

Analysis of *UNESCO* Best Practices of Underwater Cultural Heritage from the perspective of marine sustainable development and challenges in 2022 New Chinese UCH Regulations

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ABSTRACT

The topic of this paper fits best within this Session17, *the 2001 Convention: from 'constructive ambiguities' to 'destructive misunderstandings'*, because it summarizes the ways in which underwater cultural heritage contributes to the sustainable development as a Marine resource through its own inheritance and development, and suggests that China should change its legislative idea of underwater cultural heritage.

The case studies under consideration are the latest 13 Best Practices of *UNESCO 2001 Convention for the Protection of Underwater Cultural Heritage*, which are analyzed in three aspects: 1) legal protection based on the legislative concept of marine resource law, 2) protection of cultural heritage resources through long-term monitoring and dynamic classification, and 3) sharing the benefits of cultural resources and environmental economic development.

The resources available to conduct the work include the list of Best Practices of *UNESCO 2001 Convention for the Protection of Underwater Cultural Heritage* and China's newly revised version of *Regulations on the Protection of Underwater Cultural Heritage* in 2022.

The research questions are how underwater cultural heritage can contribute to the sustainable development of the oceans through its own inheritance and development, and how China should change its legislative idea of underwater cultural heritage. The research approaches are case review and legal text analysis.

The results are the legal protection of underwater cultural heritage in international law with the concept of resource law, and China's responses.

Keywords: Underwater Cultural Heritage; Best Practices; sustainable development; UNESCO

1. INTRODUCTION

The topic of this paper fits best within this Session 17, *the 2001 Convention: from 'constructive ambiguities' to 'destructive misunderstandings'*, because the newly revised *Chinese Regulations on the Protection and Administration of Underwater Cultural Relics* is implemented in April 2022. The protection of underwater cultural heritage (hereinafter referred to as “UCH”) in China is facing a historical opportunity of rapid development of environmental and resource protection. This paper proposes the rule of law that environmental resources should be used to promote the sustainable development of underwater cultural heritage, through the evaluation and analysis of the current UNESCO "Best Practice of Underwater Cultural Heritage". And this paper lays out that China should change the concept of governance of underwater cultural relics - from the protection of cultural relics themselves only to the governance of environmental resources.

2. CASE STUDIES

The case studies under consideration are the Best Practices of *UNESCO 2001 Convention for the Protection of Underwater Cultural Heritage* (hereinafter referred to as “*the 2001 UNESCO convention*”).

In 2015, the Meeting of States Parties (hereinafter referred to as “MSP”), by its Resolution 4/5MSP adopted at its fifth session, wished to strengthen cooperation among States Parties by inviting them to submit examples of Best Practices in the implementation of the Convention. To submit a Best Practice example to the Conference of States Parties, heritage must¹:

- i) fall within the definition of Article 1 of the 2001 Convention or is at least 100 years old, but is classified as underwater cultural heritage under national legislation, ii) be adequately protected both legally and practically, in particular through the implementation of the Rules concerning activities directed at underwater cultural heritage of the Convention, iii) respect responsible and non-intrusive access, iv) have a framework for sustainable management.

These Best Practices are evaluated by the Scientific and Technical Advisory Body (hereinafter referred to as “STAB”), which makes recommendations to the MSP

¹ <https://en.unesco.org/underwater-heritage/best-practices>

regarding their designation. Until May 2023, this establishes a register of 13 Best Practices for use by all States Parties to *the 2001 UNESCO Convention*. After consideration, the reasons are analyzed in three aspects.

2.1 The establishment of national legal frameworks for UCH protection

First of all, the Best Practice encourages countries to ensure their legal protection for UCH archaeology, conservation, and management by establishment of national legal frameworks for UCH protection. There are 6 Spain's UCH practices² selected into the list of Best Practices, benefiting from a series of special laws. For example, the Historical Heritage Act (law 16/1985 of 25 June, on Spanish Historical Heritage) and the Andalusian Historic Heritage Law (Law 14/2007 of 26 November on the Historical Heritage of Andalusia). Secondly, the Best Practices encourages countries to make specific laws that define their own underwater cultural heritage. According to the Portuguese law "Decree No. 164/97 on underwater archaeological activities^[3]", underwater heritage is recognized on the basis of its cultural value, not on the basis of 100 years. Spanish law believes the value of underwater heritage reflects the memory and identity of the marine community, which is more important than age. In 2009, the National Museum of Underwater Archaeology of Spain (ARQUA) launched The National Plan for the Protection of Underwater Cultural Heritage (the Green Book), which aims to the adoption of a series of specific measures for the protection, conservation and diffusion of this rich heritage in waters to create awareness, in a coordinated way, for all the departments and public government bodies involved in this protection in Spain. Finally, Protection and fight against commercial exploitation by law. One of the six Best Practice, the Nuestra Senora de las Mercedes Project, Spain⁴ is an excellent example for UCH protection by effectively combating illegal commercial salvage activities on an international level and resolving ownership issues through judicial means. And the de las Mercedes cargo was definitively deposited in the

