

The Interest of the Ratification of the Underwater Cultural Heritage Convention for Landlocked Countries

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Art. 1 paragraph 1 of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage defines its object, “underwater cultural heritage”, as 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. The Convention urges for its protection, sensible scientific research and a stronger investment in underwater archaeology.

Since the middle of the 20th century underwater cultural heritage has become much more accessible. Shipwrecks and underwater ruins are no longer beyond the reach of treasure hunters and are increasingly under threat of exploitation. Similarly, increasing numbers of industrial activities damage and destroy such heritage. It was therefore not only a necessity, but also a matter of urgency to adopt a specific international instrument for the legal and material protection of underwater cultural heritage, the 2001 UNESCO Convention. A global standard is now in place for the protection of the underwater cultural heritage, preventing it from looting and destruction and offering scientific guidance. This standard is comparable to that granted by other UNESCO Conventions or national legislation on cultural heritage on land, and yet specific to archaeological sites under water.

Many States have already adhered to the Convention¹, willing to better protect their historic sites located in the ocean. But why should land-locked countries take an interest in this Convention?

The answer is, as illustrated in detail below, that landlocked countries have indeed a great number of advantages in becoming party to the 2001 Convention. Not only oceans, but also lakes and rivers hold extensive remains of cultural heritage, which need protection. Furthermore, they are the most promising field for future research in archeology.

Application of the 2001 Convention to Inland Waters

The first question to be answered is whether the 2001 Convention applies to inland waters, such as lakes and rivers? The answer is yes. The 2001 Convention was drafted by UNESCO’s Member States to apply to all kinds of waters, in conformity with Article 29 of the Vienna Convention on the Law of Treaties: “*Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.*”²

¹ For a list of States Parties see: www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha

² See also Paragraph 6 of the Operational Guidelines of the 2001 Convention: “The Convention applies, as regulated in its text and with the limitations contained therein, to the entire jurisdiction of its States Parties, unless a reservation is made under its Article 29.”

An exception is made for the application of a part of the Convention, its Annex, containing Rules for Activities directed at Underwater Cultural Heritage. Article 28 of the 2001 Convention states that “*When ratifying, accepting, approving or acceding to this Convention or at any time thereafter, any State or territory may declare that the Rules shall apply to inland waters not of a maritime character*”. While the Convention’s Annex is its most recognized and valued part, Article 28 states that concerning the Annex a separate declaration is needed to allow for its application to inland waters not of a maritime character. The reason for this is that some States already have elaborate regulations regarding underwater archaeological finds for their inland waters and wish to be given a choice, if they would have to replace these with the Annex Rules. This is of special concern to federal States, as a compulsory application of the Annex to inland waters might in some instances demand lengthy consultative procedures with regional authorities. It is however, in case there are no administrative obstacles, extremely recommendable for a State to declare the Annex applicable, when ratifying, as it offers the best scientific standards available worldwide for activities directed at the underwater cultural heritage.

Underwater cultural heritage of interest to land-locked countries

Having confirmed that the 2001 Convention also covers inland waters, there arises the second question, whether there is any heritage of significance, meriting special protection efforts, in inland waters?

The object of the 2001 Convention, which is correctly ‘underwater cultural heritage’, is often translated as ‘submarine heritage’ (for instance in French ‘patrimoine sous-marin’). This derives from the assumption that submerged archaeological sites would necessarily be located on a seabed. In reality however, many important traces of human existence are found on riverbeds, in lakes and in swamps. Some examples of landlocked underwater cultural heritage might help illustrate the significance of underwater cultural heritage in landlocked States.

Underwater cultural heritage in inland waters

An especially well-known example for the importance of underwater cultural heritage research for timber-based pre-historic communities, are the sacrificial bog finds in the Scandinavian States and Germany. Biological materials and timbers, under certain conditions, are often much better preserved under water than on land. While often on land only metallic or stone materials from graves or buildings survive, swamps, rivers and lakes often preserve textiles, human remains, and tools.

The Tollund Man is, for example, a naturally mummified corpse of a man who lived in the 4th century BC, during the period characterized in Scandinavia as the Pre-Roman Iron Age. He was found in 1950 on the Jutland Peninsula in Denmark, buried in a peat bog which preserved his body. Such a find is known as a bog body. The man's physical features were so well-preserved that he was mistaken at the time of discovery for a recent murder victim. Twelve years before Tollund Man's discovery, another bog body, Elling Woman, had been

discovered in the same bog. Such ancient bog bodies have also been found in England and Ireland. Some of the Danish swamp lakes also hid sacrificial collections of huge musical instruments, weapons and shields.

Another impressive example of the importance of waterbodies, such as wells and sources is the Mir Zakah Well Hoard of Afghanistan. Between 1992 and 1995 one of the largest deposits of coins known in the history of currencies was discovered at the bottom of a well in Mir Zakah, located in Pakhtia province of Afghanistan. Torrential rains had caused the well to overflow. The coin deposit seems to have contained more than four tons of minted metal, nearly 550,000 mostly silver and bronze coins and 350 kilograms of gold. Unfortunately, the find, which's special importance, lies in the information it gives on Bactrian kings and in a depiction of Alexandre the Great on a medal, was pillaged and exported to foreign States. The fate of this find illustrates not only the importance of the finding place, but also the essential need for an international Convention to protect the site and to prevent the dealing in the pillaged artefacts beyond State borders.

