



# ***What's up with the underwater archaeological heritage?***

*"Historians have for too long ignored the sea, its fishermen and its sailors"*

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## **Resumen**

Hasta hace bien poco el patrimonio arqueológico subacuático era sistemáticamente olvidado por las instituciones públicas, el colectivo de arqueólogos y el público en general. Nos hemos dedicado a los yacimientos en tierra firme, posibilitando el surgimiento y fortalecimiento de "empresas de salvamento" que poco interés tienen en el conocimiento científico de las sociedades pasadas.

## **Abstract**

*Just in recent time the underwater cultural heritage has become a topic by itself for political institutions, the archeologist collective, and general public. We have dedicated most of our time to sites in the dry land and, at the same time, we have left the underwater sites in hands of "salvagers", who have no interest in the scientific knowledge of the past societies.*

**Keywords:** *Heritage, Convention, Salvagers, Antiquary market, Social science, Conservation agreement.*

## **A short introduction**

People don't usually realize that four-fifths parts of our planet are covered by water. This huge part of our environment has functioned as a communication and transport route for thousands of years, allowing our social and economic development. Because of this, very important information about ancient and current societies

is hidden on the ocean floor, the beds of rivers and lakes.

On the other hand, it is true that the issue has been ignored until recent times. It is said that everything that you can't see you should forget it and, unfortunately, this is the policy in mass media nowadays (TEJEDOR, 2006). In Heritage Studies, international organizations have recently

dedicated to the underwater legacy a special attention in their policies, guides and conventions<sup>1</sup>. For example, the European Union (EU) hasn't specifically mentioned the underwater heritage in their eight resolutions and directives to protect monuments, in more than fifty years of History (YOUNG and POLLACK, 2005). However, there is the need to convince public opinion and the different administrations about the idea that the underwater heritage is a part of the universal heritage of humanity, and it deserves the same protection that the monuments in the dry land.

So, there is no doubt about how the development of exploration techniques has contributed to make the seabed more accessible and exploitable. In this way, the natural protection that depth has granted for centuries is now fragile. In addition, the market and the prices that it may offer for the relics, contribute to make the exploitation, recovery and trade of this material a lucrative activity.

### First of all, what is heritage?

If we look it up in the dictionary, we can find the following definition of heritage: *"the property that can be inherited or something handed down from one's ancestors or the past, as a characteristic, culture, tradition..."*. Synonyms are patrimony, legacy, birthright and also, tradition, convention, system...

Looking for a closer definition of cultural heritage, I agree with the version that considers heritage as whatever one of us, individually or collectively, wish to preserve and pass on the next generation (LEBLANC, 2004). It is a much more accurate definition than the one in the dictionary. However, this one seems to be depending on the wishes of everyone, or the community that expresses a specific interest. But, in fact, it expresses a wider meaning; heritage could be a photo album, a historical building, a wreck in the deep blue sea, the traditions of a disappeared culture, or a lost treasure of pirates in the Caribbean Sea.

In the specific case of the underwater heritage I want to investigate in this white paper all kind of information that the mankind have "lost" in this specific context. This patrimony is a primary testimony of the people that produced it, their community and the world that they had lived in. It's our History.

### Let's talk about the players...

There are three principal characters involved in the discovering, investigation and management of the underwater cultural heritage. Actually, there are two of them that are totally faced. Speaking bluntly, it is a fight between archeologists vs. treasure hunters, while in the middle of it, there are the different States and international administrations, with very different policies regarding heritage protection.

Firstly, **shipwreck corporations and treasure hunters** have become a strong lobby in the last years. For example, the most famous of them, Odyssey Marine Exploration Inc, is since June 2007 in the NASDAQ stock market. As it is said in his web page: *"We offer our investors the best prices, the fastest execution, and the lowest cost per trade"*. The best profits are, of course, supposed. In order to do their projects, their explanation is simple: *"historic wrecks are at risk, threatened by the forces of nature and time, there are a lot of them and time is going by"*. In addition, they argue that archeologists are not available in sufficient number or they don't have the technical and financial means to save these materials and through the History, private missions have saved more wrecks than all archeologists put together. Secondly, the **archeologists collective** that considers Archeology a Science. According to this point, the aim of the discipline is not the recovery of archeological objects, or artifacts, with monetary value in the antiquary market. They focus their projects on the capacity of the objects and its context to explain the society that had produced them. Because of that, they strongly claim that no historic wreck have been saved by treasure hunters corporations, just the

objects of commercial value, at the cost of the destruction of the archeological context. And the result is the destruction of all the valuable information about how was the way of living of the original society. The heritage can't be exploited as a mine of precious metals, and taking advantage in poor countries, through compromises offering a percentage of the spoils. Archeologists' argumentation summary could be: *"Why not conserve 100% of that belongs to the nation?"* (PETZET, 2006)

Finally, **the States and international institutions** that have only, in recent times, assumed the protection of the underwater heritage as part of their duties. Every country has his own regulation to be applied in his own territory. According to this point, every State has the exclusive right to regulate activities in their internal and archipelagic waters and in their *Territorial Sea and Exclusive Economic Zone*<sup>2</sup>. On the other hand the international institution related to culture, UNESCO, have produced a Convention in 2001 to protect the underwater heritage. It's an ambitious and protective regulation but, unfortunately, every government of every State has arguments in favor or not to ratify the Convention<sup>3</sup>. I will talk specifically about this law in the next part.

