

Shipwrecks and graves: Their treatment as intangible heritage

● **Elena Perez-Alvaro**

Nelson Mandela University, South Africa
ICOMOS International Committee on the Underwater Cultural Heritage

ABSTRACT

The treatment and management of human remains in land archaeology has been a debated topic. However, in the field of underwater cultural heritage, the references are almost non-existent. The importance of the topic has already been recognised, since some nations have established legal frameworks to protect those human remains. In addition, the term is included in the definition of 'underwater cultural heritage' under the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage (UNESCO 2001). However, the ethical dilemmas around the topic have not been discussed, and protocols for the management of shipwrecks with or without human remains have not been established. This article discusses

the management of human remains as part of an underwater cultural heritage site and the ethical issues that this complicated heritage presents at an international level. In this regard, it looks both at those shipwrecks that still preserve human remains and those where the remains have disappeared but were once there. It also introduces three concepts, applied for the first time to human remains, based on a variety of cultural attitudes: absent, invisible and intangible heritage.

Keywords

underwater cultural heritage, shipwrecks, watery graves, respect, sacred places

1. Introduction

The treatment of human remains is one of the most complex areas of archaeology – on land and underwater (Mays 2008). Its management depends both on legal and ethical considerations. Although this issue has been largely discussed for land archaeology, marine contexts are different and deserve special consideration. In addition, the treatment of human remains depends on specific community traditions, so its treatment as an international issue can result in many controversial decisions, as this article will highlight. Shipwrecks are usually caused by catastrophes that, in most cases, claim several lives (Perez-Alvaro and Carman 2011). Vessels were used to transport passengers and cargo and were operated by a crew, so every ship, big or small, carried human lives on board.

The event that usually converts a vessel into a shipwreck is an accident – an accident that provides a document of scientific value and with a direct connection to the past. This is why Flatman (2007), Head of Listing Programmes at Historic England (UK) states that shipwrecks have an inherent ‘stench of the morgue’ (81), even if they have not caused a loss of life. Human remains can still be found at sites that are several hundred years old (Dromgoole 2013), although skeletal remains are often the only human remains found – soft tissue discoveries are exceptional (Mays 2008). However, the preservation of human remains depends on various factors and environmental conditions. Deterioration can be caused by different processes, such as impacts with rocks when the ship wrecks and encrustation by organisms or sediments that abrade the surfaces of the bones (Mays 2008). The normal changes and decomposition of a body are delayed in cold, deep water so that bodies may be surprisingly well preserved after a long period of immersion (Cunningham and Tolson 2010). Although biological activity results in advanced decomposition within 12 years, even in cases of the most durable skeletal parts (Cunningham and Tolson 2010), some human bones on shipwrecks are preserved if and when the body became trapped below deck – for instance, beneath a cannon or the cargo. This situation prevents degradation of the remains until a sealing layer is deposited to conserve it within an anaerobic environment. Therefore, the degree of preservation will depend on whether the burial site is oxygen free and how quickly the remains become inundated with sediment. However, Nigel Pickford (1994), a maritime historian, believes that bodies trapped inside a hull are the exception rather than the rule, since this usually happens when the sinking is quick. According to Pickford, the majority of people lost at

sea float free from the ship itself.

If human remains are still preserved on the shipwreck, the question is how to manage them: they can be left untouched, they can be recovered, or they can be managed by creating an underwater cemetery or memorial. This last option, the treatment of shipwrecks as graveyards and memorials, is an option that has started to be applied in some cases – such as the USS *Arizona* – since the recognition of a wreck as a resting place for human remains acknowledges that it is a place that needs to be treated with respect. In addition, this treatment of shipwrecks as watery graves has proved to be effective for the preservation of these shipwrecks in some countries, although it is still controversial (Perez-Alvaro 2014). However, even if there were people on board when the ship went down, if no human remains were preserved, we would be dealing with absent, invisible or intangible heritage, and its management would be different, as this article will show.

The management and protection of human remains as part of underwater cultural heritage is a complex ethical issue – as it is in land archaeology – entangled with technical considerations related to being underwater. The sea tells us about mobility and connections. It does not respect boundaries, neither political nor geographical, so underwater cultural heritage is an invaluable international source of knowledge about individuals and communities; however, it is also fraught with international issues more than any other branch of archaeology (Maarleveld 2011). In addition, underwater cultural heritage is a relatively new discipline, and the issues are only now starting to appear, as opposed to land archaeology, which has already faced these issues for some time. However, underwater heritage managers cannot find all the answers in land heritage, since archaeology – both in land and underwater – presents different challenges.

