

## Preliminary report for the development of a code of ethics for archaeological research\*

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*A first version of this document has been discussed in a work session at the ICMAH symposium in Dakar in March 1994. This previous text aimed at defining principles for the elaboration of a code of ethics for archaeological research in Africa. During the discussions in Dakar, the fact that the African continent was not solely concerned with the need to develop a code of ethics, became apparent. The preliminary report which follows has therefore been amended and complemented. In this new version, the reference to Africa remains but does not prevent the opening up of this code of ethics to other parts of the world.*

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Archaeological research, as a professional activity, is not submitted to any specific regulation, whether at the national or international level. The only existing regulations concern the legal environment within which archaeological research is carried out.

Depending on the country or specific circumstances, archaeological activity must abide by certain rules regarding the methods of dealing with an archaeological site which is to be excavated. Therefore, the set of legal rules that surround archaeological research concerns the relationship between the archaeologist and the object of his research. The relationships amongst archaeologists with regard to their research topic do not require formal codification at the outset. In some rare cases, the formalisation of these interprofessional relationships generates a contractual arrangement through a formal agreement along the terms of international law on archaeological excavations. This way, archaeologists create an obligation among the profession to abide by the standards recommended to governments by international law.

However, this type of rules with which archaeologists will try to comply, are only applied or implemented in specific circumstances or untried situations, without generalisation. They are characterised by the fact that they are not compelling and rely on reciprocity.

Once such rules are settled since they apply to most people within a profession, they become legal in the way that they can be defined as a set of permanent and contingent codes of conduct which may result in sanctions in case of transgression.

The development of a professional code can be described as the legal sedimentation of a sociological construction belonging to a fairly homogeneous group. Such a professional code can be formalised and constitute a *corpus* which will occupy a hierarchical position in professional conduct, without requiring public law recognition. Whether it is called code of ethics or code of professional practice, its vocation is to govern behaviours in all the activities and involvements of a profession, and also in some cases, to offer protection from public institutions and their potential deviations.

### 1 - NOTION OF ETHICS AND DEONTOLOGY

The word "deontology" comes from the Greek word *deon* which means obligation/duty. The word "ethics", comes from the Greek word *ethos* and should be understood as moral principles. Philosophically speaking, ethics is the science of morals, the art of managing human conduct<sup>1</sup>.

Ethics codes were first developed in legal and medical professions, to specify the rules by which professionals should abide. They consisted in a set of rules of conduct adopted by a profession in the provision of services to clients and in inter-professional relationships.

The content of ethics codes developed as they were gradually applied to other fields. Indeed, ethics also includes notions of teleology. Ethics is not only concerned with the impact of conducts

and rules within a system of values, but also with the purpose they serve<sup>2</sup>.

In the cultural field, ethics codes were first developed in the museum sector. Apart from the American Association of Museums Code of Ethics created in 1925, most of the Ethics Codes related to museums and therefore cultural activity, were adopted at the beginning of the seventies;

Amongst these, should be noted the "Code of Conduct for Museum Curators" and the "Code of Practice for Museum Authorities", adopted respectively in 1974 and 1977 in the United Kingdom, by the Museums Association, the updating of the American Association of Museums Code of Ethics in 1978, the adoption in 1980 of a Code of Ethics and Standards of Practice by the American Institute of Conservators, and in 1986 the International Council of Museums Code of Professional Ethics.

In the cultural field, ethics codes can mainly be found in museum institutions. Other cultural disciplines are fairly marginal in the range of ethics codes. Amongst these, geology, which belongs to the fields that are fairly closely related to archaeology and where research activity enters in the definition of the discipline, has sometimes adopted such regulation tools. For instance, at the European level, the European Federation of geologists created a Code of Professional Conduct in 1986 which includes 14 articles. This code mainly aims at the recognition and protection of a professional title without ever dealing with the role of the geologist in geological heritage protection. Obviously, in spite of the analogy between both research activities which involve very similar regulation in some cases, this type of approach is completely contrary to the one that should be sought in the creation of a code of conduct for archaeological research.

This code should indeed address itself to the definition of intangible principles that the archaeologist should abide by and promote to ensure archaeological heritage protection and prevent illicit traffic and pillage of archaeological objects.

As can be noticed following the listing of these various ethics codes, the creation and implementation of these

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<sup>1</sup> In countries whose law is of Roman inspiration, the word "deontology" will be more readily used than the word "ethics"; the latter being more widely encountered in countries where law is of British origin.

