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## The implementation of the Malta Convention in The Netherlands: historical context and current practice

### Abstract

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The Netherlands signed the so-called ‘Malta Convention’ in 1992. This event marked the start of major changes in the archaeological sector in The Netherlands. Prior to 2001 only the national government, universities and local municipalities were permitted to perform archaeological excavations. However, in 2001 new temporary rules were introduced allowing commercial archaeological companies to conduct archaeological fieldwork under certain conditions. The entire Archaeological Heritage Management Cycle in The Netherlands consists of a process of step-wise intensification of archaeological work. Excavations (= preservation *ex situ*) will only be performed if a valuable archaeological site cannot be preserved underground (= preservation *in situ*). The number of commercial archaeological companies licensed to perform archaeological fieldwork grew steadily over the years. These companies perform a growing proportion of desk research and fieldwork, now accounting for almost 90% of all archaeological research carried out in The Netherlands. In the year 2017, there were 4,225 archaeological projects registered in The Netherlands.

**Keywords:** Malta Convention, archaeological heritage management, The Netherlands

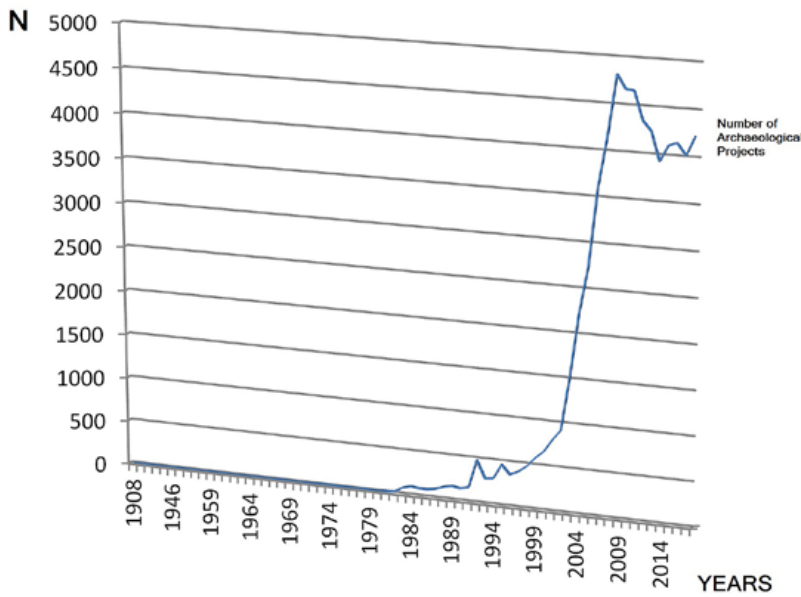
### ■ INTRODUCTION

The so-called ‘Malta Convention’ or the ‘Valletta Treaty’, which is formally also known as ‘The European Convention on the Protection of the Archaeological Heritage’ was signed by The Netherlands – as a member state of the Council of Europe – on January 16, 1992. The Malta Convention, which is a multilateral treaty of the Council of Europe, aims to protect European archaeological heritage “as a source of European collective memory and as an instrument for historical and scientific study” (Council of Europe 1992, Article 1). The Malta Convention seeks to improve the protection of archaeological heritage by its preservation *in situ*. More specifically, the Convention focuses on the problem of conservation of archaeological remains in the face of construction and infrastructure projects.

The Malta Convention was however only formally ratified by The Netherlands on June 11, 2007 and

entered into force on December 12, 2007. Historically, most of archaeological fieldwork in The Netherlands was carried out by the former State Service for Archaeological Research, the so-called *Rijksdienst voor het Oudheidkundig Bodemonderzoek (ROB)*, the universities and the local municipalities, some of which had their own archaeological services for many years. Regarding the development of the archaeological sector in The Netherlands after 1992, according to Willems (2006, 45) two phases can be distinguished. The first phase started with the signing of the Malta Convention in 1992 and ended in 1998. During this phase all archaeological research was generally carried out in the so-called ‘spirit of Malta’, but formally still within the old legal framework. The second phase began in 1999. This second phases radically changed the archaeological sector and was characterised by the incorporation of archaeology within spatial planning, the introduction

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**Fig. 1.** The explosive growth in the number of archaeological projects since the Malta Convention was signed (Data: *Rijksdienst voor het Cultureel Erfgoed 2018, 2*)

of the ‘polluter pays principle’ and the establishment of commercial archaeological companies.

