



United Nations
Educational, Scientific and
Cultural Organization



The Protection of
the Underwater Cultural
Heritage

**UNITED NATIONS EDUCATIONAL,
CULTURAL AND SCIENTIFIC ORGANIZATION**

**CONVENTION ON THE PROTECTION OF
UNDERWATER CULTURAL HERITAGE**

Scientific and Technical Advisory Body

**Report of the mission to Panama (6-14 July and 21-29 October 2015) to evaluate the
Project related to the wreck of the *San José***

7 December 2015

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EXECUTIVE SUMMARY

At the request of the Government of Panama, the Meeting of the States Parties to the UNESCO Convention on the Protection of the Underwater Cultural Heritage, adopted in 2001, decided to task the Scientific and Technical Advisory Body (“STAB”) with sending a mission to evaluate a project (hereinafter “the Project”) presented in 2003 and 2013 by the company Investigaciones Marinas del Istmo, S.A. (“IMDI”) in light of the Rules of the Annex to the 2001 UNESCO Convention.

The mission visited Panama twice during 2015: from 7 to 11 July, when it held various meetings with the Panamanian authorities; and from 21 to 29 October, when it also visited and inspected the area covered by the project near Isla Contadora. During the first visit, it analysed the legal and administrative issues and, during the second, it assessed the appropriateness of the work carried out by IMDI in the area covered by the project.

In addition, the mission held various meetings with the Panamanian authorities responsible for the protection of underwater cultural heritage, as well as with other experts and stakeholders. The mission obtained information from various documentary, historical, media and legal sources, both in Panama and from other countries.

In consideration of the above, this mission determined that, in general, IMDI has not observed the scientific precautions required by the underwater archaeological standards accepted by the international scientific community and set out in the Rules of the Annex to the 2001 UNESCO Convention.

At the request of the Government of the Republic of Panama, the mission makes recommendations to improve the protection of underwater cultural heritage within Panama’s territory, in light of the legal obligations assumed by Panama as a State Party to the 2001 UNESCO Convention.

1 INTRODUCTION

- 1.1 On 25 July 2003, the company Investigaciones Marinas del Istmo, S.A. (IMDI), which has been operating in Panamanian waters for some time, signed an exploration and salvage contract with the Ministry of the Economy and Finance of Panama¹. Pursuant to clause 1 of that contract, the Panamanian State granted IMDI:

"the exclusive rights to carry out all types of studies at the specified sites [...] and to perform the salvage or recovery of items in the territorial waters of Panama, including metal objects; treasure; vessels, such as sunken and abandoned ships, barges, skiffs and floating equipment in general, including any cargo found in salvaged vessels or wrecks".

- 1.2 In an addendum to the contract², three new exploration areas were added. One of them - area No. 9 - is located on the Panamanian coast of the Pacific Ocean in an area delimited by the following coordinates: *[information not public]*

Area No. 9 is the area covered by the project analysed by this mission³ and is within the limits of the territorial sea of the Republic of Panama⁴.

- 1.3 On the basis of the 2003 contract and at the request of IMDI, in 2013, the National Directorate of Historical Heritage (DNPH) of the National Institute of Culture of Panama (INAC) authorized IMDI "to undertake the project of identification, recovery and salvage of artefacts from historic shipwrecks in the Pearl Islands, Republic of Panama: Case of the 'San José' Galleon"⁵.

- 1.4 The project focuses on the identification, recovery and salvage of artefacts from a shipwreck that IMDI considers historic - that of the Spanish galleon *San José* - located within the area declared in the addendum to the contract as area No. 9 and delimited by the coordinates specified in paragraph 1.2 above. The DNPH/INAC Resolution also indicates that the aim of the project is to "preserve the items recovered, document the discovery and duly hand over to the Panamanian State the portion of the items of commercial value that corresponds to the State in accordance with Salvage Concession Contract No. 231 of 25 July 2003, as well as all items declared to be of historical and heritage value".

- 1.5 In light of the content of the aforementioned project, various recent developments in Panama and the information obtained in relation to the activities of IMDI in the waters under Panamanian sovereignty and jurisdiction, the Government of the Republic of Panama has begun a process of revising and auditing the 2003 contract and the 2013 Resolution, taking

¹ Salvage Concession contract No. 231 of 25 July 2003, concluded between the Ministry of the Economy and Finance and Investigaciones Marinas del Istmo, S.A. (*Official Gazette* No. 24,958 of 30 December 2003) (hereinafter referred to as the "2003 contract") (Appendix 1).

² Ministry of the Economy and Finance, Addendum No. 1 of 19 March 2010 to Salvage Concession contract No. 231 of 25 July 2003 (*Official Gazette* No. 26,516 of 21 April 2010) (Appendix 2) (hereinafter referred to as the "Addendum to the contract"). The location of said area No. 9 is illustrated in Appendix 3.

³ Clause One of the Addendum to the contract.

⁴ Panama declared a territorial sea of 12 nautical miles pursuant to Law No. 58 of 18 December 1958 (*Official Gazette* No. 13,720 of 24 December 1958).

⁵ Resolution No. 136-13 DNPH of 16 July 2013 (Appendix 4). This Resolution approved the Project presented by IMDI in May 2013, signed by G J Leal Cuervo and entitled *Underwater archaeology Project - Identification, recovery and salvage of artefacts from historic shipwrecks in the Pearl Islands, Republic of Panama. Case of the "San José" Galleon* (2013). Henceforth, we will refer to the Project authorized by said resolution and evaluated by this Mission as the "2013 Project".

into account Panama's condition as a State Party to the 2001 Convention on the Protection of the Underwater Cultural Heritage⁶.

- 1.6 In a letter dated 1 April 2015⁷, the Director General of INAC asked H.E. the Ambassador of Panama to UNESCO to request, at the next Meeting of the States Parties to the 2001 Convention, that the Scientific and Technical Advisory Body (STAB) of the Convention send a technical mission to Panama. INAC stipulated that the terms of reference of the mission should be as follows:

- “1. Carry out a programme of visits in order to evaluate the state of intervention at the *San José Galleon* wreck, in collaboration with specialists appointed by Panama.
2. Evaluate the current underwater heritage management mechanisms in Panama, with a view to recommending improvements to the implementation of the Convention.
3. Verify compliance of the project Plan "Identification, recovery and salvage of the artefacts from the historic shipwreck in the Pearl Islands, Republic of Panama, *San José Wreck*", carried out by Investigaciones Marinas del Istmo (IMDI), with the Rules concerning activities directed at underwater cultural heritage, stipulated in the Annex to the Convention.
4. Prepare a written report evaluating the project "Identification, recovery and salvage of the artefacts from the historic shipwreck in the Pearl Islands, Republic of Panama, *San José Wreck*", with a detailed evaluation of all the goods recovered from the wreck by IMDI, with the inclusion of recommendations of actions to be carried out by the State Party.
5. Provide guidelines for the establishment of a management programme for the preservation of the *San José Galleon* wreck and the cultural property recovered or that may be recovered from it."

- 1.7 H.E. the Ambassador of Panama to UNESCO acceded to said request from INAC in a letter dated 2 April 2015 to the Assistant Director-General for Culture of UNESCO⁸, who forwarded the request to the Meeting of States Parties to the Convention.

⁶ Convention on the Protection of Underwater Cultural Heritage of 2 November 2001, in force since 2 January 2009 (United Nations Treaty Collection, vol. 2562, p. 1 *et seqq.*) (hereinafter referred to as the "2001 UNESCO Convention"). Panama deposited its instrument of ratification of the Convention on 20 May 2003, having approved its text pursuant to Law No. 32 of 26 March 2003 (*Official Gazette* No. 24,773 of 2 April 2003).

⁷ National Institute of Culture of Panama, Note No. DG/173 of 1 April 2015 (reproduced as Appendix 5 in this report).

