PREVENTION OFILICIÓ TRAFECHN OFTHE UNDERMAER

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ike rivers and lakes, seas have since ancient times been used by mankind for transportation and livelihood. These activities have left material traces in the bed of oceans, rivers and lakes that had remained undisturbed for centuries. Increasing access to the underwater world, thanks to technological breakthroughs in autonomous scuba diving and the detection of underwater materials, has evidenced that submerged archaeological remains are no longer safe from pillage and theft. The current situation of the underwater cultural heritage in most countries shows not only legal gaps in protection actions but also a lack of specialists in underwater archaeology and related sciences, such as the conservation of materials that have always been under humidity conditions. Evidently, there is an urgent need for international collaboration to fight against growing destruction.

UNESCO took note of the concern voiced by its member countries. In 2001, it adopted the Convention on the Protection of the Underwater Cultural Heritage, which entered into force in January 2009 and today has 46 States Parties, 16 of which are from Latin America and the Caribbean.¹ This international legal instrument complements the set of UNESCO conventions seeking to protect the cultural heritage in all its diversity (natural, movable, intangible), as well as contemporary creativity. This new convention establishes the basic principles for the protection of the underwater cultural heritage, provides a specific system for cooperation among States and a reporting and coordination mechanism that facilitates the management of this protection by the States Parties, and formulates practical rules for worldwide recognition, intended for archaeologists and cultural managers in the identification, protection and preservation of submerged remains. For the purposes of this Convention, underwater cultural heritage means 'all traces of human existence having a cultural, historical or archaeological character, which have been partially or totally under water, periodically or continuously, for at least 100 years, such as sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and objects of prehistoric character.'

The rule No. 2 annexed to the Convention, which establishes the rules to be followed in any activity directed at the underwater cultural heritage, provides that commercial exploitation of the underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of the underwater cultural heritage. This heritage will not be traded, sold, bought or bartered as commercial goods. This legacy, like



El Navegador, Cuba © Cabinet of archaeology of OHCH

the terrestrial cultural heritage, cannot be conceived of as a source of economic resources. Its recovery should be carried out in order to preserve the scientific and cultural significance that gives it an outstanding value for humanity.

Many submerged sites have been discovered and studied archaeologically for the benefit of knowledge. Museum programmes have been developed, and sightseeing tours have been organized on these sites or at cultural centres in neighbouring coastal communities.

However, most of the underwater archaeological remains of Latin America and the Caribbean have not had the same fate and have seen pillage and destruction by profit-seeking commercial groups. Legal gaps and ignorance of the importance and potential of this cultural heritage favour the growth of this activity. The romantic notion of the search for a lost treasure, as it appears in adventure novels and movies where valuable objects are sought after in exotic places, takes on a different dimension when we think that the commercial exploitation of the underwater cultural heritage has become the most serious and devastating threat hanging over the protection of these vestiges bequeathed to humanity. Those who are engaged in recovery for commercial purposes (treasure hunters) draw objects with a certain market value such as jewellery, coins, navigation instruments, fragile porcelain and other antiques, regardless of the archaeological, historical and cultural significance of the site itself, which they ignore as an entity. Information that is crucial to understand the techniques of shipbuilding, navigation, naval combat, trade, feeding practices, clothing, and the health

condition of seamen, officers and migrants at various times in history has thus been lost.

The objects that are involved in underwater pillage often end up on the illicit art market and are only known after they appear there or in antique exhibitions or showrooms, making it difficult to determine their exact origin. This is another reason to insist on the importance of making inventories and gathering as much information as possible about each shipwreck. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Private Law Aspects Related to Improper Trading are both an excellent complement to the 2001 Convention, which provides regulations on the control over the import of heritage objects from illicit trafficking, their marketing and possession, and the prohibition of activities that are not in accordance with the Convention in the area of national jurisdiction of States Parties, including sanctions where appropriate.

The actions related to illicit trafficking in the underwater cultural heritage can be implemented using the channels available under the 1970 and UNIDROIT conventions, with support from police and customs officers and international cooperation agencies involved in fighting against illicit trade in works of art.