▪ **1. LEGAL FRAMEWORK**

In The Netherlands, the principles outlined in the Malta Convention were further developed in new Archaeology and Heritage legislation. The revision (de Bruijn 2007, 2) of the existing Monuments Act (= *MonumentenWet 1988*) and the new Archaeological Heritage Management Act (= *Wet op de Archeologische MonumentenZorg (WAMZ)*) implemented the ratification of the Malta Convention by the Parliament of The Netherlands. The so-called *Wet op de Archeologische MonumentenZorg (WAMZ - December 21, 2006)* took effect on September 1, 2007 and was accompanied by a secondary archaeology legislation, the so-called *Besluit Archeologische MonumentenZorg - BAMZ*. In July 2016 the primary archaeology legislation was incorporated into the broader Heritage Act, the so-called *Erfgoedwet*, which deals with the protection of archaeological heritage, historic buildings, museums and their collections. In 2019, all the secondary archaeological legislation (e.g., *BAMZ, WRO, Woningwet, Ontgrondingenwet, Waterwet, WABO etc.*) will be incorporated into the new Spatial Planning Act, the so-called *Omgevingswet*. This new Spatial Planning Act will become the pivotal instrument for safeguarding archaeological heritage in The Netherlands.

The implementation of the Malta Convention in The Netherlands has shifted the archaeological process from the national level to the local, municipal level. The *WAMZ* (de Bruijn 2007, 1; Keers *et al.* 2011, 16) made the local towns and municipalities responsible for the care of their own archaeological heritage when issuing

demolition or building permits, nowadays called ‘area-permits’ (= the so-called ‘*Omgevingsvergunningen*’ within the *WABO*). On the basis of archaeological reports – paid for by the project developer – the municipality will decide how the construction or infrastructure project should accommodate archaeology. In certain cases however, the Provinces (e.g., earth removal permits, Environmental Impact Assessment Procedures or so-called *MER*-procedures) or the national government (e.g., national archaeological monuments) – and not the local municipalities – are still the relevant authorities. Today, the central government of The Netherlands, is first of all responsible for the protection of archaeological heritage of national importance. The most important, national institution is the Cultural Heritage Agency (= *Rijksdienst voor het Cultureel Erfgoed* or *RCE*), which is a research institute, that studies historic monuments, intact landscapes, arts, and of course archaeological monuments. The Cultural Heritage Agency actually performs the national government’s tasks in relation to archaeological heritage.

Since the signing of the Malta Convention, the Archaeological Heritage Management Cycle (AHM = *Archeologische MonumentenZorg-Cyclus = AMZ-Cyclus*) in The Netherlands focuses mainly on new construction and infrastructure projects, which potentially threaten archaeological assets. The primary goal of the whole process is the *in situ* preservation (Willems 2006, 45; Dingeman 2007, 1). This idea of the *in situ* preservation, which in itself is not new, came of course straight from the Malta Convention itself, which explicitly states that archaeological assets must be protected *in situ* as much as possible. However, in The Netherlands, other options (Isarin *et al.* 2009, 41; Van Os and Kosian 2011, 83;

Bringmans 2018b, 2574) such as the legal enforcement of protective measures, or classical archaeological excavations, which were dubbed ‘preservation *ex situ*’, are still possible. It is however important to keep in mind that since the signing of the Malta Convention, a shift from purely ‘academic’ archaeology to more ‘pragmatic’ archaeology has taken place. In a certain sense, this shift has transformed archaeological research from a pure, scientific enterprise into a formal legal process in which – to a large extent – archaeological research is guided by laws and municipal decisions. Contrary to the ideal, the *in situ* preservation is not (always) implemented. It is a certain fact that for practical reasons the *ex situ* preservation (= classical excavations) is often preferred. Only 28% of valuable archaeological sites are preserved *in situ* (Rijksdienst voor het Cultureel Erfgoed 2017, 47). The rest, about 72% of them, are excavated and thus ‘preserved’ *ex situ*.