The first difference is the cause of death. In shipwrecks, everyone usually died at once and for the same reason. It is not common to find shipwrecks with only one or two bodies on board. Generally, shipwrecks are a consequence of accidents and create catastrophes. Simon Mays (2008), a Human Skeletal Biologist for Historic England (UK), differentiates between additional burials – accumulated over a period of time with varying causes of death – and catastrophe samples – individuals that died at the same time, sharing a common cause. Human remains on shipwrecks are included in the last type. Battlefields, disasters or fires are the only examples of collective catastrophe samples on land.

There is a second main difference between the two disciplines: establishing the identities of human bodies on shipwrecks can be easier than in land archaeology, since most passengers and crew were registered in the ship's logbooks. A third main difference is that the microbial destruction of bone in maritime contexts differs from bone that is buried on land, and, as a consequence, its preservation and treatment have to be different. In a maritime environment, for instance, human remains tend to be incomplete and commingled (Mays 2008), with some other remains floating freely away from the ship. In land archaeology, with exceptions such as prehistoric tombs or the Towton mass grave (Sutherland and Schmidt 2003), human remains tend to be preserved together. Another difference is that a ship is a mobile means of transport that usually carries people of different cultures on board, which can sink in the waters of the flag state, other nation's waters or in international waters, and these factors load the issue with several complexities. In land archaeology, deaths usually belong to the same community or culture – except on battlefields – and its subsequent management will be easier than in underwater archaeology. The final difference is that it is more difficult for families to pay their respects to their relatives when death occurs in the ocean, since some areas are practically inaccessible. For families, a wreck may represent the last resting place of those that perished but can be a place that they will not be able to visit (Perez-Alvaro 2013). Some land sites may also be difficult or impossible to access, although that is not the usual situation.

Any policymaking or management decision on underwater cultural heritage often faces complicated and delicate decisions. The management of human remains also implies an emotional component that has to be looked at through various values contained in ethical principles. The protection of human remains contained in underwater cultural heritage reveals differences in the management between countries established by aspects of culture, such as tradition, mentality or habit (Perez-Alvaro 2014). Consequently, states develop their policies according to their collective values – human remains and the rest of underwater cultural heritage – and those values determine what deserves to be preserved. Only if we recognise the importance of human remains can these shipwrecks become gravesites. As this article will explore, the different options of management when finding a shipwreck with or without human remains – excavating it in any way, leaving it as a watery grave or recovering the human remains – will depend on the archaeologists.

Its management after the remains are recovered will depend on museum managers and policymakers (O'Keefe 2002). But it will also depend on legal and ethical cultural considerations, such as how long the shipwrecks have been underwater or the communities' cultural approaches to death.

This article will study the literature around the topic of human remains in land archaeology and attempt to apply the theories therein to underwater archaeology from an international perspective. Although the article will posit regional or national examples as the basis for this research, it will mainly look at the general complexities that different nations and communities bring with respect to their perspectives on death. 'Ethics is not about asserting one's own viewpoint.' (Maarleveld 2011, 919) This is the real challenge in this article: creating a scientific approach to something so biased as ethics. Human remains as part of underwater cultural heritage is a well-studied topic, as shown in the bibliography, from all points of view in different disciplines. Medicine, museology and archaeology are just a few of the many fields interested in the ethical and legal consequences on the management of human remains, and this is both the context of this study and the research problem, as the bibliography in the specific field of underwater cultural heritage is limited. This allows this study to present new dilemmas and explore new solutions by analysing these dilemmas not only from the point of view of cultural heritage management but its consideration in the legal realm. The result is not a legal work but a legal view of ethical aspects that can contribute to including a more holistic point of view of the benefits of considering human remains as part of intangible heritage.

2. Considerations

Underwater cultural heritage has value, not only as an archaeological, economic or scientific source but also as a 'container' of human remains. The dilemmas in this article will be organised on the basis of a three-concept relationship: values awarded to the submerged human remains, guardians of the deceased (cultural or genetic) and subjects (human remains) of these shipwrecks.

