



Threads to Underwater Cultural Heritage: Sustainable Submarine Cables

Abstract:

Since the late 1800's, emerging uses of the oceans are interfering with the preservation of underwater cultural heritage. The increase of international communication requires a submarine cable network, which at this point, are hundreds to thousands of miles in length and many decommissioned at the bottom of the sea. Through the years, scientific environmental groups and archeological academies have finally created a serious legal framework to protect underwater cultural heritage from illegal activities. The crucial issue, however, is whether legal activities – such as laying and salvaging submarine cables – threaten the protection of underwater cultural heritage, or whether the protection of this heritage conflicts with the best mechanism to retrieve them. Up until this point, there is no protocol to follow when an archeological site is found while planning, routing or recovering submarine cables.

Introduction:

International law today offers a seriously deficient legal framework for the protection of underwater cultural heritage. Since there is no international law on its protection, there have been some efforts to coordinate international measures to manage and protect it. In this regard, two important sets of international negotiations are subject to underwater cultural heritage: the first concerns with the international law of the sea – the *UN Convention of the Law of the Sea* and the second relates to a provision for the specific protection of underwater cultural heritage: *UNESCO Convention on the Protection of the Underwater Cultural Heritage* (1).

These two regulations protect the underwater cultural heritage against illegal activities and advise on its management. However, these regulations do not solve the issue of prioritization when a conflict between legal usage arises and on how said law should be interpreted. Consequently, there are several threats to underwater heritage, such as construction, illegal salvage or “treasure-hunters.” Furthermore, as we have witnessed, human interference not only includes illegal uses but also legal applications, such as the recuperation of submarine cables (2). These legal activities do not affect shipwrecks unlike treasure hunting activity, where the trend is the plunder of the historic discovery.

In recent studies, the waters of the Caribbean shows that there are the archeological remains of more than 300 vessels lying at the bottom of the sea (3). There are also historic monuments underwater, such as Port Royal in Jamaica as well as buildings that once stood on land are now covered by the sea. However, of all types of underwater archaeological sites, shipwrecks are the most important in terms of their number and variety.

Just in the waters around the Island of Puerto Rico there are 17 shipwrecks registered, including 8 since 1878 in the Mona Canal (4). For Clean Ocean Initiative Inc., the importance of cultural heritage includes not only the potential effects of the sustainable cables operation on the environment, but also the way we will record, treat, pinpoint, and share our findings with other seabed users and the marine authorities.

Underwater cultural heritage / submarine cables:

The retrieval of submarine cables is a difficult task. First, there is the process of gathering all related information concerning the cables to be recuperated and reused. Coordinates, year of laying, route, and previous owner are authenticated. While the cable was laid in the ocean floor the initial route information includes landing sites, geopolitical and cultural issues, security, geology, meteorology, oceanography, location and history of existing nearby cables and other obstructions – presumably including underwater cultural heritage finds - fisheries or hazards.

The route undergoes a preliminary engineering survey conducted by marine geologists with cable engineering experience who assemble all available hydrographical and geological information. Thereafter, a survey of the ocean floor is made. This assessment produces information on, for example, the fauna and flora of the ocean floor and the temperature of the water. The results are cables that can have total lengths of over 21,000 km (13,000 miles) and likely that over such long distances shipwrecks will be found. However, no such shipwrecks have been reported to date by any of the companies laying cables (5).

Conflict when finding shipwrecks while laying submarine cable has not yet occurred, therefore, when recuperating cables historical wrecks are not anticipated to be discovered.

Legal approach

Underwater Cultural Heritage: legal protection

The protection of underwater cultural heritage was specifically neglected on an international level until 14-years ago when the UNESCO Convention was not adopted in November 2001(6). Thirty states are now involved. This is the only legal instrument to specifically protect underwater cultural heritage. The most important aspects of this convention are the priority of preservation *in situ*, the rejection of commercial recovery of underwater cultural heritage since it is incompatible with its preservation (this rule eliminates recognition of the economic value of this heritage) and the principle of cooperation between interest groups such as scientific institutions, archaeologists and divers, as well as between countries.

Most of the shipping lanes (and as a consequence most sunken vessels) are located in international waters, where no state can claim sovereign jurisdiction. Since territorial sea area extends only twelve nautical miles from a state's land out to sea, there is a vast area of sea beyond that boundary with a wealth of shipwrecks with difficult issues of ownership. The picture emerging outside the territorial sea is one of a lack of agreement between states claiming rights over underwater heritage.