The ‘polluter pays principle’, which implies that the destruction of archaeological remains is a form of ‘pollution’, means that the developer of construction and infrastructure projects is financially responsible for archaeological remains. This principle – and the money that came with it – led to the establishment of new commercial archaeological companies, which have to follow many new rules. For instance, these companies are obliged to register the start and completion of all their archaeological research projects in *ARCHIS* (Roorda and Wiemer 1992, 117), which is The Netherlands’ online archaeological information system that is administered by the national Cultural Heritage Agency (*RCE*). The digital information system *ARCHIS* (Roorda and Wiemer 1992, 117) was established in 1992. The system contains information on locations, dates, soils, finds, legal status and archaeological monuments. *ARCHIS* covers the entire country and now contains information on 75,000 archaeological findspots and 13,000 sites dating from the Prehistory to the modern period.

Reporting of archaeological research (Willems 2006, 45) was made obligatory in 2001 with the introduction of the Dutch Archaeology Quality Standard (= the so-called *Kwaliteitsnorm Nederlandse Archeologie*, usually referred to as the *KNA*) by the College for Archaeological Quality. The *KNA*-manual sets out the standards and guidelines of archaeological fieldwork. Archaeologists in The Netherlands are bound to follow the Dutch Archaeology Quality Standard, which is now incorporated into the Assessment Guideline Archaeology *BRL SIKB 4000* (= *Beoordelingsrichtlijn Archeologie van de Stichting Infrastructuur Kwaliteitsborging Bodembeheer 4000*). The *BRL SIKB 4000*, the *KNA*-manual and the

associated protocols (1) Desk Research, (2) Terms of Reference, (3) Field Survey, (4) Excavation, (5) Expert Analysis, (6) Archaeological Supervision and (7) Depot Management, make up the so-called ‘Certification Scheme Archaeology’ (*SIKB 2018*). This certification scheme contains all the requirements that are necessary to obtain a certificate to perform archaeological research.

## ■ 2. COSTS OF ARCHAEOLOGICAL RESEARCH

The expansion of the archaeological sector in The Netherlands was only possible thanks to the implementation of the ‘polluter pays principle’, which means that the developer who disturbs the soil, is also responsible for the costs of the archaeological research (= archaeological liability). In reality, the ‘polluter pays principle’ changed the whole archaeological sector from government-based funding to a commercial, market-based system. The Netherlands have opted specifically for a system of strictly project-based funding of archaeological projects.

Figure 1 shows the explosive growth in the number of archaeological projects since the Malta Convention was signed (Data: *Rijksdienst voor het Cultureel Erfgoed 2018, 2*). In the year 1991 there were only 164 archaeological projects registered, whereas in 1992 there was a dramatic increase to 483 archaeological projects. In the year 2000 there were 660 projects and in 2003 exactly 1,516. In the year 2008 – the year of the economic crisis – 4,817 projects were carried out. The impact of the crisis was limited thanks to a major construction and infrastructure development programme (*e.g.*, new motorways) set up by the national government. Still a steady decline in the number of projects can be noted in recent years. In the year 2013, only 3,930 archaeological projects were registered. Then the number of projects started to grow again. In the year 2017 exactly 4,225 archaeological projects were carried out, which is still well below the ‘best’ year ever: 2008. The total number of registrations of archaeological projects carried out in The Netherlands since 1908 amounts to 64,304.

One of the disadvantages of the new archaeological legislation is, that due to the relatively low exemption limit (< 100 m<sup>2</sup>), small project initiators may sometimes face excessively high costs for archaeological research. At the time, it was thought that high costs would stimulate the *in situ* preservation. Unfortunately, this has not been the case. Initiators of a small-scale project are therefore often confronted with exceptionally high costs (Keers *et al.* 2011, 10). Larger project initiators tend to be better equipped to cope with the problem. However it is clear



**Fig. 2. The process of Archaeological Heritage Management (AHM = Archeologische MonumentenZorg-Cyclus = AMZ-Cyclus) in The Netherlands**

that the funds for research – even for bigger investors – are not endless. This implies that in most cases the municipal authorities have to make choices (Lauwerier *et al.* 2017, 222; Rensink *et al.* 2017, 36) concerning what – and what not – to investigate.

