



Preventive International Legal Protection Against the Looting of Underwater Cultural Heritage

International Legal Protection (Case Study of the Looting of the Merchant Ship Fort Royal 1 in the Mediterranean Sea)

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Article	Abstract
Keywords: Protection, Looting, Heritage	<i>Case of looting of goods in the trading ship Fort Royal 1 in the Mediterranean Sea located on the continental shelf is a violation of international legal protection of Underwater Cultural Heritage. The looting violates provisions of the 2001 UNESCO Convention. Looting can result in the loss of human cultural heritage in the past. The purpose of this study is to identify the protection of underwater cultural heritage according to international law as well as the responsibility of the state due to the looting of Underwater Cultural Heritage. The research method used is normative legal research using legislation approach, case approach, and conceptual approach. The existence of cases of looting of goods in the trading ship Fort Royal 1 in the Mediterranean Sea proves that the lack of strict safeguards and strict rules regarding the protection of Underwater Cultural Heritage. France as a state party is still in the process of investigating the search for looters and looted goods. France as a state party must certainly take responsibility for the looting that occurred, namely by way of restitution and satisfaction.</i>

INTRODUCTION

Cultural heritage which is a historical relic of the past can be used as a historical object in the future, because cultural heritage has historical values attached to the object. (Central European University n.d.) Cultural heritage can be defined as the word 'cagar' which implies that something has a value or quality that is worthy of protection so that it can be passed on to future generations, then the word 'culture' refers to something related to humans, then finally the word 'underwater' implies something that is or at least is under water. (Dromgoole 2013) Protection of underwater cultural

heritage has been enacted in the UNESCO Convention on the Protection of Underwater Cultural Heritage 2001 or hereinafter referred to as the UNESCO Convention 2001. Previously, regulations regarding the protection of ancient and historical objects were regulated in the United Nations Convention on the Law of the Sea or UNCLOS 1982, namely in Article 149 which reads "*All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.*" (If interpreted: "All ancient objects and those of historical value found in the Area must be preserved or used for the benefit of mankind as a whole with special attention to the rights that are prioritized by the State of origin or the State of cultural origin or the State of origin and origin of the archaeological remains."). However, the underwater cultural heritage regulated in Article 149 of UNCLOS 1982 only concerns areas within the boundaries of national jurisdiction, which implies that if there is an underwater cultural heritage found in the national jurisdiction area, the national legal regulations that apply are in accordance with the international legal regime. (Fakhriah and Afriansyah 2022) The rules regarding the protection of underwater cultural heritage in UNCLOS 1982 are further stated in Article 303 paragraph (1) and paragraph (2) which reads (1) "*States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose*" (If interpreted: (1) States have the duty to protect archaeological objects and historical objects found at sea and must cooperate for this purpose) (2) "*In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article*" (If interpreted: (2) "In order to control the circulation of such objects, the Coastal State may, in applying article 33, presume that the removal of such objects from the seabed in the area referred to in that article, without the consent of the Coastal State concerned would constitute a violation within its territory or territorial sea, of the laws and regulations referred to in that article" (If interpreted: (2) "In order to control the circulation of such objects, the Coastal State may, in applying article 33, presume that the removal of such objects from the seabed in the area referred to in that article, without the consent of the Coastal State concerned would constitute a violation within its territory or territorial sea, of the laws and regulations referred to in that article" (as intended in the article.) Article 303 paragraph (1) of UNCLOS 1982 explains that the state has an obligation to protect archaeological objects and objects of historical value found underwater. The state referred to in this article is a state that has agreed to be bound by UNCLOS 1982. Article 303 paragraph (2) of UNCLOS 1982 explains that if there is a transfer of underwater cultural heritage from the additional zone without the permission of the coastal state, this constitutes a violation of the territorial area of the coastal state.

On April 27, 2022, there was looting of underwater cultural heritage in France. (CBS News 2022) The looting was carried out on the wreck of an ancient merchant ship named Fort Royal 1 which was lost 2,000 years ago in the Mediterranean Sea, and is estimated to have sunk off the coast of Cannes on the French Riviera in the second century BC. (CBS News 2022) The looting was discovered when divers who were tasked with carrying several containers made of clay that functioned as wine carriers at that time had been taken by looters. (CBS News 2022) The looting which was located in the continental shelf sea area violated the provisions of Article 10 paragraph (1) of the 2001 UNESCO Convention which states "*No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article*" (If interpreted: "No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article"). France, as a state party, naturally has regulations for the protection of underwater cultural heritage in its maritime territory. These regulations are stated in Art L532-3 of *the 2004 Heritage Code of France*, which states, "Anyone who discovers maritime cultural property is required to leave it in place and not to damage it." The French, through a press release on April 27, 2022, stated that the local authorities' action regarding the area where the Fort Royal 1 Merchant Ship sank was to prohibit anchorage. (CBS News, 2022).

