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Online Journal in Public Archaeology

FORUM

The looting of archaeological heritage

Last year, in addition to AP Journal Volume 2, JAS Arqueología also published a book in Spain about the looting of archaeological heritage: *Indianas jones sin futuro* (Indianas jones without future), by Ignacio Rodríguez Temiño. We then realised there was an urgent need to debate this issue more thoroughly at an international scale, to show how different things can be and try to find better strategies for the protection of archaeological heritage.

While the forum was being designed, a special issue of Internet Archaeology on looting was published (Issue 33) and new projects started to emerge. This shows an increasing interest in these topics and opens the way for wider debates and perspectives.

At first, we thought metal detecting was the main topic to be discussed. Then we started to realise it was just a small part of a wider problem: looting. This is how we decided to initiate a series of forums for the coming years, with a focus on different aspects of looting, and from different perspectives*.

PART I (vol. 3 – 2013) Beyond metal detectors: around the plundering of archaeological heritage.

PART II (vol. 4 – 2014) Conflict and looting: alibi for conflict... and for the looting of archaeological heritage.

PART III (vol. 5 – 2015) Beauty and money: a market that feeds looting.

PART IV (vol. 6 – 2016) Managing development: from the building of a country, to the destruction of archaeological heritage.

**Participation is open for anyone interested, for both published and unpublished parts. We would like the debate to constantly flow among topics.*

PART I

BEYOND METAL DETECTORS: AROUND THE PLUNDERING OF ARCHAEOLOGICAL HERITAGE

The use of metal detectors is an important issue in the management and protection of archaeological heritage. However, metal detectors have been generally tagged as a tool for looting more than a tool for research or protection. Their use has evolved in a way that is now considered a problem in many countries, and each country takes a different path to tackle it. From prohibition to indulgence, there is no clear idea of what is the best way to deal with this problem.

The forum at hand is a starting point for a debate on the topic of looting; it presents several perspectives on the use and misuse of metal detectors and the consequences for archaeological heritage, together with a broader perspective on looting in those countries where metal detectors are not a fundamental tool for finding archaeological remains.

We deliberately avoided to include the well-known system that is being used in England through the PAS (see latest, Campbell 2013), as we preferred to present other, lesser-known examples from Europe and America; cases from Spain, Moldova, Flanders (Belgium), Estonia, Mexico, Bolivia, and Peru provide different viewpoints and examples, as well as the latest developments. This is only an outline of the forum, and we welcome new papers from different countries as well as answers to those included in this volume.

Responses

Ignacio RODRÍGUEZ TEMIÑO

Fighting against archaeological plundering on land and underwater sites in Spain.

The loss of what we know as archaeological heritage can be directly attributable to the continuous human occupation of the same places for thousands of years, which increases with population growth and economic development. But the loss of archaeological heritage due to looting is something else entirely. In non-legal terms, looting is defined as the loss of archaeological goods and its associated information,

caused by art theft and removal of soil for artefacts to supply the illicit antiquities market. This concept of looting implies damage done to a site, with its special stratigraphic and depositional settings, or other any archaeological entity. This is the meaning of the term looting that will be used in this paper.

In Spanish legislation, looting has a broader meaning. According to Article 4 of the Ley de Patrimonio Histórico Español, or the Spanish Historical Heritage Act, looting refers to any act or omission that prevents or disrupts the social function of cultural property.¹ Since the 19th century, Spain has undergone all sorts of plundering. At the end of that century, and the beginning of the 20th, many of the objects excavated or found by chance ended up abroad. This led to strong social reactions that eventually materialised in laws governing archaeological activity that also banned the export of such goods. However, these good intentions were frustrated by the lack of interest of public authorities in preserving cultural heritage, evident in the absence of effective legal and bureaucratic systems specifically dedicated to the protection of these goods, until very recently.

The map of cultural plunder in Spain can be roughly divided into two areas. In the north, the main mode of plundering is stealing artwork, usually of a religious nature, while in the south, archaeological looting is usually related to the use of metal detection devices. Add to that underwater cultural devastation, which began in the 1960s and was perpetrated by sport divers on coastal wrecks. Today, technological developments have enabled access by remote control to mesopelagic depth. This possibility has been used by treasure-hunter companies to reach shipwrecks of the so-called Carrera de Indias and its sunken treasures. It should be noted that at least eight out of ten wrecks located in waters under Spanish jurisdiction have been wholly or partially removed.

According to the analysis of the number of complaints related to unauthorised use of metal detectors in the Guardia Civil (Civil Guard), Andalusia has been accumulating more complaints than the other regions of Spain. This picture has been corroborated by studies

1 Under this law, spoliation is understood as any action or omission placing all or any of the values of the property comprising the Spanish Historical Heritage at risk of loss or destruction, or the prevention of it from carrying out its social function (Article 4, LPHE).

carried out by the Instituto Andaluz de Patrimonio Histórico (Andalusian Historical Heritage Institute), which lists surface archaeological looting (i.e., looting carried out with the use of detectors) as the second most destructive cause of the loss of sustainability of archaeological sites.

Unlike other neighbouring countries, such as Italy, which experienced significant damage to archaeological sites and necropolises due to the use of heavy equipment, or South American and Asian countries, in which graves or works of art are stolen directly from the ruins or ancient cities, metal detectors are a key factor in the looting of archaeological sites in Spain. These detectors are not only used to locate items close to the surface, but also burial structures with metallic goods contained within, that are subsequently dug up without the use of archaeological methodology of any kind.

These devices, which are used for locating archaeological objects, were introduced into Spain by American metal-detecting enthusiasts who worked on joint-use Spanish-American military bases in Rota (Cadiz) and Morón de la Frontera (Seville). Their use soon extended to local erudite experts, seeking to develop their individual collections. Somewhat later, they were employed professionally in the search for artefacts and the extraction of grave goods destined for sale as part of the illicit trade in antiquities. Archaeologists showed little interest in them as instruments for improving archaeological work, which led to a considerable rejection of their use.

Legislation concerning historical or cultural heritage in Spain (18 in total, one general and one with specific application to each region) have regulated the use of metal detection devices to locate archaeological goods. This regulation, however, is not homogeneous throughout Spain. While some regions require prior authorisation for the use of metal detectors anywhere within the autonomous community, authorisation is only required for recorded archaeological sites in others, which leaves unknown or unrecorded sites without any protection. Additionally, these laws state that any find of archaeological value automatically belongs to the state, regardless of on whose property the item was found. Moreover, the Código Penal (Penal code) of 1995 lists a number of offenses for damaging archaeological sites, but its application is only reserved for severe damage.

With reference to the use of metal detectors, the main difference between the administrative and the criminal systems is that the former has a preventive aim. It punishes the conduct, i.e., the use of detectors without prior authorisation, without requiring the results of that conduct, i.e., the location of the archaeological object, to be disclosed. In criminal law, meanwhile, it is more the existence of a result, i.e., an archaeological site damaged by the removal of deposits without proper archaeological methodology, regardless of the choice of apparatus, e.g., a metal detector, used to locate archaeological items.

A reform of existing regulations within the Código Penal has been requested, so as to include an article criminalising archaeological looting—with no results thus far. But despite this relative lack of adaptation, the Spanish cultural administration has attempted to resolve the plundering of terrestrial and underwater archaeological heritage. The main means used to combat this threat on the archaeological heritage have been the administrative sanctions to those who have been reported for unauthorized use of detection devices, as well as police operations against looters and traffickers in illegal antiquities. This results of this move vary according to each autonomous region. While some autonomous communities have barely done anything, other regions, such as Andalusia, have achieved a wide decrease in looting—so much so that the image of the wanton detectorist searching for ancient coins in the countryside has been consigned to memory. Where underwater archaeological heritage is concerned, there has been greater cooperation between cultural authorities and the Navy in defending existing wrecks in the waters under Spanish jurisdiction on the one hand, and on the other, the legal defence of Spanish rights over state-owned ships in the courts of third countries.

The first legal response was, in all likelihood, deemed necessary to restrain the growth of archaeological plunder and the feeling of impunity among those involved in the illicit trade of artefacts; today, however, new means to deal with this issue are being explored—such as the decriminalisation of the use of detectors on beaches, as well as the incorporation of detectorists in archaeological research projects. Both policies are indeed necessary and must be complemented by educational programs that emphasise the social value of archaeological heritage, but it is still naïve to consider the fight against plundering to be truly over.

