

Abstract

The provisions on illicit traffic in the UNESCO 2001 Convention on the protection of the underwater cultural heritage.

By Etienne Clément

Etienne Clément is an international lawyer (University of Brussels, Law 1978; international law 1980) born in Belgium in 1955.

He started his career by teaching law in his native country. He joined the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1984 at the Regional Office for Education in Africa in Dakar, Senegal where he was in charge of the administrative and legal aspects of education projects in Western Africa.

In 1987 he joined UNESCO Headquarters in the Division of Cultural Heritage where he was in charge of the international conventions on the protection of cultural heritage. He was especially responsible for the implementation of the Hague 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. He was also associated in the preparation of the UNIDROIT 1995 Convention and of the UNESCO Convention on the protection of the underwater cultural heritage. He has also participated in several special UNESCO projects in particular for training of national officers for the protection of cultural heritage or the recovery of stolen cultural objects, in particular in Asia and in Africa. He has published numerous articles on the legal aspects of the protection of cultural heritage and a handbook on the implementation of the 1970 UNESCO Illicit traffic Convention.

In July 1998, he was appointed as Representative of UNESCO in Cambodia.

Abstract of the presentation.

The speaker will start his presentation by underlining the links between the UNESCO 2001 Convention on the protection of the underwater cultural heritage and other relevant conventions, in particular the 1970 Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects.

The initial purpose of preparing a Convention on the protection of underwater cultural heritage was precisely to address the growing concern that underwater cultural heritage, in particular historic shipwrecks, were looted and therefore cultural objects from underwater sites were illegally exported and sold without any proper excavation. The provisions of the Convention related to this issue are therefore very important and will be presented and analyzed in regards to existing Conventions and national legislation in that field.

The relevant articles of the Convention are Article 6 (on bilateral, regional or other multilateral agreements), Article 14 (on control of entry into the territory, dealing and possession), 15 (on non-use of areas under the jurisdiction of States Parties), 17 (on sanctions) and 18 (on seizure).

Article 14, in particular, is the backbone of these aspects in the Convention. It covers the issue of export and recovery:

Article 14 – Control of entry into the territory, dealing and possession

States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to this Convention.

The purpose of this article is to make more difficult the entry, the dealing in and the possession of artifacts which were recovered contrary to the Convention and contrary to the Rules (the so-called Rules with a capital “R” are the rules concerning activities directed at underwater cultural heritage which are contained in an annex to the Convention, but which form an integral part of the Convention). The speaker will also envisage what practical measures the States Parties could take to implement this provision. Several examples, based on recent cases, will be presented.

Another essential provision is article 15:

Article 15 – Non-use of areas under the jurisdiction of States Parties

States Parties shall take measures to prohibit the use of their territory, including their maritime ports, as well as artificial islands, installations and structures under their exclusive jurisdiction or control, in support of any activity directed at underwater cultural heritage which is not in conformity with this Convention.

The purpose of this article is to deny certain facilities to persons acting contrary to the Convention (including the Rules, with a capital “R”). For this article, relations with the United Nations Convention on the Law of the Sea (UNCLOS) will also be examined as this article is drafted in a similar way than several provisions of the UNCLOS.

The speaker will also refer to the particular situation of countries in the Asia-Pacific region, some being States Parties and some not being States Parties to the 1970 Illicit traffic UNESCO Convention and to the 2001 Underwater Convention. He will in particular appeal for a wider dissemination of the contents of the Convention among interested national services, especially in its provisions dealing with illicit traffic. He will establish parallel with similar awareness campaigns successfully organized in the past on the protection of terrestrial archaeological sites which could inspire similar campaigns for the protection of the underwater cultural heritage threatened of looting and illicit traffic.