

Spain and the Underwater Cultural Heritage in the Asia-Pacific Area

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Abstract

In 1521, Ferdinand Magellan reached the Mariana Islands in the name of king Charles I of Spain. His travel of exploration to seek out a westward route to the Spice Islands led to a long standing presence of Spain in the Asia-Pacific region. Miguel Lopez de Legazpi established the first Spanish colony in the Philippines in 1565 and only a few months later, Andrés de Urdaneta had made a safe return trip to Acapulco which led to the establishment of the Manila-Acapulco galleon trade route that lasted until Mexico's independence in 1815.

Today, Spain's maritime legacy is dispersed around the world, with a large number of settlements and wrecks located in the Asia-Pacific region. For the past 30 years, the Spanish government has done enormous efforts to study its past overseas, especially in the Americas. Finally, the time has come to rediscover our links with Asia-Pacific countries and redesign our cultural ties with the region. In this paper I will analyze Spain's institutions and laws that will hopefully lead to a new collaboration paradigm that will re-evaluate Spain's role in the history of Asia-Pacific.

It is well known that a sunken ship is a valuable document to be taken into account to explain the history of any country.

For centuries the world was Spain's action field and the ships were the most important means of transport for men and products. Consequently our history is deeply linked to that of countries where our ships called at.

No wonder, therefore, the interest of Spanish institutions to participate in conferences like the present one. Sometimes we are there to make scientific contributions and in other cases, like the present one, to learn about participants' new ideas so as to initiate and strengthen personal and institutional relationships that will surely bring about new possibilities for the understanding of Spanish links with the Asian-Pacific zone.

My intervention will focus on the importance of the joint work among countries, under United Nations Educational, Scientific, and Cultural Organization (UNESCO) recommendations, in order to locate, preserve and work on these documents submerged in the seas and oceans all over the world.

Introduction

We cannot forget, significant as it is, that the Philippines owes its name to Infant Felipe, who would later reign in Spain under the name of Philip II (1556 - 1598), a monarch who would eventually also become king of Portugal, under the name of Philip I (1581 - 1598). Once the Portuguese colonies had been incorporated to the Spanish ones, this double crown allowed the monarch to extend his administrative and political control over territories located in five continents. This new development forced the monarch to design new strategies based on naval communications, thanks to which Spain asserted its presence,

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both culturally and administratively, in the Philippines and the Pacific for more than three hundred years between 1565 and 1898.

The failure in 1524 of the Spanish-Portuguese meeting held in Badajoz in order to find solutions for the dispute over ownership of The Moluccas, gave reasons for the Spanish Kingdom to send, the following year, six ships commanded by Juan Garcia Jofre de Loaysa following the route opened by Magellan in the Pacific. Despite the failure of the expedition, it was possible to reach The Moluccas and the Philippines and to gather enough experience to assess the difficulties involved in making the journey around South America, forcing them to open a new route, this time from Mexico.

The mission fell to Alvaro de Saavedra, who in 1526 was ordered by king Charles V to establish a route to the Pacific departing from Zihuatanejo, in current Mexico (González 1964:210-211). Two vessels reached the East Indies with relative ease, however the return trip was a complete failure. Spain would have to wait another twenty years before a successful return route could be established.

The Treaty of Zaragoza (Tratado de Zaragoza 1529) clarified, in theory, the division of Asia between Spain and Portugal. Although it was not respected, it had the advantage of focusing the interest of Spain over the archipelagos which were not under Portuguese influence. In particular, the Spanish focused on the Philippines, which had already been named so by Ruy Lopez de Villalobos during his expedition in 1542.

In the seventeen years between the expeditions of Jofre de Loaysa and that of Lopez de Villalobos` the first phase of a typical process of naval colonization had been completed. Characterized by progressive geographic penetration through a rather uneven process, gathering experience through trial and error assessment, accumulating geographic and seafaring knowledge, studying economic efficiency and establishing a framework for sharing power and influence with pre-existing populations..

This allowed Miguel Lopez de Legazpi to carry out the last "jump" and in April 1565 he settled down in Cebu. Just two months later he sent the *San Pedro* back with a cargo of cinnamon. The Manila Galleon trade route had been opened (see Junco this volume). Coinciding with the transfer of the capital from Cebu to Manila this route joined the Asia-Pacific to Mexico and Europe..