⁸ Permanent Delegation of Panama to UNESCO, DPP/4.50715.044 of 2 April 2015 (Appendix 6).

The mission of the Scientific and Technical Advisory Body (STAB)

- 1.8 In view of this formal request from the Government of Panama, the 5th Meeting of States Parties to the Convention on the Protection of the Underwater Cultural Heritage, which took place on 28 and 29 April 2015, decided to send a technical mission to audit the project presented by the company IMDI for the “Identification, recovery and salvage of objects from the historic wreck San José in the Pearl Islands, Republic of Panama”⁹. It entrusted this mission to the Scientific and Technical Advisory Body, which, at its 6th Meeting on 30 April 2015, took the decision to dispatch the mission¹⁰.



Figure 1.1: The members of the Mission with representatives of the Panamanian authorities.

Its members were:

- Dr Xavier Nieto Prieto (Head of mission), archaeologist, member of the Scientific and Technical Advisory Body;
- Dr Dolores Elkin, archaeologist, member of the Scientific and Technical Advisory Body;
- Helena Barba Meinecke, archaeologist, member of the Scientific and Technical Advisory Body;

The mission was accompanied by the following members of the UNESCO Secretariat:

- Dr Ulrike Guerin, Programme Specialist, Convention on the Protection of Underwater Cultural Heritage; and
- Arturo Rey da Silva, Associate Programme Specialist, Convention on the Protection of Underwater Cultural Heritage.

Also participating in the mission was legal advisor:

- Prof. Dr Mariano J Aznar Gómez, Professor of international law at Jaume I University, Spain.

- 1.9 The mission was carried out in Panama City, on Isla Contadora and in the surrounding waters:

- from 7 to 11 July 2015 a preparatory visit was undertaken by Drs Nieto, Elkin and Aznar, who held several meetings in Panama City with different members of the Panamanian authorities and had access to part of the documentation and materials relating to the contract;
- from 21 to 29 October 2015, the mission returned to Panama City and visited Isla Contadora in order to fulfil its mandate.

- 1.10 The Government of Panama cooperated fully with the implementation of the mission at all times, providing all the human and material resources requested or needed.

- 1.11 The members of the mission undertook *in situ* inspections of various locations within area No. 9, compiling visual and technical information in different formats to demonstrate the work carried out to date by IMDI, as well as the general condition of the sites.

- 1.12 After the preparatory visit had been completed and before the mission commenced, various events took place that had an impact on the aim of 2013 project and the mission's mandate:

- on 23 July 2015, the National Directorate of Historical Heritage (DNPH) adopted Resolution No. 143-2015/DNPH, which ordered the “holding or custody” of certain pieces

⁹ Resolution 7/5 MSP of 29 April 2015 (Appendix 7).

¹⁰ Resolution 5/STAB 6 of 30 April 2015 (Appendix 8).

recovered within the framework of the Project, which a director of IMDI had apparently tried to export from Panama without the necessary permits;

- on 24 July 2015, the DNPH adopted Resolution 144-2015/DNPH, pursuant to which it revoked Resolutions Nos. 68-14 of 17 March 2014 and 136-13 of 16 July 2013, the second of which had authorized the Project, on the grounds that they contravened Panamanian national legislation, and ordered an audit of the execution of the 2003 Contract¹¹;
- following the revelation of another unlawful export to the United States of America of archaeological pieces recovered within the framework of the IMDI Project by staff linked to the project, on 13 October 2015 the DNPH adopted Resolution No. 224-2015/DNPH which ordered that administrative proceedings be brought against IMDI, requested the immediate return to Panama of the pieces seized by the US authorities, for which a mission will be sent to the United States and, finally, ordered an international alert in relation to the matter.

The aim and mandate of the mission

- 1.13 The decision taken by the Scientific and Technical Advisory Body (STAB) does not specify the mandate of the mission in as much detail as the letter of 1 April 2015 of the Director General of INAC to H.E. the Ambassador of Panama to UNESCO does¹². However, the mission does consider that the mandate received from the Advisory Body includes the different issues raised by the Director General of INAC in the aforementioned letter.
- 1.14 The Government of Panama requests that the project presented by IMDI in 2013 be evaluated in light of the international obligations assumed by Panama as a State Party to the 2001 UNESCO Convention, in particular the Rules in its Annex. In the opinion of this mission, the project cannot be analysed in isolation; the Contract (including its addenda and extensions) entered into between the Government of Panama and IMDI in 2003 and implementation of said Contract by IMDI to date, should also be taken into account.
- 1.15 It falls to the mission to assess the content and consequences of the contract and the acts derived therefrom, in light of the historical, documentary and archaeological evaluation also entrusted to this mission and performed by it during its time in Panama. It is however not the responsibility of the mission, but of the Panamanian authorities to take any legal or administrative decisions that may derive from this report.
- 1.16 Finally, it is the responsibility of the mission to issue to the Government of Panama the recommendations and considerations that it deems appropriate in light of its mandate and the circumstances under which the mission has carried out its work since being appointed by the Scientific and Technical Advisory Body of the Meeting of the States Parties to the 2001 UNESCO Convention.

The structure of the present report

- 1.17 This report is divided into four parts: after this introduction, which presents the most relevant facts about the mission and the implementation of its mandate, the second part contains an analysis of IMDI's compliance with the Rules in the Annex to the 2001 UNESCO Convention. This analysis takes into account not only the documentary and photographic materials available to the mission, but also the inspection that the mission carried out in area No. 9 and the information gathered from experts and witnesses. After the analysis, the third part sets forth the main conclusions of the mission. Finally, in accordance with the Government of Panama's request, the fourth part of this report contains a series of recommendations for

¹¹ The Mission is aware of the appeals lodged by IMDI against this Resolution, which are being dealt with through administrative channels.

¹² Reproduced above in paragraph 1.6.

improvements to the management and protection of underwater cultural heritage in Panama, as a State Party to the 2001 UNESCO Convention.

2 EVALUATION OF THE 2013 PROJECT AND THE ACTIVITIES OF IMDI IN AREA No. 9

- 2.1 In order to better understand the 2003 contract and the 2013 project, it is worth briefly recalling certain aspects of the *San José* shipwreck for the purpose of completing the account of the facts that led to the conclusion of the contract in 2003.
- 2.2 On 17 June 1631, the *San José* - a 400-tonne war galleon with 32 cannons, first launched on 25 April 1611 in the Guayaquil shipyard, which was the South Sea admiral's ship of the Spanish navy - foundered in the waters of the Gulf of Panama¹³. After running aground on a sandbank near Punta Garachiné, which was not indicated on the on-board nautical charts, part of the ship's hull broke away, leaving another part of the ship adrift and scattering its cargo to the east of Isla del Rey in the Las Perlas Archipelago. Part of the remains that were still floating drifted N-NW, finally sinking in the vicinity of Isla Contadora, Isla Saboga and Isla Chaperá. After various recovery attempts by the Spanish colonial authorities, those remains appear to have been protected by the ocean until the early 21st century.
- 2.3 The officially declared cargo included 1,417 silver bars (weighing 65 pounds each), 416 cases of silverware, precious objects and numerous pieces of eight, all privately owned, as well as 73,436 pieces of eight belonging to the Crown and 27 silver cones (weighing 16 pounds each). When it sank, the *San José* was armed with 28 cannons, all of which were recovered at the time, as was much of the officially recorded cargo, in addition to cargo not included on the ship's manifest. In an official communication to the Crown, it was stated that 400,000 pesos in coins and 267 silver bars with a total value of 1,000 pesos and a total weight of more than 17,000 pounds remained to be recovered.
- 2.4 By means of its addendum, and as we have seen, the 2003 contract granted exclusive rights to IMDI to recover archaeological objects in area No. 9. IMDI carried out various operations in that area and, prior to termination of the contract, requested, by way of an extension, the 2013 project, which is the object of analysis in this report.
- 2.5 As the mission has been asked to "[v]erify compliance by the [...] project Plan, carried out by [IMDI] with the Rules concerning activities directed at underwater cultural heritage" set forth in the Annex to the UNESCO Convention, this report must now identify which of those Rules are applicable to this case and analyse whether IMDI's conduct complied with them.