The project-based approach has of course serious financial consequences for commercial archaeological companies involved, because in times of economic crisis, the number of new construction and infrastructure projects immediately drops, which has a negative effect on their budgets. This situation leads to an ebb-and-flow pattern of available work within the commercial archaeological sector. Some archaeological companies failed to cope with this pattern due to lower prices in times of economic crisis. The 14 commercial, archaeological companies with an excavation permit and their 400 employees generated in the year 2015 a total annual turnover of more than 20 million EUR (Rijksdienst voor het Cultureel Erfgoed 2017, 49). On the other hand, ‘academic’ archaeology at universities was also hit by the crisis, be it in an indirect way, but they were also confronted with budget cuts and loss of staff.

▪ **3. A PROCESS OF STEPWISE INTENSIFICATION OF ARCHAEOLOGICAL RESEARCH**

The Archaeological Heritage Management Cycle in The Netherlands consists of several consecutive steps (Figure 2) with specific decision-making moments by respective authorities. In practice, we can actually distinguish

between three critical steps. The first step in the process is to determine whether archaeological heritage is in fact present at a specific location or not. This evaluation is based on the results of desk research and reconnaissance surveys. The second step is the evaluation of the size of the site and the scientific value of archaeological remains under investigation. This assessment is based on a multi-criteria evaluation scheme. Thirdly, the respective authority has to decide on how to deal with the preservation of an archaeological site. There are three possibilities: (1) preservation *in situ*, preservation *ex situ* (= excavations) and intensive or extensive archaeological supervision of the construction or the infrastructure project.

The criteria used for deciding on when to intensify research are unfortunately not very well defined. Instead, decisions are often made on ‘expert judgement’ (Isarin *et al.* 2009, 48) and through negotiation between the parties involved in the project. To a certain extent, the use of ‘expert judgement’ (Isarin *et al.* 2009, 41) in decision making is inevitable, as not all the aspects involved in valuating archaeology can be translated into objective decision making schemes and norms. A research agenda may serve as a policy instrument to guide the process, but this is not always the case. Predictive models and potential archaeological liability maps (Lascaris and de Kort 2017, 13) are also employed to enforce reconnaissance surveys, but the models used do not say anything about the potential of archaeological sites that may be found. The entire Archaeological Heritage Management Cycle in The Netherlands can be seen as a stepwise intensification of archaeological research. This intensification (Verhagen 2005, 121) moves from desk research and core sampling to trial trenching campaigns (Figure 3) and classical excavations. The more detailed archaeological work will only be done in ‘selected’ areas (Lauwerier *et al.* 2017, 222; Rensink *et al.* 2017, 36) that were defined as archaeologically ‘valuable’ in the preceding step. This ‘zooming in’ (Isarin *et al.* 2009, 41) on the areas of interest will then lead to a final evaluation of archaeological remains.

▪ **4. DISCUSSION**

We have seen that the Archaeological Heritage Management Cycle in The Netherlands led to the decentralisation of policies and the principle of subsidiarity, which means that the national government only performs those tasks which cannot be performed at a more local level. As everybody had hoped for, the implementation of the Malta Convention in the national legislation of The Netherlands has led to a very

**Fig. 3.** Trial trenches (IVO-P) at Bergen-Aijen, The Netherlands (Bringmans 2018a, 15)



substantial increase in the amount of archaeological fieldwork, which is increasingly performed by commercial, archaeological companies. Embedding archaeology in spatial planning procedures (Willems 2012, 8) thus seems to have had a positive effect on the protection of archaeological assets. The number of archaeological reconnaissance surveys (Rijksdienst voor het Cultureel Erfgoed 2017, 45) rose steadily from 165 in 1996 to more than 3,100 in 2008. After this, the number fell gradually to 2,223 in 2013, probably due to a decline in the number of construction and infrastructure projects. Desk research shows a similar rise and fall, with a peak of 1,313 in 2009. The proportion of excavations has remained fairly stable throughout the entire period. Even during the period of a sharp growth in the number of archaeological reconnaissance surveys, the number of excavations did not increase proportionally, which may be explained by the fact that more sites are being preserved *in situ*.

The introduction of commercial archaeology in The Netherlands meant a complete break with the pre-Malta era. In the year 2017 (Rijksdienst voor het Cultureel Erfgoed 2017, 50) about 3,731 archaeological projects were carried out by commercial archaeological companies, 325 projects were handled by local municipalities, only 1 project was carried out by a province, 9 projects were undertaken by the *RCE* and about 49 archaeological projects were done by universities. There is only one province with an excavation license, 25 local municipalities still have an excavation permit, only 4 universities can carry out archaeological field work and finally, about 14 commercial companies have an excavation license. Almost one thousand people work within the

archaeological sector in The Netherlands, more than fifty per cent of whom are employed by commercial archaeological companies or are self-employed (= the so-called *ZZP-ers*). By contrast, academic archaeology at universities is clearly shrinking.

