

MINISTRY OF EDUCATION  
AND CULTURE  
Auberge D'Aragon  
Valletta.

MECT/357/65

MEMORANDUM BY THE MINISTER OF EDUCATION AND CULTURE

UNESCO RECOMMENDATION ON INTERNATIONAL PRINCIPLES APPLICABLE  
TO ARCHAEOLOGICAL EXCAVATIONS.

1. This Recommendation was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation on the 5th December, 1956, at the Ninth Session held in New Delhi. The purpose of the Recommendation is the preservation of monuments and works of the past and to this end the Recommendation stipulates, inter alia, that all archaeological excavations should be undertaken under a licence from the Central Authorities.

2. The Antiquities (Protection) Act 1925, conforms in many respects with the provisions of the Recommendation. There is however one noteworthy omission in that our law is not clear about excavations on the seabed and, though the Antiquities Act has been administratively interpreted as including reference to underwater excavations it would be advisable to effect minor amendments to subsection (2) of section 2 and to section 10 of the Act which will make it clear that the provisions regarding excavations apply as well to those carried out on the seabed.

3. The Recommendation gives considerable attention to the subject of excavations conducted by foreigners. This subject does not however raise problems in our case since section 10 of the Act explicitly prohibits excavations by anyone except the Government or with the permission and under the surveillance of the Government.

4. The amendment to the Antiquities Act referred to in paragraph 2 above has been recommended by an 'ad hoc' Committee set up to examine the Recommendation in question. The Committee,

consisting of representatives of the Crown Advocate-General, the Director of Museum, the Director of Public Works and the Commissioner of Land, recommended also that the Director of the Museum be represented on the Planning Area Permits Board and that copies of the Recommendation should be circulated to all those officers in the Public Service and outside whose work could impinge the provisions of the Recommendation.

5. It is relevant to point out that UNESCO Recommendations are instruments by which the General Conference formulates principles and norms for the international regulation of any particular question and invites Member States to take according to the Constitutional practice of each State and the nature of the question under consideration, whatever legislative or other steps may be required, to apply the said principles and norms within their respective territories. Though Government is at liberty to implement any or all of the clauses of the Recommendation it would be very much in the national interest if Malta were to conform with as many as possible of the provisions of the Recommendation under reference.

6. Ministers are therefore requested to agree:

- a. to the acceptance of the Recommendation insofar as any of the relative provisions are compatible with the national sources;
- b. to the amendment of the Antiquities (Protection) Act 1925, on the lines referred to in paragraph 2 above; and
- c. to the appointment of the Director of Museum or his representative as a member of the Planning Area Permits Board and eventually of the Town and Country Planning Commission, which, it is understood, may replace the above Board.

7. A copy of the Recommendation is attached herewith.

30th March, 1973.

Recommendation on International Principles applicable to Archaeological  
Excavations, adopted by the General Conference at its Ninth Session,  
New Delhi, 5 December 1956

L-ARKIVI NAZZJONALI TA' MALTA



RECOMMENDATION ON INTERNATIONAL  
PRINCIPLES APPLICABLE TO  
ARCHAEOLOGICAL EXCAVATIONS

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting at New Delhi, from 5 November to 5 December 1956, at its ninth session,

Being of the opinion that the surest guarantee for the preservation of monuments and works of the past rests in the respect and affection felt for them by the peoples themselves, and persuaded that such feelings may be greatly strengthened by adequate measures inspired by the wish of Member States to develop science and international relations,

Convinced that the feelings aroused by the contemplation and study of works of the past do much to foster mutual understanding between nations, and that it is therefore highly desirable to secure international co-operation with regard to them and to further, in every possible way, the fulfilment of their social mission,

Considering that, while individual States are more directly concerned with the archaeological discoveries made on their territory, the international community as a whole is nevertheless the richer for such discoveries,

Considering that the history of man implies the knowledge of all different civilizations; and that it is therefore necessary, in the general interest, that all archaeological remains be studied and, where possible, preserved and taken into safe keeping,

Convinced that it is highly desirable that the national authorities responsible for the protection of the archaeological heritage should be guided by certain common principles which have been tested by experience and put into practice by national archaeological services,

Being of the opinion that, though the regulation of excavations is first and foremost for the domestic jurisdiction of each State, this principle should be brought into harmony with that of a liberally understood and freely accepted international co-operation,

Having before it proposals concerning international principles applicable to archaeological excavations, which constitute item 9.4.3 on the agenda of the session,

Having decided, at its eighth session, that these proposals should be regulated at the international level by way of a recommendation to Member States, adopts, this fifth day of December 1956, the following Recommendation:

The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect, within their respective territories, to the principles and norms formulated in the present Recommendation:

The General Conference recommends that Member States should bring the present Recommendation to the knowledge of authorities and organizations concerned with archaeological excavations and museums.

