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## Underwater Cultural Heritage and Armed Conflict: An Analysis under the 1954 Hague Convention

**Abstract:** This article explores the protection of underwater cultural heritage under the umbrella of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict as a guide to analyse the impact of armed conflict on underwater cultural heritage. During direct confrontations, underwater cultural heritage faces threats, including deliberate destruction, looting for profit, and damage from military activities. In fact, underwater cultural heritage has been used and is still used in military strategy as a tool of hybrid warfare. Together, the 1954 Hague Convention and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage offer a comprehensive approach to safeguarding cultural heritage, including underwater sites and artefacts, by combining legal frameworks, preservation strategies, and international

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cooperation efforts mitigating the devastating impact of warfare on underwater cultural heritage.

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**Keywords:** 1954 Hague Convention, 2001 UNESCO Convention, hybrid warfare, underwater cultural heritage, military strategy

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## Introduction

In February 2022, Russia commenced an invasion of Ukraine. This conflict is not only having an impact on lives and livelihoods, but also on the global economy, business, and society.<sup>1</sup> The conflict is also destroying cultural heritage.

The Russia and Ukraine war has also had an impact on the Black Sea, which borders Ukraine, Russia, Georgia, Bulgaria, Romania, and Turkey. The sea is not only supplied by major rivers, such as the Danube, Dnieper, and Don, but it also comprises 421 km<sup>2</sup>, an area similar to the whole of Iraq,<sup>2</sup> so it is the world's largest land-locked inland sea. It is, nevertheless, much more difficult to quantify the damage to the underwater cultural heritage lying at the bottom of the Black Sea since the hostilities are persistent, and the sea is of strategic value to both Russian and Ukraine. In fact, the Black Sea has always played a central role in the history of human interaction and exchange, but it has also been decisive in the history of conflict and incompatible civilizations, and remains as well a place that is still key in geopolitical decisions today.<sup>3</sup>

Within days of the invasion, Turkey closed the Black Sea to any country that does not border it. Since then, there have been no amphibious assaults, but there have been naval attacks. Although the sea has not been a potential choke point in the conflict, there have been some casualties. Missiles have also been shot from the sea; there are continuous Russian and Ukrainian fleets in the waters; and the control of the sea has had an important role in, for instance, the possibilities for the carriage of goods.<sup>4</sup> In fact, the seizure of ports was meant to strangle Ukraine economically. According to a report by the European Council,<sup>5</sup> before the war, Ukraine

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<sup>1</sup> W. Lim et al., *What Is at Stake in a War? A Prospective Evaluation of the Ukraine and Russia Conflict for Business and Society*, "Global Business and Organizational Excellence" 2022, Vol. 41(6), pp. 23-36.

<sup>2</sup> G. Bakan, H. Büyükgüngör, *The Black Sea*, "Marine Pollution Bulletin" 2000, Vol. 41(1-6), pp. 24-43.

<sup>3</sup> C. King, *The Black Sea: A History*, Oxford University Press, Oxford 2014.

<sup>4</sup> H. Mongilio, *Russia and Ukraine in the Black Sea Stalemate a Year Into Russo-Ukraine Conflict*, "U.S. Naval Institute News", 23 February 2023, <https://news.usni.org/2023/02/23/russia-ukraine-in-black-sea-stalemate-a-year-into-russo-ukraine-conflict> [accessed: 07.02.2024].

<sup>5</sup> European Council, Council of the European Union, *How the Russian Invasion of Ukraine Has Further Aggravated the Global Food Crisis*, <https://www.consilium.europa.eu/en/infographics/how-the-russian-invasion-of-ukraine-has-further-aggravated-the-global-food-crisis/> [accessed: 23.06.2024].

exported more than 90% of its agricultural products via the Black Sea. Today, 10 of the commercial ships that used to transport these products have been hit by Russian naval ships. This has resulted in reduced supplies and higher costs for shipping all over Europe.

Ukraine's navy claims it has sunk or disabled in total three Russian warships in the Black Sea in just over two years of war.<sup>6</sup> In April 2022, Ukraine sank the Russian flagship *RTS Moskva*, the largest Russian warship sunk in combat since the Second World War. No further research has been carried out on the vessel due to the political instability of the sea. However, this shipwreck is likely to become important underwater cultural heritage for one or both countries, and if it stays submerged for 100 years it could be protected by the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage ("the 2001 UNESCO Convention"). Ownership of the shipwreck would become slightly more complicated. In fact, after the sinking, Ukraine's Ministry of Defence reported that Ukraine had registered the *Moskva* shipwreck as underwater cultural heritage under Ukraine number 2064. According to Ukraine's defence ministry's Facebook page:

The *Moskva* missile cruiser was the flagship of the Russian fleet, and became number 2064 in the register of underwater cultural heritage of Ukraine. The famous cruiser and the most sunken object at the bottom of the Black Sea can be admired.<sup>7</sup>

This statement is, in reality, being used as a political weapon to undermine the morale of Russia, since the materialization of this would bring about legal queries, such as where the shipwreck was sunk – in whose territorial water or in the high sea, as will be later discussed in this article – and the very controversial issue of the ownership of state vessels and warships.<sup>8</sup> In addition, although Ukraine is a State Party to the 2001 UNESCO Convention, Russia is not, so it is unlikely to follow international guidelines.