### **The legal framework: 2001 UNESCO convention to protect underwater cultural heritage**

As I have already said, until 2001 underwater heritage didn't have a specific protection by international law. Just the **1982 United Nations Convention on the Law of the Sea (UNCLOS)**, offered two provisions referring to archeological and historical objects. It was to differentiate them from the "ordinary" one, and to establish an obligation for the States Parties to protect such objects. In addition, UNCLOS mentioned the *"preferential rights of the State or country of origin, or the State of culture origin, or the State of historical and archeological origin"* (CARDUCCI, 2006). Unfortunately, how to protect and preserve

were two important missing parts of UNCLOS. Furthermore, it is not a law to protect the patrimony, it is a general law of the use of the sea and it has only references to heritage as a secondary issue.

On the other hand, **2001 UNESCO Convention** represents an international regulation specific to underwater cultural heritage (UCH). These are some of the general principles of the convention, based in Guido Carducci's interpretation of the law (CARDUCCI, *ibid*):

- **Definition of Underwater Cultural Heritage** as all traces of human existence having a cultural, historical or archeological character which have been partially or totally under water, periodically or continuously, for at least 100 years (Article 1).
- **Preservation *in situ*** is considered the first option before allowing or engaging in any activities directed at UCH (Article 2).
- **State Parties shall preserve UCH for the benefit of humanity.** It doesn't regulate the issue of ownership but this principle establishes provisions for international cooperation between the States.
- **UCH shall not be commercially exploited** for trade and speculation (Article 2). On the other hand, research projects are regulated by the Convention in one of its annexes.
- **It establishes specific policy of cooperation between coastal and flag states** (Articles 7 to 13). It is very important Article 9 to 11 that make a specific international cooperation regime with notifications, consultations and coordination in the protective measures in the case of UCH founded outside the *Exclusive Economic Zone*.
- **Promote the training in UCH** and the transfer of technologies and information.

With this ambitious regulation the underwater heritage is now at the same level of protection than the legacy in the dry land. However, the

problem is that only 17 countries had ratified the Convention until 2008, and for example, any of them are neither the base of the big treasure companies as the United States is, nor the base of the main auction houses, as the United Kingdom is. Is well known that every Convention or International Treaty have to be supported by the powerful countries of the world, such as G7 countries or the permanent members in the Security Council of the UN. That's why I can affirm that the 2001 Convention is not strong enough.

### **A case of misunderstanding: Odyssey vs. Spanish Government**

In May 2007, Odissey Inc. announced in his web page the discovery and recovery of more than 500,000 coins from a Colonial era site in the Atlantic Ocean near the Gibraltar's strait (EFE AGENCY, 2007). The code name was *Black Swan* and everything recovered was valued in more than 300 million. At the same time, the Spanish government claimed the property of the wreck and all it contained, according to the Spanish legislation. It is a story of archeological despoliation? Or it is a legal action? Now, the case of the biggest treasure found in the seabed is on court in Florida, the base of Odissey, waiting for a resolution.

As the study of the case of historian Victor Vela affirms (VELA, 2008) there are two important points in this case: Obviously, the most important one is the huge economic benefits that this operation passed for Odissey, that in June 2007 signed in NASDAQ stock market growing more than 80 % his value after the finding of the *Black Swan*. Furthermore, this is the reason of the Spanish Government to decide to appeal the court in Florida, not for scientific reasons. In addition, they authorized Odissey to explore the Atlantic coast between Gibraltar and his territorial sea with the aim to found the *HMS Sussex* lost in the 17th century. It is also true that this permission was expired when Odissey "saved" this wreck, and it was also very suspicious the

fact that all the findings were incredibly fast moved from Gibraltar to the United States, before any communication to the Spanish authorities. But, how does the Kingdom of Spain protect his heritage? I want to remind that they signed the 2001 Convention, but which are the ways and means to protect his own patrimony? And what's the role of the Gibraltar authorities? Although they permitted Odyssey's operations, they knew about the investigations and inquiries of the Spanish authorities.

Another interesting point is the origin of the findings. Odyssey states that it was extracted in the international sea and, surprisingly, now they can't find out the origin of the coins. On the other hand, the Spanish authorities claim that it is very easy to determine the origin of all these materials when you have half a million of them. In addition, it's possible to find out easily how the ship sunk, because there was only a few of them able to transport this amount of money sailing in this route, and it had to be recorded in the government files. According to Spanish Culture Department, all possibilities indicate to a Spanish origin of the findings and Odyssey's ambiguity hiding the findings from the Spanish archeologists is a proof of that. Questions like, what they have to hide or where their will of compromise is are in the air.