The General Conference recommends that Member States should report to it, on dates and in a manner to be determined by it, on the action which they have taken to give effect to the present Recommendation.

I. DEFINITIONS

*Archaeological Excavations*

1. For the purpose of the present Recommendation, by archaeological excavations is meant any research aimed at the discovery of objects of archaeological character, whether such research involves digging of the ground or systematic exploration of its surface or is carried out on the bed or in the subsoil of inland or territorial waters of a Member State.

*Property Protected*

2. The provisions of the present Recommendation apply to any remains, whose preservation is in the public interest from the point of view of history or art and architecture, each Member State being free to adopt the most appropriate criterion for assessing the public interest of objects found on its territory. In particular, the provisions of the present Recommendation should apply to any monuments and movable or immovable objects of archaeological interest considered in the widest sense.

3. The criterion adopted for assessing the public interest of archaeological remains might vary according to whether it is a question of the preservation of such property, or of the excavator's or finder's obligation to declare his discoveries.

(a) In the former case, the criterion based on preserving all objects originating before a certain date should be abandoned, and replaced by one whereby protection is extended to all objects belonging to a given period or of a minimum age fixed by law.

(b) In the latter case, each Member State should adopt far wider criteria, compelling the excavator or finder to declare any object, of archaeological character, whether movable or immovable, which he may discover.

See 9C/Resolution 4.22(c).

## II. GENERAL PRINCIPLES

### *Protection of the Archaeological Heritage*

4. Each Member State should ensure the protection of its archaeological heritage, taking fully into account problems arising in connexion with excavations, and in conformity with the provisions of the present Recommendation.

5. Each Member State should in particular:

- (a) Make archaeological explorations and excavations subject to prior authorization by the competent authority;
- (b) Oblige any person finding archaeological remains to declare them at the earliest possible date to the competent authority;
- (c) Impose penalties for the infringement of these regulations;
- (d) Make undeclared objects subject to confiscation;
- (e) Define the legal status of the archaeological sub-soil and, where State ownership of the said sub-soil is recognized, specifically mention the fact in its legislation;
- (f) Consider classifying as historical monuments the essential elements of its archaeological heritage.

### *Protecting Body: Archaeological Excavations*

6. Although differences of tradition and unequal financial resources make it impossible for all Member States to adopt a uniform system of organization in the administrative services responsible for excavations, certain common principles should nevertheless apply to all national archaeological services:

(a) The archaeological service should, so far as possible, be a central State administration—or at any rate an organization provided by law with the necessary means for carrying out any emergency measures that may be required. In addition to the general administration of archaeological work, this service should co-operate with research institutes and universities in the technical training of excavators. This body should also set up a central documentation, including maps, of its movable and immovable monuments and additional documentation for every important museum or ceramic or iconographic collection, etc.

(b) Steps should be taken to ensure in particular the regular provision of funds: (i) to administer the services in a satisfactory manner; (ii) to carry out a programme of work proportionate to the archaeological resources of the country, including scientific publications; (iii) to exercise control over accidental discoveries; (iv) to provide for the upkeep of excavation sites and monuments.

7. Careful supervision should be exercised by each Member State over the restoration of archaeological remains and objects discovered.

8. Prior approval should be obtained from the competent authority for the removal of any monument which ought to be preserved *in situ*.

9. Each Member State should consider maintaining, unlooted, partially or totally, a certain number of archaeological sites of different periods in order that their excavation may benefit from improved techniques and more advanced archaeological knowledge. On each of the larger sites now being excavated, in so far as the nature of the land permits, well defined 'witness' areas might be left unexcavated in several places in order to allow for eventual verification of the stratigraphy and archaeological composition of the site.

### *Formulation of Central and Regional Collections*

10. Inasmuch as archaeology is a comparative science, account should be taken, in the setting up and organizing of museums and reserve collections, of the need for facilitating the work of comparison as much as possible. For this purpose, central and regional collections might be formed or, in exceptional cases, local collections in particularly important archaeological sites in preference to small scattered collections, accessible to comparatively few people. These establishments should commence on a permanent basis, the administrative facilities and scientific staff necessary to ensure the preservation of the exhibits.