Applicable regulations

- 2.6 The mission is not in a position to analyse the possible invalidity of the contract in light of Panamanian domestic law given that it was concluded on 25 July 2003, after the incorporation of the provisions of the UNESCO Convention into the national legislation of Panama pursuant to Law No. 32 of 26 March 2003, which was officially published on 2 April of that same year in the *Official Gazette*¹⁴. It falls to the Panamanian public authorities and any actor with legal capacity recognized in Panamanian national law to bring proceedings to

¹³ General Archive of the Indies, Lima 43, R.34. See, in general, Castellero Calvo, A, *Sociedad, economía y cultural material. Historia urbana de Panamá la Vieja*, Panama, Patronato Panamá Viejo, 2006, pp. 673-681; and Pérez-Mallaína Buena, P A, *El hombre frente al Mar. Naufragios en la Carrera de Indias durante los siglos XVI y XVII*, Seville, University of Seville, 1996.

¹⁴ See here the pronouncements of the Supreme Court of Justice of Panama in its (full-court) judgment of 27 July 2009 (*Official Gazette* No. 26,504 of 5 April 2010) or in its (full-court) judgment of 2 February 2012 (*Official Gazette* No. 26,985 of 2 March 2012). From these judgments derives the constitutional doctrine in Panama whereby the law that approves a treaty immediately incorporates its content, with a greater force of law than other laws, and, logically, that content must be complied with throughout the Panamanian legal system.

declare the Contract invalid, if applicable; and only the Panamanian courts have jurisdiction to declare, again if applicable, such invalidity and to evaluate the consequences of the signing of said Contract for the Government of Panama and IMDI.

- 2.7 The mission also considers that it is not its role to evaluate the 2013 Project and the activities of IMDI within the framework of the 2003 contract in relation to the Panamanian legal system. As has been shown by the DNPH resolutions of July and October 2015 (referred to in paragraph 1.12 above), it also falls to the Panamanian authorities and courts to initiate any legal proceedings in that respect.
- 2.8 The benchmark in this report is provided by the Rules contained in the Annex to the 2001 UNESCO Convention¹⁵. Said Rules refer to "Activities directed at underwater cultural heritage", that is, activities "having underwater cultural heritage as their primary object and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage" (article 1.6 of the 2001 Convention).
- 2.9 Both the 2013 Project and the 2003 Contract, which should have complied with Panamanian law in the first place, describe the activities planned therein as "archaeological investigations, excavations and recoveries". These two texts adopt the terminology of and are subject to both Law No. 14 of 1982¹⁶ and the Regulations approved by Resolution No. 6 of 9 April 1997, which regulate underwater archaeological activities throughout the national territory¹⁷. Regardless of whether or not, scientifically and technically, they warrant that classification, it should be recalled here that it is IMDI itself that, since before the contract was concluded, has constantly described its activities as underwater archaeological activities. This is deduced from the Contract, the Project and the reports and documents presented and cited by IMDI in its dealings with the Panamanian authorities.
- 2.10 Similarly, the goods covered by the Contract and the Project constitute underwater cultural heritage in accordance with the 2001 UNESCO Convention. According to the contract, such goods are "metal objects; treasure^[18]; vessels, such as sunken and abandoned ships, barges, skiffs and floating equipment in general, including any cargo found in salvaged vessels or wrecks"¹⁹. These are clearly "traces of human existence" of a "cultural, historic or archaeological nature" which have "been partially or totally under water, periodically or continuously, for at least 100 years", as referred to in article 1.1(a) of the Convention defining underwater cultural heritage. Subparagraph (ii) of said article further specifies the concept by including as an example "vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context".
- 2.11 Thus, the mission considers the activities provided for in the 2003 Contract and the Project to constitute "activities directed at underwater cultural heritage", as referred to in the Convention, and therefore considers the Rules of its Annex to be fully applicable²⁰.
- 2.12 Having determined the applicability of the Rules of the Annex to the Convention (which form an integral part of the Convention and must be interpreted in the light of its articles), the next step is to analyse the compliance of IMDI's conduct with those Rules. For that purpose, together with the detailed study set out in Appendix 9 to this report, the activity of IMDI within

¹⁵ For a detailed analysis of the archaeological standards reflected in the Rules of the Convention, see Maarleveld, T, Guerin, U and Egger, B (eds.), *Manual for Activities Directed at Underwater Cultural Heritage*, Paris, UNESCO, 2013.

¹⁶ *Official Gazette* No. 19,566 of 14 May 1982. Amended by Law 58 of 7 August 2003 (*Official Gazette* No. 24,864 of 12 August 2003).

¹⁷ *Official Gazette* No. 24,265 of 21 March 2001 (hereinafter referred to as "the Regulations").

¹⁸ Which Clause 4 of the contract determines as "money or metals and precious stones".

¹⁹ Clause 1 of the contract.

²⁰ This Mission seriously doubts the applicability to the contract of Cabinet Decree No. 364 of 26 November 1969 (*Official Gazette* No. 16,497 of 2 December 1969), amended by Cabinet Decree No. 397 of 17 December 1970 (*Official Gazette* No. 16,778 of 25 January 1971), which refers to generic maritime salvage operations and would not be applicable, in light of the subsequent legislative developments, to an archaeological excavation and the recovery from the seabed of goods belonging to the historical heritage of Panama.

the framework of the 2013 Project and the 2003 contract will be analysed in relation to the five main obligations to be fulfilled in any activity directed at underwater cultural heritage, pursuant to the Convention and its Annex²¹:

- (1) Respecting the principle of the consideration of *in situ* preservation as the first option before engaging in activities directed at underwater cultural heritage and the principle of least impact (article 2.5 and Rules 1, 3, and 4);
- (2) The prohibition on commercially exploiting underwater cultural heritage (article 2.7 and Rule 2);
- (3) The requirement for those carrying out the activity to have technical and scientific training, also taking into account a proven reputation in the field of underwater archaeology (Rules 10, 22 and 23);
- (4) Compliance with appropriate methodologies prior to and during the activities by designing and implementing an archaeological project plan, incorporating respect for the natural context affected (Rules 9,10, 14, 15, 16 and 29); and
- (5) The requirement to preserve and manage in an ordered manner both the archaeological site and the objects recovered, and to document them (Rules 24, 25, 26, 30, 31, 32, 33 and 34).

2.13 The analysis of the fulfilment of all these obligations took into account, among other documents and sources:

- the texts of the 2003 Contract and the 2013 Project, as well as other resolutions derived from them;
- the documentation and reports presented by IMDI²²;
- information received from the Panamanian authorities, in both document form and verbally; and
- information obtained during the visits to the archaeological materials research and preservation centres of the Panamanian authorities.

In situ inspection of the archaeological area by the mission

2.14 As well as all the documentary information, as mentioned above, the mission had the opportunity to gather additional information through the *in situ* inspection of area No. 9, from 23 to 27 October 2015. The objectives of this inspection were to locate the site attributed by IMDI to the galleon *San José* in said area and to evaluate its current condition based on an investigation of the effects caused by the actions of IMDI at the site. The different areas surveyed in the successive dives are indicated in figure 2.1.

²¹ Henceforth, unless otherwise indicated, the terms "article" and "Rule" refer to the articles and rules of the UNESCO Convention.

²² Together with the 2013 Project, IMDI presented to the Panamanian authorities a series of reports between September 2013 and March 2014.