Donna YATES

*The theft of cultural property in Bolivia:
the absence of metal detectors*

It seems surprising at first that the popularity of metal detecting has not spread to much of South America. The pre-Conquest cultures of the Andes are, perhaps, best known for their metal work. Furthermore, throughout the Colonial and into the Republican periods, the region was extensively mined for a number of metals, most notably silver, and Bolivia was a centre of coin production. Despite the potential for metal detector finds, nearly no reports exist of metal detectors being used on Bolivian archaeological and historic sites.

In this piece, I will offer some reasons of why I think that illicit metal detecting is not a significant problem in Bolivia, followed by a discussion of the type of looting of metal heritage objects that the region does experience.

Why isn't detecting popular in Bolivia?

The Law

Personally, I do not think that the criminalisation of illicit removal of heritage objects from Bolivian archaeological and historic sites is what discourages people from engaging in metal detecting. However, it is worth noting that this is not a grey area in Bolivian law.

Although physically sweeping a metal detector over the ground is not illegal in Bolivia, the intentional removal of archaeological and historic objects from the ground on both private and public land is. In 1906 the Bolivian government declared itself to be the rightful owner of all archaeological material from the Inka period and before, and banned the unauthorised removal of objects from all archaeological sites (Law of 3 Oct. 1906). By 1938, national ownership of all archaeological material was added to the Constitution (BOL. CONST. 1938, art. 163). This claim of complete ownership, accompanied by the need for a Ministry of Cultures permit for all excavation, has been supported by all subsequent Bolivian heritage legislation and has been expanded to include all objects dating to before 1900.

According to Title XII, Chapter 1, Article 326 of the 2010 Bolivian Penal Code, theft from an archaeological or heritage site is considered to be 'especially serious' and incurs a prison sentence from three months to five years. Furthermore, Article 223 of the 2010 Penal Code states that the punishment for destroying, defacing, or exporting objects archaeological or historic patrimony is one to six years imprisonment.

Poverty

Despite the stiff penalties, people are willing to break the law and remove heritage objects from the ground. Bolivia has experienced a significant amount of looting at heritage sites, yet metal detector use does not seem to be a factor. I believe that the primary reason that individuals who are willing to engage in illegal digging in Bolivia do not use metal detectors is, quite simply, poverty.

According to household surveys conducted by the Political and Economic Analysis Unit (UDAPE), 5.17 million Bolivians lived in poverty in 2010, meaning that roughly 50% of the population of the country lived on less than \$2 a day. Roughly half of those in poverty live in extreme poverty. Around 65% of the rural population, a group made up almost entirely of Indigenous subsistence farmers, are considered to be in poverty and 45% of them are considered to be in extreme poverty (down from 87% and 75% respectively in 2002). The majority of archaeological sites are located in rural areas where poverty is most concentrated.

With 65% of the rural population of Bolivia earning less than \$730 a year, it is not surprising that few choose to devote an entire year's income to the purchase of a metal detector. Even a motivated individual would not reasonably be able to come up with the money needed to buy a metal detector. It is a rich man's tool.

But what about the rich?

Not everyone is poor in Bolivia: some people are really quite rich. The income divide between the rich and the poor in Bolivia is one of the widest in Latin America. If we consider metal detecting to be a hobby accessible to the few who are able to buy a metal detector, why don't we see more of an uptake of metal detecting use among Bolivia's elite?

Wealthy metal detector users in Bolivia interested in heritage objects would be required to not only willfully break the law, but would

also need to cross significant social and racial boundaries. They would need to enter into the largely indigenous areas of the country where metal-producing archaeological sites are found. They would also need to negotiate their detecting with communities and land owners who, at least stereotypically, have a profound distrust of elite Bolivians, especially elite Bolivians with an interest in their land. In a country where trespassers and thieves are regularly lynched, to nighthawk would be akin to suicide. I would imagine that a wealthy Bolivian would not think it was worth it.

Bolivian metal artefacts are looted

Despite this lack of metal detector use, the theft and trafficking of metal objects is one of the most common types of heritage looting in Bolivia. Throughout much of the 16th through 18th centuries and into the 19th century, a significant amount of the silver in global circulation came from Bolivia. Perhaps because of this local availability of silver, the churches that are scattered throughout the small communities of the Bolivian highlands are filled with silver ecclesiastical objects. These objects, although owned by the Catholic church (or, arguably, the community they are in), are considered to be the cultural patrimony of Bolivia, thus they cannot be easily sold, can never be exported, they have been catalogued by the Ministry of Culture (as per the requirements of Bolivian law) and their theft results in the stiffer penalties mentioned above. The churches themselves are usually in poor condition and are insecure due to lack of funding for security or preservation.

No metal detector is needed to locate a Bolivian church and metal ecclesiastical heritage objects are regularly stolen. At least 34 church thefts and 1 attempted church theft have occurred in Bolivia in the last five years (2008 through 2012). Many of these churches have been robbed in the past and a few were robbed multiple times during this five-year period. In almost none of these cases were the thieves apprehended by the authorities. However, in 2012 two individuals who were allegedly caught robbing one rural church were lynched.

Silverwork was the most common type of item stolen from these churches (324 items) with other metal objects (13 items), goldwork (1 item) and gilt wood (35 items) representing smaller portions of what was stolen. A preliminary survey of international sales of this type of material indicate that a portion of these items may have entered the illicit antiquities market, however there is a distinct possibility that

some of these objects, particularly larger silver pieces, have been melted down and sold as scrap silver.

It is unclear what can be done about the theft of metal heritage pieces from churches and my research into the regulatory and social issues surrounding these occurrences is at an early stage.

Closing Thoughts

It is easy to dismiss illicit and illegal metal detecting use at heritage sites as a first world problem. While that may not be a fair characterisation of this sort of archaeological site looting globally, it appears to be the reality in Bolivia at the moment.

Pieterjan DECKERS

The past, present and future of amateur archaeological metal detecting in Flanders

Archaeological metal detecting by amateurs in Flanders stands at a turning point. Earlier this year, the first steps were taken towards the approval of a new Immoveable Heritage Decree that effectively lifts a 20 year-old ban on the hobby. This change of direction did not come out of the blue; rather, it is the culmination of a long, gradual shift in attitudes and policy. And neither is it an end-point, as several challenges can still be identified.

As with countries neighbouring Belgium, metal detecting was first introduced in Flanders in the 1970s. It was only in 1993, in the wake of the Valletta Convention, that the first Flemish legislation² specifically aimed at the protection of archaeological heritage was drawn up. It explicitly prohibits the use of metal detectors other than as part of licensed archaeological fieldwork by professionals (Archaeological Heritage Decree, Article 9). As far as can be ascertained, however, this difficult-to-enforce ban had little effect on metal detecting activity in the field, other than creating a rift between the hobby community and the archaeological establishment.

² Belgium is a federal state. The responsibility for heritage management is relegated to its constituent regions, e.g., Flanders.

More recently, the government's Flanders Heritage Agency adopted a more pragmatic viewpoint and instigated talks with representatives of the metal detecting community, resulting in a mutual agreement on a deontological code for metal detecting in 2006 (Ministerie van de Vlaamse Gemeenschap, Afdeling Monumenten & Landschappen, Cel Archeologie 2006).

Further steps towards closer cooperation were halted after a looting incident involving a number of detectorists (Archeonet Vlaanderen 2009). Nonetheless, the Flanders Heritage Agency maintained an unofficial policy of tolerance, emphasising the legal obligation to report archaeological finds (Archaeological Heritage Decree, Article 8), rather than the prohibition of metal detecting. This ambiguity has been a significant factor in the controversy following a number of exceptional metal detecting finds, and has been the subject of occasional debate in Parliament (see Deckers 2012).

It needs to be noted that agricultural land, which is often characterised by a mixed and disturbed topsoil layer, represents 62% of Flanders' unbuilt area.³ As such, the potential damage to the archaeological record from responsible metal detecting is relatively limited. Furthermore, it is clear from experience that a significant group of detector users are both well-informed on the legal and deontological ramifications of the hobby, and are primarily motivated by historical rather than financial interest. In recent years hobbyists have helped to identify eroding sites that are in need of further fieldwork (e.g., Verhoeven 2012), and have put their expertise at the disposal of archaeologists in the field, often on a voluntary basis (Ribbens 2011). However, such involvement happens mostly on an ad hoc and individual basis, and usually through personal contacts between detector users and professional archaeologists.⁴

Finds reporting on a structural basis is less frequent, however. A comparison with the English/Welsh reporting rate shows that up to 85% of finds from Flanders may currently be going unreported (see Table 1), while anecdotal evidence supports the notion that many archaeologically significant finds remain unknown (Deckers, forthcoming).

