
ENFORCEMENT OF MARITIME ARCHAEOLOGY IN MALAYSIA: A REVIEW

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Abstract

The development of conservation and law enforcement for underwater cultural heritage in Malaysia has been slow due to some internal problems. Among them are that Malaysia does not have expertise in excavation, lack of funding, insufficient tools and awareness of the importance of underwater cultural heritage is still not sufficiently disseminated. maritime and still employs experts from abroad such as Michael Flecker and Sten Sjostrand. when enlisting the help of the custodians of historic objects from every shipwreck discovery in the world. which has a great influence on the status of maritime archeology, especially in the process of rescuing historical objects in Malaysia. UNESCO Convention 2001 the Convention on the Protection of the Underwater Cultural Heritage is a convention on the protection and preservation of historic underwater objects such as shipframes such as ships, airplanes, any form of vehicle including cargo and cargo

Keywords: cultural heritage, Maritime Archeology

Introduction

Maritime archeology means two branches that merge and form the term (Adi Haji Taha, 1986). The branches in question are underwater archeology and nautical archeology. Therefore, it covers rivers, swamps, lakes and any geographical form of freshwater. This fact is in line with the basic understanding of maritime archeology from Amanda Bowes (2009). Yet, (Muhammad, 2018) defines maritime archeology as a term used to refer to the study of human past. The term was first introduced by Jacques Spon in the 17th century and is derived from the Greek word, arkhailogia which means discourse about ancient things. Different perspectives from neighboring Indonesia on the definition of maritime archeology. The understanding of maritime archeology is broader when compared to underwater

archeology (Mundardjito, 2007). For example, the meaning understood in Indonesia is that maritime archeology is the relationship between humans and the environment such as the sea, rivers and lakes. This relationship occurs when studies are done on underwater historic objects, shipwrecks, ship cargo holdings and so on. Apart from the study of relationships at sea, Mundardjito (2007) states that it can also occur at coastal and ship burials locations such as the Sutton Hoo ship and the Khufu ship. However, the approach from Keith Muckelroy (1978) is adopted in Malaysia which states that the study of maritime archeology is not only to study shipwrecks and historical objects underwater but maritime culture that contains aspects of historical, social, religious and economic traces. Therefore, these aspects help the development of the field of maritime archeology in the Southeast Asian region. In the understanding of researchers, maritime archeology is a field related to ships and objects that sank many years on the seabed and has historical value encompassing the culture and lifestyle of earlier societies.

The meaning of the field of maritime archeology is indeed very complicated to debate if it refers to the parent term to describe archaeological studies carried out on the seabed. Referring to figure 1.1, maritime archeology is under the field of underwater archeology which has three divisions namely maritime archeology, ocean archeology and terrestrial water archeology. Maritime archeology is in the group of nautical archeology, architectural archeology of ships - heritage ships - boats, shipwreck archeology and naval archeology. Researchers chose maritime archeology in this research because it covers aspects of shipwrecks and historic objects that sank on the seabed.

Literature Review

Maritime archeology is a systematic study of any form of cultural relics and the underwater natural environment that is to reconstruct the past with one of its main focus being shipwrecks. There was no significant difference between the focus of terrestrial and underwater archaeological studies except for differences in terms of the use of equipment and that is appropriate to the environment of the site or area to be studied (Figure 1.2). Refers to a model of the scope of maritime archeology (Keith Muckelroy, 1978), which describes the remains of shipwrecks in different areas. Part A is the remains of a shipwreck unrelated to maritime culture and is on land sites studied by nautical archeology, Part B is the remains of a shipwreck not underwater such as on beaches and embankment areas. . Non -shipwreck remains such as dry piers or jetties in section C while any form of shipwreck site remains that are underwater which is also the scope of study in nautical archeology. The part that is within the circle of maritime archeology is a remnant of maritime culture and outside the circle of maritime archeology is Any cultural remnant not a remnant of maritime culture that is under water.

Malaysian maritime archeology in 1979 to 2000 was relatively slow according to Zainuddin Baco & Stephen Chia, (2020) due to some internal problems. Among them is that Malaysia does not have expertise in rescuing historic objects at shipwreck sites and needs to seek

assistance from foreign rescue agencies, lack of funding, insufficient equipment and awareness of the importance of underwater cultural heritage is still not sufficiently disseminated. As we all know, the field of maritime archeology is a new field in Malaysia, although it started in 1979, it still does not have experts, especially in the aspect of rescuing historical objects at the shipwreck site and needs to be fully developed so that all the heritage treasures of the shipwreck can be studied and recorded as best as possible. . This is because the theft of shipwreck artifacts is a major global issue discussed at The United Nations Educational, Scientific and Cultural Organization (UNESCO) on the loss of priceless heritage treasures and buried historical narratives due to human greed to destroy, steal and sell such treasures. without thinking about the value of its heritage (Utusan Malaysia, 2013).

