

**XIth MEETING OF LATIN AMERICAN AND CARIBBEAN MINISTERS OF  
CULTURE AND OFFICIALS  
RESPONSIBLE FOR CULTURAL POLICIES  
PORT-AU-PRINCE, HAITI**

**TECHNICAL COMMISSION FOR THE FOLLOW UP ON UNDERWATER  
CULTURAL HERITAGE**

**THE SITUATION IN THE LATIN AMERICAN AND CARIBBEAN REGION  
DURING 1999**

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**INTRODUCTION**

The area of underwater cultural heritage has come to be defined currently as a new frontier of cultural heritage. As such, it is necessary to study properly and protect the wealth that is a part of this legacy, to guarantee its adequate documentation and conservation, for the knowledge and enjoyment of present and future generations as part of humanity's whole heritage.

Over the last forty years, thanks to the enormous progress in the development of technologies, new environmental dimensions have become accessible, as well as new territories that before were strange and hostile to mankind. An example of this is the sea and its " impenetrable depths." This universe so near us was, only a few years ago, a close, mysterious and far away world.

The development of diving techniques has allowed us to discover the depths of the sea. Because of these new techniques we can now study and get to know the natural underwater environment, and trace human existence under water, in lagoons, swamps,

rivers, seas, on the continental platform or the ocean depths. These traces constitute an important part of humanity's cultural legacy: they are a valuable testimony of mankind's history. As such they constitute underwater cultural heritage.

However these same techniques have also facilitated the resurgence in our seas of treasure hunters who are the inheritors of the legendary pirates that attacked and devastated the small islands in this Caribbean sea.

These new pirates appeared armed with state-of-the-art technology in the sector, abundantly financed and protected by consistent political influence in their country of origin as well as some times buying influence in the target country. This situation has reached proportions where it has become increasingly difficult for nations with less technological and financial resources to defend their underwater cultural heritage from these predators.

Treasure hunters also use in the majority of their underwater diggings the most violent and destructive methods not only for the natural underwater environment, but also for the cultural and historical environment. These methods are used to cut the costs of their projects because the only interest that guides them is to get as fast as possible to the places where the treasure-gold and jewels - they are avidly seeking, is located. These activities are totally contrary the most elementary principles of rational scientific management of underwater historical and cultural wealth.

This wealth is like a time capsule which holds an era that has already disappeared, and will allow access to the rich historical meaning that it holds , only if it is properly opened by specialists, and according to pertinent scientific methods. Only with a study and proper management of such wealth can we discover precious information such as ancient techniques of ship-building, life aboard ships , commercial routes, the terms of trade during a certain historical period.

An important factor that negatively influences the possibility of strengthening underwater cultural heritage methods and management systems, is the current lack of general international norms that legally define what underwater cultural heritage is. How should the term "protection" as refers to this heritage, be defined.? What should be the legal aspects of State sovereignty? What should be the positive aspects governing the relationship between the new Convention and the International law of the Sea (UNCLOS)? What should be the proper terms to support cooperation projects and the exchange of information that develop scientific management of such wealth? In a few short words , there lacks an International Convention that regulates the general aspects of a policy for the protection of this type of heritage.

It must however be said that we already have a declaration of general principles for technical management, as well as a scientific methodology on today's level of technological development that provides us with a framework for research and fieldwork in this type of heritage. These norms have been codified and are apart of the 1996 International Council for Monuments and Sites (ICOMOS)' Charter of Sophia

We are striving to help write an International Convention on underwater cultural heritage. Many of the nations present here today were called to UNESCO's headquarters in 1998, and again this year in Paris. There the Convention for the protection of underwater cultural heritage which was drafted by a committee of experts designated by this international organization assigned, was discussed, amended and rewritten article by article.

## RECOMMENDATIONS OF BRIDGETOWN, BARBADOS

During the 10th Meeting of the Forum of Ministers of Culture, and Officials responsible for cultural policy in Latin America and the Caribbean held in Bridgetown, Barbados from the First to the Sixth of December 1998, we presented a first report on the situation of the debate on the elaboration of the draft Convention on underwater cultural heritage. At the end of the report, we presented a few recommendations to promote a joint action among our nations in this field during 1999. These recommendations as well as the report were welcomed by the forum. We would like to remind everyone of what we proposed and what we achieved. It was recommended:

That the Declaration of Santo Domingo be reconsider and ratified, as well as the Declaration of GRULAC which was written during the 1998 Paris meeting.