However, the statement by Ukraine's Ministry of Defence, despite having little legal basis, is proof of the use of underwater cultural heritage for "hybrid warfare", a concept that has been used to describe the "combination of conventional and unconventional organisations, equipment and techniques to achieve synergistic strategic effects".<sup>9</sup> This includes diplomatic, military, intelligence, and information-

<sup>6</sup> W. Murray, *Ukraine War Briefing: 'Third of Russia's Black Sea Fleet Sunk or Crippled'*, "The Guardian", 27 March 2024, <https://www.theguardian.com/world/2024/mar/27/ukraine-war-briefing-third-of-russias-black-sea-fleet-sunk-or-crippled> [accessed: 08.05.2024].

<sup>7</sup> [https://www.facebook.com/MinistryofDefence.UA/videos/336164768613886/?extid=CL-UNK-UNK-UNK-AN\\_GK0T-GK1C](https://www.facebook.com/MinistryofDefence.UA/videos/336164768613886/?extid=CL-UNK-UNK-UNK-AN_GK0T-GK1C) [accessed: 07.02.2024].

<sup>8</sup> M.J. Aznar-Gómez, *Treasure Hunters, Sunken State Vessels and the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage*, "The International Journal of Marine and Coastal Law" 2010, Vol. 25(2), pp. 209-236.

<sup>9</sup> T. McCulloh, R. Johnson, *Hybrid Warfare*, Joint Special Operations University Report 13-4, August 2013, <https://apps.dtic.mil/sti/pdfs/ADA591803.pdf> [accessed: 24.05.2024].

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al manners.<sup>10</sup> There are plenty of historical examples in which hybrid forces have been used, and one of these techniques has been the use of the past, and more specifically the use of underwater cultural heritage for historical claims.

This weaponization of underwater cultural heritage in politics is not new. In fact, it was one of China's justifications in the conflict over the disputed South China Sea.<sup>11</sup> It has also been used, for instance, in difficult issues concerning historical sites and Indigenous rights in Canada and the Arctic Northwest Passage.<sup>12</sup> The uses and abuses of cultural heritage to demonstrate historical presence have also been seen regarding land heritage sites in the Temple of Preah Vihear and the case of Qatar vs. Bahrain.<sup>13</sup>

Two millennia ago, the ancient Chinese military strategist Sun Tzu recognized the effectiveness of indirect warfare as a strategic approach to combatting enemies. Today, although direct warfare executed by bombers and tanks is still a major part of conventional wars, military strategies are being directed towards indirect warfare as well.<sup>14</sup> Social media, artificial intelligence tools, informational wars, financial measures, and psychological warfare which includes the use, destruction, or modification of cultural heritage are replacing precision-guided munitions with very effective results. In 2005, Lt. Gen. James Mattis, who was then the Commanding General of the Marine Corps Combat Development Command, along with Frank Hoffman of the Center for Emerging Threats and Opportunities at Quantico, posited that future adversaries would probably amalgamate various forms and methods of warfare to counterbalance the conventional battlefield power of the U.S. military.<sup>15</sup> The annexation of Crimea by the Russian Federation in 2014 marked a pivotal moment in the evolution of the term "hybrid warfare".<sup>16</sup> The method involved a blend of "deniable" special forces, local proxy militia, economic coercion, disinformation campaigns, and the exploitation of social rifts.<sup>17</sup> This orchestrated combination caught Ukraine and the West off guard, presenting a *fait accompli*. As a preparation for the invasion, Russia had already used underwater cultural heritage as part of this nationalistic campaign. In 2002, Vladimir Putin himself "recovered" two ancient ceramic jars while diving in the Taman Gulf off Crimea. In 2014, historical and archaeological evidence was again used to prove

<sup>10</sup> B. Renz, *Russia and "Hybrid Warfare"*, "Contemporary Politics" 2016, Vol. 22(3), pp. 283-300.

<sup>11</sup> E. Perez-Alvaro, C. Forrest, *Maritime Archaeology and Underwater Cultural Heritage in the Disputed South China Sea*, "International Journal of Cultural Property" 2018, Vol. 25(3), pp. 375-401.

<sup>12</sup> M.J. Aznar, *Maritime Claims and Underwater Archaeology: When History Meets Politics*, Brill, Leiden 2021.

<sup>13</sup> *Ibidem*.

<sup>14</sup> A. Korybko, *Hybrid Wars: The Indirect Adaptive Approach to Regime Change*, Peoples' Friendship University of Russia, Moscow 2015, [https://cdn.mashregnews.ir/d/old/files/fa/news/1395/5/11/1775890\\_752.pdf](https://cdn.mashregnews.ir/d/old/files/fa/news/1395/5/11/1775890_752.pdf) [accessed: 07.02.2024].

<sup>15</sup> S. Monaghan, *Countering Hybrid Warfare*, "Prism" 2019, Vol. 8(2), pp. 82-99.

<sup>16</sup> *Ibidem*.

<sup>17</sup> B. Renz, *op. cit.*

a past Russian presence around Crimea. Putin himself boarded a three-seater submersible vessel to inspect an ancient sunken ship recently found in the Black Sea off the coast of Crimea. Speaking on the radio with Prime Minister Dmitry Medvedev while still underwater, Putin said he hoped the shipwreck would shed light on Russia's development and show "how deep our historical roots are".<sup>18</sup>

These media releases by China, Russia, or Ukraine prove that underwater cultural heritage is being used both as a form of underwater political networks as well as military influence. This tactic aims to undermine the collective identity, heritage, and sense of belonging of the different communities. It inflicts psychological and emotional harm on affected communities, erases cultural memory, disrupts social cohesion, and undermines peace and stability. The press releases and social networks' messages seek to sow fear, division, and powerlessness among the populations involved.

