

Human remains on underwater cultural heritage: ethics, values and law

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Abstract

All of the factors and complexities of the issues regarding the management of underwater cultural heritage reveal the narrow dependence between its management and the historical, sociological, cultural and traditional particularities of every country. Catastrophes creating shipwrecks frequently also cause deaths, ranging from single fatalities to disasters claiming hundreds of lives. However there is not a specific legislation dealing with the treatment of the human remains on shipwrecks. Nevertheless, the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage includes in its definition the term human remains, which means that the same guidelines for the protection of the underwater cultural heritage — preservation in situ for the public benefit— are also applicable to human remains. In this regards, this paper will justify that declaring shipwrecks as funerary monuments or underwater cemeteries in most cases attracts tourism, apart from the own meaning of these sacred places, and also complies with the 2001 UNESCO Convention principles. In addition, the possibility of the treatment of human remains as intangible heritage can lead to a new whole vision for its protection and management. Underwater cultural heritage can be not only monuments to the great journey or heroic combat, but also a tool to shape the collective memory. Underwater cultural heritage can act as a trigger for a set of emotions and memory narrative.

Keywords

Human remains, underwater cultural heritage, values, submerged cemeteries, watery graves, 2001 UNESCO Convention

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Introduction

The management and protection of human remains as part of the underwater cultural heritage is a complex ethical issue –as it is in land archaeology- entangled with technical considerations for being underwater. And although human remains can be found at sites that are several hundred years old (Dromgoole, 2013), its preservation depends on different factors and environmental conditions. Different issues arise from the issue, which requires a lot of unpacking before offering possibilities. The establishment of the respect for the deceased or the development and education for the future faces complicated moral questions. One of the justifications of archaeologist and museum managers for the recovery and/or exhibition of human remains is the appeal to science and education, which raises other ethical issues. In addition, the definition of respectful treatment is different in different cultures. Problems with those who believe on live after death are also a complicated aspect on the management of human remains. The international community must establish clear rules about how to protect shipwrecks containing human remains.

Different attitudes to underwater cultural heritage

The current tendencies on the protection of underwater cultural heritage show differences in the protection between countries determined by aspects of culture, such as tradition, mentality or habit. States may also manage and protect their underwater cultural heritage to shape public memory through the memorial forms, sites, references and public rituals (Nora, 1996). As a result, the different countries develop their protection policies according to their system of collective values, which work as guides to decide what deserves to be preserved and how it has to be managed. As part of this heritage, shipwrecks can also represent different meanings

for different people in different cultures, so their actions to enable preservation show a real complexity because of these differences. The complexity of the issue has led to similar complexities on the procedures to preserve.

Since most of the Earth is covered with water, burial at sea has long been the accepted norm for mariners all over the world. Most of those burials are accidental as a consequence of a casualty. Says Delgado (2011): Despite years of shipwreck exploration as a maritime archaeologist and a decade as director of a maritime museum, Titanic was never high on my list of lost ships to visit. I'd never considered it an archaeological site, but rather an underwater museum and memorial. However, some authors are opposed to the treatment of shipwrecks as cemeteries (Bryant, 2001). This school of thought support its theories by three main assertions:

It is argued that neither history nor the law treats shipwrecks, historic or otherwise, as protected underwater cemeteries, stating that the historic, social, scientific, and monetary value of historic shipwrecks dictates that they should not be treated as underwater cemeteries protected from salvage or recovery. This fact is well documented: neither history nor the law treats shipwrecks as protected underwater cemeteries. However, if as we will claim, human remains *are* underwater cultural heritage, they are protected and managed by the 2001 UNESCO Convention (Convention hereinafter), meaning that they have to be preserved *in situ*. According to the Convention, the use of these shipwrecks as underwater cemetery will make the history for future generations.

It is also suggested (Bryant, 2001) that since underwater shipwrecks are unnatural and do not belong on the bottom of the sea -they belong at their home ports and intended destinations- neither do human remains belong on the bottom of the seas there. As a consequence, recovery is acceptable where circumstances permit: the reason being that while cemeteries are the intended resting places for the dead, shipwrecks are not, and because shipwrecks have other diverse values, they should not glibly be labelled as cemeteries and kept off-limits to salvors and others. Historic shipwrecks containing human remains deserve respect, although not so far as to treat them as underwater cemeteries that cannot be salvaged, Bryant concludes (2001). In this regard, it is open to debate that, while cemeteries are the intended resting place for the dead, shipwrecks are not. Throughout history, cemeteries have changed their context according to the circumstances: from churches -which are not

meant to be cemeteries- to main squares in the village when there are mass deaths. Therefore, fatalities and deaths on board -of the now shipwrecks- has converted them into submerged cemeteries.