2.1. Values awarded to the submerged human remains

a. Cultural value

Since the 19th century, the world has been seen

through the eyes of our own cultural beliefs and values inside a spiral of ethnocentrism (Pojman and Fieser 2012). However, what is acceptable in one culture may be unacceptable in another, and what is sacred for one culture may be superficial for another. And since ethics on the subject of death is an area loaded with emotions, remains of the dead can offend religious or secular sensibilities (Mays 2008), since the definition of 'respectful treatment' is different in different cultures. In the UNESCO *Manual for activities directed at underwater cultural heritage* (Guerin and Egger 2011), it is highlighted that respect and significance mean different things to different nations and, within a nation, to different people. For instance, some cultures have deliberately chosen the sea or rivers as repositories for their dead, while others have done so out of necessity. In addition, on long voyages, before the invention of cold storage, there was little alternative but to surrender the deceased to the surrounding waves. Specific funerary rituals developed relating to these watery graves, as is described in the literature (Guerin and Egger 2011).

Respect for the dead is acknowledged by most religions but also by people with no religion. Some cultures may need ceremonies to honour death or private access to human remains (Teague 2007). And what is even more complicated is that soldiers in wars and crews of naval ships may have included people from many faiths and ethnicities, all of whom may be together in the same site. The issue of remembering – or not – tragic events depends on a number of ethical codes, such as the consideration of death; superstitious perceptions and general attitudes towards the 'respect of the dead' and their remains; religious and spiritual inclinations and their impetus in life after death; the consideration of memories as an instrument to continue life after death; and the consideration of the past as an example – positive or negative – for the present and for the future associated with the collective memory of the human being. One particular aspect of this consideration is that it uses memories as a tool for the benefit of social cohesion, to create or strengthen a national, regional or local identity. The concepts of monument and hero acquire, in those contexts, an emotive capacity that can strengthen the goals and actions for the protection of the heritage (Nora 1996–1998). But religious perceptions of death or philosophies on the treatment of the body may be different for different people.

In Japan, human remains not claimed by living descendants are no longer subject to protection. This raises several issues, since human remains are important,

not only for the descendants but, in some cases, also as a symbol of a nation, or a community or a hero (Iwabuchi 2014). In addition, and as Akifumi Iwabuchi, Professor of Maritime Anthropology and Nautical Archaeology at Tokyo University points out, according to traditional Asian beliefs, human remains will never become underwater cultural heritage, because if human remains are discovered in an underwater site, it is imperative to rescue and bury them on land. According to Pickford (1994), the Japanese, for instance, pay large sums of money for World War II losses to be recovered, since the bodies have to be buried properly. This contrasts with the preservation in situ motto claimed by the 2001 UNESCO Convention.

b. Temporal value

Respect for the deceased not only depends on traditions or cultures but also on time. What was considered respectful in the same culture in the past may not be considered so today. We have to bear in mind the changing contexts of the present. In addition, there is a dichotomy between the protection of human remains and the protection of the rest of underwater cultural heritage. Under the 2001 UNESCO Convention, shipwrecks have to be underwater for more than one hundred years to be protected. And human remains are underwater cultural heritage. On the other hand, some authors (Dunkley 2011) suggest that at least four generations (one hundred years) should pass before our ancestors from submerged warships can be of archaeological interest and can serve science and be investigated. Human remains are better protected if they are more recent (less than one hundred years after the tragedy), but underwater cultural heritage is better protected if it is older (more than one hundred years after the tragedy). In other words, the human remains most deserving of respect and protection, and that should be untouchable, are the most recent, and the shipwrecks deserving protection are those that have been submerged for a longer period of time after the tragedy. On this basis, human remains contained in shipwrecks in World War II should be undisturbed, although the ship itself can be recovered, plundered or salvaged, since it is not protected, for instance, under the 2001 UNESCO Convention. Following the same line of thought, a 200-year-old shipwreck should be kept intact, although the human remains contained in it could be used as examples of catastrophe once four generations have passed.

c. Scientific value

The recovery of human remains – sometimes a large

number of civilian or military victims – is a source of controversy regarding how the bodies and the shipwrecks containing them should be managed. Some people have opinions that are opposed to the treatment of human remains, while others believe that historians and the public need to understand the facts to learn about history. The question of leaving the human remains alone, to be researched by scientists in the present or to be preserved for the archaeologist of the future, is not a new debate (Saunders 2002). However, it seems commonly acknowledged that, although contributions to science can carry some beneficial results, it cannot justify ignoring the dignity of the dead and their relatives (Teague 2007). Other disciplines such as medicine have gone through the same process of thought. One of the justifications of archaeologists and museum managers for the recovery and exhibition of human remains is the appeal to science and education (Curtis 2003), which raises other ethical issues: for instance, the role of museums as keepers of human remains. However, archaeologists or museum guardians are not the only stakeholders of these remains. The establishment of respect for the dead or the development and education for the future faces complicated moral questions.