## Political Analysis: Underwater Cultural Heritage as a Historic Tool for Hybrid Warfare

The definition of underwater cultural heritage can be complex, due to the interdisciplinary nature of the subject and the variety of cultural and historical artefacts it encompasses. In essence, underwater cultural heritage refers to any human-made structures, artefacts, or remains that have cultural, historical, archaeological, or anthropological significance and are located under water. Depending on the national legislations, in order to be protected, this heritage has needed to be submerged for a certain amount of time. The 2001 UNESCO Convention supports this definition in its Article 1:

- (a) "Underwater cultural heritage" means 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.

For this reason, the *RTS Moskva* would not be categorized as underwater cultural heritage by the 2001 UNESCO Convention until such time as it has remained submerged for more than 100 years. Ukraine was one of the first countries to ratify the 2001 UNESCO Convention. There is also national legislation to protect

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<sup>18</sup> N. Vasilyeva, *Putin Rides to Bottom of Black Sea in Submarine to See Ancient Ship*, "The Globe and Mail", 18 August 2015, <https://www.theglobeandmail.com/news/world/putin-rides-to-bottom-of-black-sea-in-submarine-to-see-ancient-ship/article26003422/> [accessed: 03.02.2024].

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Ukraine's underwater cultural heritage. Under the Ukrainian *Law on Protection of Cultural Heritage*, underwater cultural heritage encompasses artefacts and landmarks up to the Second World War. What's more, in a pioneering move Ukrainian scientists advocated for the adoption of the term "international maritime memorial", aiming to formalize recognition for modern historically significant sites.<sup>19</sup> For this reason, the *Moskva* could be regarded by the Ukrainians as an underwater cultural heritage site. In fact, the warship is now valued, monumentalized, and depicted as a national symbol on Ukrainian stamps (Fig. 1).



Fig. 1. Ukrainian stamp and poster depicting the *RTS Moskva*. Source: author's photograph

The Black Sea is bordered by Bulgaria, Romania, Georgia, Moldova, Russia, Turkey, and Ukraine, each with its territorial waters. The exact location of the *Moskva* has not been confirmed. She seemed to have sunk 80 nautical miles south of Odessa and 50 nautical miles from the Ukrainian coast, which complicates even further the issue of who can claim the shipwreck as its underwater cultural heritage. There is still another consideration: the 2001 UNESCO Convention considers as underwater cultural heritage "human remains". According to the media, *Moskva's* crew was evacuated, with one sailor killed and 27 missing,<sup>20</sup> although these numbers were never confirmed by Russia. As a result, the shipwreck could be regarded as a "sacred place" and a war grave. The *Moskva* could also be seen as a state vessel, complicating the issue even further. If Russia claims that it was a state vessel, this could evoke strong reactions not only domestically but also internation-

<sup>19</sup> UNESCO, *Ukraine: National Report on Underwater Cultural Heritage*, 10 November 2010, UN Doc. CLT/CIH/MCO/2010/RP/168, <https://unesdoc.unesco.org/ark:/48223/pf0000189944> [accessed: 08.05.2024].

<sup>20</sup> S. Lagrone, *Warship Moskva Was Blind to Ukrainian Missile Attack, Analysis Shows*, "U.S. Naval Institute News", 5 May 2022, <https://news.usni.org/2022/05/05/warship-moskva-was-blind-to-ukrainian-missile-attack-analysis-shows> [accessed: 07.02.2024].



ally, potentially leading to accusations of aggression and violation of international agreements. The interpretation of the shipwreck's status would influence how the destruction is perceived and could escalate tensions.

Nevertheless, it is noteworthy to emphasize the manner in which Ukraine's First Minister utilized social networks and media releases to not only proclaim the shipwreck as the nation's underwater cultural heritage, but also to demonstrate the naval superiority of Ukraine. In fact, navies have been instruments of power for centuries. From the past and into the present, seas and oceans have played an essential role in shaping the history of nations. Entire continents have been attacked, colonized, defended, and reconquered by sea. Nowadays, warships include state-of-the-art machinery such as vertical missile launch technology and triple torpedo tube launch systems. The U.S. Navy, for instance, currently has around 355 active battleships, some of which have the capacity of more than 2,700 officers and men.<sup>21</sup> The United States had a budget of US\$48.1 billion for sea power in 2022.<sup>22</sup>

It has been estimated that there are around 3 million shipwrecks at the bottom of the ocean.<sup>23</sup> For instance, in the Battle of the Atlantic during the Second World War alone, 784 submarines and 175 warships were sunk.<sup>24</sup> There are also underwater battlefields, such as in the Mediterranean and the Pacific, which have an abundance of archaeological remains. Some are commemorated, and some are ignored. Many other pieces of underwater cultural heritage are submerged, from slave shipwrecks to shipwrecks loaded with cultural objects from conquered countries. Some are shipwrecks from countries that do not exist today, and some are shipwrecks from searches for new routes, such as the *Erebus* and the *Terror*, two ships that failed to find new routes to Alaska.<sup>25</sup>

Nuclear testing was also carried out under water on many occasions, until it was banned in 1963. Between 1946 and 1958, 67 nuclear weapons were detonated by the United States in the Pacific Ocean.<sup>26</sup> For these tests, dozens of ships were sunk, including a 27,000-ton ship. The Bikini Atoll Nuclear Test Site is currently on the list of the 1972 World Heritage Convention not only because of its outstanding value as a nuclear test site with tangible archaeological remains, but also because

<sup>21</sup> H. Hodge Seck, *Active Ships in the US Navy*, "Military.com", 5 March 2021, <https://www.military.com/navy/us-navy-ships.html> [accessed: 07.02.2024].