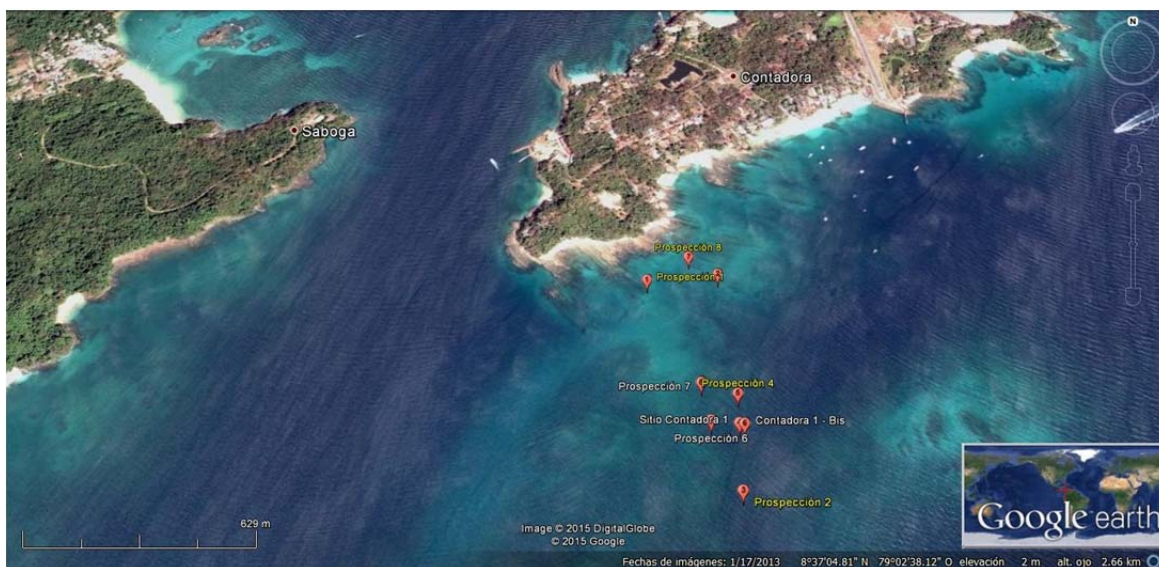


Figure 2.1. Areas surveyed around Isla Contadora during the Mission. The total area covered was approximately 35,700 m². See the spatial distribution of the inspection in Appendix 10.

- 2.15 During the aforementioned period, eight group dives were undertaken at the site, each group being made up of five to seven divers, with a total dive time of 38.8 hours. The dives were undertaken to survey different areas selected based on the geographical coordinates indicated in the IMDI reports, as well as those recorded by the INAC inspector (the anthropologist Roxana Pino). GPS was used to locate the reference points.
- 2.16 The surveys were carried out according to the methods usually used in underwater archaeology: linear searches in parallel formation and circular searches. Considering the underwater visibility and conditions²³, it was decided that there should be a five-metre separation between the divers, in both search methods. On some occasions, one of the divers used a metal detector to complement the visual search. The initial objective of the work was to survey the designated areas in order to gain a general idea of the dispersal of archaeological materials, their nature and the surrounding environment²⁴.
- 2.17 During the initial surveying work, findings of suspected archaeological interest were simply plotted. A more detailed inspection and sample collection was undertaken during subsequent dives, specifically intended for that purpose.

²³ The visibility was variable, with an average of about five metres. The water temperature was approximately 29 degrees Centigrade. The currents were moderate to strong. The sea floor at the site was primarily made up of rocks, with some flat slabs and smaller stones, on a bed of sand.

²⁴ See the spatial distribution of the inspection in Appendix 10.



Figure 2.2. Top left: Contadora 1 site - Piece No. 001. Neck of a ceramic container made from reddish paste. Photo UNESCO-STAB. Rest of images: Similar pieces removed by IMDI from the site attributed to the galleon *San José*. Clockwise: 00101, 00501 and 00328 (IMDI reports).

- 2.18 In two of the areas surveyed, shown in figure 2.1 as Contadora 1 and Contadora 1-Bis, the mission found ceramic fragments of the same type as those found by IMDI, making it possible to verify that the site that IMDI attributed to the galleon *San José* had been located (figure 2.2). Since, based purely on these types of artefacts, it was not possible to ascertain whether it was the wreck of the galleon *San José*, it was decided to refer to the site as Contadora 1.
- 2.19 The predominant materials consist of fragments of ceramic containers or jars made from a reddish paste, some of considerable size (figure 2.3). They might be parts of so-called "Peruvian jars", a type of recipient frequently used in Ibero-American trade during the colonial era²⁵. There were also a few ferrous concretions, as well as some boulders, which could have been used as ballast in a vessel.

²⁵ See, among others, James, S: "A Reassessment of the Chronological and Typological Framework of the Spanish Olive Jar", in *Historical Archaeology*, vol. 22, No. 1, 1988, pp. 43-66; Marken, M W, *Pottery from Spanish shipwrecks 1500-1800*, Gainesville, University Press of Florida, 1994; or Mena García, C: "Nuevos datos sobre bastimentos y envases en armadas y flotas de la carrera", in *Revista de Indias*, vol. LXIV, No. 231, 2004, pp. 447-484.



Figure 2.3. Contadora 1 site - Fragments of ceramic recipients. Scale of the upper images: 30 cm. Bottom-right photo: Boulder that could have been part of the ballast of a vessel. Scale: 5 cm. Photos UNESCO-STAB.

Analysis of IMDI's conduct in light of all the information gathered by the mission

- 2.20 Taking into account all the information compiled - both the documentary part and the information gathered by the mission at the site -, IMDI's conduct in area No. 9 will now be analysed in light of the obligations mentioned in paragraph 2.12 of this report.

Respecting *in situ* preservation as the first option to be considered

- 2.21 One of the aspects to be highlighted is the fact that not only has there been a failure to give adequate justification for excavating the reference site, thus respecting the consideration of the principle of *in situ* preservation as the first option, but the work was also geared towards commercial exploitation.
- 2.22 In the 2001 Convention, the consideration of *in situ* conservation is recommended unless there are reasons that justify interventions, such as excavation or removal of artefacts (article 2.5 and Rule 1)²⁶. As stated in the *Manual for Activities directed at Underwater Cultural*

²⁶ There seems to be a grammatical divergence between the authentic versions of the text of the Convention and Annex in Spanish and French, on the one hand, and English on the other hand. While the first two versions talk of "opción prioritaria" ("option prioritaire"), the English text uses the term "first option". As established by the general rule for interpreting treaties authenticated in different languages - as codified in article 33, paragraphs 3 and 4 of the Vienna Convention on the Law of Treaties of 1969 -, "[t]he terms of a treaty are presumed to have the same meaning in each authentic text" and, in the event of a discrepancy in meaning (which we do not consider to be the case here), "the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted". Interpreted contextually, the UNESCO Convention contains in its Annex archaeological action protocols that give meaning to the concept of "*in situ* preservation as the first option" or "*opción prioritaria*", which is simply to understand

Heritage, “[t]he consideration given to preservation *in situ* by the Convention and its Annex is based on the recognition of the importance of the interplay between the site, its story and its context”²⁷. In the 2013 Project, it is indicated that IMDI “has undertaken professional historical studies and 'in situ' investigations that justify activities to salvage, recover, protect, preserve and restore the goods contained in the wreck of the galleon *San José*...”²⁸. However, it is not made clear which studies and investigations justify the salvage.

2.23 It is also stated that “wreck salvage operations are fundamental to preserve their historical and commercial value, as the marine environment tends to destroy them and make them disappear over time”²⁹, and reference is made to “their continuous deterioration in an environment which is destructive for them”³⁰. No-where in the documentation available is proof of that deterioration or destruction presented for the case of the *San José*. Furthermore, it is known that large amounts of remains of shipwrecks and/or their cargoes have survived for hundreds or even thousands of years in the marine environment. Therefore, to generically assume that the marine environment tends to destroy and eradicate wrecks with the passage of time is not correct and certainly does not justify the excavation and recovery of the galleon *San Jose*.