The 2001 Convention envisages the establishment of relevant authorities or the strengthening of the entities that can make and update inventories of the underwater cultural heritage, and guarantees its effective protection. It also sets forth in Article 17 that each State Party shall

impose sanctions against violations of the measures adopted to implement the Convention.

Since its establishment in 1947, INTERPOL, the largest police organization in the world, has been fighting against illicit trafficking in cultural property and goods from the aguatic environment. The incidence of the underwater cultural heritage on the illicit market for these goods has been addressed on several occasions at the meetings organized by its secretary-general. This international institution, which consists of 186 States Parties, has a system of national central offices that provide mutual assistance to the criminal police authorities of each country so as to help prevent and suppress ordinary law crimes. Countries should be aware of the importance of working together with this organization to implement sanctions and do prevention work under its different mechanisms, such as the global police communications system known as I-24/7. Effective communication between police forces of States is a fundamental requirement for a truly international cooperation in the fight against illicit trafficking in the underwater cultural heritage. Similarly, States may make use of international databases and resort to registration documents like the international identification document and export certificates on the underwater cultural heritage. They provide international standards that describe cultural objects and have been developed in collaboration with the museum community, police forces, customs agencies, art trade representatives, insurance companies, and art and antique appraisers.

Two excellent examples of cooperation with police forces in the field of the underwater cultural heritage in Argentina and Cuba are described below.

In July 2012, the Underwater Archaeology Programme (PROAS)² of the National Institute of Anthropology and Latin American Thought of Argentina (INAPL) learned that an Internet auction site was offering an anchor rescued «from **an old wooden hull buried in Rio de la Plata.**» After appropriate verification, the information was sent to the relevant prosecutor's office (Tax Crime and Smuggling Investigation Unit). The office opened a preliminary investigation to determine whether or not Law 25,743 (on archaeological heritage protection) had been violated, and requested a technical report on the age and origin



of the piece, based on the photos and data published by the auction house. The idea was to find out if it was covered by this law or not. The office later asked to involve the INTERPOL-Argentina-run National Centre for Cultural Heritage Protection, which conducted an operation that led to the identification of the offender, the recovery of the piece, and its subsequent deposit at INAPL.

In Cuba, the wreck of El Navegador (The Navigator), a merchant frigate built in New York in 1805, is located off the coasts of Santa Cruz del Norte (Mayabeque province). The frigate naval architecture has not been sufficiently studied and it was transporting a peculiar cargo of English porcelain. This wreck is part of the Cuban underwater archaeological inventory carried out in accordance with the 2001 UNESCO Convention, to which Cuba has been a signatory since 2008. However, these highly important archaeological remains have been looted by unscrupulous divers who make profit from the sale of porcelain. Thanks to a joint action by the National Cultural Heritage Registration Office, the local authorities, archaeologists and police forces, over 30 pieces from the shipwreck have been seized from private homes and restaurants in the area. To raise public awareness about the information that can be provided by a scientific archaeological research into these remains and the site from which they come, an exhibition has been organized, describing the discovery and the condition of the shipwreck. The exhibits include artillery pieces, artefacts used by sailors on a daily basis, and some of the cargo, which illustrate a specific event in history and provide crucial information about an industry and a market in full expansion in Cuba in the 19th century (that of English porcelain).

The cultural heritage can be effectively protected through cooperation at the national and international levels. To prevent the looting of the underwater heritage and its subsequent introduction into the illicit trafficking in cultural property, joint actions are being implemented by institutions related to the marine environment, such as the police, the navy, port authorities, customs, marine research institutes specialized in climate and biology, archaeological conservation institutes, museums, and recreational divers. We should speak the same language and protect the cultural heritage that belongs to all and that should be preserved for future generations.

Notas

¹Panama, Mexico, Paraguay, Ecuador, Saint Lucia, Cuba, Barbados, Grenada, Haiti, Saint Kitts & Nevis, Argentina, Honduras, Trinidad & Tobago, Saint Vincent & the Grenadines, Jamaica, and Antigua & Barbuda.

²Established in 1995, PROAS seeks to conduct scientific research, do preservation work, and raise awareness about the underwater cultural heritage in Argentina.