To establish a fair comparative analysis, this section aims to list the main arguments in favour of and against the use of human remains for the purposes of education and science.

Arguments in favour of the use of human remains for education and science include that it is widely acknowledged that gaining knowledge about the past requires examining ruins from earlier cultures, including human skeletal remains (Bryant, 2001). Human remains are the source that offers the most information about the past (Mays 2008). In fact, human remains in shipwrecks can provide a variety of information, such as demographic information, the origin of the crew, specific roles of the crew (rowers, archers, etc.), diseases and injuries – such as scurvy or bone injuries – and the diet of the crew. This information from the past is helpful in developing science in the present day, for instance, through a better understanding of diseases (Bryant 2001). Also, and according to British archaeologist Sarah Tarlow (2006), the knowledge that we obtain from dead bodies for medical research and research on human tissue cannot be obtained otherwise. Annetta Cheek and Bennie Keel (1984), Professors at the National Park Service (US) have summarised the types of information obtained from human remains: 1) archaeological – physical characteristics, biological and genetic elements,

demographic, pathological evolutionary processes and the treatment of the dead, 2) medical – diseases and disorders and 3) forensic. The ambiguity of the concept of 'respect' for the deceased is another argument in favour of the use of human remains; it can be what archaeologists consider 'respect', what cultural descendants of the dead claim or what the scientific community considers respectful. In an archaeological excavation – land or marine – if human remains are expected to be found, a human osteologist is appointed to record and trace every step, from the location – the grave – to the point of recovery, if they are recovered (Mays 2008). A final argument in favour of the study of human remains is that some visitors expect to see human remains on display in a museum (Curtis 2003), since museum experiences are part of a necessary educational process.

The first argument against the use of human remains for science and education is that curators and archaeologists do not own human remains (Curtis 2003); the ownership of human remains is controversial (Saunders 2002). Sarah Dromgoole (2013), Reader in Law at the University of Nottingham, states that whether a dead body is property is subject to debate. This is why Lynn Teague (2007), curator at Arizona State Museum, establishes a process of consultation for those interested in human remains, which involves interviewing all those interested in the body, analysing new discoveries that this body can bring, bearing in mind when a form of study is specifically offensive to cultural traditions, restricting the use of photographs and other records, and giving reasonable private access to human remains for ceremonies by interested communities and allowing those ceremonies. Another argument against the use of human remains for science and education is the idea of authenticity. Is an authentic skeleton in a window of a museum informative, or is it just a source of appeal for the public? What would be the difference in showing a plastic skeleton in the window? This, as in the case of the violin of the *Titanic*, is an issue of authenticity. And, although a fake skeleton in a museum would not be 'authentic' with regard to material, it would be with regard to experience. Although objects in museums were previously selected for their high cultural value and were shown as unique or impressive examples or to encourage reactions, the present-day mentality in museums is changing: their exhibitions are more interactive and include touching objects that can only be made from copies of the real object. This intention and the authenticity have to be clear to the public. In 2004, for example, a museum in China closed

for displaying fake objects (Dasgupta 2014). In addition, how objects are displayed affects their sanctity. The same material can be sacred for different people depending on how it is presented (Curtis 2003). A museum, especially an occidental museum, will display the object according to its criteria, which does not have to agree with the way that an Indigenous community, for instance, would display – or not display – it. Another argument for not using human remains is that deciding on which authority can order the recovery of the dead is a complicated issue (Tarlow 2006). For years, it has been a religious authority who made the decision, but this does not seem to be the case anymore. One more argument is that, although the use of human bodies for research is a common and accepted practice in medicine, it differs from archaeological use. In medicine, the bodies are obtained only through body donation, and if the donor agreement is not signed, the doctor will look for permission from the deceased's relatives only in special and interesting cases for science, such as rare illnesses (Goold 2014). This barely happens in archaeology. Finally, finding a limit on the use of human remains is a complicated issue, because its use in medical and scientific research may increase in the future.