KONVENSYEN UNESCO 2001: CONVENTION ON PROTECTION UNDERWATER CULTURAL HERITAGE (CPUCH)

UNESCO Convention on the Protection of Underwater Cultural Heritage or in English the Convention on the Protection of the Underwater Cultural Heritage (CPUCH) adopted in 2001 aims to enable countries to protect cultural heritage such as shipwrecks and historic objects sunk on the seabed better. The 2001 UNESCO Convention also focuses on protection at sunken archaeological sites especially shipwreck sites. The UNESCO Convention has 194 member countries and 8 associate members worldwide.

Underwater Cultural Heritage

The term ‘protection’ is used in several aspects; first in terms of the ‘prohibition’ of certain activities related to underwater cultural heritage and second in terms of the ‘conservation’ and ‘preservation’ of heritage. In terms of archeology, underwater cultural heritage requires protection from two types of problems, namely protection against human interference that is not allowed to encroach on historic sites and damage historic sites as well as protection against natural degradation in the environment. Therefore, the use of the term protection carries different practical implications. Protecting underwater cultural heritage from human interference will raise issues related to heritage ownership, exploitation and disposal. Protecting heritage from destruction or deterioration will pose problems related to preservation and conservation either in situ or otherwise.

Elements of the Term Underwater Cultural Heritage

One of the most complicated tasks during the UNESCO Convention drafting process (Debarbieux & Munz, 2018) is to comprehensively define the term ‘underwater cultural heritage’. Perez-Alvaro, (2019) states in his book entitled Underwater Cultural Heritage:

Ethical concepts and practical challenges that the terms ‘underwater’, ‘culture’ and also ‘heritage’ give remarkable interpretations when combined. The definition for the term was agreed in Recommendation 848 of the Council of Europe (1978), and later brought to the Draft European Convention on the Protection of the Underwater Cultural Heritage (1985) (Francioni & Vrdoljak, 2020) which was never adopted by the -the negotiating party. The final text adopted in the 2001 UNESCO Convention, however, marks a more significant final definition from the European Draft Convention by introducing a more comprehensive approach to defining the definition of protection, namely the protection of historic sites or shipwreck sites and not just 'objects' as defined in UNCLOS. 1982. The 1995 UNESCO Feasibility Study has mentioned ‘historic shipwrecks’ as the ‘main body of material’ that makes up the ‘underwater cultural heritage’, thus it narrows the scope of the UNESCO Convention 2001. Underwater Cultural Heritage protects historic shipwrecks from stolen by treasure hunters, although the number of historic shipwrecks is smaller, yet its importance is the same as any other heritage that needs to be protected. The justification given in the Feasibility Study for not including other categories of underwater cultural heritage is that there are only a small number of cases and these are already covered by the respective national legislation.

a) Human Adventures Contribute to Culture, History, or Archeology

The 2001 UNESCO Convention defines ‘underwater cultural heritage’ as all traces of human existence and adventure contributing to a culture, history or archeology that is partially or entirely underwater periodically or continuously, for at least 100 years inclusive (Roberts, 2018) :

(i) sites, structures, buildings, artifacts and human remains, together with their archaeological and natural context

(ii) ships, aircraft, other vehicles or parts thereof, cargo or other contents, together with archaeological and natural contexts, and

(iii) prehistoric objects

Other objects buried in the seabed including pipelines and cable installations that are still in use, cannot be considered underwater cultural heritage. Refers to (i) (ii) and (iii) only which reflect the possibility of objects considered to be underwater cultural heritage. Evidence of human existence dates from prehistoric times to the heritage of the aborigines as well as existence in the 21st century.

b) 'History, Culture and Archeology'

A report based on the UNESCO Expert Meeting on 31 October 2001 stated that some countries thought that it was more effective to focus on underwater cultural heritage to obtain information on culture and history especially from shipwrecks and historical objects (Aikawa, 2018). O'Keefe, (2006) argues that historical, cultural and archaeological expressions, do not add to or subtract from the scope of the 2001 Convention that has been set temporarily (O'Keefe, 2006; Roberts, 2018) argues that such expressions provide flexibility in interpretation but still follow the boundaries -bona-fide limits in the 2001 Convention. (Argyropoulos & Stratigea, 2019) analyzes that in determining broader protection using a maximalist approach emphasis should be given to all objects of cultural values while a selective or minimalist approach will emphasize on objects of extraordinary value or which is of high importance.

c) Cultural Heritage and Human Cultural Heritage

The 2001 UNESCO Convention is not the first law to focus on cultural heritage but is the most recent convention in protecting cultural heritage, particularly underwater cultural heritage. With the UNESCO Convention 2001, countries in the world such as Malaysia, Cambodia, the United Kingdom, and Australia are more aware of the issue of protection of cultural heritage underwater.