<sup>22</sup> J. Garamone, *Lethal, Resilient, Agile Joint Force Basis for Defense Budget Request*, U.S. Department of Defense, 13 March 2023, <https://www.defense.gov/News/News-Stories/Article/Article/3327644/lethal-resilient-agile-joint-force-basis-for-defense-budget-request/> [accessed: 20.05.2023].

<sup>23</sup> United Nations, *UNESCO Calls on Countries to Save World's Historic Underwater Heritage*, 29 June 2005, <https://news.un.org/en/story/2005/06/142952> [accessed: 07.02.2024].

<sup>24</sup> V. Kiprof, *How Many Shipwrecks Are There?* WorldAtlas, 20 March 2018, <https://www.worldatlas.com/articles/how-many-shipwrecks-are-there.html> [accessed: 07.02.2024].

<sup>25</sup> E. Perez-Alvaro, *Underwater Cultural Heritage: Ethical Concepts and Practical Challenges*, Routledge, London 2019.

<sup>26</sup> P.J. Kiger, *7 Surprising Facts about the Nuclear Bomb Tests at Bikini Atoll*, History, 12 May 2022, <https://www.history.com/news/nuclear-bomb-tests-bikini-atoll-facts> [accessed: 22.05.2023].

of the ideas associated with the site, including the image of nuclear weapons as powerful symbols. Nowadays, nuclear submarines and their detection are probably the most important aspects of the military's use of the sea.

Underwater cultural heritage is also linked to international trade. Greek and Egyptian mariners created commercial colonies, exchanged ideas, and allowed people to travel across the Mediterranean and Black Sea. Today, around 90% of traded goods are carried by sea, and maritime transport is at the centre of many debates, from global freight increases to greenhouse emissions from boats and shipbuilding policies.<sup>27</sup> Trade routes are a hot topic in geopolitics.<sup>28</sup> The international instability of world politics is creating a situation in which public and private sectors adapt their trade links, which increases costs and redraws the boundaries of the world's economies. These routes were already beginning to be drafted in prehistoric times in regions that were connected by land and sea routes. Ports and urban centres became the nodes connecting settlement networks. These acted as markets, production centres, and places of religious exchange.<sup>29</sup> The sinking of these maritime transport vessels throughout history has created the earth's "undersea store-room", which now contains pottery, coins, elephant tusks, gold objects, glassware, organic material, musical instruments, and ritual figurines, along with many other things. Underwater cultural heritage is, consequently, an essential witness of the transformation of this important part of the geopolitical code.

Another important aspect related to underwater cultural heritage is the economic value of this heritage. Treasure hunters sell off valuable objects acquired through unauthorized excavations or excavations in areas in which international legislation is unclear. Some of these companies allow investors to avoid paying taxes by investing in their companies or helping with money laundering.<sup>30</sup> Money laundering plays an important role in the international economy, since these flows of money are linked to both a web of players in other global regions, and because they are related to a criminal underworld with illicit markets, and even to state authorities.<sup>31</sup> Furthermore, pre-existing smuggling routes for narcotics and weapons provide the same channels for the illicit export of cultural heritage.<sup>32</sup> Many of these smuggling

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<sup>27</sup> Organisation for Economic Co-operation and Development, *Ocean Shipping and Shipbuilding*, <https://www.oecd.org/ocean/topics/ocean-shipping/> [accessed: 07.02.2024].

<sup>28</sup> C. Flint, *Introduction to Geopolitics*, Taylor & Francis, London 2021.

<sup>29</sup> N. Prahov et al., *The Negative Impact of Human Activities on Underwater Cultural Heritage: Case Studies from the Bulgarian Black Sea Littoral*, in: *Proceedings of the 21st International Multidisciplinary Scientific GeoConference SGEM*, 2021, pp. 441-450.

<sup>30</sup> S. Giroud, D. Lechtman, *Art, Money Laundering and Terrorist Financing: New Developments in Swiss Law*, International Bar Association Online, 29 September 2015.

<sup>31</sup> D. Brombacher et al., *Introduction: Illicit Flows, Criminal Markets and Geopolitics*, in: D. Brombacher et al. (eds.), *Geopolitics of the Illicit: Linking the Global South and Europe*, Nomos, Baden-Baden 2022, pp. 13-28.