The prohibition on the commercial exploitation of underwater cultural heritage

2.24 For many years attention has been drawn to the fact that there is a fundamental incompatibility between the interests of a commercial enterprise and the preservation of cultural heritage, in this case the underwater cultural heritage. This is due to the tendency of commercial enterprises to focus their activity on the extraction of objects that can be sold, while archaeology and heritage preservation does not differentiate between those objects with commercial value and those that do not have such value. The respective interests are very different and so is the methodology, as discussed in this and other sections.

2.25 The archaeological context of a site is formed by the association of the remains with each other and with their environment. Accordingly, it is an essential source of information, similar to what happens in a forensic case where the position of each element provides evidence. The commercial exploitation of underwater cultural heritage alters that context, given that the careful recording and preservation of all archaeological remains means a waste of time and money for the company and is contrary to the interests of investors. This issue is, from a scientific point of view, one of the main negative consequences of the commercial exploitation of heritage.

2.26 In addition, only the preservation of the integrity of the heritage allows the complete use of its benefits such as gaining knowledge, strengthening the cultural identity or the simple

that "activities directed at underwater cultural heritage shall be authorized in a manner consistent with the protection of that heritage" and, subject to that requirement, "may be authorized for the purpose of making a significant contribution to protection or knowledge or enhancement of underwater cultural heritage" (Rule 1); those activities "shall not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project" (Rule 3); they "must use non-destructive techniques and survey methods in preference to recovery of objects" and "[i]f excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains" (Rule 4). Finally, activities directed at underwater cultural heritage "shall avoid the unnecessary disturbance of human remains or venerated sites" (Rule 5). Considering, also, that the "survey, excavation and protection of underwater cultural heritage necessitate the availability and application of special scientific methods and the use of suitable techniques and equipment as well as a high degree of professional specialization, all of which indicate a need for uniform governing criteria" (Preamble to the Convention), it should be understood that, as a first option/*opción prioritaria*, preference must be given to acting scientifically on the heritage in the place where it is found, respecting its natural context (article 1 and Rule 14). Only in cases in which, scientifically, removal is considered appropriate (better study or danger at the site), would *in situ* preservation cease to be the "first" or "priority" option.

²⁷ Maarleveld *et al.*, *Manual for Activities Directed at Underwater Cultural Heritage*, above No. 15, p. 20.

²⁸ 2013 Project; p. 6.

²⁹ 2013 Project; p. 8.

³⁰ 2013 Project; p. 46.

enjoyment. The collection of artefacts and evidences is more significant than the sum of its individual components. However, commercial exploitation leads to the dispersion of the collection. This is another negative impacting issue, in this case not only for science but for the general public as a whole.

- 2.27 For the above reasons, Article 2.7 of the Convention stipulates that "[u]nderwater cultural heritage shall not be commercially exploited" and Rule 2 considers said exploitation "fundamentally incompatible" with the preservation and proper management of underwater cultural heritage. However, clause 5 of the Contract clearly shows its commercial nature, establishing a compensation arrangement that simply assigns an economic value to goods covered by the Contract, focusing on their "commercial value" and systematically disregarding their potential historical, cultural and archaeological value.
- 2.28 The intention to trade the objects extracted from the archaeological site by IMDI makes it impossible to valorize the cultural heritage site as a universal public good and for public enjoyment, as objects will be dispersed in numerous private collections.
- 2.29 In the contract, IMDI is granted exclusive rights to explore and salvage or recover objects in area No. 9. Clause 5 of the contract provides for the acquisition of such goods by IMDI in exchange for a certain percentage of their net market value, determined by means of a valuation. Hence, a desire to reduce the archaeological objects, particularly the precious materials, to their mere commercial value can be deduced, with the resulting transformation and the disregard for their value as Panamanian and world cultural heritage. In addition to the details described above, one need simply observe the different treatment reserved for the 'precious' materials compared with the rest of the archaeological material³¹. For the scientific community, the fact that some goods from archaeological sites have had commercial value in the past -- even if from their creation on, such as with coins or ingots of precious metals -- does not affect or reduce their historical and heritage value at present, nor does it mean they should be traded. In fact the codes of ethics and professional practice for the field of archaeology explicitly state that artefacts should not be the subject of commercial transactions and / or that archaeologists must act in accordance with the provisions of the UNESCO's 2001 Convention and the ICOMOS Sofia Charter³².
- 2.30 As borne out by subsequent developments, the various members of IMDI planned to offset their costs and share profits through the valuation and distribution of the objects recovered (obviously, the precious materials, particularly, if not exclusively, the silver coins recovered). This is clearly deduced from various well-documented occurrences:
- the holding and seizure of nearly three thousand (3,000) silver coins and uncertainty about their fate while in the possession of the of the directors of IMDI;
 - the confiscation of 94 silver coins by staff of the United States customs and immigration authorities and the claim by the detained person, who had been contracted by IMDI, that said coins had been given to him as payment for his work as captain of one of the ships that removed the coins from area No. 9.

³¹ 2013 Project, pp. 32 and 33.

³² Along with the Charter of Sofia (http://www.icomos.org/charters/underwater_e.pdf), see for example the code of ethics of the European Association of Archaeologists (http://eaa.org/EAA_Code_of_Practice.pdf) the Registry of Professional Archaeologists of the US (rpanet.org) or of the Australasian Institute of Maritime Archaeology (www.aima-underwater.org.au/code-of-ethics).

2.31 This is also clear when accessing the IMDI website and Facebook page³³, which refer to, the company's intention to trade objects removed from the archaeological site, which it assumes is the spot where the *San José* finally sank..

2.32 In short, this mission has no doubt that the 2013 project - and the 2003 contract from which it derives - is a simple operation to remove objects (a "salvage" operation, as it is constantly referred to by IMDI³⁴) disguised as a supposedly archaeological project, with the intention of commercially exploiting the 'precious' objects removed from the seabed in the Las Perlas Archipelago.

The lack of technical and scientific competence of the IMDI team

2.33 Another important aspect that was not complied with in the work carried out by IMDI concerns the competence



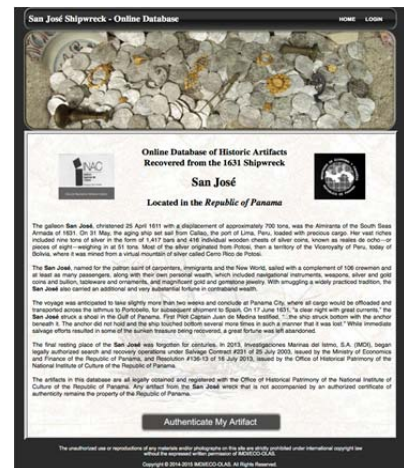
Figure 2.4. Example of one of the ceramic objects recovered by IMDI from the site attributed to the galleon *San José*, which has not received adequate conservation treatment. Note the abundant presence of buildups of biotic origin, known as biofouling, which are still on the surface of the materials © Photos UNESCO-STAB.

and qualifications of the personnel (Section VII of the Rules of the Annex to the 2001 Convention). Rule 22 states that “[a]ctivities directed at underwater cultural heritage shall only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologist with scientific competence appropriate to the project”.

2.34 The person in charge of the project, lacks these credentials (he is not an archaeologist and does not have experience in underwater archaeology), while the co-director of the project, is an archaeologist and has taken part in wreck salvage activities. In any case, however, the Panamanian authorities have no evidence of the continued presence of either of them at the archaeological site in area No. 9, nor have their signatures been seen in the on-board work log books of the IMDI vessel in that area.

