LEGAL FRAMEWORK OF UNDERWATER CULTURAL HERITAGE & MUSEUMS

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SUMMARY

I. 2001 UNESCO Convention: a minimal legal framework protection...
   1. Background
   2. Underwater Cultural Heritage definition
   3. Prevention and Sanctions
   4. Lacks and limits of the Convention

II. 2001 UNESCO Convention: promotion of cooperation on multiple levels
    1. Regional / Sub-Regional
    2. Bilateral

III. Focus on underwater heritage museums and dive sites
     1. Underwater heritage museums
     2. Input of ICOM and cooperation to be further explored
I. 2001 UNESCO CONVENTION

I.1 BACKGROUND 1/6

Endangered heritage

Experts estimate that about 3 Millions shipwrecks and remains are still lying under waters.

This heritage can still be damaged on various occasion, such as:

- Environmental factors (earthquake, waves and currents, bacteria…)
- Human activities (fishing, natural resources extraction…)
- Looting increased with underwater exploration technics progress

Example: The lost sunken Spanish galleons, between USA and Europe, represent a treasure that may worth more than 100 Millions euros

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The Underwater Cultural Heritage is a precious witness of past times. Sites and objects remained untouched for centuries, and well conserved by water, sometimes better than inland remains (lack of oxygen and inaccessibility).

The conservation and display of this Heritage is well supported by the public (cf. Vasamuseet, most visited museum in Sweden: >200,000 visitors before the opening of the museum).
Underwater Cultural Heritage legal protection historically lays on:

Recommendation on International principles applicable to archaeological excavations (UNESCO, 1956)

“Each Member State should ensure the protection of its archaeological heritage, taking fully into account problems arising in connexion with excavations, and in conformity with the provisions of the present Recommendation. [...] By archaeological excavations is meant 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.”
I. 2001 UNESCO Convention

I.1 Background 4/6

**Hard Law**


Two articles of the Montego Bay Convention are dealing with the issue of underwater objects of archaeological and historical nature.

**Article 149: Archaeological and historical objects**

“All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.”

The Area refers to the Zone.

**Article 303: Archaeological and historical objects found at sea**

“1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.

2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.

3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.

4. This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.”
Charter on the Protection and Management of the Underwater Cultural Heritage (ICOMOS, 1996)

“This Charter is intended to encourage the protection and management of underwater cultural heritage in inland and inshore waters, in shallow seas and in deep oceans.”
The 1956 Recommendation (UNESCO): only addresses the protection of the Underwater Heritage located in the territorial waters of a Member State, and not in the Zone, which covers about ½ of the Earth surface, and 64% of oceans.

UNCLOS (1982):
- Article 149 does not specify which State shall be in charge of the conservation of the object, and/or which State shall retain the objects found. It does not specify either the notion of “preferential rights” of the State linked to the objects or the connexion between these rights and the disposal “for the benefit of all mankind”.
- The mention of the “law of salvage” in Article 303 may lead to an increase in the looting of the cultural heritage, notably by private diving companies.

ICOMOS Charter (1996): strongly supports the protection of the Underwater Heritage for all water areas, based on geographical concerns (internal waters, seas and oceans...) rather than legal existing concepts. However, it is non-binding for States Parties.
I. 2001 UNESCO Convention

I.2 Underwater Cultural Heritage 1/3

Convention overview

Purposes

The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, entered into force on 1/2/2009, is an international treaty, which purpose is to address the issue of looting and destruction of underwater heritage.

The Convention:

- Sets out the basic principles to provide a minimum protection, notably by promoting the *in situ* conservation wherever possible
- Provides a framework for cooperation between States Parties
- Provides 36 practical Rules of operation scheme to researches and management of this heritage (cf. Annex of the Convention)

The Italy Maru sunken ship - Papua New Guinea
Key essential principles

- Obligation to preserve underwater cultural heritage and undertake measures to the extent possible
- In situ preservation as 1st option, ie as a priority to be considered. Recovery of objects on protection or research purposes possible.
- Commercial Exploitation not allowed to prevent irretrievable dispersion
- Training and information sharing in underwater archaeology and transfer of technology

45 States Parties ratified the Convention
Some of them ratified the Convention with reservations (cf. France)

6 Arab Countries, among of ALECSO
UNESCO Convention Article 1 paragraph 1

“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 archaeological and natural context; and
- Objects of prehistoric character”

Countries may opt for domestic law definition of Underwater Cultural Heritage (cf. France)
UNESCO Convention Article 1 paragraph 1

- “Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage
- Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage”
Sanctions

UNESCO Convention on the Underwater Cultural Heritage, Article 17

1. “Each State Party shall impose sanctions for violations of measures it has taken to implement this Convention
2. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance with the Convention and to discourage violations wherever they occur and shall deprive offenders of the benefit deriving from their illegal activities
3. States Parties shall cooperate to ensure enforcement of sanctions imposed under this Article.”