Finally and more importantly, it seems that declaring shipwrecks as underwater cemeteries is generally the result of a need to enhance the cultural identity of a nation, region or group, something not well accepted in some circles, since it is highly selective in terms of what is portrayed as worthy of being remembered. In this sense, the topic of heritage as a tool to shape the collective memory has been well studied (Nora, 1996; Viejo-Rose 2011). It seems true that heritage can become an evocative national symbol, acting as a trigger for a set of emotions and memory narrative. During a period of deciding what to preserve, efforts are made to shape public memory through memorial forms, sites, references and public rituals (Viejo-Rose, 2011). As a consequence, the heritage can be manipulated by the rulers to remember history in a different way. In the case of the shipwrecks, it is the idea of those who died for us, for their country.

Legal approach

The Convention defines *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 such as: (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character.

This definition appears to represent that human remains *are* underwater cultural heritage, regardless of whether they are contained on a shipwreck or just lying at the bottom of the sea. In other words, human remains under water for at least 100 years are objects according to the Convention. As a consequence, every article and every rule of the Convention is applicable to human remains. Any direct citation to human remains in the rest of the text is redundant and expresses differences with the rest of the cultural heritage discriminating against –or emphasizing- human remains with

respect to sites, structures, buildings, artefacts, vessels or other vehicles lying at the bottom of the sea.

The term is used in two more articles. Human remains are also explicitly named in Article 2.9: States Parties *shall ensure that proper respect is given to all human remains located in maritime waters*. This article suggests a respect in any case or activity when dealing with human remains. The last mention of human remains is found in the Annex, Rule 5, where it is specified that *activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites*. This last reference deals with human remains contained within the other underwater cultural heritage, for instance a shipwreck.

However, none of these articles directly states the best conditions to manage human remains, for instance in cases where the shipwreck is going to be excavated and/or raised. The Convention does not describe whether the bodies should be recovered with the ship and reburied, or should remain at the bottom of the sea. It is also not stated if the human remains should repatriated to their country of origin if the shipwreck is, for instance, salvaged by a private company.

The Convention mainstays are:

1. Preservation of underwater cultural heritage for the benefit of humanity;
2. *In situ* preservation of underwater cultural heritage;
3. Prohibition of commercial exploitation of the underwater cultural heritage;
4. International cooperation in the preservation of underwater cultural heritage.

In this regard, if we finally agree that human remains *are* in fact underwater cultural heritage, the same terms are applied. As a consequence, human remains have to be preserved for the benefit of humanity, they cannot be commercially exploited and an international cooperation must occur in order to preserve them.

The Convention also establishes what to do with the underwater cultural heritage – and therefore with human remains- once it has been discovered (Article 18.4):

A State Party which has seized underwater cultural heritage shall ensure that its disposition be for the public benefit, taking into account the need for conservation and research [...] the need for public access, exhibition and education [...] in respect of the underwater cultural heritage concerned.

Leaving aside the economic definition of public benefit, it is worth to remember that families may need a place to pray, to honour the victims of the shipwrecks. This demand is part of the public benefit. Article 18.4 is complemented in the Annex of the Convention consisting on *Rules concerning activities directed at underwater cultural heritage*:

Rule 1. The protection of underwater cultural heritage through *in situ* preservation shall be considered as the first option [...].

Rule 4. Activities directed at underwater cultural heritage must use non-destructive techniques and survey methods in preference to recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains.

As a consequence, none of the instruments dealing with the protection of underwater cultural heritage deal specifically with human remains and how to manage them, but since human remains *are* underwater cultural heritage, the same rules are applicable; the most important direction is the preservation *in situ* for the benefit of the public. However, since the two articles refer to human remains in specific terms, the Convention sows doubts about its specific distinction and consequently, about the specific treatment.

Other instruments, like the Vermillion Accord on Human Remains (1989) that remarks respectful treatment and consideration of indigenous communities and the Tamaki Makau-rau Accord on the Display of Human Remains and Sacred Objects (2005) that establishes ethics on the display of human remains are not specific to human remains on shipwrecks, although they can be combined.

Watery graves

The community is relaying its history, its past and in some way its future in the hands of archaeologists. How those elements are going to be managed and manipulated will build the history of an individual, a community or a nation. Archaeologists have also to respond to an ethic of cultural dignity, which may include obtaining permission from the descendants of the human remains. The biologically and culturally related groups must have a substantial role in the decisions and the treatment of their ascendants.