Other finds made in land-locked countries include finds from the Roman era, such as Roman boats and river fortresses in the Danube and Rhine and the sculpture of Caesar found in the Rhone in Arles, France, associated with the remains of several Roman river barges and their cargos. These remains form today part of one of the most visited museums in the South of France.

They also include the remains of decisive battles. The remains of the fleets which took part in the naval Battle of Riachuelo in Paraguay in 1865 constitute a prominent example of river-located underwater heritage. The battle was the largest of its kind to take place in Latin America during the War of the Triple Alliance, and its remains still survive on the bed of the Paraná River. Also many remains of dwellings constructed on small natural or artificial islands or on piles in the water (similar to the city of Venice), have been discovered. Examples include the remains of ancient settlements in the Zurich lake and Lake Constance, the crannogs of Ireland and Scotland, La Colletière, France, a medieval lake-side dwelling, or the pile settlement in a river close to Pompeii, Italy.

The underwater cultural heritage of land-locked States can also be of special importance for sustainable development and tourism and its appropriate management and protection can contribute to the achievement of the UN Agenda 2030 and Sustainable Development Goals. The Latenium Museum in Switzerland is for instance the largest archaeological museum in the country. The breath of its collection covers Celtic archaeology and many other periods, especially including the Neolithic pile dwelling sites preserved under water in the lake of Neuchâtel. The underwater site, together with 110 similar ones, has been inscribed in the UNESCO World Heritage list.

Ocean-located heritage of landlocked countries

The above examples illustrate the importance of heritage located under water in landlocked countries. However, many of these landlocked countries also have a strong connection to

heritage located on the ocean bed. The Austro-Hungarian Empire participated for instance in wars at sea, such as in World War I, and a considerable number of shipwrecks from this time remains under the sea. Thus Austria, today a land-locked country, as well as the large number of additional successor States of this Empire, of which some are equally landlocked, such as the Czech Republic, Slovakia and Hungary, certainly have a preservation interest in these sites.

The Interest in Ratification of the 2001 Convention

Underwater cultural heritage found in land-locked countries is, as shown, extensive. But how is its protection and research improved by a State's adherence to the UNESCO 2001 Convention?

The Convention was adopted to combat the extensive pillage, commercial exploitation and illicit or unethical traffic of underwater cultural heritage. It is a comprehensive treaty, which fully addresses these issues regarding all waters, i.e. also in rivers, lakes and wells. It increases the legal protection of sites *in situ* and prohibits the illicit and/or unethical recovery and traffic of artefacts. The Convention is thus very relevant at a time when the pillage and commercial exploitation of underwater cultural heritage constitute major issues that have not yet found an appropriate solution in most regions of the world. If artefacts are pillaged and exported the prevention of their traffic and their seizure is for landlocked countries as important as for ocean-bordering States.

The ratification of the Convention also means that a State commits to prevent the pillage and commercial exploitation of heritage by its nationals or vessels flying its flag and to provide for sanctions. States implement the Convention through their law as far as their jurisdiction reaches. Their jurisdiction covers all private individuals and companies within their national territory. However, States always have jurisdiction over their own nationals and vessels flying their flag, even in international waters. This jurisdiction over nationals and vessels flying the State flag is founded on the 'active personality principle', which establishes national jurisdiction over them abroad³. Therefore, they can sanction violations of heritage protection regulations when committed in other States' waters. As many foreign treasure-hunters are operating today in developing countries this extension of sanctions is important.

The Convention, however, goes further than that. It also responds to the need for scientific guidance and the facilitation of State cooperation. Underwater archaeology is still a developing discipline. The majority of river and lake-beds has not yet been researched for heritage. Research capacities are still lacking and awareness of this immense patrimony lying in rivers and lakes is very low. Only through exchange of knowledge and training can this situation be improved and bring the important underwater cultural heritage to benefit the public.

³ See also Advisory Report on the Unesco Convention on the Protection of the Underwater Cultural Heritage, Page 5

The Convention provides scientific guidance through the “Rules concerning activities directed at underwater cultural heritage”, annexed to the Convention. These Rules are an integral part of the Convention according to Article 33, even if there is flexibility concerning their use in inland waters, not of a maritime character, according to Article 28. It is however strongly recommended to declare their application, as they set the most recognized guidance for underwater archaeology worldwide. They include regulations as to how a project is to be designed; guidelines regarding the competence and the qualifications required for persons undertaking activities; and methodologies on conservation and site management. The 36 Rules of the Annex present a directly applicable operation scheme for underwater interventions. Over the years, they have become a reference document in the field of underwater excavations and archaeology, setting out regulations for a responsible management of such cultural heritage. Every professional working in the field of underwater cultural heritage should strictly comply with these Rules.

A third advantage is the support the Convention provides to mitigate industrial activities. Article 5 stipulates that each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage. Today, lakes and waterways are increasingly exploited in order to extract sand or gravel, to catch fish or are dredged to allow for transport. Many of these activities impact on the environment by creating pollution, erosion or changing currents, and many of them can also affect sites holding submerged cultural heritage, such as sunken cities or ancient shipwrecks. Indeed, a large number of ancient shipwrecks have been damaged by dredging. The question of how to mitigate these extensive industrial, non-desired and non-intended impacts arises. In the above described situation Article 5 of the UNESCO 2001 Convention is a great ally for national authorities and its importance should not be underestimated. It offers a recognized international standard and backs up an authority’s stance in negotiations with an entrepreneur.

Last, but certainly not least, the ratification of the 2001 Convention means that the ratifying State gives its support to the global effort to protect heritage from pillage, exploitation and destruction, regardless where it is found.