11. On important archaeological sites, a small exhibit of an educational nature, possibly a museum, should be set up to convey to visitors the interest of the archaeological remains.

### *Education of the Public*

12. The competent authority should initiate educational measures in order to arouse and develop respect and affection for the remains of the past by the teaching of history, the participation of students in certain excavations, the publication in the press of archaeological information supplied by recognized specialists, the organization of guided tours, exhibitions and lectures dealing with methods of excavation and results achieved, the clear display of archaeological sites explored and monuments discovered, and the publication of cheap and simply written monographs and guides. In order to encourage the public to visit these sites, Member States should make all necessary arrangements to facilitate access to them.

### III. REGULATIONS GOVERNING EXCAVATIONS AND INTERNATIONAL COLLABORATION

#### *Authority to Excavate Granted to Foreigners*

13. Each Member State on whose territory excavations are to take place should lay down general rules governing the granting of excavation concessions, the conditions to be observed by the excavator, in particular as concerns the supervision exercised by the national authorities, the period of the concession, the reasons which may justify its withdrawal, the suspension of work, or its transfer from the authorized excavator to the national archaeological service.

14. The conditions imposed upon a foreign excavator should be those applicable to nationals. Consequently, the deed of concession should omit special stipulations which are not imperative.

#### *International Collaboration*

15. In the higher interest of archaeology and of international collaboration, Member States should encourage excavations by a liberal policy. They might allow qualified individuals or learned bodies, irrespective of nationality, to apply on an equal footing for the concession to excavate. Member States should encourage excavations carried out by joint missions of scientists from their own country and of archaeologists representing foreign institutions, or by international missions.

16. When a concession is granted to a foreign mission, the representative of the conceding State—if such he appointed—should, as far as possible, also be an archaeologist capable of helping the mission and collaborating with it.

17. Member States which lack the necessary resources for the organization of archaeological excavations in foreign countries should be accorded facilities for sending archaeologists to sites being worked by other Member States, with the consent of the director of excavations.

18. A Member State whose technical or other resources are insufficient for the scientific carrying out of an excavation should be able to call on the participation of foreign experts or on a foreign mission to undertake it.

#### *Reciprocal Guarantees*

19. Authority to carry out excavations should be granted only to institutions represented by qualified archaeologists or to persons offering such unimpeachable scientific, moral and financial guarantees as to ensure that any excavations will be

completed in accordance with the terms of the deed of concession and within the period laid down.

20. On the other hand, when authority to carry out excavations is granted to foreign archaeologists, it should guarantee them a period of work long enough and conditions of security sufficient to facilitate their task and protect them from unjustified cancellation of the concession in the event, for instance, of their being obliged, for reasons recognized as valid, to interrupt their work for a given period of time.

#### *Preservation of Archaeological Remains*

21. The deed of concession should define the obligations of the excavator during and on completion of his work. The deed should, in particular, provide for guarding, maintenance and restoration of the site together with the conservation, during and on completion of his work, of objects and monuments uncovered. The deed should moreover indicate what help if any the excavator might expect from the conceding State in the discharge of his obligations should these prove too onerous.

#### *Access to Excavation Sites*

22. Qualified experts of any nationality should be allowed to visit a site before a report of the work is published and with the consent of the director of excavations, even during the work. This privilege should in no case jeopardize the excavator's scientific rights in his finds.

#### *Assignment of Finds*

23. (a) Each Member State should clearly define the principles which hold good on its territory in regard to the disposal of finds from excavations.

(b) The finds should be used, in the first place, for building up, in the museums of the country in which excavations are carried out, complete collections fully representative of that country's civilization, history, art and architecture.

(c) With the main object of promoting archaeological studies through the distribution of original material, the conceding authority, after scientific publication, might consider allocating to the approved excavator a number of finds from his excavation, consisting of duplicates or, in a more general sense, of objects or groups of objects which can be released in view of their similarity to other objects from the same excavation. The return to the excavator of objects resulting from excavations should always be subject to the condition that they be allocated within a specified period of time to scientific centres open to the public, with the proviso that if these conditions are not put into effect, or

case to be carried out, the released objects will be returned to the conceding authority.