Over the years there has been a shift regarding the use of the term 'cultural property' to 'cultural heritage' as a legal governing tool that regulates the movement of objects of historical and cultural significance or not (O'Keefe, 2006). The term 'property' is less attractive in the field of cultural heritage protection because it is not broad enough to cover various aspects of underwater historic objects. Meanwhile, the notion of the use of 'heritage' is better because it incorporates the concept of duty to preserve and protect historic shipwrecks and historic objects underwater. According to O'Keefe, (2006) again, if culture consists of ways of behavior that are educated and socially transmitted from one generation to the next and from one society to the next then cultural heritage consists of a large number of activities and objects that give us evidence of the history and heritage of the past. The term heritage is constantly changing from time to time, it was once also referred to as a cultural monument relic. However, it is seen that the term heritage is more appropriate to use in the UNESCO Convention 2001. Under heritage there are two forms of heritage, namely tangible cultural heritage and intangible cultural heritage. A more difficult task is to determine the economic and historical value of such heritage as well as to determine the level of importance of cultural heritage in society such as national heritage, local heritage, general cultural heritage, regional cultural heritage.

Muscat, (2020) argues that ‘human cultural heritage’ is an abstract concept as opposed to a more concrete ‘cultural property’ and tends to lead to abstract interpretations because through material protection and authentic evidence (historical objects) the ultimate goal of protecting cultural heritage will be achieved. In line with the definition of ‘cultural heritage’, the 2001 Convention recognizes that underwater cultural heritage is an interconnected part of human cultural heritage and is a very important element in history, race and relationship with each other. The term ‘common heritage’ is widely contained in the Moon Treaty 1979 and UNCLOS 1982. Environmentalists use this term to refer to all living and non-living natural resources or the global environment as ecological entities (Perez-Alvaro, 2019) but UNCLOS 1982 has adopted effectively in extending this concept of ‘common heritage of mankind’ in underwater cultural heritage. The phrase ‘common heritage’ implies the ‘common interest’ of human beings as recipients of inheritance.

Therefore, to regard underwater cultural heritage as the ‘common heritage of mankind’ in the same context as the exploitation of resources on the seabed and the moon would be an undesirable approach because for example, underwater cultural heritage lies within territorial sovereignty a State cannot be a nullius in terra or a communis in terra. The non-existent elements and consequences of the notion of ‘common heritage of mankind’ are:

the notion of trust and trustees; indivisibility of the heritage; the regulation of the use of that heritage by the international community; the most appropriate equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries; freedom of access and use by all States; and principle of peaceful use.

In the context of the discovery of ‘archaeological or historical’ objects as used under UNCLOS 1982, it seems impossible to really combine the element of ‘indivisibility of Heritage’ with the preservation of underwater cultural heritage. Therefore, the legislation that most states the obligation to the state to protect underwater cultural heritage is under UNCLOS 1982 as well as the 2001 Convention.

Discussion

In Malaysia, all rehabilitation projects involving historic shipwrecks have so far been implemented with the help of commercial rescue companies, which have underwater technology and expertise in rehabilitation (Sahar, 2006). Without a partnership doing this project, important historic shipwrecks such as the shipwreck Diana and a few others would remain on the seabed. Although many historic objects were rescued from the wreckage of the Diana shipwreck, they ended up in an auction house in Amsterdam in 1992 (P.Given, 2019). Malaysia is not alone in using the expertise of private companies. The same action

was taken by the neighboring country of Indonesia to save Geldermahlsen and even the much more developed and wealthy maritime countries such as the United Kingdom have also used the expertise of private companies.

Malaysia has referred to the UNCLOS law and the UNESCO Convention 2001 in protecting underwater culture. Malaysia has also adopted the Antiquities Act 1976, the National Heritage Act 2005 and the Merchant Shipping Ordinance 1952. All these acts apply aspects of underwater cultural heritage such as historical objects and shipwrecks in terms of protection from being stolen by treasure hunters and shipwreck rescue. karam. Previous studies namely (Manaf et al., 2017), (Michael Flecker, 2017) have conducted a study on the issue of theft of historic objects in Malaysian waters. Yet it is not discussed in detail about the law focusing on enforcement and surveillance in the area of the shipwreck site. In this study, the National Heritage Act 2005 and the Merchant Shipping Ordinance 1952 are studied by focusing on Part XIV which is the power relating to enforcement, seizure, arrest etc. and protection of shipwrecks under the Merchant Shipping Ordinance 1952. When theft of historic objects in the site area shipwreck, it will have implications for the country namely the loss of millions of ringgit and the loss of historical sources on culture and data on the arrival of foreign traders passing through Malaysian waters. Muhamad (2018), Sjostrand et al., (2006), Sahar, (2006) and Flecker, (2019) are among the scholars in the field of maritime archeology who helped develop the field of archeology in Malaysia. They are also active in writing books in this field including Adi Haji Taha, (1986). Therefore, this study will produce improvements from previous studies that focus on enforcement and surveillance at shipwreck sites to curb the issue of theft of historic objects and shipwrecks in Malaysian waters.

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