### **A case of compromise: titanic's recovery**

*RMS Titanic* is perhaps the most famous shipwreck for western culture. Titanic was British flagged and the largest and most luxurious passenger ship of its time. Although it was reported to be unsinkable, it sunk on April 15, 1912. 1500 people died in the shipwreck and, for that reason, the international law of safety in the navigation ship, the *Safety of Life at Sea Convention* was developed and there was the establishment of the *International Maritime Organization* (IMO) (VARMER, 2006). The wreck was found in 1985, approximately 340 nautical miles off the coast of Newfoundland, Canada. As it is obvious, in the international sea. The head investigator Dr. Ballard seeking to

protect the discovery went to the US Congress, and he answered to the Department of State to negotiate an international agreement to designate the wreck as a maritime memorial.

The *RMS Titanic Maritime Memorial Act* of 1986 or *Titanic Act* was enacted to protect this unique shipwreck from potential harm caused by misguided salvages, and the US Congress recognized that it needed the international cooperation to be successful. Canada, France and the United Kingdom signed in 1999 the *Final Minutes of the International Agreement concerning to the Shipwreck vessel RMS Titanic* based on the guidelines of the ICOMOS Charter, the precedent of the 2001 UNESCO Convention (VARMER, *ibid*)).

The main policy is the *in situ* preservation as the first management option. In other words, in case of compulsories recoveries of artifacts, all the reasonable measures have to be taken to ensure that all objects are conserved, curated and kept together and intact as project collections.

In addition all the research projects are focused by law to build a baseline of scientific information from which to measure the shipwreck's processes and deterioration and then apply that knowledge to other underwater heritage sites.

The *Titanic* and the *Black Swan* are very similar cases. But in the case of the *Titanic*, national and international institutions stopped the private corporations and established strong protocols with the aim of preserving the heritage. Unfortunately, the political will is not always the same, and the *Titanic Act* becomes an exceptional case of protection of heritage, but as I have said, it's an exception.

### To conclude...

As I have explained, irreplaceable sites can be destroyed by acts of man or nature under different waters without anyone knowing. At the moment, we can't do anything against the forces of nature,

but we do can stop the mankind equipped with the last technologies, which it is much more dangerous than a tsunami every 200 years. According to a conservative point of view, one of the ways to do it is related to the protective legislation that in the last years has been applied in several countries. The seabed begins to be regulated and it must be useful to stop the "salvagers" who destroy archeological sites. However, the key point is not only the legislation but also the capacity to implement these and the political will to do so.

But an international convention becomes just a piece of paper if we fail in the challenge with the public ignorance of what constitutes the underwater cultural heritage and how important it is. We need a strong effort for the education in patrimony studies freed from the romantic stereotypes related to the literature, comic or cinema, that consider the Archeology as an adventurer job with the aim to recover ancient relics. In addition, historic wrecks have to cease being viewed as sources of "supply" for the coastal populations, or for divers and enterprises that "save" the cultural objects and gain some royalties at the same time.

Another fight is the "salvation" emergency. The wrecks after several years or decades of rapid deterioration, gradually reach a stabilized state of conservation for centuries or millennia (PETZET, *ibid*). It is scientifically proved. The heritage doesn't have to be saved, or it has to be from ourselves.

But it is not an archeologist collective campaign. Education is very important to make possible the take off. We need also the combination between archeologists, the politic impulse, collaboration with divers, as well that international, national and local institutions, and also companies that considered the protection of the heritage as an added value. There is no recipe for the success but this ingredient combination could be useful to start. Working in this way, the heritage will become into an opportunity of developing a national industry, a new way of occupation in



cultural tourism, an international cooperation system, a way to exchange experiences,...To sum up, a way to know our past and to build our present.

## Notes

<sup>1</sup> The most important international organizations in the management of the heritage are: 1-The United Nations (UN), 2- UNESCO the branch of UN for Education, Science and Culture and 3- The ICOMOS, the International Council for Monuments and Sites. The international policy is based in their conventions and recommendations and I will explain this point later.

<sup>2</sup> This is a concept of the International Law that generally implies 12 nautical miles from the coast of each country are part of their sovereignty. In the Spanish case, the cultural heritage is under the exclusive authority of each Autonomous Community, an administration similar to the German *Land* or the State in the United States of America. This public institution can make a Cultural Heritage Law to regulate the activities in their 12 marine miles of territory and it has a Department of Culture to control every research or project involving the protected heritage.

<sup>3</sup> In the gap 2001-2008 the countries that have ratified the 2001 Convention are: Bulgaria, Spain, Croacia, Cambodia, Lybia, Ukraine, Santa Lucia, Romania, Portugal, Paraguay, Panama, Nigeria, Lithuania, Mexico, Libanon, and Ecuador. Poor results for an ambitious regulation.

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