<sup>32</sup> E. Nemeth, *Cultural Security: The Evolving Role of Art in International Security*, "Terrorism and Political Violence" 2007, Vol. 19, pp. 19-42.



networks are run by terrorist groups. It has been reported that smugglers buy antiquities cheap and sell weapons. In fact, there are associations of diggers dedicated to finding antiquities.<sup>33</sup> Resolution 2199 of the United Nations Security Council underlines the obligations and steps required by Member States to prevent terrorist groups in Iraq and Syria from benefitting from their engaging – directly or indirectly – in the looting and smuggling of cultural heritage items.<sup>34</sup> The United Nations Security Council's concerns are linked to geopolitical consequences: terrorist groups destabilize the political structure of host nations and distract security forces.<sup>35</sup> Consequently, the multibillion-dollar illicit trade in cultural heritage threatens international security because it is a source of political violence, and there is an intersection with trafficking in narcotics and weapons. As an example, it has been reported that shipwrecks are used as strategic places to hide packages of cocaine and facilitate exchanges. Smugglers bring the packages fairly close to the coast and hide them in a shipwreck, and a diver from the coast collects them a few days later.<sup>36</sup> This requires smugglers to have studied these shipwrecks, which are not monitored, and these groups must have advanced knowledge of diving techniques.

Maritime security is essential to nations. It safeguards navigation routes, provides oceanographic data to marine industries, and protects rights over marine resources within claimed zones of maritime jurisdiction, to cite just a few examples of the importance of the oceans for countries. This also includes ownership of the continental shelf and protecting citizens from ballistic missile attacks, as well as controlling the introduction of non-native marine species to new aquatic habitats. Maritime power offers states the ability to achieve a political goal using the maritime domain. This power includes fighting wars, power projection, and maritime diplomacy, as well as preserving maritime resources, ensuring the safe transit of cargo and people at sea, protecting maritime borders, upholding maritime sovereignty, engaging in maritime security operations, rescuing those in peril, preventing the misuse of the oceans, and using the seas as an area for military exercises.<sup>37</sup> Maritime security also includes illegal fishing, smuggling illicit goods by sea, maritime piracy, migration, and cybersecurity.

The 2001 UNESCO Convention serves as a framework for countries to develop policies and strategies for the protection and management of their underwater cultural heritage, although it is not part of customary law. It underscores the importance of preserving these valuable cultural resources for the benefit of humanity and future generations. However, the Convention primarily addresses tangible cul-

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<sup>33</sup> TANN, *Artefacts Traded for Guns in Syria*, "Archaeology News Network", 13 September 2012, <https://archaeonewsnet.com/artefacts-traded-for-guns-in-syria/> [accessed: 07.02.2024].

<sup>34</sup> 12 February 2015, S/RES/2199 (2015).

<sup>35</sup> E. Nemeth, op. cit.

<sup>36</sup> Personal communication, September 2023.

<sup>37</sup> D. Sanders, *Maritime Power in the Black Sea*, Ashgate, Farnham 2014.

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tural heritage assets located within the territorial waters of specific nations, overlooking the consideration of intangible cultural heritage or associated narratives related to underwater cultural heritage. Nevertheless, this article argues that underwater cultural heritage holds numerous intangible values, and the assessment of cultural heritage greatly influences the way such values are perceived and managed. For instance, there is an ongoing process of assigning and reassessing value to assets that are “discovered” or claimed. Disputes, such as those seen in the South China Sea, over these assets have the potential to escalate into conflicts or even wars.

In February 2024 David Correa, the Minister of Culture of the Republic of Colombia, announced that his government will allocate 18 billion pesos (€4.25 million) towards the inaugural campaign aimed at retrieving materials from the wreck of the Spanish galleon *San José*.<sup>38</sup> The vessel sank in the 18th century near Cartagena de Indias, and its sovereignty is claimed by the Kingdom of Spain. The dispute was not significant over the past decade, as the governments of Bogotá and Madrid reached an agreement to preserve the remains of the *San José* as an inviolable cemetery when, in 2015, Juan Manuel Santos referred to the *San José* as “a Colombian treasure” but agreed with then Spanish minister José Manuel García-Margallo to explore “formulas of understanding” to protect it. The situation changed with the electoral victory of Gustavo Petro in the summer of 2022. Last November, the Colombian president announced that his government would establish a public-private consortium aimed at recovering the riches of the *San José*. Both Spanish and Colombian academics have condemned these new decisions. Such governmental actions and decisions concerning their underwater cultural heritage – which may impact the heritage of other governments – often lead to diplomatic conflicts with significant geopolitical consequences. It is also an opportunity to explore the First Protocol of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“the 1954 Hague Convention”)<sup>39</sup> concerning the prohibition of all exportations from occupied territory and the requirement for the return of cultural property to the state from which it was exported, or the prohibition of its retention. However, in the realm of submerged cultural heritage this presents a novel and largely unexplored territory.

Information from underwater archaeological research can expose national defence secrets, such as petroleum storage areas, food stocks, or territorial presence in the sea. In fact, many countries know this and have tried to avoid archaeological expeditions near their territorial seas. For example, in 2013 a joint expedition between noted maritime archaeologist Franck Goddio and the National Museum of the Philippines explored the wreckage of 13th-century Chinese junk in

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<sup>38</sup> L. Alemany, *Gustavo Petro manda a la Armada colombiana a por los tesoros del galeón San José*, “El Mundo”, 4 February 2024, <https://www.elmundo.es/cultura/2024/02/04/65bfd6dfe85ece7c568b456f.html> [accessed: 07.02.2024].

<sup>39</sup> 14 May 1954, 249 UNTS 240.