<sup>2</sup> On these issues, see SCHMIDT (F.), "Codes of museum ethics and the financial pressures on museums", *Museum Management and Curatorship*, 11, 1992, p 258.

professional regulation instruments mainly concern Northern countries, whether on the American or the European continent. Comparing this to a map of the various important legal systems throughout the world, it would seem that in the cultural field, ethics codes can mainly be found in countries where law is of British origin. In countries governed by "Common law" as opposed to Roman law, ethics codes are enacted to complement substantive law. Contrary to Roman law, Common law enacts rules which aim at solving conflictual situations, finding solutions during a trial, rather than implementing general codes of conduct. Since this last objective is not generally met by law of British origin, other legal instruments set as standards such as ethic codes are resorted to. A code of ethics constitutes thereof a type of contract between two individuals who belong to similar groups and have common interests. Its legitimacy lies in its acceptance by a group of people who have close and converging professional identities on a similar topic<sup>3</sup>.

On this basis, a double reflection is necessary prior to developing a code of ethics for archaeological research.

First of all, apart from ICOM Code of Professional Ethics, most ethics codes are formulated at the scale of a given country<sup>4</sup>. Ethics codes seldom integrate a continental or universal dimension in the rules of conduct they stipulate. This is a major challenge to be addressed in the regulation of archaeological activity at the scale of the African continent.

On the other hand, many of these ethics codes offer a close articulation with statute law, whereas as far as Africa is concerned, the diversity of legal systems,

inherited from the colonial period, prohibits this type of approach.

A code of ethics for archaeological research must be envisaged from the outset within a global perspective; it should take into account the principles formulated in international law, regarding archaeology and more generally, cultural property, as per the recommendations and conventions adopted by UNESCO, and should also integrate supra-national laws developed by heritage professionals. Therefore for Africa, the recommendations adopted during the symposium held in Cairo from 13 to 19 November 1993 on The Protection of Cultural Heritage in the Middle East and North-Africa undoubtedly requires close attention, particularly as concerns the chapter dedicated to the impact of policy on the management of archaeological heritage sites. The same is true of the resolutions and recommendations adopted at Arusha, on 29 September, during a workshop on illicit traffic of cultural property.

Apart from these international and normative texts, a code of ethics for archaeology, providing it were based on international principles giving it a universal dimension, could find an articulation with the ICOM Code of Professional Ethics which presents this feature already. Indeed, since the objective is to regulate an activity which is closely linked to museums, it would seem adequate that, in the dispositions of a code of ethics, the principles common to both disciplines - museums and archaeology - came as a complement or be within the same perspective as that of ICOM Code of Professional Ethics.

A code of ethics for archaeological research should have an impact on archaeologists' professional practice as well as on their perception of this discipline. It should contribute to encouraging interinstitutional cooperation and the multidisciplinary nature of archaeology, whilst reminding that archaeological excavation is a complex issue in which the archaeologist is just one actor. Therefore training and qualification issues must be addressed to in a code of ethics. All these elements should be marked out in a code of ethics, without too much interventionism, in order to develop archaeologists' accountability in relation to the object of their research.

Finally, developing a code of ethics for archaeological research in Africa can set out a reference and become a source of

inspiration to regulate archaeological research in other continents.

## 2 - THE RELATIONSHIPS BETWEEN ETHICS RULES AND LEGAL STANDARDS

Ethics codes entertain strange relationships with the Law. Their existence is the manifestation of a normative power which a profession takes on. Therefore the expression "code of ethics" should not be mistaken with the classic legal definition of codes which are a body of laws related to a given subject and brought together through legal or regulatory procedures. A code of ethics describes principles formulated by a profession rather than by a legal or administrative authority<sup>5</sup>.

Imposed on itself by a profession, sometimes an institution, ethics principles generally prevail over the Law. The way certain administrative committees operate provides a good illustration of this. During the processing of and decision making on a file, committee members who are directly concerned with the matter arising, are sometimes authorised by Common law to attend the meetings and exercise their right to vote; on the contrary, a code of ethics may forbid this and therefore control this possibility given by Law. This is true of the interaction between the rules which govern the way the Board of Directors of certain museums function in the United-States and the principles of the AAM<sup>6</sup> Code of Ethics.

Ethics codes are also different from the Law because of the way they can adapt to the evolution of a profession and the ideas they promote. Therefore, since a code of ethics is the result of a consensus within a structured professional sector, amending or complementing it can be done rapidly, whereas a law will require a fairly lengthy elaboration process and the end-result may not win the agreement of the whole profession. Moreover, the intervention of legislation can produce conflicting laws; whereas in theory, ethics codes should not be faced with this problem, due to the way they are developed and amended. Therefore, in such cases, they may play a role of arbitration.

<sup>3</sup> Ethics codes are not the only instruments likely to complement common law. As far as archeology is concerned, the Planning Policy Guidance developed in Great Britain in 1990 describes the process for conservation and recording of sites and archeological objects during real estate or development projects. It is directed to landowners, developers, archeologists, environmental associations and to the public at large. It gives advice within the existing legal framework, without imposing new obligations or creating additional costs. [see NEGRI (V.) dir., *L'organisation territoriale de l'archéologie en Europe*, Editions du Centre national de la fonction publique territoriale, Paris, 1992, p 90].