One important challenge for the future of commercial archaeology in The Netherlands is to improve the research questions of the archaeological fieldwork (Groenewoudt 2015, 98). Archaeology is a science, which implies that archaeological research must be driven by questions. Developing good research questions is one of the first critical steps in the research process. Archaeological research questions must therefore not be too general, but fit-for-purpose, related to the expected archaeological finds, and translated into specific fieldwork goals. Question-driven fieldwork is certainly not opposed to preventive, development-led or commercial archaeology. Fortunately, the scientific research methods and the recording of excavation results in the form of the so-called 'Malta-reports' were safeguarded under the terms of the new Archaeological Heritage Management Act and within the Assessment Guideline Archaeology *BRL SIKB 4000* (SIKB 2018). However, there are still major differences in scientific quality of the 'Malta-reports'. The differences in quality seem to depend mainly on the researchers themselves rather than on the institutions they work for. Nowadays, 'commercial' archaeology provides most of the new data. 'Academic' archaeology should study and synthesize these data in order to produce more in-depth knowledge of our past and to disseminate the scientific information to make the financial investments in archaeological research

more relevant, not only for professionals, but also for the general public.

In 2017 the number of archaeological sites that were excavated amounted to 627 (Rijksdienst voor het Cultureel Erfgoed 2017, 48), which represent 72% of the archaeologically 'valuable' sites. About 244 sites, which represent 28% of the archaeologically 'valuable' sites, were preserved *in situ*, which proves, that *in situ* preservation is not always implemented, because for practical reason preservation *ex situ* is often preferred. Preservation *in situ* is of course the main goal of the Archaeological Heritage Management Cycle in The Netherlands. However, in most cases it is completely uncertain (Willems 2012, 8) what will happen in the future to the archaeological sites involved. The on-going process of soil degradation and the intensification of agriculture create serious problems. However, so far very few research into the effects of gradual soil degradation on the archaeological assets have been carried out. The fact that virtually all known archaeological sites of interest are not being monitored makes the situation only worse. Virtually no (legal) tools are available to remedy actual cases of archaeological site degradation (Keers *et al.* 2011, 14). The development of a suitable set of measures to monitor the preserved archaeological sites is thus imperative and urgent. In the meantime, we believe that preservation *in situ* should be used only as a tool, rather than a goal in itself, because the ultimate consequences of this preservation *in situ* policy are quite uncertain.

## ■ CONCLUSION

The Malta Convention (1992) was mainly a response to the massive construction and infrastructure projects

that in the 1970s and 1980s had caused the destruction of numerous archaeological sites at an unprecedented scale. Rescue archaeology at that time had not been able to cope with this phenomenon. At that time, the destruction of archaeological remains was seen as a form of 'pollution'. It thus seemed a good idea to preserve important archaeological sites *in situ* for future academic research. In 2007 the Malta Convention was formally implemented by The Netherlands when the Parliament voted the new Archaeological Heritage Management Act (= *Wet op de Archeologische Monumentenzorg*, or *WAMZ*), which has beyond any doubt improved the protection of the archaeological assets in The Netherlands. As a result, archaeological remains that in the pre-Malta situation would have been destroyed, have been excavated or preserved *in situ*. Since preservation *in situ* is an important goal of archaeological heritage management in The Netherlands, the development of a suitable set of measures to monitor the protected archaeological sites is imperative and urgent. In the past years the new legislation in The Netherlands has amounted to *ca.* 200 formal archaeological excavations on average per year, against only a few dozen until the 1980's. Clearly, archaeological desk research and fieldwork in The Netherlands have intensified and the commercial archaeological sector has become more professionalized. However, the contribution that 'academic' archaeology can make, is severely limited by cuts in funding and loss of staff. Archaeological information must be made available and accessible to the public at large "as a source of collective memory" (Council of Europe 1992, Article 1). The continuity of public support (Kajda *et al.* 2017, 13) for archaeological heritage management in the Netherlands depends on it.

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