Scarborough Shoal off the coast of the Philippines. A Chinese marine-surveillance vessel approached the archaeologists and ordered them to leave.<sup>40</sup> The head of the China Centre of Underwater Cultural Heritage, Liu Shuguang, took the view that the archaeological expedition was illegal because it intended to “drag away this shipwreck”, because it was material evidence that “Chinese people first found the Scarborough Shoal, and foreigners wanted to destroy evidence that was beneficial to China”.<sup>41</sup> For Zhong,<sup>42</sup> the incident was related to national defence secrets and a nation-building philosophy, as well as a political strategy concerning territorial claims in the South China Sea. As previously mentioned, archaeological research can bring about territorial claims through archaeological findings, especially in Asia. In fact, security in the Asia Pacific region and political disputes are heavily dependent on archaeological statements. Another example is the Japanese and Korean claims concerning the Liancourt Rocks.<sup>43</sup> These islets have been at the centre of diplomatic disputes for more than 300 years. For communities in both countries, the Liancourt Rocks are representative of their culture and their race, with people even making pilgrimages to the islets. In terms of politics, the Liancourt Rocks are more a propaganda tool. Yet both countries’ claims are based on historical facts supported by underwater archaeology.

## Legal Analysis: The 1954 Hague Convention and the 2001 UNESCO Convention

The 1954 Hague Convention mainly aimed to prevent the destruction of cultural heritage. This legislation acknowledged the importance of cultural heritage as an essential aspect in the lives of individuals and communities, but it also warned about the destruction of cultural heritage in wars and armed conflicts aimed at undermining people’s spirits.

The Convention does not contain any direct or indirect reference to underwater cultural heritage. When the Convention was drafted, underwater archaeology was still a nascent discipline. In fact, it was in 1978, during the 30th Session of the Parliamentary Assembly of the Council of Europe, that underwater cultural heritage was first considered in a legal instrument (in Recommendation 848<sup>44</sup>). Although this was more than 20 years after the 1954 Hague Convention, the Hague

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<sup>40</sup> J. Page, *Chinese Territorial Strife Hits Archaeology*, “The Wall Street Journal”, 2 December 2013, <http://www.wsj.com/articles/SB10001424052702304470504579164873258159410> [accessed: 30.05.2023].

<sup>41</sup> *Ibidem*.

<sup>42</sup> H. Zhong, *Underwater Cultural Heritage and the Disputed South China Sea*, “China Information” 2020, Vol. 34(3), pp. 361-382.

<sup>43</sup> L. Hally, *The Politicisation of Archaeology in Border Demarcation Conflict in the Asia Pacific Region*, “Defense & Security Analysis” 2022, Vol. 38(3), pp. 258-268.

<sup>44</sup> Council of Europe, *Recommendation 848 (1978): Underwater Cultural Heritage*, 4 October 1978.

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Convention can still be applied to underwater cultural heritage. In its definition (Article 1), cultural property is defined as:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; [...].

Underwater cultural heritage is, in fact, movable and immovable property of great importance to the cultural heritage of every people, similar to archaeological sites and other objects of artistic, historical, or archaeological interest. As a consequence, underwater sites are nowhere specifically excluded and consequently fall under the umbrella of the 1954 Hague Convention.

While the 1954 Hague Convention and the 2001 UNESCO Convention serve different purposes and address distinct aspects of cultural heritage protection, they share common objectives and principles related to the preservation and safeguarding of cultural property for future generations. Both conventions emphasize the importance of international cooperation, respect for cultural heritage, and the prevention of illicit trafficking and commercial exploitation of cultural property, whether on land or underwater.

Next an analysis of the 1954 Hague Convention is provided, focusing on three scenarios: underwater cultural heritage as a military target; the weaponization of underwater cultural heritage; and the collateral effects of armed conflict on underwater cultural heritage.

## Underwater cultural heritage as a military target

The 1954 Hague Convention forbids exposing cultural property to damage, except in the case of military necessity, but this necessity is highly unlikely in the case of underwater cultural heritage. In contrast to what happens in terrestrial heritage, where cultural sites are often destroyed as specific military targets or transformed into battlefields, underwater cultural heritage has been, so far, “protected” from direct targeting.

Different international humanitarian laws define the term “military objective”. For instance, the 1907 Hague Convention<sup>45</sup> allows the bombardment of “[m]ilitary works, military or naval establishments, depots of arms or war matériel, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour” (Article 2). Article 52(2) of the 1977 Additional

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<sup>45</sup> Convention (X) concerning Bombardment by Naval Forces in Time of War, 18 October 1907, 205 CTS345.

Protocol I to the 1949 Geneva Conventions<sup>46</sup> provides:

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

The Second Protocol to the 1954 Hague Convention<sup>47</sup> also defines “military objective” in Article 1(f) as “an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage”.

One conceivable scenario might involve Russia contemplating the destruction of the shipwreck of the *Moskva* to prevent Ukraine from claiming or utilizing it as underwater cultural heritage. However, this notion may overstate the influence and importance of underwater cultural heritage on nationalist sentiments and interests.

However, this opens the door to the question of when underwater cultural heritage could be considered a lawful military target. Determining when underwater cultural heritage could be considered a lawful military target involves balancing military necessity with the principles of humanity and cultural preservation. Preserving cultural heritage sites holds significant strategic importance because of the intricate connections between these sites, artefacts, and communities. These interdependencies have both symbolic and economic dimensions, often motivating populations to take action against military forces if cultural sites are damaged or destroyed.<sup>48</sup> If the Russian government were to target the *Moskva* in response to Ukraine’s actions, the Russian population might react with a mixture of disbelief, anger, and sadness at the destruction of their own heritage. Such actions could lead to internal discord and criticism of the government’s priorities, potentially sparking protests or calls for accountability.

