of the European identity (Collis 1991; Moscati 1991; Wieczorek 1996; Gramsch 2000) or the 'Viking legacy' (NSVL 2008, Halewood and Hannam 2001). These activities are supported by the Council of Europe (CoE) or the European Union (EU) and deliberately promote supra-national or European themes. However, such use of the past exploiting historiography, myths and archaeological remains has very bad connotations and constitutes an ethical challenge for researchers. There is also a danger that without a robust theoretical background such ventures will present or fortify clearly anachronistic ideas (Pluciennik 1998) and minimise alternative views and cultural heritages, e.g. Jewish and Muslim (Silberman 2005). Thus, in my opinion, one of biggest challenges faced by medieval archaeology across the Continent will be finding a balance between carrying out an unbiased research and engaging in open,

unprejudiced debate while avoiding providing support for partisan political positions (Härke 1998; Hamilakis 2007).

## 10.26. *Annex 26 – The greening of EU Policies*

In the last few decades, 'green issues', such as the protection of European wildlife, mitigation of the greenhouse effect on the environment, development of 'clean' energy technologies or increasing the effectiveness of recycling schemes, have been gradually gaining importance in the European politics. Already in the 1990s the European Community's environmental policy was perceived as 'having reached the state of an international regime' (Hildebrand 1992). And yet, despite the growing number of policies, directives, recommendations and awareness-raising activities and in spite of intensive intergovernmental co-operation and lengthy discussions, ecosystems and biodiversity in Europe remain threatened. The EU has been criticised for undermining the pursuit of sustainable development through prioritising short-term economic gains. For example, currently the EU is struggling to implement a coherent energy policy and $CO_2$ reduction strategy and the common climate change policy has been developing for more than two decades now as member states that rely on coal as main energy source are slowing down the EU reform effort. For that reason, for many environmental protection specialist the impact of the EU environmental policy so far has been rather disappointing (Lenschow 2002).

Explanation of this unsatisfactory state of affairs has been attributed to the fact that since many EU policies are poorly implemented in the member states, high standards enshrined in these documents are in practice ineffective. Secondly, because achievements in the environmental field often clash with existing political, socio-economic and industrial conditions, the development of green issues may be hindered by interests of other sectors, such as agriculture or transport. For years, the EU environmental policies have been considered too costly and too burdensome, limiting the economic development and imposing excessive administrative constraints. They were also accused of interfering

too much with domestic affairs and national politics of member states (Jordan 2008, p. 487).

This problem had been recognised and in the past few years, the European Union has been experimenting with new, more flexible and decentralised forms of governance and policy-making structures (Lenschow 2002, p. 20). However, a major difficulty associated with the use of the 'soft law' and flexible modes of governance tested by the EU in relation to environmental issues, such as voluntary agreements or tax incentives, is their perception of having less authority than the regulatory approach (Jordan 2008, pp. 489-90). In addition, 'soft approaches', which usually do not entail strict sanctions for not adhering to them, are not seen as imposing equally binding obligations as 'proper' regulations. Treated with caution and given limited trust by legislators, such methods and norms are often also half-heartedly applied and executed.

The concept of sustainable development is the key issue to a new approach, which assumes that, on its own, the environmental sector is not able to secure and achieve its objectives (Lafferty and Hovden 2003, p. 1). For that reason, the aim of Environmental Policy Integration (EPI) is to negotiate conflicts between environmental objectives and other socio-economic goals and integrate the environmental policy into all major EU policies in the non-environmental sectors.

In order to 'green' itself, the EU needs to address the root causes of environmental damage and 'green' common policies on a national and regional level (Jordan and Lenschow 2000). There are two aspects of this self-assessment process: diagnostic of the central governance and analysis on a cross-sectoral, institutional and national 'ground' level. The so-called Vertical Environmental Policy Integration (VEPI) specifies the extent to which EU governmental sectors have pursued and adopted environmental objectives; in other words, VEPI indicates the degree to which central sectoral governance has been 'greened' (Lafferty and Hovden 2003, p. 12). Horizontal Environmental Policy Integration

(HEPI) on the other hand relates to the implementation of comprehensive cross-sectoral environmental strategies by central authorities (e.g. national governments, particular institutions or commissions entrusted with responsibility for sustainable development, etc.) (Lafferty and Hovden 2003, p. 14).

In most cases restructuring the economy to execute the sustainable development paradigm results in redistributive effects, potentially bringing losses for individual producers and consumers (Lenschow 2002, p. 33). The example of a very slow and thorny process of 'greening' the EU energy policy demonstrates that where immediate trade-offs are felt, reforms encounter resistance and present individual interests often prevail over responsibilities for a common good. For that reason, until recently, the EU's efforts to implement EPI and sustainable development concept focused on political élites instead of involving the general public because, in political terms, they were more likely to gain acceptance on an 'expert' level and to be acknowledged by the EU and government officials. The fast-increasing deterioration of the natural environment has brought the realisation that the method of balancing green ideas with goals of other policy sectors have proved ineffective. It is now recognised that the change, to be effective, must engage a wider audience (Lenschow 2002, p. 31).

In many ways archaeological heritage managers face similar problems to those troubling their environmental counterparts (limited sanctions, opposition between communal and individual interests, constraints to development projects, necessity to gain public support). Therefore, it is possible that archaeology could benefit from the green lobby's experience. There are, for example, tried-and-tested policy-making recipes developed by the environmental sector (Lafferty and Hovden 2003), which may be worth considering:

- — removing contradictions between sectorial policies as well as eliminating internal contradictions within environmental policy itself;

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– recognising mutual benefits and making policies mutually supportive: anyone seeking to pursue any policy objective would seek to point out benefits not only for the 'home' sector, but also for other sectors, as this would be a central element of a successful policy;

– securing execution at a local level – effectiveness will depend on the involvement of national and regional authorities and engagement with local communities.

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