(b) Temporary export of finds, excluding objects which are exceptionally fragile or of national importance, should be authorized on requests emanating from a scientific institution of public or private character if the study of these finds in the conceding State is not possible because of lack of bibliographical or scientific facilities, or is impeded by difficulties of access.

(c) Each Member State should consider exchanging, or depositing in foreign museums objects which are not required in the national collections.

#### *Scientific Rights: Rights and Obligations of the Excavator*

24. (a) The conceding State should guarantee to the excavator scientific rights in his finds for a reasonable period.

(b) The conceding State should require the excavator to publish the results of his work within the period stipulated in the deed, or, failing such stipulations, within a reasonable period. This period should not exceed two years for the preliminary report. For a period of five years following the discovery, the competent archaeological authorities should undertake not to release the complete collection of finds, nor the relative scientific documentation, for detailed study, without the written authority of the excavator. Subject to the same conditions, these authorities should also prevent photographic or other reproduction of archaeological material still unpublished. In order to allow, should it be so desired, for simultaneous publication of the preliminary report in both countries, the excavator should, on demand, submit a copy of his text to these authorities.

(c) Scientific publications dealing with archaeological research and issued in a language which is not widely used should include a summary and, if possible, a list of contents and captions of illustrations translated into some more widely known language.

#### *Documentation on Excavations*

25. Subject to the provisions set out in paragraph 24, the national archaeological services should, as far as possible, make their documentation and reserve collections of archaeological material readily available for inspection and study to excavators and qualified experts, especially those who have been granted a concession for a particular site or who wish to obtain one.

#### *Regional Meetings and Scientific Discussions*

26. In order to facilitate the study of problems of common interest, Member States might, from time to time, convene regional meetings attended by representatives of the archaeological services of interested States. Similarly, each Member State might encourage excavators working on its soil to meet for scientific discussions.

#### **IV. TRADE IN ANTIQUITIES**

27. In the higher interests of the common archaeological heritage, each Member State should consider the adoption of regulations to govern the trade in antiquities so as to ensure that this trade does not encourage smuggling of archaeological material or affect adversely the protection of sites and the collecting of material for public exhibit.

28. Foreign museums should, in order to fulfil their scientific and educational aims, be able to acquire objects which have been released from any restrictions due to the laws in force in the country of origin.

#### **V. REPRESSION OF CLAUDESTINE EXCAVATIONS AND OF THE ILLEGAL EXPORT OF ARCHAEOLOGICAL FINDS**

##### *Protection of Archaeological Sites against Claudestine Excavations and Damage*

29. Each Member State should take all necessary measures to prevent clandestine excavations and damage to monuments defined in paragraphs 2 and 3 above, and also to prevent the export of objects thus obtained.

##### *International Co-operation in Repressive Measures*

30. All necessary measures should be taken in order that museums to which archaeological objects are offered ascertain that there is no reason to believe that these objects have been procured by clandestine excavation, theft or any other method regarded as illicit by the competent authorities of the country of origin. Any suspicious offer and all details appertaining thereto should be brought to the attention of the services concerned. When archaeological objects have been acquired by museums, adequate details allowing them to be identified and indicating the manner of their acquisition should be published as soon as possible.

##### *Return of Objects to their Country of Origin*

31. Excavation services and museums should lend one another assistance in order to ensure or facilitate the recovery of objects derived from clandestine excavations or theft, and of all objects exported in

Infringement of the legislation of the country of origin. It is desirable that each Member State should take the necessary measures to ensure this recovery. These principles should be applied in the event of temporary export as mentioned in paragraph 23 (c), (d) and (e) above, if the objects are not returned within the stipulated period.

#### VI. EXCAVATIONS IN OCCUPIED TERRITORY

32. In the event of armed conflict, any Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory. In the event of chance finds being made, particularly during military works, the occupying Power should take all possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto.

#### VII. BILATERAL AGREEMENTS

33. Member States should, whenever necessary or desirable, conclude bilateral agreements to deal with matters of common interest arising out of the application of the present Recommendation.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its Ninth Session, which was held at New Delhi and declared closed the fifth day of December 1956.

In faith whereof we have appended our signatures this fifth day of December 1956.

*The President of the General Conference*

*The Director General*

Certified copy  
Paris.

*Legal Adviser  
of the United Nations Educational,  
Scientific and Cultural Organization*

L-ARKIVJI NAZZJONALI TA' MALTA