d. Funerary value

There are various reasons for leaving bodies undisturbed, such as the spirit finding rest, the necessity to pray or show dignity, that tampering with remains is sacrilegious, or for reasons of tradition or culture (Scarre 2006). For instance, some people's beliefs disregard mortal remains, but some think that the soul is tied to the remains as long as there is a body (Cheek and Keel 1984). In some cultures, any kind of disturbance of human remains is disrespectful (Scarre 2006). The example of mummification or building the pyramids (Scarre 2006) proves that, for some cultures, how the deceased are disposed of and buried is important. In the case of shipwrecks, leaving them undisturbed as watery graves would mean leaving the human remains untouched. However, as Dromgoole (2013) points out, in a recovery of cargo from a shipwreck, even if it does not disturb the remains of the human beings, there is still a potential to disturb the sanctity of the site as a gravesite. The argument in favour of treating shipwrecks as watery graves is that declaring shipwrecks as funerary monuments or underwater cemeteries, such as the USS *Arizona*, attract tourism in most cases if the shipwreck is accessible (Perez-Alvaro 2013). It also conveys the unique meaning of sacred places, and, in addition, complies with some 2001

UNESCO Convention principles, such as preservation in situ. However, this option will depend both on the collective interest in remembering the tragedy and the weight of opinion to consider the shipwrecks as a sanctuary for the dead. A shipwreck represents a loss: personal or cargo. However, the symbolic value of the shipwreck is only awarded if there is an effort to prolong its memory (Gibbs 2005). Underwater archaeologist James Delgado (2009) points out that converting these burials to heritage is, as a consequence, a process, and commemoration is part of this process:

Despite years of shipwreck exploration as a maritime archaeologist and a decade as director of a maritime museum, *Titanic* was never high on my list of lost ships to visit. I'd never considered it an archaeological site but rather an underwater museum and memorial. (69)

Commemoration is the alternative to conservation: we can demolish a building or leave a memorial. In terms of tourism, leaving a memorial where people can go to remember the victims, honour them or just see it as a curiosity or a historical memory, such as war memorials, can be attractive (Howard 2003). States can manage and protect their underwater cultural heritage to shape public memory through the various forms of memorials and sites (Nora 1996–1998). Memorials are highly selective in terms of what they portray as worthy of being remembered. Part of our identity is based on our cultural identity. This is the feeling of a group of people or of an individual, which is influenced by their culture.

However, there are also arguments against treating shipwrecks as watery graves. In fact, some authors are opposed to the treatment of shipwrecks as cemeteries (Bryant 2001) for several reasons. First, it is argued that neither history nor the law treats shipwrecks, historic or otherwise, as protected underwater cemeteries, stating that the historic, social, scientific and monetary value of historic shipwrecks dictates that they should not be treated as underwater cemeteries protected from salvage or recovery. This fact is well documented. Neither history nor the law treats shipwrecks as protected underwater cemeteries. However, if, as we will argue, human remains are underwater cultural heritage, they will be protected and managed by the 2001 UNESCO Convention, which requires that they be preserved in situ. In addition, cultural heritage lawyer Christopher Bryant (2001) also suggests that, since underwater shipwrecks are not natural and do not belong

on the bottom of the sea – they belong at their home ports and intended destinations – neither do human remains belong on the bottom of the sea. As a consequence, recovery is acceptable where circumstances permit. The reason is that, while cemeteries are the intended resting places for the dead, shipwrecks are not, and because shipwrecks have other diverse values, they should not be labelled as cemeteries and kept off limits to salvors and others. Bryant (2001) concludes that historic shipwrecks containing human remains deserve respect, although not so far as to treat them as underwater cemeteries that cannot be salvaged. In this regard, it is open to debate why or whether, while cemeteries are the intended resting place for the dead, shipwrecks are not. Throughout history, cemeteries have changed their context according to the circumstances, from churches – which were not meant to be cemeteries – to main squares in the village when there were mass deaths. It has been the fatalities of the sunken wrecks that have converted them into submerged cemeteries. A final argument is that the management of shipwrecks as watery graves can lead to dark tourism, attracting tourists to a place with special meaning to the friends and relatives of the people who lost their lives in the disaster. Dark tourism is defined as a different type of tourist attraction: it is the act of travel and visitation to sites of death, disaster and the seemingly macabre (Stone 2009). If shipwrecks as watery graves attract this tourism, tragedies would be exploited, not only to convey political messages but also for commercial gain (Sharpley 2009). A ship is a vehicle but can also be a place of catastrophe and with a range of spiritual values with which we want to award it (Gibbs 2005). In addition, people might be upset because their ancestors died when the ship went down, but where do you stop? Do you refrain from excavating Bronze Age ships because those who died were someone's ancestors?