3 Based on statistics for 2011 from <http://statbel.fgov.be> and <http://lv.vlaanderen.be>.

4 Most notably the battlefield archaeology projects at Oudenaarde (Project Casus Belli) and Lafelt (Vanderbeken e.a. 2013, 55).

	England and Wales		Flanders
Arable land area (1000 ha)	5.028		224
Reported finds (E/W: arable land only)	49.568 (2007)	66.745 (2010)	Ca. 450 (2010)
Finds/year/1000ha	9,86	13,27	Ca. 2,0 (any land use)

Table 1: Comparison of reported metal detection finds in England/Wales and Flanders⁵

A lack of knowledge of the legal requirements to file a report or the channels to do so may be one reason for this discrepancy, and ill intentions another. However, the good intentions and the responsible conduct of much of the detecting community suggest that there are other reasons still. In particular, the legal grey zone results in an apprehension to report finds, as strictly speaking this implies self-incrimination even if the risk of prosecution is virtual. In addition, despite the aforementioned shifts in the attitude of the archaeological establishment towards metal detecting, there is still a degree of mutual distrust which may cause hesitation in reporting finds.

Lastly, the lack of incentive for filing reports can be lamented. Reported finds are added to the Central Archaeological Inventory maintained by the Flanders Heritage Agency (Van Daele et al. 2004). This database is not publicly accessible and usually, no other feedback is provided on reported finds. Conversely, the aforementioned studies as well as the success of larger-scale structural approaches abroad⁶ demonstrate how active outreach is crucial to engaging the detecting community and producing information.

As for the impact of lifting the ban, the legislative framework for heritage management in Flanders will change significantly in the near future. On 3 July 2013, the Flemish Parliament approved the new Immovable Heritage Decree, which is expected to come into force by the start of 2015. Details on the implementation are as yet unavailable,

⁵ Data derived from the Department for Environment, Food and Rural Affairs (www.defra.gov.uk), the Welsh Government (<http://wales.gov.uk/docs/statistics/2011/110622was09ch1ency.xls>), Studiedienst van de Vlaamse Regering (http://www4.vlaanderen.be/sites/svr/Cijfers/Exceltabellen/landbouw/areaal/landbouwa_reaal.xls), PAS Annual Reports (Lewis 2009: 278; 2011: 25, 27), and unpublished information courtesy of CAI.

⁶ Notably in England/Wales (Portable Antiquities Scheme) and Denmark (Axboe 1994; Henriksen 2006).

but the new decree envisions the establishment of a scheme of metal detecting licenses (Vlaamse Regering 2013, Article 3.6.1).

In some ways this new decree represents a sea change—it lifts the metal detecting hobby from clandestinity and resolves the grey zone which formed one of the obstacles for an effective exchange of information. Furthermore, it offers an incentive for responsible detecting and finds reporting, as these would be the main requirements for periodic extension of the license. The prospect of practising the hobby in a law-abiding way will undoubtedly attract many detectorists. However, it remains to be seen to what extent the raise of the maximum fine from €7.500 to €300.000 (Article 11.2.6) will be an effective deterrent against unlicensed and irresponsible detecting, given the practical difficulties in closely monitoring the activities of detector users—quite literally—in the field.

Other challenges lie ahead as well. In Flanders, metal-detected objects are by definition intentional (as opposed to accidental) finds, and therefore the rightful property of the landowner, not the finder (Burgerlijk Wetboek, Article 552). Typically, detector users have at best an oral agreement with the landowner on whose property they search, and the latter is often unaware of the exact nature of the finds collected on his land. This is no new issue, but once such finds become licit the problem of ownership will be cast in a sharper light.

Furthermore, there are the often substantial collections of archaeological objects collected over the years by many detector enthusiasts. The illicit nature—strictly speaking—of many of these finds and the conditions in which they are stored are valid concerns, but also the fact that the first generation of detector users, who have been involved in the hobby for up to 40 years, are reaching old age. Their collections and any associated information, such as finds locations, therefore become vulnerable to dispersal and loss.

Lastly, Flanders is small and occupies a central position in Western Europe. With its rich archaeological heritage, including remains from both World Wars, it is an attractive region for detector users from neighbouring countries as well as Eastern Europe.⁷ How will policy makers address the loss of information, or worse, the damage to the

⁷ Based on an as yet unpublished survey amongst the Flemish metal detecting community by the author.

archaeological record their activities cause? Perhaps an international approach is needed to monitor the cross-border flow of metal-detected finds, whether or not many of these are objects of little financial value collected by good-intentioned, responsible hobbyists.

Once it comes into force, the new Immovable Heritage Decree will be an important step towards a more consistent and pragmatic metal detecting policy in Flanders. However, it will form neither a watershed change for the practice of the hobby, nor a conclusive solution for the problems that arise from it. The most important benchmark test for the Decree, as far as metal detecting policy is concerned, will be the following question: does it result in an increased flow of qualitative data that will help us better protect and understand our archaeological heritage? The proof of the pudding is in the eating, but in the author's opinion it is unlikely that the license scheme in and of itself will be sufficient for this purpose. Continuous dialogue with the metal-detecting community, preferably on a structural basis, will have to become a crucial element of an effective heritage management policy.

Acknowledgements

I wish to express my gratitude to Dr Suzie Thomas for proofreading this text.

Henry TANTALEÁN

*Detectors and Sondas:
Brief comments on Huaqueo or plundering in Peru*

When my colleague Jaime Almansa requested that I write something related to detectors of archaeological pieces, I did not consider it to be too daunting a task—after all, as someone who has seen people on Spanish Mediterranean beach using these devices, or who has visited the necropolis of the Bronze Age in Andalusia and witnessed the spoliation very likely caused by these same instruments, I was

familiar with the subject matter. Upon returning to my home country of Peru, however, I was struck by how different everything had become. And although one would think that this would have something to do with Peru not enjoying the same levels of technology transfer of a 'developed' country, it is a fact that developing countries are the main importers of technology (both good and bad). The truth is, however, that the case of Peru is not too far removed from that of other countries that still contain artefacts to plunder.

What I observed in Spain is that the use of detectors only 'appeared' to be a weekend hobby; but a little scratching beneath the surface revealed that detectors were not so much used to find coins or rings on the beach, but more to systematically plunder archaeological resources, which pays off enough to allow the perpetrators to call this plundering 'work.' Beyond fetishists, it is an undeniable fact that there is a looting market that has—to paraphrase Gramsci—no nationalities. For example, there was the recent case of archaeological objects from the Paracas Society (800-1 BC, a society that I am researching) being sold by an auction house, like any other common art object.

This is made worse by the controversial debate—sometimes involving fellow archaeologists, but mostly involving those from outside the collective—who point the finger at archaeology itself as the cause of spoliation. To *huaquero* or regular looters, the last part of the 'operational chain' of spoliation is symbolised by the advocates of archaeological heritage. Others, who are more involved behind the scenes, recognise the existence of a market for antiquities for collectors and auction houses. Others still apportion blame to diplomatic relations between countries, in terms of unfulfilled treaties.

As an archaeologist, one develops a working ethic that is continually instilled over time. But this ethic is an abstraction; in the real, capitalist world, however, things work a little differently. In a world where everything can be bought and sold, artefacts are often treated as just another commodity. It is therefore very important to keep track of the means by which looting occurs—especially the tools that are used, such as detectors, or the *sonda*, a long metal bar that allows *huaqueros* to poke at the earth and discover tombs—to see if any actions can be taken to alleviate the situation.