No specific measures set by in case of infringement of the Convention by States Parties

Prevention against Illicit trafficking

UNESCO Convention on the Underwater Cultural Heritage, Articles 14 and 18

States Parties must take practical measures to regulate the underwater cultural heritage trafficking:
- Nationals do not damage or disperse underwater cultural heritage
- Prevent the entry into their territory, the dealing in or the possession of underwater cultural heritage illicitly owned.

Sanctions, as specify in Article 17, should be set by domestic law.
I. 2001 UNESCO Convention

I.4 Lacks and Limits of the Convention

- Natural heritage not covered

- Ownership of wrecks and remains not regulated
  - The 2001 Convention does not regulate the ownership of underwater heritage, which is still bound to civil, domestic and private international law (no improvement regarding UNCLOS).
    “Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of an in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.”

- Cultural character of the underwater heritage not precisely defined

- Limits of any legal system, it needs the support of politics
  
  Constitutive, distributive, regulatory oriented policies. Pr. Theodore Lowi
II. MULTIPLE LEVELS OF PROTECTION

II.1 REGIONAL & SUB-REGIONAL

Article 6 of the 2001 UNESCO Convention encourages States Parties to conclude bilateral, regional or multilateral agreement in order to improve the protection of the Underwater Cultural Heritage regarding existing international norms or agreements, in accordance with the 2001 Convention.

States Parties to such agreement may invite any States with cultural, historical or archaeological link with the heritage to be protected to cooperate.

Article 6 of the 2001 UNESCO Convention is non coercive

Key concept is the best protection. States involved shall provide a protection much developed than existing International Regulation
II. MULTIPLE LEVELS OF PROTECTION

II.2 BILATERAL

Bilateral agreements

Agreements often concluded on a particular object of the Underwater Cultural Heritage

- December 1972: The Netherlands and Australia (wreck ship of the Ancient Dutch East India Company)
- September 1989: United Kingdom and South Africa (Birkenhead wreck ship)
- August 1997: United Kingdom and Canada Erebus and Terror wreckship, under ice
- Mars 2003: France and United States of America: La Belle, ship sunk in the Mississippi

The purpose of such agreements are:

- to prevent this heritage from being looted
- to further develop conservation and studies on underwater remains

Help conciliate the interests of Flag State and Territorial State

Immediate danger to sites: Articles 10 and 12, State Member(s) can take measures to immediately prevent pillaging or destruction of sites
III. FOCUS ON UNDERWATER MUSEUMS

III.1 UNDERWATER HERITAGE MUSEUMS

ICOM Museum Statutes definition

ICOM Statutes Article 3 Section 1
“A museum is a non-for-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment”

ICOM Internal Rules & Regulations Article 2 Section 2,1,1
“The definition of museum must be applied without limitation based on the nature of the regulatory authority to which the institution is subject, its territorial status, its system of operation, or the focus of the collections at the relevant institution.”
Underwater Museums are considered Museums and are eligible as Institutional Members according to ICOM Statutes.
III. FOCUS ON UNDERWATER MUSEUMS

III.1 UNDERWATER HERITAGE MUSEUMS

In situ Underwater heritage museums

Baiheliang museum (China)

- Yangtze River, natural sandstone ridge, submerged (TGP’s reservoir)
- Inscriptions engraved, since the Tang Dynasty (763), to record the water levels
- Project scope: 2003 – 2009
- Museum opening: 05/18/2009

First underwater museum opened
In situ Underwater heritage museums

Underwater museum of Alexandria project

- Alexandria’s Quait Bey Citadel, located in the Eastern Bay,
- Protect artefacts from sea and pollution erosion
- Workshop (Ministry of Culture of Egypt & UNESCO) in 2006 to study the possibility of the establishment of an Underwater Museum
- Feasibility study of a museum placed partly under the sea: since 2009
Underwater heritage sites presented as Museums for Divers. According to ICOM Statutes and IRR, they could be considered as having some or all of the characteristics of a Museum.