<sup>4</sup> Sometimes, several codes co-exist to regulate similar professional activities within one country. In this case, one may wonder whether they are the fact of a corporate expression, rather than the formulation of a professional code of conduct.

<sup>5</sup> see BUFFELAN (J. -P.), "Etude de déontologie comparée dans les professions organisées en ordres", *Jurisclassique périodique*, Paris, 1962, 1<sup>o</sup> partie, n° 1695.

<sup>6</sup> see BOYD (W. L.), "Museum Accountability : Laws, Rules, Ethics and Accreditation", *Curator*, vol. 34/3, 1991, p 174.

However, a preliminary condition to being in a position to exercise this type of function is that the code of ethics should have been produced by a representative and legitimate professional structure, to which the referral of any issue concerning the profession can be undertaken by any member of the structure or the relevant professional branch.

However, it is important to remember that a code of ethics outlines general principles without prejudging of any civil or legal action which could be undertaken with legislative bodies.

### **3 - INTERNATIONAL PRINCIPLES GOVERNING ARCHAEOLOGICAL RESEARCH**

The sources of international law regarding archaeology mainly lie in the Recommendations and conventions adopted by UNESCO. Most documents include references to the various components of archaeological heritage. But we shall not make an inventory of all these texts, since they all deal with archaeological heritage protection. Without dismissing other legal documents that may be of interest in the development of a code of ethics for archaeology, we shall only refer to the legal instruments which are directly related to the protection and management of archaeological heritage, whose implementation concerns directly the archaeological profession, and which can throw light on a code of professional practice.

#### **3.1 - Archaeological Excavations**

According to the Recommendations adopted by UNESCO on 5 December 1956 which outline the International Principles Applicable to Archaeological Excavations, the latter are defined as being "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 sub-soil of inland or territorial waters of a member state" (Article 1).

Apart from the definition of ground excavation given by this article, one should note that the recovery of remains from a nation's territorial waters is seen as an archaeological excavation<sup>7</sup>.

<sup>7</sup> see BEURIER (J. -P.), "Pour un droit international de l'archéologie sous-marine", *Revue générale de droit international public*, t 93, vol 1, 1989, p 48.

#### **3.2 - Archaeological Heritage**

Numerous criteria exist to define archaeological heritage. The 1956 Recommendation limits its application to remains whose preservation is in the public interest from the point of view of history of art and architecture. This mainly concerns monuments and movable or immovable objects of archaeological interest considered in the widest sense (Article 2).

With regard to the definition of public interest, the Recommendation stipulates that the criteria may vary according to the protection sought. As far as the preservation of remains is concerned, the Recommendation advises to adopt a criterion of belonging to a given period or of a minimum age fixed by law. Regarding the obligation to declare any discovery which should be imposed on the excavator or finder, it is recommended to retain wider criteria and consider that any object of archaeological character, movable or immovable, is concerned with this obligation (article 3).

Other texts include archaeological heritage in other cultural heritage items in the expression "cultural property". This is true of the Recommendation adopted by UNESCO in 1968 concerning the Preservation of Cultural Property Endangered by Public or Private Works.

#### **3.3 - Supervision and Regulation of Archaeological Research**

With regard to archaeological research supervision, the 1956 recommendation advises the adoption of an adequate legal framework by governments, and includes general rules regarding excavation concessions, in particular when these are granted to foreign entities. Governments must therefore determine the legal environment to which the contract is subordinated. This way, the concessionaire knows the regulations he is submitted to, in particular as concerns the supervision exercised by the national authority, the period of the concession, the reasons which may justify its withdrawal, the suspension of work, or its transfer from the authorised excavator to the national archaeological service (article 13). Unless it is absolutely necessary, the conditions imposed upon a foreign excavator should not be different from those applicable to nationals (article 14).

With regard to archaeologists' obligations, this Recommendation advises to compel "the excavator or finder to declare any object of

archaeological character, whether movable or immovable he may discover" (article 3b).

With regard to the context in which excavations should be carried out, the 1956 Recommendation formulates the principle of a right of access to the site by any qualified person. It is therefore advised that "qualified experts" be allowed to visit a site with the consent of the director of excavations, providing that the latter's scientific rights are not endangered (article 22).

#### **3.4 - Scientific Rights**

Scientific rights on archaeological excavations are a truly innovative concept in a field fairly hostile to economic considerations. Some methods of implementing them outlined in the 1956 Recommendation have been integrated by some African states in their national law<sup>8</sup>.

The text defines a type of contract between the excavator and the public authority whose mechanisms lie in a principle of reciprocity. On one hand, the State guarantees the excavator's scientific rights during a predetermined period; on the other hand, the excavator has to publish his findings during that period. At the end of the deadline, the State can take on the excavator's rights.