2.35 Other members of the team have not demonstrated that they have the training and competence required for a project of this nature either (see Appendix 9). An example of this is that at the Isla Contadora laboratory set up by IMDI, the archaeological heritage recovered from the site has not been properly preserved, particularly those objects that have not been of commercial interest to IMDI, such as ceramics (figure 2.4). This is not consistent with what was stated in the 2013

project, which states that the archaeologist “will be in charge of performing the excavations and extracting the goods, whether on land or under water. Much of his on-land activity will be devoted to supervising the conservation process to ensure that each historical object is



Screenshot of the IMDI website to "authenticate" objects removed from the archaeological site.

³³ These two electronic resources can be consulted at <<http://www.imdionline.com/home.html>> and <<https://www.facebook.com/EICazadorCollectionInc/?fref=ts>>, respectively. Accessed in November 2015.

³⁴ It should not be forgotten that the IMDI contract, as well as IMDI's continual claims, are based on Cabinet Decree No. 364 of 26 November 1969 (*Official Gazette* No. 16,497 of 2 December 1969), amended by Cabinet Decree No. 397 of 17 December 1970 (*Official Gazette* No. 16,778 of 25 January 1971), which refers to generic maritime salvage operations and might not be applicable, in light of the subsequent legislative developments, to an archaeological excavation.

treated with appropriate techniques so that, through its restoration and/or conservation, it recovers the majority of its original attributes”³⁵.

The use of an inappropriate methodology

- 2.36 Added to this failure by IMDI, to comply with the obligations of considering as first option the protection *in situ* of the archaeological site and its objects, of not commercially exploiting them and of having personnel qualified to perform their respective roles – and perhaps as a consequence of such non-compliance - the methodologies used by IMDI at said site did not comply with the requirements of the Convention and the Rules set out in its Annex either.



Figure 2.5.a. Top: The Blue Water Rose boat used by IMDI. The propeller deflectors used in the excavation of the site attributed to the *San José* wreck can be seen on the stern. © UNESCO



Figure 2.5.b. Right: Aerial view showing the circular depressions left in the seabed after the use by IMDI of the propeller deflectors, which produce powerful jets of water. © UNESCO

- 2.37 Rules 3 and 4, as well as part of Rule 16, state that the impact on the site should be limited. The IMDI project states that “all rescue and salvage activities will be performed by IMDI in accordance with the strictest environmental protection procedures”³⁶, and it is added that the work team includes an environmental consultant (Dr Peter J Barile), who “is the professional who advises the project on everything concerning care and preservation of the environment, in order to eliminate or reduce to a minimum any possibility of environmental damage that could be caused by the recovery and salvage activities”³⁷. However, the excavation method used by IMDI³⁸, consisting of generating powerful jets of water using propeller deflectors that remove sediment, thus 'excavating' a site, have caused considerable damage to both the archaeological heritage and its natural environment (Figures 2.5.a and b).
- 2.38 Far from what is claimed in the Project - that the effect of the deflectors “is like that of the bristles of a paintbrush”³⁹-, the propeller deflectors cause the shifting and/or destruction of

³⁵ 2013 Project; p. 21.

³⁶ 2013 Project; p. 7.

³⁷ 2013 Project; p. 23.

³⁸ 2013 Project; p. 28.

³⁹ 2013 Project; p. 38.

small and light elements. The internationally accepted standards for an archaeological excavation, whether on land or under water, require the use of techniques that make it possible to control the sediment removal rate and discover any remains in a careful manner, in order to be able to document their original position before extracting them, if necessary, and preserving their physical integrity. Said standards are fundamental in general and underwater archaeology and have been applied for several years, including in Latin America⁴⁰.

2.39 Moreover, due to the excavation technique used by IMDI, the archaeological survey methodology (referred to in Rule 16) was not carried out according to current standards of professional archaeological practice. One of the most serious failings is the lack of spatial records of the excavation context with regard to the individual origin of each artefact, which is a fundamental procedure in any archaeological excavation. None of the reports consulted presents said information according to archaeological criteria; only the geographical coordinates of the dives undertaken are provided⁴¹. Moreover, the reports contain no diagrams of the site to a scale of 1:5 or 1:10, which the Project indicates would be done⁴². In addition, from the spatial distribution of the objects found during the mission, it is clear that they have been moved from their primary context to a secondary (or even tertiary) context, thus altering the archaeological context. That is due to the highly destructive excavation method used by IMDI.

2.40 Thus, it is apparent that IMDI removed pieces without performing the necessary steps and without specifying their exact origin and location. Consequently, the materials attributed by IMDI to the galleon *San José* are largely made up of elements that correspond to the Ibero-American context at the time the galleon was wrecked, and which could indeed have come from said wreck (Figure 2.6), but contain also other elements that probably date from a later period and could not, therefore, have come from the *San José*. Among the latter elements, we would like to mention is piece 00415, which consists of an iron fitting that has two threaded bolts (Figure 2.7.a) and the through bolt catalogued as piece 00414 (figure 2.7.b), which appears to be threaded at one of its ends at least.

2.41 Until well into the 18th century, threaded iron fittings were made by hand. These bolts might be occasionally found joining pieces of carpentry in the cabins or in lightweight bulkheads of ships, however, threaded bolts only began to be used in shipbuilding after the advent of the mechanical lathe towards the end of the 18th century, which made it possible to perform combined rotation and feed movements to work metals in



Figure 2.6. Front and back of a hammered silver Spanish coin (piece No. 538-3). To the naked eye, details such as the year of issue and the mintmark cannot be seen, however the general design corresponds to the period in which the galleon *San José* floundered.

⁴⁰ In this respect, see Luna Erreguerena, P, *La arqueología subacuática*, professional thesis, National School of Anthropology and History - National Institute of Anthropology and History. Mexico City, 1982; Elkin, D: "Arqueología subacuática en el Instituto Nacional de Antropología", in *Noticias de Antropología y Arqueología. Electronic journal for scientific dissemination*, No. 21, 1998; or Elkin, D: "Water: A new field in Argentinian Archaeology", in C V Ruppé and J F Barstad (eds.), *International Handbook of Underwater Archaeology*, New York, Kluwer Academic-Plenum Publishers, 2002, pp. 313-332.

⁴¹ See, in this respect, the IMDI reports of September 2013, November 2013, December 2013, January 2014, February 2014 and March 2014.

⁴² 2013 Project; p. 27.

this way⁴³. In other words, this type of threaded bolt came after the European industrial revolution, and its use became more widespread from the nineteenth century.



Figure 2.7.a. Piece 00415 - IMDI, report of November 2014.



Figure 2.7.b. Piece 00414. IMDI, report of November 2014.

A direct inspection of these pieces would need to be undertaken, but if the threads are of the industrial type, they could not have come from the galleon *San José* (or any other vessel from that period).

2.42 The raw materials used for some of the artefacts also provide a chronological indicator. From the first centuries of the Christian Era, up to and including the seventeenth century, iron was the metal conventionally used in European shipbuilding to assemble the structural elements of the ship, while bronze and other copper alloys were not used until the eighteenth century. This fact is not only reflected in various treatises on shipbuilding, but is also solidly supported by archaeological records. In the wreck of the English carrack *Mary Rose* (1511-1545), at the site of the Spanish shipwreck at Emanuel Point (mid-sixteenth century), in the Dutch sailing ship *Hoorn* which was destroyed by fire in 1615, in the sixteenth-century Basque whaling ship which floundered in Red Bay, Canada, or in the British war frigate *HMS Dartmouth* (1655-1690), to name but a few, no fastening elements made of bronze or a similar alloy were found, and the evidence indicates that the only metal used for that purpose was iron⁴⁴.

2.43 Hence, the threaded pieces mentioned above (00415 and 00414), as well as other iron fittings and fastening elements attributed to the galleon *San José*, which appear to have been made of bronze or some other copper



Figure 2.8. Piece 00051, attributed to the galleon *San José*.

⁴³ McCarthy, M, *Ships' Fastenings - From Sewn Boat to Steamship*, College Station TX, Texas A&M University Press, 2005.