Article 53 of the 1977 Additional Protocol I to the 1949 Geneva Conventions states that:

[...] it is prohibited: a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; b) to use such objects in support of the military effort; c) to make such objects the object of reprisals.

<sup>46</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> [accessed: 25.05.2024].

<sup>47</sup> 26 March 1999, 2253 UNTS 172.

<sup>48</sup> R.M. Beitler, D.W. Dugan, *Practicing the Art of War While Protecting Cultural Heritage: A Military Perspective*, in: J. Weiss (ed.), *Cultural Heritage and Mass Atrocities*, Getty Publications, Los Angeles 2022, pp. 500-516.

Article 16 of the 1977 Additional Protocol II to the 1949 Geneva Conventions<sup>49</sup> states that

[...] it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

## Weaponization of underwater cultural heritage

The rise of irregular warfare in the 20th and 21st centuries has led to the strategic use of cultural heritage as a powerful weapon in conflicts. This phenomenon, known as “heritage weaponization”, has – combined with the progress in social media and information warfare – equipped the irregular battlefield with a formidable tool.<sup>50</sup> The rising importance of cultural heritage in the realm of international security and military operations stems from its role as a cornerstone of historical narratives and territorial assertions. Consequently, the destruction and misappropriation of cultural heritage have become integral components of genocidal strategies and significant tools in hybrid warfare.<sup>51</sup>

The 1954 Hague Convention complements the 2001 UNESCO Convention in providing comprehensive guidelines for the preservation and management of underwater cultural heritage. While the 1954 Hague Convention itself does not directly address media propaganda, its principles and objectives align with efforts to counteract propaganda’s negative effects on cultural heritage preservation, accurate reporting, international awareness, and educational outreach (Article 30 of the Second Protocol to the 1954 Hague Convention). The Article states that “Parties shall endeavour by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population”, which underscores the importance of accurate reporting and documentation of cultural heritage sites, especially during armed conflicts where misinformation and propaganda may be rampant.

Media coverage that adheres to the principles of truthfulness and impartiality can help raise awareness about the significance of cultural heritage preservation. However, as has been demonstrated, governments use the underwater cultural

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<sup>49</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977> [accessed: 25.05.2024].

<sup>50</sup> E. Salo, *To Break Their Will to Fight: The Weaponization of Heritage in Modern Irregular Warfare*, in: G. M. Standrea Bonaviri, M.M. Sadowski (eds.), *Heritage in War and Peace: Law and Visual Jurisprudence*, Springer, Cham 2024, pp. 225-266.

<sup>51</sup> F. Rosén, *NATO and Cultural Property: A Hybrid Threat Perspective*, “PRISM” Vol. 10(3), <https://ndu-press.ndu.edu/Media/News/News-Article-View/Article/3512012/nato-and-cultural-property-a-hybrid-threat-perspective/> [accessed: 08.05.2024].



heritage for the dissemination of false or misleading narratives aimed at justifying attacks. So far, neither the 2001 UNESCO Convention nor the 1954 Hague Convention have the tools to counteract this threat.

This verifies that the destruction of cultural heritage, or the ideas associated with it, in times of peace is indeed a reality.<sup>52</sup> However, it is also essential to contemplate that the growing accessibility of digital communications and social media poses a heightened risk, as even seemingly minor and unintentional harm to cultural heritage can swiftly provoke local, regional, and international responses. Furthermore, the use of precise 21st-century munitions diminishes tolerance for collateral damage. When combined with social media's ability to amplify tactical errors into strategic ramifications, these circumstances fuel resentment among host nations towards foreign soldiers perceived as disregarding their deeply cherished cultural values.<sup>53</sup> With the emergence of hybrid warfare, this phenomenon has become even more pronounced.

### Collateral effects of armed conflict on underwater cultural heritage

The military uses of the underwater environment and seabed encompass a range of activities and operations conducted by naval forces and defence agencies worldwide with, for instance, military manoeuvres such as amphibious operations, antisubmarine warfare, mine warfare, explosive ordnance disposal, and unmanned underwater vehicles. Army training exercises also include tests with live weapons and exercises to practice disembarking on the coastline or making an emergency landing on a beach, both with planes and helicopters. Underwater surveillance, underwater communication networks, undersea warfare systems, underwater salvage and recovery, or underwater infrastructure protection deploying underwater barriers, sensors, or surveillance systems to protect critical infrastructure are some of the military activities at sea, which are used in time of peace but focused on a possible armed conflict.

In fact, and although the most apparent danger presented by armed conflict is explosions, other activities such as towed devices, seafloor devices, remotely operated vehicles, military transportation, military construction, or contamination by hazardous substances are some of the other very damaging activities to this heritage.<sup>54</sup> All of these activities have the potential to harm underwater cultural heritage, impacting not only shipwrecks but also, and perhaps most significantly, submerged landscapes, ports, and harbours beneath the water's surface.

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<sup>52</sup> L. Lixinski, *Destruction of Cultural Heritage in Peacetime and International Law*, Routledge, London 2023.

<sup>53</sup> R.M. Beitler, D.W. Dugan, op. cit.

<sup>54</sup> M. de Ruyter, *Under the Cruel Sea: Effects of Armed Conflict on Underwater Cultural Heritage*, MA thesis, Flinders University, South Australia, 2014.