In the case of *huaqueros* in Peru, it must be explained that *huaquear* refers to the removal of parts, especially ceramic vessels (*huacos*) and metallic objects from archaeological sites (*huacas*). This practice has been historically documented, and dates back to the arrival of the Spaniards in the 16th century, and possibly even further. *Huaqueros* were even required to pay taxes for their finds during colonial times. Obviously, a lot has changed today, not only in terms of looting no longer being considered illegal, but also in terms of the *huaqueros* working the Peruvian coast no longer being seen as romantic figures. As Peru grew into an independent republic, and when the idea of a cultural heritage began to exist, the romantic *huaqueros* lost their aura, and started being tracked down by the state. This is because the evolution of Peru's cultural heritage also brought with it a series of laws to put a halt to the plunder—both the looting and the sale of archaeological artefacts—based on certain precepts drawn from more developed countries.

But as an archaeologist who travels throughout Peru and sees the reality up close, one thing worth noting here is that regardless of ethics and legality, spoliation and plundering still exist. There are a number of reasons for this. First is the lack of a relationship between subjects, namely the identity of the *huaqueros* and the archaeological objects that they plunder. What this implies is that the cultural heritage project is not working. One solution for this problem is providing the general public with information on digs and archaeological artefacts. This value is, of course, limited, since it is rendered an abstraction for most. But it works nevertheless—workplaces with high instances of looting have been quick to address the situation: by opening up workplaces to the public, since nobody 'eats' cultural heritage. Of course, images such as the villagers of Sipán talking to the archaeologist Walter Alva and being surrounded by policemen is rarely replicated, and have now been replaced with general visits to sites designated by the Peruvian government, which along with the criminalisation of the activity, has reduced the looting as a whole.

But as is often the case, police measures have failed to materialise as actual penalties. And so, spoliation becomes something that everyone has to live with every day—especially independent archaeologists and researchers, who end up becoming the last barrier between predators

and the institutions that defend cultural heritage. Given my experience with the Peruvian state (in the former National Institute of Culture, or the present-day Ministry of Culture), it is frustrating to see sites continue to be destroyed, despite the existence of a legal 'apparatus'. Although it cannot be denied that a handful of looters do get penalised by the state, more steps should be taken to empower local communities to ensure that spoliation does not increase, and that our shared cultural heritage is protected.

Again, I believe that the distribution of information that archaeologists carry out, either directly or indirectly, is the only realistic way out of this situation. Moreover, archaeologists and cultural resource managers in Peru need to take into account the actual needs of the communities and people directly linked to the sites—as opposed to the more disrespectful method of academically theorising their needs. Over time, hopefully, communities will play an active role in the maintenance and reproduction of archaeological sites and objects, and integrate it into their world. This will ensure that spoliation is kept to a minimum.

Since looting and collecting have always existed, it is safe to assume that they will continue to do so. What is necessary is to keep the levels sustainable, so that a people's historical memory is not completely extinguished. If the current levels of spoliation in Peru are not kept in check or controlled soon, the *huaqueros* will only grow in sophistication. For the sake of archaeological sites and objects that, after all, are a big part of the historical memory of a people, I hope not to see people with metal detectors in the near or distant future in Peru. What I do hope is that this future will also see looter's detectors and probes as archaeological objects displayed in museums.

Ingrid ULST

*Combating Illicit metal detecting in Estonia***Introduction**

Estonian archaeological sites have faced several cases of looting in recent years. Only a limited number of these cases have ended with legal proceedings, and yet their solutions have not been helpful from the perspective of the protection of archaeological sites. This allows concluding that laws and state authorities were at some point unsuccessful. Next to the legal side, it is important to consider ethical, social and economic aspects. The self-justification and effrontery of looters have been occasionally deepened by the false images created in media. Thus, the general public does not often perceive the actual contents and legal boundaries of the activity of looters. All this facilitates looting and makes it more difficult to apply laws efficiently. On the basis of 4 case studies, this paper addresses the major problems of the protection of archaeological heritage in Estonia with regard to legal regulation, ethical conflicts and economic interests.

1. Regulatory Tools

The protection of archaeological finds in Estonia is regulated by the Heritage Protection Act (HPA)⁸. Any excavation work on immovable monuments and in heritage conservation areas is prohibited without the permission of the National Heritage Board (NHB)⁹. The finder of an archaeological object is required to preserve the place of the finding in an unaltered condition and to notify the NHB or the municipality promptly of the finding¹⁰. When it comes to legal sanctions with regard to the unlicensed use of metal detectors and the destruction of sites, intentional acts are punishable and the sanctions vary between misdemeanors and criminal offences¹¹. The liability is stipulated both in the Penal Code¹² and in the HPA.

8 "Muinsuskaitseadus", signed 27 February 2002, *Riigi Teataja (RT) I* (2002) No. 27, 153; (2011) 21.03.2011, No. 4 (in Estonian) (hereinafter "Heritage Protection Act").

9 Art 24 (1) 11 and Art 25 (2), Heritage Protection Act.

10 Art 32, Heritage Protection Act.

11 Classifying an act as misdemeanor or criminal offence depends on the punishment provided in law. In case an act is punishable by a fine (measured in fine units) or detention (up to 30 days), it is qualified as misdemeanour. In case an act is punishable by pecuniary punishment (measured in daily rates) or imprisonment (more than 30 days), it is qualified as criminal offence.

12 "Karistusseadustik", signed 6 June 2001, *Riigi Teataja (RT) I* (2001) No. 61, 364; (2011) 29.12.2011 No. 1 (in Estonian) (hereinafter "Penal Code").

Metal detecting is prohibited on registered monuments unless justified by the methodological purpose of official archaeological fieldwork. In addition to these rules, which have been in effect for quite some time, the HPA was supplemented in 2011 by new provisions regarding the use of detectors on unprotected sites.¹³ Respectively, the use of a search device in searching an item of cultural value outside the areas of registered monuments requires a license. In order to apply for the license, the applicant must be at least 18 years old and must have completed his/her education in archaeology or a respective training.¹⁴

A find of cultural value is considered an ownerless object which belongs to the state regardless of whose property it was found on. The finder of an object of cultural value is entitled to receive a fee up to the full value of the object.¹⁵ The fee is based on the natural, historical, archaeological, scientific, art or other cultural value of the object, as well as the circumstances of finding and handing over of the object. The size of the fee shall be determined by the NHB.

2. Major Cases of Illicit Detecting

Illicit excavations and trade are the major challenges for heritage protection in Estonia. Additionally, it is important to view such issues as problems with administrative capacity and control mechanisms, low public awareness and initiative. To illustrate these challenges, let us briefly look at the lootings of the hoards of Lauritsamäe, Keila, Ubina and Vaivara.

The case of the Lauritsamäe hoard serves as a good example of the lack of administrative capacity in heritage protection in Estonia. Although it dates back to 2004¹⁶ and despite the fact that the situation has somewhat improved since then, administrative capacity remains an issue. The case goes as such: Three persons were suspected of having excavated 10 coins dating from the first half of the 14th century until the first half of the 18th century, having cleaned and separated them from the hoard. The location of the coins was unknown. The NHB claimed that their removal supposedly damaged the site and the

13 The provisions regarding the use of metal detectors in Estonia became effective on 1 June 2011.

14 Art 30¹ (1) and (4), Heritage Protection Act.

15 Art 33 (1), Heritage Protection Act.

16 The case was eventually solved in Harju County Court only in the beginning of 2007. The court ruled for the persons subject to proceedings on the basis of expiration because the misdemeanor had been committed more than 2 years before the day of making the court decision.

completeness of the complex.¹⁷ The looters successfully contested the misdemeanor proceedings of the NHB in court, basing themselves on the lack of evidence and the violation of procedural rules by the NHB. With regard to the latter, their key points were the application of expiration and reference to the different treatment of persons who had supposedly committed the same misdemeanor together.

Although my personal view is clearly against looting, these problems cannot be disregarded and in this respect the looters did make a point. In the course of handling the case, the NHB had annulled the proceeding against one of the looters. Different treatment of persons that participate in the same misdemeanor contradicts the principle of uniform application of law¹⁸. This indicates that the understanding of its role as the processor of misdemeanors on the part of the NHB is very important in combating illicit detecting.

The case of the Keila hoard brought the issue of finding fees into the agenda. The case dates back to 2004, when 446 silver coins from the 14th century were excavated by the same persons responsible for the looting of the Lauritsamäe hoard. The coins were removed, cleaned and taken to the Estonian History Museum only some three weeks later. Although the looters had committed a breach of law, they applied for a finding fee. At the first stage, the NHB decided not to pay the fee because the excavation and removal of coins had been unlawful according to the provisions of Art 32 of the HPA¹⁹. However, the looters brought an action to court and the NHB surprisingly made another decision: to pay the looters a finding fee. This completely surprising change of positions ended the proceedings in court and enabled the treasure hunters once again to get away with an advantageous solution, also reflecting the challenge to set finding fees.