2.2. Guardians of the deceased

a. Surviving relatives

For some authors, biologically and culturally related groups to the body must have a substantial role in the decisions about its treatment (Teague 2007). However, honouring one's ancestors is different from honouring one's descendants (Scarre 2006). It is understood that the descendants are the ones that have the obligation of care of the human remains (Hutt and Riddle 2007). However, there should be an 'unwritten social contract' that does not exist, for instance, with Tutankhamen (Scarre 2006). In fact, archaeologist Mark Dunkley (2011) argues that

the only argument to respect human remains is if there are living descendants who knew the victims. Dromgoole (2013) also suggests that if there are interested parties, their feelings have to be taken into consideration, and as a consequence, they all must be considered for consultation. However, relatives of the dead have often been excluded from decision-making (Teague 2007). In addition, the issue of ownership of a shipwreck also affects the human remains contained in it. If a shipwreck occurs in the waters of another nation, it loses its nationality if it is not a state vessel. Repatriation of bodies is the common practice for accidents that happen nowadays, both on land and in water. Repatriation of cultural heritage has been widely discussed in the literature (Bator 1981). The only issue is if human remains arising from incidents more than one hundred years underwater should or could be repatriated.

b. Indigenous communities

There are communities that have been excluded from their countries' decisions, particularly about the treatment and preservation of human remains, until recently (Teague 2007). A prime example of this approach was the case of the Kennewick Man, a 9,300-year-old skeleton found in 1996 on the banks of the Columbia River in the United States (Chatters 2000). Five Native American tribes claimed it as an ancestor under the Native American Graves Protection and Repatriation Act (1990), a law that allows Native Americans to remove ancestors' bones from museum collections (Bruning 2006). However, in February 2004, the United States Court of Appeals for the Ninth Circuit ruled that a cultural link between any of the Native American tribes and the Kennewick Man was not genetically justified, allowing the scientific study of the remains to continue (Bruning 2006). The case, however, is still unresolved (Bruning 2006). Professor at Indiana University Larry Zimmerman (1994) takes the opposite approach. For this author, the collection and study of Native American or Indigenous American remains have grown with the development of American archaeology. From the moment that the actions of the collectors were improper and offensive to the Indigenous communities, archaeologists took action to become more scientifically sophisticated and more ethically aware of the Indigenous communities. In this line of thought, Teague (2007) states that the recent repatriation law is an approach to prohibit scientific research in favour of traditional concerns, especially when talking of Indigenous communities. In this regard, Professor of Law at Queensland University Craig Forrest (2010) remarks that, in some countries, such as

the United States, Canada, Australia and New Zealand, issues on the return of human remains to Indigenous communities are of particular political importance. The author reminds us that a considerable number of Aboriginal remains have already been returned to their communities in these countries.

In 2011, a representative of an Indigenous community travelled from the Torres Strait to the Natural History Museum in London to collect the bones of his ancestors, since the museum had agreed that the remains should be given back to their 'originating community' (Shariatmadari 2019). A private ceremony was held at the museum, and the remains were sent back to the Torres Strait to have the 'right' burial. The question here is the differences in perception of what a 'right' burial is.

2.3. Subjects (human remains) of these shipwrecks

a. War graves vs. civil graves

Human remains not only have a scientific value or a cultural value but sometimes also a political value (Gibbs 2005). The issue is more evident in the case of war graves. The debate surrounding war graves has been clouded more by emotion than reason (Williams 2000). Advances in technology for underwater explorations in the 1980s were the catalyst not only for underwater archaeology but also for the concern of disturbance to 'war graves', which have always created more interest than other types of graves, maybe because they are associated with a particular group or organisation. It can also be due to the feeling of 'those who died for us, for their country' (Slackman 2012). Declaring shipwrecks as war graves is a mixture of salvage principles and legislation relating to military remains (Williams 2000). Under international law, the captain of any ship, regardless of size or nationality, has the authority to conduct an official burial service at sea. According to Law Professor Mariano Aznar-Gómez (2010), sunken state vessels in non-commercial missions are gravesites and are protected by general rules protecting human remains, including international humanitarian law.