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The 1954 Hague Convention states that:

Article 7. Military measures. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

Military operations are conducted during various stages of conflict, ranging from peacetime to unstable political situations with sporadic episodes of violence, to full-scale wars between nation states. In each of these scenarios, underwater cultural heritage faces threats. In times of direct conflict, activities can severely jeopardize underwater cultural heritage. For instance, the underwater environment in Sri Lanka was subject to explosions from a variety of sources during the civil war between the Liberation Tigers of Tamil Eelam and government forces between 1983 and 2009.<sup>55</sup> Ordnance would impact on shallow water areas and explosive devices were placed on the seabed under a garget and then activated. Areas of potential cultural heritage significance were affected, which were also occupied by Sri Lankan forces and subjected to attacks by their enemies. The sea close to the Korean Peninsula is also thought to have a substantial number of underwater cultural heritage sites at risk from the continuing armed conflicts and provocative actions of the North Korean regime, such as missile launches or the destruction of vessels by small submarines. South Korean authorities have constructed underwater defences with obstacles and nets.<sup>56</sup>

## Prospective

Not too many organizations deal with underwater cultural heritage and armed conflict. Blue Shield is an organization formed to protect cultural heritage in emergency situations. Blue Shield also facilitates cooperation with the military in many countries. Until recently, Blue Shield did not have a special working group devoted to underwater cultural heritage, but the national committee of Blue Shield in the United Kingdom has recently implemented one: the Underwater Heritage Working Group. It aims to monitor legislation and policy concerning underwater cultural heritage, evaluate the impact of conflict on this heritage; collaborate with the Royal Navy and the Coastguard; offer information to the United Kingdom government; and protect underwater cultural heritage in overseas territories. Blue Shield International also collaborates with the North Atlantic Treaty Organization (NATO) in the protection of cultural heritage during military operations by providing codes of conduct and offering courses to the military to help them understand,

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<sup>55</sup> Ibidem.

<sup>56</sup> Ibidem.

value, and protect cultural heritage. The possibility of offering these courses in relation to underwater cultural heritage is being considered.

Dialogue between the 1954 Hague Convention and the 2001 UNESCO Convention can facilitate the harmonization of principles and practices related to the protection of underwater cultural heritage. This includes aligning definitions, standards, and procedures for safeguarding cultural heritage, whether on land or underwater. Underwater cultural heritage may encounter additional challenges in the future which are explored under the umbrella of the 1954 Hague Convention, such as the potential return of cultural treasures by countries, which is not contemplated by the 2001 UNESCO Convention. However, the repatriation of cultural artefacts, objects, or sites from underwater cultural heritage such as shipwrecks, to their places of origin or to the communities from which they were taken or removed may encounter many ethical and legal considerations in the future. This return of underwater cultural heritage items can become a complex and sensitive issue, involving negotiations not only between countries, museums, collectors, and Indigenous or local communities, but also with private companies and ocean actors. The 1954 Hague Convention can play a crucial role in untangling these complexities, a phenomenon that is already beginning to emerge in terrestrial contexts.

## Conclusions

Geopolitics primarily aims to comprehend a country's international and domestic policies by delving into its past and historical narratives.<sup>57</sup> Such historical understanding is pivotal for making informed decisions in the present. Underwater cultural heritage significantly influences contemporary geopolitical dynamics and will continue to shape future decisions. Understanding the historical underpinnings of ocean geopolitics is indispensable to navigating the present challenges and anticipating future developments.

This article has analysed how underwater cultural heritage faces threats from human conflicts across three distinct realms:

First, as a tool for hybrid warfare. Hybrid warfare is the use of subversive instruments, many of which are nonmilitary, to develop national interests. Hybrid warfare economizes the use of force, is persistent, and is population centric. There are many mechanisms for this, but using historical discourses and undermining the spirits of the enemies' population by destroying their heritage are among the strategies employed to shape political narratives. As this article has demonstrated, underwater cultural heritage is highly sensitive to political manipulation and is significantly affected by state demonstrations of power.

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<sup>57</sup> L. Otto, *Introducing Maritime Security: The Sea as a Geostrategic Space*, in: L. Otto (ed.), *Global Challenges in Maritime Security: An Introduction*, Springer, Cham 2020, pp. 1-12.

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Second, underwater cultural heritage is also intricately linked with instances of the use of direct force. This involvement encompasses various activities and events that impact submerged cultural artefacts and sites. During armed conflicts or military operations, underwater cultural heritage sites may face direct threats from bombings, artillery fire, or intentional destruction as part of military strategies. The military's engagement in the underwater realm for diverse training exercises and operations also underscores the threats posed to this heritage.

Third, underwater cultural heritage sites located in disputed territorial waters or in international waters may become focal points of geopolitical tensions and conflicts. States or entities may assert control over these sites through various means, including the use of force or diplomatic pressure.

In general, governments recognize that underwater cultural heritage serves as tangible evidence of otherwise intangible historical events, offering valuable insights that can shape future outcomes. Consequently, this heritage is sometimes wielded to advance political and imperialistic objectives. While the 1954 Hague Convention and the 2001 UNESCO Convention may appear to safeguard diverse forms of cultural heritage within distinct frameworks, this article has shown that leveraging both conventions could be essential for formulating comprehensive proposals aimed at safeguarding underwater cultural heritage in the context of human conflict.

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