According to the HPA effective at the time of the proceedings, the size of the finding fee was ½ of the value of a find. The value is usually determined by the respective expert opinion. In addition to antiquity

17 The regulation of prohibitions with regard to the destruction of sites and removal of found archaeological objects was contained in Art 30 (2) and Art 32 (1) and (2) of the HPA. See *also* Harju County Court decision of 31 January 2007 in misdemeanor case 4-06-407 (in Estonian).

18 This principle assumes a thorough analysis of court practice and should also apply in misdemeanor proceedings, provided that the earlier application of law in similar situations has been carried out without major errors.

19 According to Art 32 of the HPA the finder is required to preserve the place of the finding in an unaltered condition and immediately notify of it. A found thing, if removed from the place where it was found, must not be damaged by cleaning, refurbishing, breaking or in any other manner, or by severing parts from the whole.

value, the treatment of a find by its finder is also taken into account. This means that the more complete the find and the more accurate the information about its context, the higher the value of the hoard and the fee (Kiudsoo 2008). Although the value of the coins of the Keila hoard was initially evaluated by one of the leading Estonian numismatists to amount to 96,000 kroons, the NHB decided to pay a fee of 53,400 kroons, arguing that according to auction prices the total value of the hoard could be even some 300,000 kroons. Moreover, two of the coins were very rare because there are only two such exemplars in the world (Kärmas 2005). The law clearly defined the basis for a finding fee, but it was possible to contest the determination of the value on which the size of the fee depends (Pärna 2004).

I believe that it is important to take into account the fact that the fee is designed to be an incentive for an honest finder. On the other hand, it should not be too big in order to avoid the hunting of treasures becoming a separate source of income. The case of the Keila hoard is particularly cynical because, eventually, the looters considered the fee appointed to be paid to them by the NHB too small, indicating that it would not even cover their direct costs of searching (Eesti Ekspress 2005).

Another major problem with the Keila hoard is that the NHB excluded potential misdemeanor proceedings by its decision to pay a finding fee to the looters and thereby accepted the lawfulness of the find. It would have been possible to objectively prove the violation of legal provisions which prohibit the excavation and removal of a find. Even the fact that the coins were handed over some weeks later would not have excused the violation because the find was in any case removed without the permission and three weeks is not a reasonable period for 'immediate' notification. In this light, a problem with media involvement should be mentioned. The looters ensured adequate media coverage, blaming the NHB for intentionally seeking to avoid the payment of finding fees (Kärmas 2005). Yet, archaeologists were given only limited possibilities to comment on the case and draw attention to the breach of law. Although from the legal perspective the looters committed the violation of the HPA, the focus of the case was shifted to finding fees and no sanctions were eventually applied.

The third case is that of the Ubina hoard, dating back to the spring of 2005 when archaeological excavations took place in the historical settlement of Ubina. The excavations resulted in finding a silver hoard in the remains of a Viking Age building, which contained 277 coins, 5

silver adornments, 4 silver lumps, and 5 silver plates.²⁰ Since the find was a very rare silver hoard both in the Estonian and in the European context, the archaeologists kept information about the site a secret from the first day.²¹ Nevertheless, a number of black holes were discovered on the same site just one day after the start of official excavations, which indicated possible attempt of looting. After the incident, excavations continued under surveillance and were completed by the summer.

Later, the scientists of the Estonian History Museum received information from their German colleagues²² that some coins assumingly related to this hoard were to be sold at the coin auction of Dortmund. It was thanks to the German police that 42 out of 108 coins were confiscated from the auction. Their estimated value was 8,175 euros (Põld 2008). Criminal proceedings were promptly initiated against the Estonian citizen who had arranged the auctioning of the coins. He was charged with destruction of a monument and theft of objects of great scientific, cultural or historical significance belonging to the Republic of Estonia.

This case, which ended in a final binding decision of the Supreme Court, is the first significant piece of positive case law in heritage protection in Estonia. Although there was no direct linkage of the accused person to looting²³, he was found guilty of destruction of the site and embezzlement according to Art 204 (1) and Art 201 (2) 4 of the Penal Code, based on indirect evidence. The case of the Ubina hoard is a good example of a successful fight against looting and cooperation between heritage protection and justice, but it also indicates that heritage protection seems to be more efficient in case of criminal proceedings (and related professional prosecutors involved) rather than simple misdemeanor proceedings on the part of the NHB.

Last but not least, a recent important case is that of the Vaivara hoard. The case dates back to the spring of 2009 and is an example of challenges for heritage protection as far as cross-border issues are concerned. Through his web page (<http://metaldetectingworld.com>), a Russian man originating from Estonia but living in the USA invited

20 It was a very unique find, as there are only 7 such finds known in the whole world. Moreover, 4 of these treasures have been found in Harju County, 1 in Viru County and only 2 outside of Estonia (see Tamla et al. 2006).

21 Application of the National Heritage Board of 7 July 2005 for the commencement of criminal proceedings.

22 Such information exchange is usual when important items originating from the Baltics or Scandinavia are to be auctioned in Germany.

23 The accused person was reached through the confiscation of coins and he was not caught in direct action of looting.

detector users to go to the Eastern part of Estonia where one can discover many interesting heritage sites. As an example, he uploaded to the page a story and numerous photos of his own recent discovery. The map on the web page indicates that he had excavated close to the location of the destroyed Vaivara parish church in East Estonia (county on the border with Russia). He had found and removed a hoard consisting of 2700 Russian coins and an icon dating to the period of the Livonian war back in the mid-16th century. Criminal proceedings were initiated in 2010 and are still in progress. However, the page was still active at the moment of publication of this paper.

In spite of the ongoing criminal proceedings and the fact that the potential looter's web page contains many photos in which he is clearly identifiable with a detector and coins in his hands, there are problems concerning this case. First, it is not certain whether such excavation actually took place, and even if it did, whether all the coins shown in the photos originate from that location. Moreover, the looter is allegedly a foreign (non-EU) resident, which makes it difficult to hold him responsible. Even if the police investigation identifies the person behind the web page, it would be practically complicated to initiate and carry out successful and timely proceedings against him. There are, of course, legal means (including extradition) but their practical implementation is complex and time-consuming. As archaeological heritage has always been and will continue to be subject to cross-border interest, this case serves as a good example of such challenges for heritage protection.

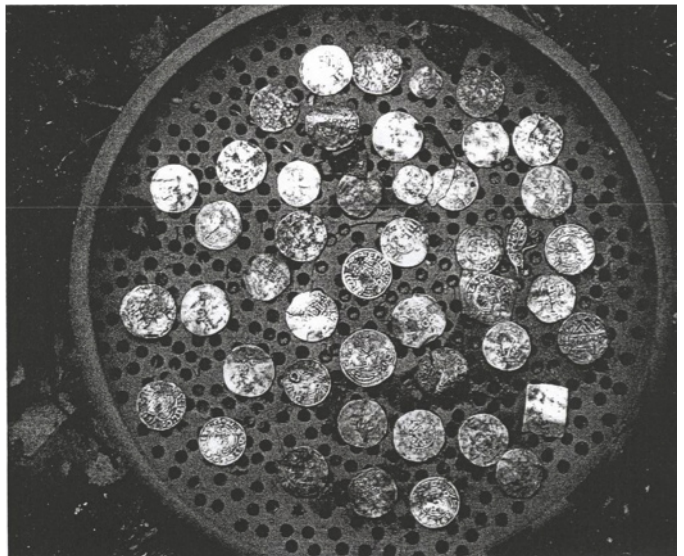
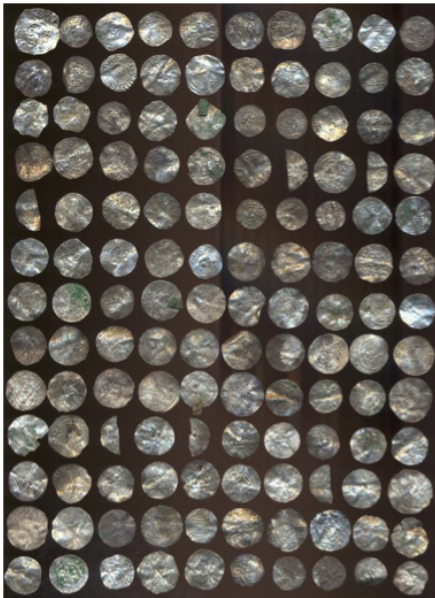
Conclusion