National laws are changing on this direction. In the United Kingdom, for instance, the Commonwealth War Graves Commission, established in 1917 as the Imperial War Graves Commission, claims that it is not responsible for unrecovered human remains and that referring to ships with those human remains as 'war graves' is a mistake, since they do not constitute a 'burial' as such, but rather leave the war remains unprotected. The Protection of Military Remains Act (1986), however,

differentiates between protected places (designated by name but not location) where diving is permitted and controlled sites, where damaging, moving or unearthing any remains is an offence. Under this act, any excavations that contain the remains of any military aircraft or vessel of any nationality or age is forbidden.

b. Nationless shipwrecks

Shipwrecks from nations with a complicated status or shipwrecks carrying slaves or refugees offer many ethical issues on their preservation as watery graves. The fact that the remains cannot be claimed by any group because of confusion over nationalities is still an unresolved matter.

3. Proposal: Intangible, invisible and absent heritage

The fact that human remains should be respected seems to be covered by common law in most countries around the world and is generally accepted. However, we cannot protect all sites, and we may not be able to protect all the human remains underwater. Cities transform cemeteries, as evidenced by examples on land. For instance, there is not a single cemetery site in Sheffield (UK) unaffected by modern construction, and exhumation projects are common (Sayer 2010). Shipwrecks may suffer the same fate. However, if a shipwreck is evaluated, and it is decided to be worth preserving because it contains human remains, a new approach has to be taken.

The scope of heritage has been admitted internationally to include tangible and intangible heritage and their surrounding environment. As previously stated, human remains on shipwrecks can result in two scenarios: that the human remains are preserved or that the human remains are not preserved, but there were people who perished on board the shipwreck. If the human remains are still conserved, they can be recovered for reburial, repatriation, museum exhibitions or information retrieval, or they can be left untouched as watery graves. However, if the human remains are known to be there but not conserved, the options for preservation complicate the issue. This study proposes three options for the possibility of new treatment of these shipwrecks in order to consider not only Western policies but also a more international approach that can also incorporate Indigenous practices.

3.1. Invisible heritage

A new approach to an undiscovered form of heritage has been recently raised: the reuse of vessels as

harbour structures. A vessel loses its original function – transportation – and is transformed into barracks, prisons, hospitals, store ships or hotels. The ships left in these harbours remain in existence: cans, syringes, pots and all kinds of objects can carry archaeological interest. These semi-permanent structures left full archaeological fields in the same spot. This is what we have called ‘invisible heritage’: the heritage that has been there and has left its footprints behind. In this regard, when Odyssey found the wreck of the *Nuestra Senora de las Mercedes*, they claimed that the shipwreck was not a shipwreck but a field of debris, so it was abandoned property (Zorich 2009). This argument could have contravened the concept of ‘invisible heritage’: shipwreck fields that are known to be there but have disappeared and have left invisible human remains. As a consequence, the human remains that were once contained in shipwrecks that have disappeared would be considered as cemeteries of ‘invisible heritage’. This is the idea of the heritage as a footprint. The shipwreck fields have, as a consequence, adopted the function of a cemetery whose human remains were once there and need to be respected.

3.2. Absent heritage

Absent heritage is the memorialisation of places and objects whose significance relates to their destruction or absence. This concept is particularly applied to the destruction of the Great and Little Buddhas of the Bamiyan Valley (Afghanistan). The pieces of heritage are the niches that once contained the Buddhas and that have remained as a memory of the destruction. Absent heritage, applied to human remains on shipwrecks, would transform the shipwrecks into ‘absent niches’ where the human remains are not preserved, but the shipwreck is preserved for its memorialisation. This could be considered as an ‘absent presence’.

3.3. Intangible heritage

Intangible heritage is as powerful as tangible material, although protecting it is particularly difficult. One option explored in this article is whether those shipwrecks that once contained human remains should maintain their ‘sacred places’ status as intangible heritage. According to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003), intangible heritage is defined in Article 1 as follows:

1. The ‘intangible cultural heritage’ means the practices, representations, expressions, knowledge,

skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage [...] provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.

2. The ‘intangible cultural heritage’, as defined in paragraph 1 above, is manifested inter alia in the following domains: [...]

(c) social practices, rituals and festive events.