Several countries sent copies of these resolutions to UNESCO and asked this organization to distribute them to all the delegations, which was effectively done by the UNESCO Secretariat).

That a technical committee be set up for the follow up on underwater cultural heritage, and that this committee be accountable to the Forum in order to coordinate action with UNESCO 's GRULAC Convention, and the next conference in Paris. Toward this end, the Dominican Republic offered to be the headquarters of the technical committee, and suggested in addition to Haiti (which would be responsible for the Pro Tempore

Secretariat), Colombia (as a nation that is one of the Vice Presidents of the conference of governmental experts convened by UNESCO), Argentina(Head coordinator of GRULAC for these matters at UNESCO headquarters), and Barbados (as President of the 10<sup>th</sup> Forum). This committee met in the Dominican Republic on the 12<sup>th</sup> of March, attended by Cuba as an observer

In order to analyze the situation and recommend a common strategy for the Paris conference, the strategy agreed upon was sent to the member nations of this Forum for their information, so that they could express their support for these measures and if possible promote them during the April meeting in Paris)

That the Ministers of Culture of the countries that have not yet signed the declaration of Santo Domingo take steps with their Foreign Ministry to do so before February 15<sup>th</sup> , 1999. We called upon the nations that wished to present an additional technical reports and to bring their points of view and arguments so that these could be included in the Santo Domingo meeting.

We also called upon the Ministers of Culture to ask their Foreign Ministry to boost the task force on this issue that meets with the permanent delegates to UNESCO. As we have mentioned earlier, the task force s currently coordinated by representatives from the sister Republic of Argentina.

Finally, we suggested that the exchange of information between our nations be strengthened as well as efforts for the establishment of common legislative parameters, and the renewal of internal legislation, in order to modernize our national institutions responsible for management in this area, to effectively preserve, recuperate, conserve, exhibit, and promote our rich Underwater Cultural Heritage.

Our efforts and hopes to reach agreements and a common strategy were successful.

## THE SECOND SANTO DOMINGO MEETING: MARCH 12<sup>TH</sup> .

After the 10<sup>th</sup> meeting of the Ministers Forum, the meeting of the technical commission for follow up on Underwater Cultural Heritage, which was attended by representatives from Argentina, Barbados, Cuba, Haiti and UNESCO, was held in Santo Domingo on March 12<sup>th</sup> of this year. During this meeting the following points were discussed:

## Objectives of follow up meeting Santo Domingo 99:

- To examine the situation of Underwater Cultural Heritage in preparation for the second meeting in Paris in April 1999.
- To elaborate a document that includes the most relevant common points on these issues, which would be the instruments to achieve consensus, for the second meeting of governmental experts.
- To elaborate strategies to rally all Latin American and Caribbean countries to ratify the declaration of Santo Domingo, to meet and discuss the basic work document, to enrich and strengthen our countries' position in the Paris meeting (April 1999).

## Results from the Follow up meeting Santo Domingo 99

- I. To call upon all the Latin American and Caribbean countries to ratify the Terms of the Declaration of Santo Domingo which took place on June 16<sup>th</sup>, 1998.
- II. The delegates insisted on the importance for the Latin American and Caribbean countries to continue cooperating in favor of defining a common strategy for the Paris 99 Meeting and, on the necessity of adopting urgent measures of protection at the international as well as the national levels, updating national legislation to stop the escalation of plundering and destruction of the underwater cultural heritage, considering it is a non renewable wealth.
- III. A detailed analysis was made of the draft Convention and suggestions were put forth to produce regional consensus.
- IV. A strategy was agreed upon during the meeting for each member country to inform other countries in its sub-region on the work document:

Argentina: Mercosur and Chili, Barbados: the English speaking Caribbean area, Columbia: Andean Pact, Haiti: as President of the Forum: Cultural Ministries which are part of the Forum, and the Dominican Republic: which will inform the Central American countries, Belize and Mexico at UNESCO GRULAC Headquarters.

## Second Paris Meeting: April 19<sup>th</sup> to the 24<sup>th</sup> 1999

In April of 1999 , a large group of member countries of the Forum of Ministers of Culture and Officials responsible for cultural policies for Latin America and the Caribbean attended the Second Meeting of Government Experts on the draft Convention for the protection of underwater cultural heritage that took place in Paris from April 19<sup>th</sup> to the 24<sup>th</sup> of the present year.