The major cases of illicit detecting in Estonia allow drawing the following conclusions. Firstly, Estonian laws are in accordance with international principles, but it is necessary to increase the applied administrative capacity. There are three important factors in order to ensure the consistency of cases and set the common principles which are to be followed throughout the processing of cases: the full understanding of the role of the NHB as an extrajudicial processor, proper intra-board cooperation and enhanced competence with regard to punishment regulation on the part of the NHB. Moreover, one would expect more active involvement from local governments in dealing with the situation in their territories. Secondly, the case of the Keila hoard points out the problem with media intervention: the focus of the case

was shifted from the actual violation to the issue of finding fees. On the other hand, the use of the advantages of mass media and the raising of public awareness could also contribute to the enhanced protection of archaeological heritage in Estonia. Better knowledge would help people differentiate between official archaeologists and treasure hunters and boldly react in case of doubt. When it comes to the economic aspect of 'black archaeology', the size of finding fees is an issue: it should not decrease the finder's motivation to hand over the find but at the same time it should not intensify the treasure hunt as a separate source of income either. Current regulation is practical enough, but to avoid debates it would be reasonable to specify the methods for determining the value of a find. Finally, it can be concluded that heritage protection seems to be more efficient in case of criminal proceedings rather than simple misdemeanor proceedings.

Annexes

1. The Ubina Hoard



2. The looter of the Ubina Hoard covering his face at court session.



3. Photos in relation to the Vaivara Hoard (from metaldetectingworld.com)



Pedro Francisco SÁNCHEZ NAVA

The looting of the past: Mexico's case

It is necessary to initiate this reflection by emphasizing that the plundering of archaeological sites has its origins in the collecting phenomenon, a pastime which is inherent to humankind, even if the urge to stockpile all types of objects has various motivations and a wide range of aims. It is highly possible that this custom dates back to the prehistoric times and originates from primitive propitiatory rituals where the Shaman used objects which belonged to the category of fetish and allowed him to bind himself in a harmonious way to the already existing hostile environment.

For archaeologists it is not strange to find in explored contexts, in particular the funerary ones, collections of objects originating from cultures that do not pertain to the one being studied, in terms of both space and time. Collecting relics was not and unknown practice for the great ancient empires and were maintained by the colonial powers, especially the European ones, until the past century.

This phenomenon appeared in America since the Spanish conquest of the countries we now know as Mexico and Peru, when the plundering of cultural goods started. Most of these goods are now exhibited in great museums worldwide. The practice of 'gathering' these goods, which involves illegal methods, has manifold consequences such as the looting of archaeological sites, the destruction of contexts and scientific information, illegal buying and selling of pieces and their trafficking, frauds, punitive actions, and even suicides. One could argue that the display of these objects in museums that show the way of life in ancient foreign cultures could represent extenuating circumstances. This would make no sense, since nowadays there is the possibility of having temporary exhibitions of collections borrowed from other museums on a regular basis.

Nevertheless, I believe that, at present, the majority of cases of collecting has to do with the desire of owning, in some occasions illegally, what is considered to be exotic, unique and unrepeatable, which gives value to an object that a man cannot have and entails a personal enjoyment, without reflecting upon the damage that such actions can cause not only to the heritage and historical memory of the damaged country but also to scientific knowledge, a damage equivalent to destroying the pages of a book not fully read so as to keep for

oneself a 'beautiful' painting that illustrates the text (Sánchez Nava and López Wario 2012: 32-35).

This way of collecting has originated from the essence of the constitutional legacy of nations whose culture is a product and becomes a commodity waiting to be purchased by the highest bidder.

In Mexico, the archaeological remains, both furniture and buildings, are considered by the National Property Law Ministry to be inalienable and indefeasible (INAH 1972: 5). This feature has its origin in various legislations; some even have a New Spanish origin. The need to consolidate Mexico as an independent nation after its emancipation from Spain in the first third of the 19th century implied looking for common identity references that would support the legacy of the pre-Hispanic culture, which was developed more than three thousand years ago in what we nowadays know as Mexico.

Another aspect that should be part of the analysis in hand is the archaeological wealth that defines the Mexican territory. This is reflected in the number of archaeological sites registered in the Public Monuments and Archaeological, Historic and Paleontology Zones Register that has reached up to 48,724 (Technical File of DRPMZAHP), and includes all types of archaeological remains: sites with graphic cave paintings, workshops of lithic tools, accumulations of shells, immerse heritage, hunter/collector camps, and of course great major cities such as Teotihuacán, Chichén Itzá, Monte Albán or El Tajín, the extents of which can reach up to 2000 or more hectares. In these cities, there are thousands of buildings, most of which lie beneath the contemporary rural settlements that generally have a precarious economy.

It is within this context that the analysis of and reflection on the alteration and looting of archaeological sites should be understood. Remains are mostly affected by changes in the uses of the ground: farming practices and infrastructure development (e.g., roads, reservoirs, urban and tourist centers, gas pipelines, mines, and hydrocarbon deposit explorations among others) are activities during which archaeological remains appear, such as pottery and lithic pieces, bone remains, metal tools, and other furniture objects. From my experience of more than 30 years as an archaeologist and being an expert in the Federal Tax and Administration Court, I consider that, although present in Mexico, the professional or systematic plundering of archaeological remains is not the main problem that the authorities in charge of their protection have to face.

As already mentioned, archaeological heritage is mainly affected by agricultural practice and infrastructure development. In the first case, it is common for farmers to keep the pieces they find while preparing the land, and, if the opportunity arises, to sell them to tourists or local collectors, earning money worth several days of work.

With regards to the impact of infrastructure constructions on archaeological heritage, it is important to note that the most significant sites go through an archaeological feasibility verdict and, if the verdict is positive, an archaeological investigation is implemented for the systematic recovery of the archaeological information at risk. Nevertheless, it is clear that in many infrastructure constructions which are not reported, either by omission or because they are minor works, it is usual to find archaeological objects, the destination of which is an office or a constructor's display cabinet. But even in these cases, selling remains is not very significant, since there is always a resource to register and conserve the pieces in custody (INAH 1972: 14).

Last but not least, we have the field of professional plundering, carried out by a group of people dedicated to the looting of pieces that form part of the black market of cultural goods. Part of these gangs are labour workers who were at some point hired as auxiliaries to assist in an archaeological project and thus know the exact location of funerary deposits or building offerings. That is why we have not found any evidence of specific use of remote sensing equipment such as georadars or metal detectors. On the one hand, the abnormality reflected in the graphics obtained should be interpreted by technicians, which means that specialized knowledge is required. On the other hand, we should bear in mind that in Central America the use of metals was restricted especially in the west region of this great cultural area. Thus, the looting of objects such as stelas (commemorative monuments) or altars implies a major effort. The cases that have been documented show that looting usually takes place in the southeast of the country (Mayan Area) and in regions at the borders with Guatemala and Belice, where the circumstances facilitate the illegal traffic of goods. Another region subject to looting is the west of Mexico, famous for the 'tumbas de tiro' (shaft tombs) where one can find pottery pieces offered to the inhumated body, and thus being in an exceptional conservation state. In these cases, the knowledge that farmers have of their surroundings is more relevant than the use of sophisticated equipment.

It is worth pointing out that, in spite of the business that this despicable practice represents for the great auction houses, there are

actions that have helped to inhibit this looting of the past, such as the public registration of archaeological goods, campaigns so that the communities accept responsibility for their heritage and contribute to its preservation, poll tax for the customs agents in the cultural goods identification, international agreements to prevent the trafficking and sale of such objects, as well as broadcasting the implications that collecting has for scientific information and the heritage damage that lingers on the history of the affected towns. There is a lot to be done before we manage to put an end to this crime, but the above mentioned actions are being undertaken with this aim in mind.