In this sense, there has been an apparent growth of the notion of shipwrecks as graveyards and memorials, some with traditional notions of burial at sea, and requiring recognition and respect beyond the protection of the archaeological remains (human and otherwise) contained within. Among the reasons of such interest, it is necessary to consider both the controversial aspect of this option and the effectiveness showed in some countries.

In the first of these two aspects, the controversial one, a group of elements are combined: from the purely technical to those of ethical or human nature. In this sense, the recovery of human remains (sometimes with a high number of civil or military victims) is a source of controversy on the way that both the bodies and the shipwrecks containing them should be managed. With these controversies, there are conflicts without a clear solution, where some opinions are opposed to the treatment of human remains while other ones are related to the need of the historians and public opinion to understand the facts, and through these gain knowledge of history. Bryant (2001) remarks that it is widely acknowledged that gaining knowledge about the past requires examining ruins of earlier cultures, including human skeletal remains.

On the other side to those technical matters, the ethical background includes some other facts of a particular complexity which determines the actions of the management and the protection of certain countries. Wight (2009) observes that the issue of remembering tragedy and oppression in heritage sites is at the centre of an academic debate surrounding “truth” or “authentic” narratives. Truth, he continues, depends on a number of ethical codes codified through cultural background, and religious or secular beliefs. Among these matters, the cultural ones dominate the picture:

- The consideration of death, where there are usually superstitious perceptions, and a general attitude to the “respect to the dead” and their remains.
- The religious considerations with transcendental character, and its impetus in life after death.
- The consideration of memories as an instrument to continue life after death.
- The consideration of the past as an example (positive or negative) for the present and for the future, associated with the collective memory of the human being. One particular way of this consideration is the one who use the memories as a tool for the benefit of the social cohesion, to create or strength a national, regional, local... identity, as explained before. The concepts of monument and hero acquire, in those contexts, an emotive capacity which can strengthen the goals and the actions for the protection of the heritage (Nora, 1996).

Shipwrecks as cemeteries

It is necessary for the international community to leave an open option to preserve shipwrecks with human remains as watery graves. That option will depend both on the collective interest to remember the tragedy, and the weight of the attitude to consider the shipwrecks as a sanctuary for the dead people. Anyway, the diversity of countries of origin and the nationalities of the victims on some shipwrecks reduces the consideration of an emotional answer to an attack or national identity, although there is still an attitude of collective awareness of the realities of our times.

War graves have a different consideration (Williams, 2005). They have a particular legal status which establishes a degree of protection from disturbance: it is a mixture of salvage principles and legislation relating to military remains. The difficulty comes when those human remains are something that some want to forget, rather than remember.

Watery graves as memorials

Part of our identity is based in our cultural property identity. This is the feeling of a group of people, or of an individual which are influenced by their culture. As Renfrew and Bahn (2008: 546) remembered, ethnicity today is a living force, and heritage is an important tool in the definition of national identity. Declaring a shipwreck as a cemetery can be considered as part of this enhancement of the national identity.

Memorials are highly selective in terms of what they portray as worthy of being remembered.

Watery graves attracting black tourism

Management of shipwrecks as watery graves can lead to dark tourism, attracting tourists to a place with special meaning to the friends and relatives of the people who lost their lives in the disaster. Tragedies can be then exploited, not only to convey political messages, but also for commercial gain (Sharpley, 2009). Dark tourism is defined as a different type of tourist attraction. It is the act of travel and visitation to sites of death, disaster and the seemingly macabre (Stone, 2009). It has to be analyzed if declaring shipwrecks as watery graves will attract this kind of tourism.

Conclusions

All the factors and the complexities of the issues on the management of the underwater cultural heritage reveal the narrow dependence between its management and the historical, sociological, cultural and traditional particularities of every country.

The 2001 UNESCO Convention includes the term *human remains* within its definition of underwater cultural heritage. As a consequence, the same principles applicable to the underwater cultural heritage – no commercial exploitation, preservation *in situ*, preservation for the benefit of the mankind and international cooperation- are also valid for human remains. Preservation *in situ* of human remains means the treatment of shipwrecks as underwater cemeteries. The recovery of those remains would contravene the Convention. On the other hand, benefits from the study of human remains would come to an end if some of those human remains are not recovered and/or studied. The complexity arises from the choice of those remains that will be disturbed. Declaring shipwrecks as funerary monuments or underwater cemeteries can be attractive not only because of the controversy, but also for the effectiveness of preservation. Delgado confirmed (2004: 56) that “the best and largest museum of all lies in the bottom of the sea”. It can also be the largest cemetery of the world.

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