Bearing in mind that the Spaniards soon gave up the exploitation of unprofitable resources in the area, This route would not have been particularly noteworthy had it not been for the role of Manila as the port of redistribution and the prompt abolition of the trade ban imposed on individuals. Chinese silk arrived in Manila and cotton from India, in whole rolls or as dresses, shirts and tablecloths as well as all kinds of manufactured goods (Pérez Herrero 1989; Schruz 1939). From Japan, during the short period of sporadic direct contacts, people arrived with manufactured metal parts, lacquered pieces and furniture (Ibid.). Traders, in turn, would redistribute products from elsewhere and in this way tapestry and carpets would come from Persia (Ibid.). An extensive and ramified network had been created which facilitated the arrival of Eastern exoticism to Spain and at the same time that of Mexican and Peruvian silver to Western countries. This was done through an intense maritime traffic, not without dangers which no doubt has marked the seas with underwater archaeological remains. Nowadays this could be seen as a legacy of the Asian-

Pacific and Spanish history, which is to be preserved for historical research and public enjoyment.

Preservation

Ships of different origins, Chinese, Indian, Japanese, Spanish, Portuguese, Dutch, British to name just a few, are now a fragile, irreplaceable and valuable cultural heritage. It is essential to know the national history and the interplay of cultures that shaped and conditioned the history and culture of mankind

Unfortunately, traditional practices of recovery accelerated in recent decades by technological means and by the increased economic value of recovered things has caused the destruction of a cultural heritage. This can sometimes lead to loss of historical information involving countries different from those where the discovery occurs. That is why the preservation of this heritage should be a multinational task characterized by collaboration among affected countries.

There are many threats to this heritage as many countries still poorly or inadequately protected by national laws. These are either subjected to internationally recognized texts or the responsible body fails to implement the rules. Despite a countries ratification of international conventions they simply lack the means for compliance. Nor is it a minor obstacle the important differences, sometimes irreconcilable, among national laws of the countries involved in the partnership for historic preservation of a sunken ship.

We are facing a fragmented and diverse legal system that reflects very different legal positions of the different states whose interests are sometimes brought face to face: old naval powers against States that had been colonized and later become independent, flag states in front of coastal states (Aznar 2009).

The United Nations Convention on Law of the Sea (UNCLOS) of the 10th of December 1982, which by its wide acceptance could be a valid or at least guiding document, barely deals with Underwater Cultural Heritage. Only two articles, 149 and 303, refer to the issue:

Article 149 states:

Archaeological and historical objects.

All objects of an archaeological and historical nature found in the Area shall be reserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

Although this article states that the archaeological remains found in the area "... will be preserved or disposed of for the benefit of all mankind ..." the ambiguity of the text allows for various interpretations by failing to establish, for example, the meaning of "... preferential rights ..." or what is meant by "... dispose of ..."

Article 303

Archaeological and historical objects found at sea.

1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.
2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to

in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.

3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.

4. This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

The obligation that the articles place upon all States to protect archaeological objects and to do so through international cooperation is most valuable but it is true that the ambiguity involved in making it obligatory all over "... the sea ..." introduces elements of conflict as when regarding its application in international waters, for instance.

Paragraph 3 does not solve, at least for coastal states, the legal dispute with flag States and leaves a door open to apply the rules of rescue for boats of historical value.

Regardless of legal interpretations, that which underlies the UNESCO 2001 Convention is the obligation of the protection of underwater archaeological sites given their value for all mankind and the fact that this protection requires close collaboration among all the countries involved.

It is the *UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage* (2001 Convention) which prohibits commercial exploitation as one of the main causes of damage and destruction, insisting on the universal value of this heritage and the need for international collaboration.

Thus the 2001 Convention becomes a hindrance to the activities of treasure hunter companies which see their profits threatened both by the decline in the price of their stock market values and the lack of product to sell. Not surprisingly treasure hunters are continuously taking actions against the 2001 Convention.

Present Situation towards Underwater Archaeological Heritage

Spain has a long tradition in the preservation of the historical heritage and it is contemplated both in the Constitution (Constitución del Reino de España 1978) currently in force and in various sectorial laws. Thus Article 46 of the Constitution of 1978 provides that:

Los poderes públicos garantizarán la conservación y promoverán el enriquecimiento del patrimonio histórico, cultural y artístico de los pueblos de España y de los bienes que lo integran, cualquiera que sea su régimen jurídico y su titularidad. La ley penal sancionará los atentados contra este patrimonio²

A specific law, 16/1985 on Spanish Historical Heritage provides in Article 40

Forman parte del Patrimonio Histórico Español los bienes muebles o inmuebles de carácter histórico susceptibles de ser estudiados con metodología arqueológica, hayan sido o no extraídos y tanto si se encuentran