The Recommendation stipulates that a deadline of 2 years maximum should be granted to the excavator for the publication of the results of his work in the form of a preliminary report. Meanwhile, the competent archaeological authorities should be committed to not releasing the complete collection of finds, nor the relative scientific documentation, for detailed study, during a period of 5 years, unless written consent be granted by the excavator. The same conditions should apply to prevent photographic or other reproduction of materials still unpublished (article 24).

These principles offer a guarantee to the excavators on their research rights, and also define archaeologists' major obligations. They constitute one of the elements in the notion of professional accountability of archaeologists in their discipline; all the more so since the publication and dissemination of research results help to identify the

<sup>8</sup> Algeria is one of them (decree of 17 May 1980 on archeological research licences) as well as Tunisia (decree of 14 March 1987 on scientific rights for archeological research authors).

origin of archaeological objects and contribute to combat the illicit traffic of these objects.

Therefore, scientific rights are underlaid by on one hand, a guarantee on the rights of scientific investigation limited in time, and on the other, the obligation to publicise the research. By law, the archaeologist is therefore accountable on his results, which should be translated into standards within a code of ethics to become a principle by which every archaeologist will agree to abide.

### 3.5 - Assignment of Finds

The 1956 Recommendation dedicates much reflection on the assignment of archaeological finds (article 23). The governing principle should be the devolution of archaeological objects to the museums of the country hosting excavations. In a predetermined number of cases, the text defines some exceptions to this principle inspired by the idea of developing archaeological research through the circulation of authentic objects, or so as to compensate the lack of available research material. The sole purpose of these exceptions must be scientific.

Besides, the assignment of archaeological finds must also address issues of conservation, restoration and stabilisation of the degradation process of archaeological objects. At this stage, it is extremely important to determine precisely the limits within which archaeologists can act on the process of physical conservation of an object, without interfering in its restoration by a specialised organisation and its conservation by a museum. Co-operation between archaeologists and specialists of the restoration and conservation of cultural property should be close enough to create an intermediate phase between the excavation of an object and its integration in a museum collection. All the more so since the treatment of an object at the time it is excavated will considerably reduce the cost of its restoration when it is assigned to a museum<sup>9</sup>.

### 3.6 - Prevention Against Pillage and Illicit Transfer.

The main resolutions concerning the prevention and fight against illicit traffic

<sup>9</sup> see MARIN (J. -Y.) & NEGRI (V.), "La protection internationale des objets archéologiques : le droit et la pratique", *Actes du colloque L'objet archéologique africain et son devenir*, Paris, 4, 5, 6 novembre 1992, édition du C.N.R.S., 1994.

of cultural property are formulated in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by UNESCO in 1970<sup>10</sup>.

The convention defines various types of measures to fight against clandestine archaeological excavations which supply for a great part the international market of illicit archaeological objects. It recommends the control and regulation of archaeological excavations by a public authority and invites nations whose cultural property is in jeopardy from pillage of archaeological and ethnological materials to seek active co-operation with other countries concerned (article 9).

Although such Recommendation is primarily directed to governments, it is possible to apply this principle of co-operation at the level of professionals, within a code of ethics. This precept would be the natural continuity of the dispositions contained in the convention to foster co-operation between competent state institutions, with the objective to facilitate the earliest possible restitution of illegally exported cultural property to its rightful owner (article 13).

On this topic, the 1956 Recommendation on archaeological excavations advises close co-operation between institutions in charge of archaeological excavations and museums to ensure and facilitate the return of objects derived from clandestine excavations or theft, and of all illicitly exported objects, to their country of origin (article 31).

### 3.7 - Education of the Public and Dissemination of Scientific Information

While public education is included in a number of international papers, responsibility on this issue belongs as much to the people involved in archaeological research as to governments. The 1956 Recommendation outlines various methods likely to arouse and develop people's respect and attachment to the remains of the past (article 12). This is obviously a means to struggle against pillage of archaeological sites.

The 1970 convention recommends education to create and develop public

awareness regarding the value of cultural property and the threat to cultural heritage created by theft, clandestine excavations and illicit exports (article 10b).

However, information must indeed be disclosed to the public, but should also circulate amongst archaeology professionals. While the 1956 Recommendation advises nations and their archaeological institutions to promote access to their documentation and reserve collections of archaeological materials (article 25), and encourage the organisation of meetings for scientific discussion (article 26), such initiatives and prerogatives also belong to excavators. —

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<sup>10</sup> On 31st March 1993, 78 nations had ratified the 1970 convention, including 20 countries belonging to the African continent: Algeria, Angola, Burkina Faso, Cameroun, Madagascar, Mali, Mauritania, Mauritius Island, Niger, Nigeria, Senegal, Tunisia, Tanzania, Zaire, Zambia - (Source UNESCO).