Intangible heritage does not include physical material that has been destroyed, and a wreck does not constitute a ritual practice. Due to the organic, evolving nature of intangible cultural heritage, legal protection may be difficult. However, Rule 5 of the Annex of the 2001 UNESCO Convention introduces the word ‘venerated sites’ when discussing the management of human remains. For Professor Patrick O’Keefe (2002), ‘venerated sites’ means those sites that have a spiritual attachment for certain people, such as the graves of people. As a result, shipwrecks considered ‘venerated sites’ would be included in the definition of intangible heritage as ‘cultural spaces associated with a community’. Their preservation as intangible heritage, therefore, can serve not only as a monument to a great journey or heroic combat but also as a tool to shape collective memory. Underwater cultural heritage and human remains can act as a trigger for a set of emotions and historical memory (Perez-Alvaro 2013), and that is considered intangible cultural heritage. In addition, watery graves fall right in the middle of the delicate issue between the definition of intangible cultural heritage – living cultural practices passed from generation to generation – and human rights.

4. Conclusions

The articulation of the dilemmas surrounding the management of human remains in underwater cultural heritage has been based on three pillars: values, guardians of the deceased, and subjects – human remains. Each one of these pillars generates different ethical dilemmas. However, while the values awarded to these shipwrecks and their management depend on historical, sociological, cultural and traditional particularities of every country (Perez-Alvaro, 2014), as well as the priorities and goals of the authorities, the guardians of the deceased should

be the ones in charge of making the decisions. However, these decisions get tangled with the subjects – the human remains – and that generates controversial issues, such as the kind of passengers that the shipwreck carried or the ownership of the shipwreck, which produce various particularities and objectives.

These dilemmas are common in two different circumstances that can be found in relation to the conservation of human remains. First, shipwrecks still contain human remains. Heritage managers and archaeologists as well as communities, ancestors and descendants should collaborate on what to do with them, whether it be through research, musealisation, reburial or leaving them where they are. However, benefits from the study of human remains will come to an end if some of these human remains are not recovered or studied. The real complexity arises from the possibility of choosing for the remains to be disturbed. Second, there are shipwrecks that do not contain human remains, although they once did. These shipwrecks will only be preserved by recognition of them as watery graves, even if the remains are not conserved. These shipwrecks offer a complex discourse about respect.

The management of the ethical, religious and social implications, as well as the recovery and preservation of the human remains in aircraft and shipwrecks, will contribute to helping the public become more aware of the real value of this heritage (MacLeod 1993). Dialogue and the consideration of other actors interested in the management of human remains are the keys to the question of respect. Not only can a shipwreck preserve human remains, but the treatment that we give to the human remains can help preserve the shipwreck. Respecting the wishes of the final owners of human remains means that some activities have to be forbidden. And although Bryant (2001) claims that, since historic shipwrecks are unlikely to contain human remains and can be salvaged and the graves disturbed, this article has proved that several shipwrecks still contain human remains, and as the sunken shipwrecks are more recent, they are more likely to contain human remains.

Since most of the earth is covered with water, burial at sea can be seen as an accepted norm for sailors all over the world. And those buried human remains can offer knowledge to archaeologists not reachable by other means. Different legal agreements in relation to archaeological practices have been established as common ground for the treatment of humans in the sense of 'respect'. However, what is respectful for some communities or professionals

may not be for others. Excavating human remains is a memory-making activity that has to be regulated in order to reach a balance between families of the deceased and benefits for communities (Saunders 2002). This article has proposed a new categorisation of these scenarios under three main labels: intangible heritage, absent heritage and invisible heritage.

Under the first treatment, human remains would be considered as 'venerated sites', which are part of a community cultural space and would be considered intangible cultural heritage. These shipwrecks would be protected, as a result, under the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. The other two treatments of shipwrecks – absent and invisible heritage – would not be protected under the Convention because they are new proposed categories of heritage. However, they could be considered as new annexes to any of the UNESCO conventions. The treatment of human remains in underwater cultural heritage as 'invisible heritage' would imply the consideration of shipwreck fields as cemeteries of those human remains that were once at those sites but have now disappeared. The shipwreck would then leave their footprint, 'the human remains', that need to be respected. A final option has been considered by this study, which is the treatment of the human remains as 'absent heritage', which would imply that the shipwrecks are seen as a 'frame' of what is not there anymore. These human remains would be considered 'absent presence'. The consequence would be the memorialisation of those shipwrecks as 'containers' of sacred remains.

Intangibility has been used to protect heritage such as practices, representations, expressions, knowledge or skills. However, this article has applied it to protect underwater cultural heritage, specifically, human remains, since they have a significance that exceeds the tangible.

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