⁴⁴ See, among others, Steffy, J R, *Wooden ship building and the interpretation of shipwrecks*, College Station TX, Texas A&M University Press, 1994; Smith, R C, Spirek, J, Bratten, J and Scott-Ireton, D, *The Emanuel Point Ship – Archaeological Investigations 1992-1995*, Pensacola, Institute of Archaeology, Florida Bureau of Archaeological Research, 1999; Smith, R C, Bratten, J, Cozzi, J and Plaskett, K, *The Emanuel Point Ship – Archaeological Investigations 1997-1998*, Pensacola, Institute of Archaeology, University of West Florida and Florida Bureau of Archaeological Research, 1999; Murray, C, Vainstrib, D, Manders, M and Bastida, R, *Tras la estela del Hoorn. Arqueología de un naufragio holandés en la Patagonia*, Buenos Aires, Vázquez Mazzini Editores, 2006; Grenier, R, Bernier, M-A and Stevens, W (eds.), *The Underwater Archaeology of Red Bay - Basque Shipbuilding and Whaling in the 16th Century*, Parks Canada, 2007; or Mardsen, P (ed.), "Mary Rose: your noblest shippe. Anatomy of a Tudor warship", in *Journal of Maritime Archaeology*, vol. 2, 2009, pp. 1-433.

alloy due to the greenish-blue colour which can be seen in the photographs⁴⁵ (such as artefacts 00382, 00413 and 00544 illustrated in the IMDI reports of November 2013 and March 2014), were probably produced in or after the second half of the eighteenth century.

- 2.44 The raw material used for the cladding panels of hulls to protect them from boring organisms can also be used for diagnostic purposes. At the start of the 16th century, the Spanish Royal Navy introduced the use of lead sheeting to protect the hull⁴⁶, and it is known that other European vessels from that and subsequent periods also had that type of covering. Well into the second half of the 18th century, a significant change came about in the protective covering of hulls in the context of sailing in Western Europe: copper sheets started to be used. The British Royal Navy experimented with copper sheathing on the frigate *HMS Alarm* while the *Santísima Trinidad*, the famous flagship of the Spanish navy, was sheathed in copper sheeting in the 1780s⁴⁷. The relevant point to be highlighted here is that piece 00051 attributed to the galleon *San José* - a metal plate that appears to be made from copper or a copper alloy (figure 2.8) - could be from the sheathing of a hull, given its thinness and the presence of holes that could correspond to the position of tacks. We have not been able to see the original piece and this interpretation cannot be corroborated from the photograph, but if it is a cladding panel made of copper or an alloy of that metal, it must belong to a later chronological period than the *San José* and, consequently, could not come from that wreck.
- 2.45 In addition to all the points set out in the preceding paragraphs, it should be noted that during the fieldwork carried out by the mission no coins or other elements were found that would make it possible to define the date of the site that IMDI attributes to the *San José* wreck in the vicinity of Isla Contadora.
- 2.46 All the elements analysed highlight the general non-conformity of the work of IMDI with the archaeological protocols commonly accepted by the scientific community and set out in the Annex to the UNESCO Convention.
- 2.47 In conclusion, the 2013 Project proposed by IMDI to the National Directorate of Historical Heritage (DNPH) of the National Institute of Culture of Panama (INAC) does not comply with the Rules of the Annex to the 2001 UNESCO Convention and that the activities undertaken by IMDI could have affected more than one sunken wreck in the area of the Pearl Islands.

⁴⁵ The analyses of the raw materials are based on the corresponding photographs. It has not been possible to access them as they have remained in the possession of IMDI.

⁴⁶ McCarthy, *Ships' Fastenings...*, above, No. 43, p. 102. See also Staniforth, M, "The Introduction and Use of Cooper Sheathing. A History", in *Bulletin of the Australian Institute of Maritime Archaeology*, vol. 9, 1985, pp. 21-46.

⁴⁷ On this subject, see, among others, Knight, R J B, "Early attempts at lead and copper sheathing", in *Mariner's Mirror*, vol. 62, 1976, pp. 292-294; Cock, R: "The finest invention in the world': The Royal Navy's early trials of copper sheathing, 1708-1770", in *Mariner's Mirror*, vol. 87, 2001, pp. 446-59; or Amado, P, *Santísima Trinidad, orgullo de la Armada española*, in *Todo a Babor* (available at <<http://www.todoababor.es/>>, accessed in July 2015).

3 CONCLUSIONS

- 3.1 Following its preparatory visit in July 2015 and its inspection visit in October 2015, the mission of the Scientific and Technical Advisory Body of the 2001 UNESCO Convention has been able to evaluate the 2013 Project presented by IMDI and its conformity with the Rules annexed to the 2001 UNESCO Convention.
- 3.2 The mission has had access to the necessary supporting documentation, has been able to gather the opinions and testimonies of experts and witnesses in the area, has had access to relevant photographic materials, has also had the opportunity to examine certain pieces recovered according to IMDI from area No. 9 and has inspected *in situ* more than 35,000 m² of said area during almost 40 hours of scientific diving. The mission had the support and assistance of the Panamanian authorities.
- 3.3 It has remained abreast of the various news and developments relating to the project and the mission. . In particular, the mission takes note of Resolution No. 144-2015/DNPH of 24 July 2015, pursuant to which the competent authority revoked its prior Resolution No. 136-13 of 16 July 2013, which authorized the 2013 project, on the grounds that it contravened Panamanian national legislation, and ordered an audit of the execution of the 2003 Contract. The mission knows that said decision, against which an internal administrative appeal can be lodged, may be contested before the Panamanian administrative courts.
- 3.4 It is not the role of the mission, or the Scientific and Technical Advisory Body, to intervene in those administrative and judicial proceedings in Panama or to determine whether the 2013 Project and the 2003 contract are compatible with the Panamanian legal system. Rather, the role of the mission is to evaluate the compliance of the 2013 Project and the 2003 contract with the Rules of the Annex to the 2001 UNESCO Convention.
- 3.5 Said Convention came into force, for Panama too, on 2 January 2009. Since that date, its text - including the Annex, which, according to Article 33 of the Convention, forms an integral part thereof - has formed part of Panama's domestic legal system and must be complied with by all legal practitioners in Panama.
- 3.6 The evaluation carried out by the mission in light of all the documents, the information gathered from experts and witnesses, the inspection of the objects and the visit to the archaeological site where supposedly part of the galleon *San José* sank reveals general non-compliance by IMDI with the Rules of the Convention and the general principles thereof.
- 3.7 IMDI has not adequately justified why it did not opt for the *in situ* protection and preservation of the underwater cultural heritage located in area No. 9. In fact, the intention of commercial exploitation, which is clear in both the 2003 Contract and the 2013 Project, precludes *in situ* protection, as it would prevent commercial exploitation which runs contrary to the Convention and its annexed Rules. Furthermore, IMDI has not given a logical explanation for why it proceeded with a non-systematic classification of the huge quantity of pieces removed from the seabed, without taking into account their cultural, artistic or archaeological value.
- 3.8 IMDI has also failed to comply with the rule contained in the Convention and the Rules that underwater cultural heritage must not be commercially exploited. Reducing the recovered pieces (notably only the numerous coins found) to a mere monetary value and using them to pay various members of IMDI for their work, as well as putting them into commercial circulation through websites, clearly demonstrates the company's intention to treat said pieces as a commodity. The 2003 Contract from which the 2013 Project examined by the mission derives, confirms this intention as it is basically a "salvage" or "recovery" contract, which is incompatible with the protection of underwater cultural heritage, as not executed with the utmost protection of said heritage, which did not occur in the case in point.