Base on our responsibility, our concern is the 12 nautical miles. The definition of underwater cultural heritage, is vague and raises issues of ownership and abandonment. With no protocol established, and issues of ownership always present it is up to the state and the private sector to work on areas of compliance and cultural heritage preservation. There is no reference to the prioritization of the protection of underwater cultural heritage over other legal uses of the seas – including the retrieval of submarine cables.

The first main conclusion is that states are obliged to protect archaeological and historical objects found in the sea. The last matter is that the term *natural resources*, is not meant to include underwater cultural heritage. Consequently, refrains from explicitly extending the sovereign rights that states have over the natural and economic resources in their exclusive economic zone and in the continental shelf as pertaining to underwater archaeological resources (7).

Due to the lack of specific legislation aimed at the protection of cultural heritage, there are still inadequacies - such as a lack of protocol to follow when a archeological discovery is present - which allow private companies and governments / countries to work together on preservation of the heritage under the seas. In general, the law needs to catch up with new developments. Underwater cultural heritage is a field which has evolved mainly in the last twenty years.

Clean Ocean Initiative, Inc. Cultural Heritage Suggested Protocol

The following protocol is based on these premises:

- The states are obliged to protect archaeological and historical objects found in the sea.
- Conflict when finding shipwrecks while laying submarine cable has not yet occurred, so when recuperating cables no historical wrecks are expected to be found.
- Up to this point in time there is no protocol to follow when an archeological site is found while planning, routing or laying / recovering submarine cables.

Clean Ocean Initiative Inc. should follow the following protocol when an archeological site is found while recuperating submarine cables;

- Our marine equipment is capable to detect any anomaly while pulling cables,executing an immediate stop.
- Coordinates (longitude and latitude) shall be registered immediately at barge nautical log.
- All evidence of the discovery should be collected (pictures and video). Written report describing the finding should be in detail and clear as possible.
- Base of conditions of the archeological finding a decision to cut und release the cables shall be made.
- Clean Ocean will notify all concerning parties and authorities.
- If requested Clean Ocean will assist on further identification of the archeological finding.

Clean Ocean Initiative Inc. - Our commitment

Clean Ocean Initiative Inc. is committed to improve and preserve the underwater ecosystem, while providing employment opportunities, and a viable economic service. Our main objective is to retrieve decommissioned underwater telecommunications cables from the ocean floor, thereby improving the marine ecosystem, and recycling the reclaimed materials for trading on global markets.

Additionally, Clean Ocean Initiative Inc. will comply with all environmental related regulations, including but not limited to Law 416 of 22 of September of 2004, especially Article 4(B) 3, well known as the Puerto Rico's Public Policy toward the protection of the environment.

References:

- (1) UNESCO 2001 Convention on the protection of underwater heritage. The convention entered into force on 2 January 2009 in accordance with its Article 27. As of March 2013, the UNESCO Convention has 42 state parties: Albania, Argentina, Barbados, Benin, Bosnia and Herzegovina, Bulgaria, Cambodia, Croatia, Cuba, Democratic Republic of the Congo, Ecuador, France, Gabon, Grenada, Haiti, Honduras, Iran (Islamic Republic of), Italy, Jamaica, Jordan, Lebanon, Libya, Lithuania, Mexico, Montenegro, Morocco, Namibia, Nigeria, Palestine, Panama, Paraguay, Portugal, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Slovakia, Slovenia, Spain, Trinidad and Tobago, Tunisia.
- (2) Elena Perez - Alvaro; Underwater Cultural Heritage, Ironbridge International Institute for Cultural Heritage, University of Birmingham, exp140@bham.ac.uk
- (3) Archeology Instability - Order and Disorder, 2013 Journal of Social archaeology
- (4) Historia de dos islas, un mar compartido, Pasado y presente de Isla de Mona - Coastal and Island Caribbean Archeology
- (5) Elena Perez - Alvaro; Underwater Cultural Heritage, Ironbridge International Institute for Cultural Heritage, University of Birmingham, exp140@bham.ac.uk
- (6) UNESCO, Convention 2001
- (7) International Tribunal for the Law of the Sea, Verbatim Record. Experts declaration.

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