² Such as "Andalusian Underwater Heritage Conservation Project, Spain", "Cap del Vol and Cala Cativa shipwrecks, Spain", "Deltebre I shipwreck, Spain", "the Bou Ferrer Shipwreck, Spain", "the Nuestra Senora de las Mercedes Project, Spain", "The National Museum of Underwater Archaeology (ARQUA), Spain"

³ UNESCO. List of National Cultural Heritage Laws,

https://en.unesco.org/cultnatlaws/list/last-update-august-2015?page=50&order=title_field&sort=asc

⁴ On May 18, 2007, the US company Odyssey Marine Exploration announced in the media that it had transported a cargo of 500,000 gold and silver coins to the United States but did not give any information about the identity of the wreck from which the extraction originates or the exact location of the extraction. The Spanish government, in the face of suspicion that a Spanish ship could be treated, decides to wage a legal battle against the treasure hunting company in the courts of United States. Finally, on February 14, 2012, the US courts give the final reason to the Spanish State to return the cargo to Spain in 2022. More information on website:

<https://www.culturaydeporte.gob.es/mnarquia/en/colecciones/yacimientos/ns-mercedes.html>

National Museum of Underwater Archeology in 2012.

2.2 To promote the appropriate conservation of UCH through long-term monitoring and dynamic classification

The best practice also emphasizes long-term monitoring and dynamic protection models of UCH. Firstly, it shows how to establish UCH databases to improve the electronic information management. Compared with the cultural heritage on land, information of UCH is more difficult to collect. In 2004, the government of Andalusia in Spain established the Management and Information System of Cultural Assets of Andalusia (MOSAICO), which systematically manages hundreds of historical shipwrecks in the region. Secondly, the daily management of UCH requires multiple and dynamic monitoring. For example, Portugal has formed a conventional management model with multiple departments, interdisciplinary personnel to protect UCH in the Cascais region: the UCH management is carried out by the Cascais City Council. Underwater archaeologists have dedicated their time and effort to locate those sites, by drafting an archaeological map. Besides, the Directorate General of Cultural Heritage, the National Maritime Authority, and the Cascais Port Authority, which are responsible for different protection issues. Lastly, a dynamic and continuous model of UCH conservation should be developed. For example, the "Underwater Cultural Heritage in Chinchorro Bank, Mexico" was selected as Best Practice in 2019, developed interdisciplinary studies to understand the formation and the transformation processes of submerged archaeological contexts. The Sub-Directorate of Underwater Archaeology of the Mexican National of Anthropology and History Institute (INAH) has been conducting investigations and evaluations of 69 underwater sites recorded in the region's underwater cultural resources database since 2006.

2.3 Increase public awareness, recognition and protection of heritage

Best practices encourage responsible and non-intrusive public access to underwater cultural heritage in accordance with Articles 2.5⁵ and 2.10⁶ of the Convention, because public awareness can prompt regional economic growth and protect UCH. Several examples of Best Practices have shown that UCH protection and economic development are mutually reinforcing. First of all, local governments can develop

⁵ Articles 2.5: The preservation in situ of underwater cultural heritage shall be considered as the first option before allowing or engaging in any activities directed at this heritage.

⁶ Articles 2.10: Responsible non-intrusive access to observe or document in situ underwater cultural heritage shall be encouraged to create public awareness, appreciation, and protection of the heritage except where such access is incompatible with its protection and management.

non-intrusive and diverse UCH tourism activities which have demonstrated the protection of cultural resources and environmental development complement each other. For example, the “underwater archaeology Museum in Ferte de san Jose El Alto, Mexico⁷” One of two locations of this Museum of Campeche is in Playa Bonita, which strengthen the visibility of UCH and promote economic growth through various public hands-on activities. Another example is the "the Barge Arles-Rhône 3, France⁸" was taken out of the waters of the Rhône in 2011 to be restored and it thus joined the very exclusive club of boats found complete (or almost) in excavations, and presented in The Departmental Museum of Arles Antique in 2013. This Museum was expanded in order to exhibit these wrecks since 2013. Hence, it is also a good demonstration of boosting economic growth by constructing an underwater archaeological museum, which can share and display the submerged underwater heritage to the public.

3. RESOURCES

The resources available to conduct the work include the list of Best Practices of *UNESCO 2001 Convention*⁹ (which have been analyzed above) and latest revised version of *Regulations of the People's Republic of China on the Protection and Management of Underwater Cultural Relics* in 2022¹⁰.

In the 1980s, China began to pay attention to the importance of marine resources and underwater cultural relics. In order to protect the marine resources, and reasonable and effective use of water resources, the State Council has successively promulgated *Marine Environment Protection Law of the People's Republic of China* and the *Water*. In order to manage the protection of underwater cultural relics, the *Regulations of the People's Republic of China on the Protection and Management of Underwater Cultural Relics*”(hereinafter referred to as the "*The Chinese UCH Regulation*") were promulgated in 1989. Since then, China's UCH protection has developed with laws to follow, and China has become one of the few countries in the world to formulate

⁷ <https://www.inah.gob.mx/red-de-museos>

⁸ <https://www.arlesantique.fr/le-musee/lhistoire-du-musee>

⁹ Best Practices of *UNESCO 2001 Convention*: <https://en.unesco.org/underwater-heritage/best-practices>

¹⁰ *Regulations on the Protection of Underwater Cultural Heritage* (2022 version), <https://www.doc88.com/p-41999417420347.html>

specialized legal regulations for UCH.