This meeting had a great international impact as shown by the number of participants: 82 of the 171 member countries of UNESCO attended; Ten Experts from three permanent observer countries; the United States, the Vatican and Palestine; representatives from the Oceanic Affairs Division and the Law of the Sea(DOALOS), the United Nations Legal Affairs Office, representatives of the Underwater International Authority, of the International Center for the Conservation and Restoration of Monuments (ICCRUM), and four non-governmental organizations including the Committee of Cultural Heritage of the International Law Association, the International Committee for Underwater cultural heritage , the International Committee on Monuments and Sites (ICOMOS), The International Council on Museums (ICOM) and the World Confederation of Underwater Archeology (CMAS)

Mr. Carsten Lum (Denmark) was again designated chairman of the meeting and Columbia held the Vice Presidency for the Latin American an Caribbean region.

During the Conference the majority of the nations reaffirmed their points of view on the necessity of adopting an international Convention on the issue. UNESCO was ratified as the ideal framework to discuss and approve this convention. This was the unanimous position of the participating countries, with only exception of Norway , which questioned UNESCO's aptitude. Norway insisted that it was worried that the draft Convention contradicts the UN Convention on the law of the Sea (UNCLOS). This position was an isolated case.

Our region maintained a united front in regards to the important points concerning the technical commission of the Forum of Ministers of Culture and officials responsible for Cultural Policy in Latin America and the Caribbean and in the meetings of the GRULAC 's task force in Paris.

It is worth mentioning that the Chairmen of the Conference praised the delegates from our region for their technical knowledge .

The Europeans did not present a united front. They expressed different positions. On one hand, Spain and the United Kingdom had a similar position; on the other Italy held views close to our region's.

Australia also presented a position close to ours. Among such points are: the definition of underwater cultural heritage, the opposition to immunity for warships, and the jurisdiction of coastal states over exclusive economic zones, the continental platform and interdiction of the commercialization of underwater cultural heritage.

## MEETING PROCEDURES

The procedures followed during the meeting occurred basically in two stages. During the first stage the participants were divided in three work groups which studied the following issues:

- Definitions and principals of the Convention.
- Ways of incorporating the ICOMOS Charter in the Convention and,
- The jurisdictional problems presented by the Convention.

It is worth mentioning that Mexico was head of Group 1, Argentina, Group 3, which shows the leadership role of the region.

In the second stage , during the plenary the results of the work groups were discussed. They reported in writing and noted the points of view in the text with which they didn't agree.

In general, the work groups made important progress in the discussion of the draft but there still were extreme disagreement with several key points of the Convention. Such as:

- Immunity for warships
- Jurisdiction of coastal states over exclusive economic zones and the continental platform,
- Compatibility of certain tendencies within the convention and UNCLOS and

-The exclusive scientific purpose of research, and the banning of the sale of underwater cultural heritage.

## WORK GROUP NUMBER ONE: DEFINITIONS

With respect to Group number 1 they worked basically on articles one and two of the draft Convention.

The report containing the results of their discussions shows that they reached agreements on a number of issues.

First of all, on the definition of underwater cultural heritage(article 1.) There was consensus on establishing a time frame of a hundred years, giving the states the right to claiming declare certain areas containing traces of human existence, that have been submerged under water for less time.

Secondly, they agreed on rejecting the abandonment concept which was stipulated in article 1.2.

On the issue of the extent of application of the Convention (article 2), the positions were very different. One of the most difficult points was including warships in the range of application of the Convention (article 2,2). On one hand numerous countries were absolutely against it (all of the Latin American and Caribbean countries which were present, as well as Saudi Arabia and South Korea). However , France, Turkey, the United Kingdom and Spain insisted on applying the principal of immunity for warships. The final decision will be discussed in the new draft among the jurisdictional aspects.

It should be pointed out that Spain was the country that insisted the most on that point and proposed that warships sunken in water under the jurisdiction of other states remain its property . And that any action regarding these ships must have their participation and previous consent. This position is contrary to the position of all member countries of this forum because it would limit the right of jurisdiction of coastal states in the waters where those wrecks are found.

In spite of the fact that there was no agreement, at least this issued is still raised in the new draft. It is also important to point out that Spain combined its proposal with another one which underlines the importance of cooperative agreements