Florida Keys National Marine Sanctuary (NOAA, USA)

- Nine sites on the Shipwreck Trail, associated with European and American History.
- Shipwreck from 18th and 19th centuries and some ships sunk deliberately as artificial reefs.
- Underwater site guide (position, site map, marine life…)
- Fourteen of the sanctuary’s historic sites are listed in the Department of the Interior’s National Register of Historic Places.
- Sanctuary scientists and partners are continually documenting and researching ships that rest on the ocean floor.

Divert diving pressure from the natural reefs
III. Focus on Underwater Museums

III.1 Underwater Heritage Museums

Inland Underwater Heritage Museums

Nanhai No.1 Wreck Museum (China)

- 1000 years old vessels, 25 meters long
- 60,000-80,000 precious pieces of cargo
- Displayed in a museum *Crystal Palace of Guangdong Maritime Silk Road Museum*
- Submerged in an aquarium with the same water quality, temperature and environment as the sea spot
- On-going archaeological excavations on the vessel will continue and could be observed by visitors

A particular case

Submerged for more than 100 years, but then remove from its first localisation and submerged again for less than 100 years

The Convention stipulates that sites should be left where they were found, in the absence of any type of valid justification for intervention or recovery
III. FOCUS ON UNDERWATER MUSEUMS

III.1 UNDERWATER HERITAGE MUSEUMS

Inland Underwater heritage museums

Underwater heritage still protected by the 2001 UNESCO Convention, even if it is not submerged anymore, either totally nor partially, as it spent more than 100 years underwater.

Vasamuseet (Stockholm, Sweden)

- Museum built to protect and safeguard the Vasa, a warship built in the 17th Century, sunk in 1628: Most visited museum in Sweden
- When Vasa was raised in 1961, no one had ever conserved such a large wooden structure before
- The hull was sprayed with harbour water to prevent the wood from drying out.
- PEG (polymer polyethylene glycol) solution was then diffused into the wood structure, replacing the water molecules, preventing cracking and shrinking
- The spray treatment lasted 17 years of treatment, from 1962-1979, 9 years of slow air-drying
ICOM-CC: ICOM International Committee for Conservation

- Largest International Committee of ICOM: > 2,000 Members worldwide
- ICOM-CC aims to:
  - Promote the investigation, analysis and conservation of culturally and historically significant works
  - Further the goals of the conservation profession.
- Built up of 21 thematic Working Groups

Working Group on Wet Organic Archaeological Materials (WOAM)

Researches on technical issues raised by the Underwater Heritage conservation, both in situ and in inland museums

WOAM studies:

- The degradation and conservation of organic archaeological objects found in fresh or salt water, or during excavation of wetland or damp sites.
- In Situ conservation, reburial, and site surveys, as well as post-conservation treatments of objects of organic archaeological materials
ICOM CIDOC: ICOM International Committee for documentation

- ICOM CIDOC activities:
  - Conferences, working groups on specific area of interest, tutorials and trainings (CIDOC School)
  - Publications, factsheets, standards and other resources, CIDOC archives accessible on the website: http://network.icom.museum(cidoc)/

Possible areas of joint collaboration to explore

- Trainings, reinforce capacity buildings
- Further develop standards of Ethics for museums in order to avoid commercial exploitation of looted underwater heritage (Article 2 § 7 of the 2001 UNESCO Convention)
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ICOM Statutes Art. 4 Section 3
“Institutional Members – Museums or other institutions complying with the definition of a museum.”

ICOM Internal Rules & Regulations Art. 2 Section 2,1,1
“Aside from institutions designated as museums, the following institutions are qualified as museums eligible to seek membership to ICOM:

i. Natural, archaeological and ethnographic monuments and sites and historical monuments and sites with museum-related activities including acquisition, conservation, and making material evidence of peoples and their environment;

ii. Institutions holding collections and displaying live specimens of plants and animals, such as botanical and zoological gardens, aquaria and vivaria;

iii. Science centres and planetaria;

iv. Non-for-profit art galleries as well as conservation institutes and exhibition galleries maintained by libraries and archive centres;

v. Nature reserves;

vi. National, regional or local museum organisations as well as public agencies (ministries, departments or organisations) responsible for museums as defined in this Article;

vii. Non-for-profit institutions or organisations undertaking research in areas of conservation, education, training, documentation, as well as other activities relating to museums and museology;

viii. Cultural centres and other institutions that facilitate the preservation, perpetuation, and management of tangible and intangible heritage resources including living heritage and the creation of digital artefacts.”