Since the implementation of *1989 Chinese UCH Regulation* for 30 years, the close relationship between UCH and other marine resources has become deeply realized by Chinese legal experts. UCH in China (such as sunken ships and submerged towns and villages) serve as stable and long-term habitats for marine life. *The Chinese UCH Regulation* revised in 2022 is mindful of the concept of coordinated and integrated management of UCH as an important marine resource.

4. FRAMEWORK

The research questions are how Chinese UCH can sustainably develop as a marine resource, through the change of Chinese legislative idea of UCH after analysis of the UCH best practices in *2001 UNESCO Convention*. The research approaches are case review and legal text analysis of *the Chinese UCH Regulation (2022 version)*.

The Chinese UCH Regulation (2022 version) was implemented in April 2022. Drawing on 13 UCH best practices of *2001 UNESCO Convention*. China needs to change the legal idea from the protection of UCH itself to the management of a kind of marine resource along with promotion of the high-quality development of UCH. The approach of rule of law presents 3 aspects.

Firstly, according to different types of underwater heritage, enhance the capacity building of China UCH as marine cultural resources. For example, the duty of "other relevant departments of governments" as the coordinating authority is clarified in *the Chinese UCH Regulation (2022 version)*. It takes into account the need to consider the development and utilization of UCH in the use of sea area, and the need to pay attention to the protection of underwater resources in the development of fisheries and port operations, and the need not to neglect UCH in port security and military use of the sea area. Article 4(2)⁵ provides that "other relevant departments of the people's governments at or above the county level shall be responsible for the work concerning the protection of underwater cultural relics within the scope of their respective scope of responsibilities", which clarify the responsibility of "other government departments" as the coordinating authorities.

Secondly, adhering to sustainable development of UCH, Chinese legal protection of UCH need to formulate a dynamic and long-term management instead of only the establishment of UCH databases. Taking protection of UCH as an example of marine use, *the Chinese UCH Regulation (2022 version)* adds a consultation mechanism for the delimitation of the protected zone of UCH. The Article 7(2) states that “for the delimitation and adjustment of underwater cultural relics reserves, the opinions of relevant departments and holders of rights to use water areas should be solicited, advice of experts and the public shall be taken, and the opinions of relevant military organs shall also be solicited where military administrative areas and military use of seas are involved”⁵. Thus, it is clear that UCH, as a type of water resource, should be consulted through the mechanism of delimitation and adjustment of UCH protection areas, the relevant departments and the right to use the waters should be consulted.

Thirdly, UCH, as a kind of non-renewable marine cultural resource, so the *the Chinese UCH Regulation (2022 version)* shall increase public awareness and participation, and encourage UCH protection coordinated with economic development. Art. 16 is a new article that is “the competent cultural relics departments, cultural relics collection entities, and other entities shall, by holding exhibitions, visits, scientific research, and other means, fully maximize the role of underwater cultural relics, strengthen the publicity and education of Chinese excellent traditional culture and the legal system for the protection of underwater cultural relics, and improve the awareness of the whole society for protection of underwater cultural relics and the enthusiasm for participating in the protection of underwater cultural relics”⁵. Take the “Nanhai No.1 shipwreck¹¹” for example, in 2007, China Central Television(CCTV) broadcasted the entire salvage of the "NanhaiNo.1 shipwreck", which attracted public attention. The construction of the Nanhai No. 1 shipwreck Museum, also called “The Guangdong Maritime Silk Road Museum”. Nowadays, Hailing Island, where the “The Guangdong Maritime Silk Road Museum ” is located, is already Top 10 most popular islands in China, with beautiful scenery and cultural relics accompanying it.

¹¹ No.1 Nanhai shipwreck,a shipwreck dating back to the Song Dynasty (960 A.D.-1279 A.D.),. The excavation the ancient shipwreck was listed by China in its top 10 archaeological discoveries for 2019. More information on website: <https://www.msrmuseum.com/Home/Enindex>

5. RESULTS

The results are that from the perspective of marine sustainable development, protection UCH under *the Chinese UCH Regulation (2022 version)* faced new challenges. On the basis of a clear and complete UCH database formed, regular monitoring and continuous dynamic management should be established for specific UCH projects. Flexibly utilizing UCH, such as non-intrusive tours, on the other hand should be invested in the conversation of UCH with economic growth

After analyzing the new developments of UCH legal protection in China, it becomes obvious that isolated national UCH legal systems still face the problems in the effective protection of the UCH. The *2001 UNESCO Convention* provides for its States Parties an effective international cooperation scheme. It is beneficial for a state, like China, to protect its national UCH under the legal instrument of the *UNESCO 2001 Convention*.

BIBLIOGRAPHY