Sergiu MUSTEAȚĂ

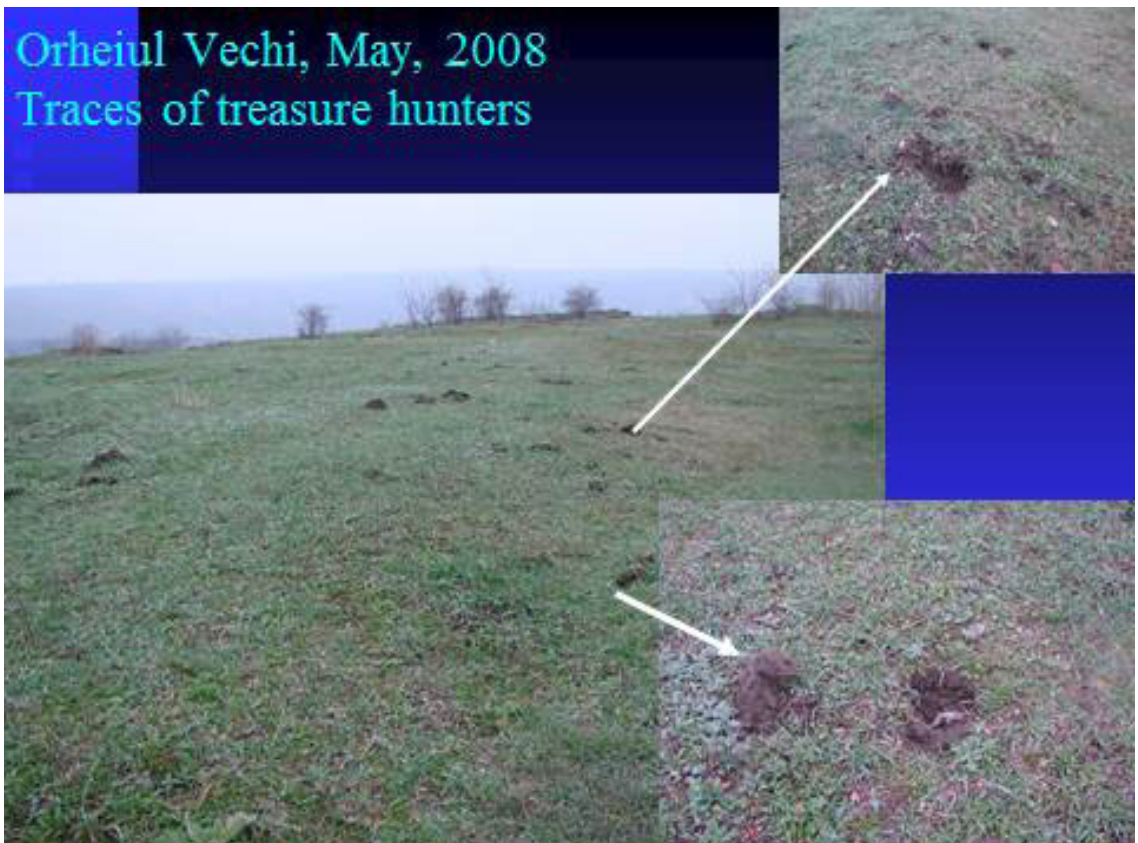
Metal detecting and treasure hunters in Moldova

Illegal or black archaeology is common for most countries; however, it is highly developed in the poor ones. The Republic of Moldova is not an exception of these practices (Musteață 2009). Modern methods and tools are largely used in modern archaeology, but this does not mean that the state is freed from its function of control. The European Convention pays special attention to the way in which metal and other types of detectors (ultra-sound and radar machines) are used in archaeological research and requires prior authorization according to the national laws (Valletta 1992: Article 3, iii). This obligation relates to the domestic law, but is also based on the need to establish some control over individuals and the way in which such equipment is used, and is meant to prevent vandalism.

Until 2011 the Moldovan Legislation did not include provisions regarding the use of metal detectors, but the Law on archaeological heritage preservation includes, since 2010, provisions previously missing from the legislation, such as the prohibition of unauthorized use of metal detectors and other remote sensing equipment in areas with archaeological heritage and of the trade and unauthorized possession of illegal metal detectors and other remote sensing equipment (Law 2010, art. 5(18), art. 47 (b, c); Musteață 2012).

This is extremely important for Moldova as, in recent years, there have been dozens of cases of unauthorized persons (treasure hunters) that have used metal detectors illegally for the purpose of discovering archaeological objects, especially coins at Orheiul Vechi, Costești, etc.

More than 20.000 coins and metal goods from Costești, dating from the Golden Hoard period (Picture 1), have been illegally excavated and sold on the black market (Gilan 2009: 111). These activities violate different laws and codes (Law of Property, Criminal Code, etc.). Nevertheless, the local and central authorities have made no attempt towards stopping or at least preventing such acts of barbarism. In this context, there is a vital need to ensure a regulated use of such equipment by law and a vigorous control and sanctions against law violators. It is true that the use of metal detectors officially and in accordance with the research methodology makes the job of archaeologists more effective; this should, however, be done within the legal framework.



Picture 1

Although in the case of archaeological sites and all other monuments the law does not allow the use of metal detectors without written permission (authorization) from the Ministry of Culture, the reality is completely different. In recent years, one can see treasure hunters with metal detectors more and more often and in more historical places on the territory of the Republic of Moldova. I personally have witnessed

at least two cases of illegal use of metal detectors. The first happened in broad daylight on September 8th, 2007, when an international (Moldo-Italian) team was looking for cultural goods in the center of the Medieval Citadel *Orheiul Vechi* without any permission (Picture 2). The second case took place on September 21st, 2009, at 7.30 a.m., when a person with a metal detector undertook searches in the area of Sântana de Mureș, Černjahov Culture (Picture 1), which was guarded by a policeman across Chișinău-Orhei motorway (Picture 3). It is true to affirm that, instead of being stopped by the police, the amateurs of illegal archaeology are protected by the employees of the Ministry of Internal Affairs. This situation speaks for itself: there is urgency for the Government of the Republic of Moldova to take steps to prohibit unauthorized use of metal detectors and to ensure the application of penal regulations provided for the case of damage and destruction of historical and cultural monuments.



Picture 2



Picture 3

In the flight magazine *Open Skies* (Air Moldova 2009: 64-66), I was 'impressed' to read that one of the biggest private collectors of cultural goods from Moldova, P. Costin, vice-director of the Chisinau Customs Service, had a dream in the night of New Year that he discovered a treasure of antique battle axes in a precise and well-known place. The next morning he reached the place from his dream and began to excavate, and was very surprised to see that his dream became reality as it indicated the existence of the treasury with great precision. Only after he had finished excavating did P. Costin inform the specialists from the National History Museum. Let's just imagine what would happen if everyone who has such 'dreams' would try to excavate! Everybody should know the law, first of all private collectors. The state bodies have to pay more attention to such cases.

We do not have any official data concerning the number of metal detector owners in Moldova. But a publication from 2009 reveals that in the Republic of Moldova there are about **1500 owners of metal detectors**. The most popular metal detector model is Garret Ace 250,

commonly called by hunters "Asja", which costs about 250 euro (Gilan 2009: 109, 111). In the same article, it is mentioned that hunters are specialized in different periods and goods, such as from Gets, Dacians, Sarmathians, Roman period, Golden Hoard sites, with the most popular sites being those from the 19th century and battle places from World War II (Gilan 2009: 110). Before doing any excavations, some hunters study the related archival documents, chronicles and maps. In October 2012 I discussed with a person from Soroca, a town in the northern part of Moldova, who mentioned that there are many people in that region who use metal detectors to hunt archaeological goods. He showed me many stolen artifacts from ancient sites – Greek and Roman coins, fibulas, earrings, etc.

As we can see, illegal archaeology is very well-organized and works in close partnerships with 'colleagues' from other countries, such as Ukraine, Russia, etc. On the Moldovan Treasure Hunters website you could see the links of the 'partners' Kladoiskatel' – Ukraine www.detector.kiev.ua or <http://forum.violity.kiev.ua/index.php>. Rusia - <http://www.reviewdetector.ru/> Moldova - <http://metaldetectormd.blogspot.com/> (last access 08.04.2013). Only in 2002, more than 20 treasure hunters organizations from Russia, Ukraine and the Baltic States organized an international meeting (Diskussii 2002, 72). Moreover, during the last decade the number of such organizations has increased. So, illegal archaeology became not just a national, but an international denouncement of cultural heritage. Consequently, state bodies should take urgent measures to fight this phenomenon.