² Public authorities will guarantee the preservation and will promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and the goods that form part of it, whichever is its legal regime and ownership. The Criminal Law will sanction the attacks against this heritage. Spanish Constitution, 1978, Article 46

en la superficie o en el subsuelo, en el mar territorial o en la plataforma continental. Forman parte, asimismo, de este Patrimonio los elementos geológicos y paleontológicos relacionados con la historia del hombre y sus orígenes y antecedentes³

This article which summarizes the legal position of Spain in this field has some peculiarities that deserve to be mentioned:

- a) .- Unlike the 2001 UNESCO Convention, Spain does not set the 100-year period as necessary to give any asset historical heritage value, so that its value is acquired not by age but by their potential value as a source of historical documentation.
- b) .- No legal distinction is made among archaeological objects whether they come from ground or underwater findings.
- c) .- Archaeological objects are protected whether they are extracted or not.
- d) .- As in national and international legislation, ships are considered as buildings, the law protects both the vessel and its cargo.
- e) .- All these objects are part of the Spanish Historical Heritage, which prevents, among other actions, commercial exploitation by private people.

Since Article 46 of the Spanish Constitution establishes that the criminal law shall punish any offences against this heritage, the Penal Code provides in Article 323 that: “Será castigado con la pena de prisión de uno a tres años y multa de doce a veinticuatro meses el que cause daños en ... yacimientos arqueológicos”.⁴

After analyzing the articles and annexes of the 2001 Convention we can see that essential aspects such as the concept of heritage as a public good are excluded from any commercial transactions and the need of protecting it as a value for society. This presents remarkable similarities with present Spanish law.

On 6 June 2005 the Spanish Parliament ratified the 2001 Convention which from January 2, 2009 became part of the legislation that sets the Spanish activities in this field.

Although Spain joined with some delay in the practice of underwater archeology, the creation in the 70's of the so-called Patronatos de Investigación Arqueológica Submarina (Submarine Archaeological Research Trusts) marked the institutional positioning that allowed in the 80's and 90's the emergence of stable institutions dependent on the Ministry of Culture and the Autonomous Governments.

Right now the National Museum of Underwater Archaeology, commonly known as ARQUA, dependent on the Ministry of Culture and the centers of Underwater Archaeology in Catalonia, Valencia and Andalusia provide staff and technical expertise enabling them to act on underwater cultural heritage.

These legislative developments and infrastructure are supplemented by

³ The Spanish Historic Heritage is composed by movable and immovable heritage of historic character that are subject to be studied with archaeological methodology, that have been or haven't been extracted and if they are either on the surface, subsoil, in territorial waters or in the continental platform. Also considered part of this Heritage are the geological and paleontological elements related to the history of mankind and its origins and history. Spanish Historical Heritage Law, 16/1985, Article 40

⁴ It will be punished with a sentence of up to three years in prison and a fine of between twelve and twenty four months to whomever might cause damage in...archaeological sites. Spanish Penal Code, Article 323

the *National Plan for the Protection of Underwater Cultural Heritage* (Green Paper 2010). This document sets targets to achieve over the coming years.

There is a publication, *Green Paper: National Plan for Protection of Underwater Heritage* (Aznar, et al. 2010). that, after a diagnosis of the present situation, presents remedial corrective measures necessary to advance in the treatment of this heritage.

A POSSIBLE FUTURE

The signing on December 2, 2010 in Washington of a partnership between the Spanish Ministry of Culture and National Oceanic and Atmospheric Administration (NOAA) included, among other issues, the protection and research of wrecks in the respective countries. It is a good example of the kind of activities that can be carried out

There is a large chapter in Spanish history that requires all the information provided by Spanish vessels sunk in the Asia-Pacific area. They should therefore be treated as historical artefacts in accordance with the spirit of the 2001 Convention.

Two aspects of the 2001 Convention are essential in this type of activity: no commercial exploitation of archaeological sites and collaboration between the States concerned.

Spain has, as part of its heritage, important archives essential for a full scientific understanding of an archaeological site. At the same time we also have very good professional historians and underwater archaeologists capable of working together to provide a complete vision of the Spanish presence in Asia-Pacific territories.

The National Museum of Underwater Archaeology - ARQUA is the technical section of the Ministry of Culture competent in these matters and collaboration with other research teams. It can carry out work of cataloguing the underwater archaeological sites of Spanish history with Pacific countries. With this catalogue we will have a tool to manage the underwater cultural heritage. It will allow us to establish the most effective actions to perform, bearing in mind its preservation and further scientific research.

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