- 3.9 For implementation of IMDI's action plan in area No. 9, the underwater activities carried out in that area and the subsequent conservation of the pieces removed, it is clear, too, that IMDI failed to employ appropriate scientific and technical personnel, as required by the Rules of the Convention, at each stage of the Project.
- 3.10 The methodology used by IMDI in area No. 9 is not consistent with a scientific archaeological project. None of the IMDI reports consulted presents clear information according to appropriate, adjusted scientific criteria. Techniques have been used that are especially harmful, not only to the underwater cultural heritage but also to its context and natural environment. In its underwater inspection of the area, the mission noted the consequences of those techniques and their impact on the site and its natural environment. Indeed, irremediable disruption of the archaeological context can be clearly observed, making it impossible to accurately affirm the origin and contextualization of the objects removed from the site.
- 3.11 It should also be noted that from the study and conservation of the pieces removed by IMDI from area No. 9 (as claimed by the company) it cannot be concluded, with the same conviction expressed by IMDI, that all those pieces come from the remains of the galleon *San José*. The collection of objects extracted by IMDI includes both elements that correspond to the Ibero-American context at the time the galleon was wrecked and other elements that probably date from a later time.
- 3.12 In view of the above, the mission concludes that the 2013 Project and the actions of IMDI in area No. 9 do not comply with the requirements of the Rules of the 2001 UNESCO Convention.
- 3.13 Together with the recommendations requested by the Panamanian government, which are set out in Part 4 of this report, the mission strongly advises the Government of Panama, before approving the 2013 Project or any other similar project, to carefully consider both the general principles of the 2001 UNESCO Convention, which Panama respects and implements, and the scientific and technical requirements set forth in the Rules of its Annex. For that, Panama is informed that it can rely on the help and counsel of the other of the States Parties to the Convention and the Convention's Scientific and Technical Advisory Body.

4 RECOMMENDATIONS

- 4.1 The request made by the National Directorate of INAC on 1 April 2015 is reproduced in subparagraph 1.6 of this report. In point 2 of said request, the mission was asked to recommend "improvements to implementation of the Convention". In response to that request from the Government of Panama, below is a series of general recommendations, some of which should be implemented urgently.
- 4.2 In relation to the legal and administrative issues, the mission advises the Panamanian government as follows:
- (1) strive to ensure that the degree of protection of cultural heritage in Panama is uniform on land and under water, always in line with the international commitments assumed by Panama, particularly the 2001 UNESCO Convention;
 - (2) where necessary, bring its internal legislation in line with the mandate of the Convention with regard to its principles and general rules, and the Rules contained in its Annex;
 - (3) if necessary, adapt its internal legislation so that an archaeological impact study must be prepared for any actions undertaken in the aquatic environment (fishing, mining, engineering works, etc.), taking into account corrective measures where appropriate;
 - (4) meanwhile, ensure that any activity directed at underwater cultural heritage in waters under Panamanian sovereignty or jurisdiction strictly complies with the principles of the Convention and the Rules of its Annex, paying special attention to *in situ* protection as a first option to be considered and avoiding, in any case, any activity that involves the commercial exploitation of underwater cultural heritage found in Panamanian territory.
- 4.3 In relation to the organizational issues, the mission recommends to the Panamanian government to provide itself with one or more specialists (depending on the country's material and human resources) in underwater archaeology, to be assigned to the authority responsible for cultural heritage, whose main tasks will be to:
- prepare reports on the suitability of projects presented to the government;
 - inspect work undertaken according to the permits granted;
 - draw up an archaeological risk map for public and private works;
 - evaluate the corrective measures proposed in archaeological impact reports;
 - advise the government in relation to meetings and international commitments within the framework of the UNESCO Convention, thus building its capacity;
 - actively promote underwater archaeology and the protection and dissemination of underwater cultural heritage.
- 4.4 The mission also recommends carrying out an example research, study and valorization project on an underwater archaeological site within the framework of the 2001 Convention, with the cooperation of UNESCO and, as far as possible, with other States Parties to the Convention.
- 4.5 In relation to the training and capacity-building issues, and given the current absence of any official courses in underwater archaeology in Panama, the mission recommends that the Government of Panama accept the offers that the members of the Scientific and Technical Advisory Body - as well as other internationally renowned specialists - can make to it at two levels of education:
- (1) For the future expert employed by the Panamanian authorities:

- participation in specialized master's courses available on UNESCO's UNITWIN network⁴⁸;
 - participation in courses, conferences and activities on the ground organized by UNESCO, especially in the GRULAC region⁴⁹.
- (2) For the creation of a work team and, as it is obvious that more than one person is needed to carry out complex actions, it would be desirable to form a specialized working group, employed by the Panamanian authorities, that could act on the ground as and when required. For that, the Panamanian government should:
- verify, if necessary with the help of the Scientific and Technical Advisory Body, the curricula vitae and prior experience of those persons in the field of underwater archaeology to ensure that they meet the archaeological standards adopted by the international scientific community;
 - facilitate the participation of those persons undertaking courses held in the region;
 - request UNESCO to organize a training course in Panama;
 - facilitate the dissemination role of the aforementioned specialist in relation to all these training opportunities.

4.6 In relation to the issues concerning dissemination and raising the awareness of stakeholders interested in the protection of underwater cultural heritage, the mission advises the Panamanian government to:

- (1) promote the idea that underwater cultural heritage is a public good that is a legacy of humanity and that the population can contribute to its protection, on the understanding that, in order to achieve that, society must become aware of the value of said heritage.
- (2) Consequently, carry out an outreach programme to raise awareness of the work carried out and the results obtained with quality and scientific rigour, is needed. In this respect, it should:
 - organize a series of lectures;
 - communicate information in the media;
 - establish a network of contributors along the coast;
 - organize a simple touring exhibition composed of panels explaining underwater cultural heritage in Panama; and
 - where possible, hold an exhibition about a given archaeological site (see following point about the *San José*).

4.7 In addition, in the aforementioned INAC request, the mission was asked to provide the competent Panamanian authorities with "guidelines for the establishment of a management programme for the preservation of the *San José* Galleon wreck and the cultural property recovered or that may be recovered from it". The Panamanian government has made significant efforts in the case of the galleon *San José*, which need to be expanded, making it possible to bring about a change of direction in relation to this field. It is unquestionable that, to that end, there are several conditions that should be taken into account. Among others, the following conditions should be highlighted:

- (1) The actions carried out to date by IMDI have caused the destruction of an archaeological site and loss of its value as a historical record;

⁴⁸ The option is proposed for this specialist to attend the course due to commence at the University of Cadiz (Spain) in October 2016, which is designed to train this type of specialist.

⁴⁹ One of these training courses will be held in Cuba throughout May 2016.

- (2) While that, in itself, is a problem, it can be used as an opportunity to demonstrate the need to preserve heritage;
- (3) The position of the site, the manner in which the shipwreck occurred, the salvage activities undertaken from the seventeenth century onwards and, especially, the disturbance caused by IMDI, do not make it cost-effective to carry out further archaeological actions on the site;
- (4) The Panamanian government has a large amount of material and information in its possession with which it can put on an exhibition (objects recovered, archival documents, graphic documentation gathered by the UNESCO mission, etc.).

4.8 For those reasons, the mission proposes organizing an exhibition accompanied by the publication of a catalogue and a media awareness campaign, addressing the following basic ideas:

(1) Content of the exhibition:

- the historical context at the time of the shipwreck, the ship's route,
- the cargo, the royal property on board, the private property and contraband on board,
- the circumstances of the sinking and recovery actions,
- Isla Contadora/the Pearl Islands: archaeological and natural heritage,
- the *San José*: part of our mutilated history (the destruction of the historical record),
- what might we have known? Consequences of the destruction;

(2) Design a catalogue that makes it possible to undertake and publish a historical research project and present an inventory of the main objects recovered; and

On that occasion, implement a media awareness campaign to show the change of direction of Panama's policy in this field and secure the support of the population in protecting this heritage.



United Nations
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The Protection of
the Underwater Cultural
Heritage

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