Conclusions

Even if the actual legislation concerning archaeological heritage preservation in the Republic of Moldova prohibits the use of metal detectors, the problem of black archaeology is far from being solved. The phenomenon of illegal excavation and antiquities looting is flourishing. Actions with a positive impact might be the monitoring of archaeological heritage by state bodies, regulation of the sale of metal detectors, registration of detector owners, authorized use of detectors in restricted areas, excluding archaeological sites and historical monuments, etc. This kind of regulation could be compared to the one regarding weapon owners, who cannot use their guns except for hunting during specific periods of the year and only according to permits that clearly state the place, species and number of birds or

animals to be hunted. At the same time, it is necessary to organize public awareness raising campaigns that will emphasize the importance of protecting archaeological heritage and the danger it faces if illegal archaeology is to be tolerated. Maybe the Romanian case could be an example of monitoring the sale, ownership and use of metal detectors. Romanian legislation prohibits the use of metal detectors before their registration. Each county police office has to register and monitor metal detector owners. We could illustrate the situation giving an example from Constanța County, one of the richest archaeological areas. During 2004-2010 36 detectors were registered, but after that the number of owners increased annually: 2011 – 22; 2012 – 33; and only during the first 3 months of 2013 - 10 (Dobre 2013).

The state institutions have to be very careful in monitoring and fighting the illegal activities against archaeological heritage, because the hunters are very flexible and very well informed. For example, after the entrance into force of the Law on preservation of archaeological heritage in Moldova in March 2011, the hunters' web page <http://www.kladoiskateli.md/> was closed and a new one was launched: www.oldstory.info. In the two years following the adoption of the Moldovan Law on archaeological heritage preservation, the Government did not establish any control or registration of metal detectors.

Acknowledgements

This research is part of the Project "Current trends in archaeological heritage preservation: the national and the international perspectives", supported by CNCS –UEFISCDI, PN-II-ID-PCE-2011-3-0610. Institute of Archaeology of the Romanian Academy, Iasi branch, Romania, e-mail: sergiu_musteata@yahoo.com

Ignacio RODRÍGUEZ TEMIÑO

Metal detectors and beyond: Some final considerations

1. Archaeological heritage is a finite resource that suffers a problem called the 'tragedy of commons', that is, the depletion of a shared resource by individuals, acting independently and rationally according to their own self-interest, despite their understanding that said depletion is contrary to the group's long-term best interests. Between the many threats besetting the archaeological heritage, looting has a special significance, because the archaeological plunder only benefits a few.
2. It must be reiterated that looting, in effect, represents not only a bleeding of goods with public interest into private hands that is unacceptable within many legal frameworks, but the merciless and planned devastation of the archaeological wealth of a country in order to bolster the illicit antiquities market, all for the benefit of a mere few individuals.
3. Archaeological looting is a global complex phenomenon, but its full-scale impacts are the same everywhere: the loss of archaeological items and associated historical information as a result of the plundering of archaeological sites, including wrecks and other kind of underwater historical remains. The chain of looting begins with plunderers, and ends with the laundering of smuggled objects for entry into the international antiquities market.
4. The reasons for plundering, and even the very concept of archaeological looting, vary depending on where it takes place, given the differing contexts of poverty, war, ignorance, lack of identification with the past, and, of course, economic profit. On the other hand, however, only aims of economic gain and prestige motivate dealers, auctions houses, private collectors and cultural institutions, all of whom are very aware of the damage they cause. Some authors justify trade in antiquities in the name of universal rights to culture or cultural cosmopolitanism, but always in the name of rich, developed countries.

5. Archaeological looting reflects world's economic, social and educational imbalances. In this regard, it is of vital importance to be aware of the full-scale impact of looting on heritage conservation. It is equally vital to examine looting as a whole phenomenon, rather than focusing on, say, the tools of the trade—metal detectors, *sondas* or heavy equipment—as these mostly reflect habits or differences in purchasing power.
6. There are different imbalances in treasure hunting. On the one hand, there is an imbalance among looters themselves, according to the place where they live and carry out the plunder. On the other, there are also different social situations affecting plundering activities—even within the same country—between who plunder and those who benefit from the plunder.
7. While many experts call for stronger measures to stop the looting, they often settle for the application of ethical codes and international agreements to regulate the black market for antiquities, which are always incomplete and advantageous to developed countries,.
8. Despite the above considerations, it should be emphasised that although plunder is still occurring, and that efforts to fight this plague must certainly take place on the ground, the ways in which it is handled should vary according to different circumstances. In any case, these measures should combine, in required proportions, legal and administrative, economic, as well as social concerns, so as to promote the engagement of landowners and farmers—who may comprise the main looters in developing countries—with archaeological heritage preservation. Nevertheless, it must be stressed again that only the regulation of the international market of antiquities, the prohibition of the purchase of archaeological objects without clear and legal provenance, and the exercise of punitive measures on those who attempt to launder these items, will result in a significant decrease in looting.
9. The relationship between archaeologists and metal detector users has been based so far in a mutual distrust (with exceptions, of course). The main consequences of this distrust is of a legal nature. For instance, the concerns of the European Council over the devastating effects of the widespread accessibility of metal

detection devices, as expressed in Directive 921 (1981), was again reiterated in the Malta Convention (1992). In some countries this international concern has led to domestic regulations on matters related to the usage of metal detectors, but most governments have been unwilling to act on treasure hunting, and do not seem to grasp the seriousness of the new threat on their own archaeological heritage. Some countries also lack constraints on the recovery of archaeological items, the ownership of which commonly lies with the owner of the land on which they were found. This resulted in virtually nothing being done to stop the use of metal detectors on archaeological sites from the 1970s to the 1990s. At the same time, the mass availability of a wide range of efficient metal detectors resulted in metal detecting becoming a popular hobby, with thousands of practitioners across Europe.

10. From the 1990s onwards, cultural administrations and even archaeological institutions tried to cope with the new situation depending on the different ideas about the role of the state in defining and maintaining 'common interests'. As a result, two major models were settled upon. The first, represented in this forum in the cases of Moldova, Estonia and Spain, is based on a handful of legal assumptions, and mostly involved the prohibition of the unauthorised use of metal detectors at any archaeological site, under new heritage acts. The aim of these authorisations is to prevent treasure hunting, so that the amateur would find it difficult to obtain a metal detector, as they do not have the requisite archaeological skills and qualifications, and are not commonly motivated by archaeological research aims. The unauthorised use of those devices is considered a violation of legal constraints, which is then punished with fines. Any archaeological object found either by chance, or as a result of deliberate searching, belongs to the state. The second model, represented here by the new Flemish Decree, contains fewer legal restrictions, allowing freer use of metal detectors, except in specially protected sites, but in return encourages detectorists to declare their findings to the relevant cultural authorities.
11. Obviously the models described here in summary form are not rigid, and do change in accordance to new social situations. So

it is out of place to make value judgments about which model is better or worse, since they respond to social models with different legal frameworks. It would probably be best to highlight the main weakness of both models, as revealed in the cases presented in this forum: the lack of real interest shown by cultural authorities in enforcing the law. These cultural authorities seem more interested in responding to particularly serious cases with extensive media coverage, without paying much attention to lower profile cases.

For better results in the fight against looting, it is necessary to dramatically shift the priority that governments place on archaeological heritage. Achieving this goal requires not only a change in the specific governmental responses to matters related to treasure hunting, but also in the public approach to archaeology as a whole. Looting and illicit trade make less and less sense when a society demands respect for the vestiges of their own history.

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AP: Online Journal in Public Archaeology

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Cover Image: *Noche en el templo de Debod* (J. Almansa)

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ISSN: 2171-6315

Quotation:

Full - Rodríguez Temiño, I. *et al.* 2013. Forum: The looting of archaeological heritage (Part I - Beyond metal detectors: around the plundering of archaeological heritage). *AP Journal* Vol. 3, 5-45.

Individuals - Surname, N. 2013. Title in Forum: The looting of archaeological heritage (Part I - Beyond metal detectors: around the plundering of archaeological heritage). *AP Journal* Vol. 3, X-X.

AP Journal is a peer-reviewed journal devoted exclusively to Public Archaeology. It is freely distributed online on the Website:

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