Based on the background of the problem above, the formulation of the problem that will be studied in this research is what form of legal protection of underwater cultural heritage in the case of the looting of the Fort Royal 1 Merchant Ship in the Mediterranean Sea and how France is responsible for the looting of the Fort Royal 1 Merchant Ship according to international law.

METHOD

This research uses a normative legal method, which is a method that reviews legal problems according to field facts. (Peter Mahmud Marzuki 2005) which in this case is the protection of underwater cultural heritage, especially for the Fort Royal 1 Merchant Ship. The problem that will be discussed in this research is regarding the protection and accountability of underwater cultural heritage according to international law based on the case of the looting of the Fort Royal 1 Merchant Ship in the Mediterranean Sea. This research uses a statute approach, a case approach, and a conceptual approach.

The legislative approach is an approach that uses legislation and regulations. (Peter Mahmud Marzuki 2005) The legislation that will be analyzed includes UNCLOS 1982, *the Convention Concerning the Protection of the World Cultural and Natural Heritage* 1972, the UNESCO Convention 2001 on the Protection of Underwater Cultural Heritage, *the 2004 Heritage Code of France*, *the International Law Commission 2001 on the Responsibility*

of States for Internationally Wrongful Acts, and *the ICOMOS Charter for the Interpretation and Presentation of Cultural Heritage Sites* 2008.

A case study approach is used to identify material facts, including people, places, times, and so on. (Peter Mahmud Marzuki 2005) This study will examine the looting of the wreck of the merchant ship Fort Royal 1 and then identify the legal facts in the case.

The conceptual approach is an approach that finds legal concepts from laws and regulations, views and doctrines of legal experts, and judges' decisions. (Peter Mahmud Marzuki 2005) This research will find the concepts of looting underwater cultural heritage in related laws and regulations, namely UNCLOS 1982, *Convention Concerning The Protection of The World Cultural and Natural Heritage* 1972, UNESCO Convention 2001 on the Protection of Underwater Cultural Heritage, 2004 *Heritage Code of France*, *International Law Commission* 2001 on the Responsibility of States for Internationally Wrongful Act, and *The ICOMOS Charter for The Interpretation and Presentation of Cultural Heritage Sites* 2008 .

The legal material collection technique used in this research is a literature study. The legal materials used in this research consist of primary legal materials, consisting of relevant laws and regulations, and secondary legal materials, consisting of books, legal journals, and legal articles. These legal materials will be collected and then organized into an information system, which will then be processed and analyzed.

The legal material analysis technique used by the author in this research is a prescriptive technique. Prescriptive techniques provide arguments based on the results of the author's research. (Muhaimin 2020) In this research, an analysis will be conducted regarding the case of looting of underwater cultural heritage in the Mediterranean Sea along with the responsibility arising from this case.

RESULTS AND DISCUSSION

The 2001 UNESCO Convention expressly prohibits illegal activities that affect underwater cultural heritage, especially looting. Although previously it has been regulated regarding the protection of underwater cultural heritage in Article 149 of UNCLOS 1982 and Article 303 paragraph (1) and paragraph (2) of UNCLOS 1982, however the rules for the protection of underwater cultural heritage regulated in UNCLOS 1982 have not fully protected underwater cultural heritage located in other sea areas, such as deep waters, archipelagic waters, territorial seas, exclusive economic zones, and continental shelves, this is what differentiates UNCLOS 1982 from the UNESCO Convention 2001. (Dromgoole 2013) The difference in the protection of underwater cultural heritage in UNCLOS 1982 and the UNESCO Convention 2001 is that Article 149 of UNCLOS 1982 only regulates the protection of underwater cultural heritage located in the deep sea and Article 303 of UNCLOS 1982 contains the obligations of the State in terms of the protection of archaeological and historical objects found under the sea, it is not explicitly stated whether these archaeological and historical objects are included in the category of underwater cultural heritage.

Meanwhile, the 2001 UNESCO Convention focuses on the protection of underwater cultural heritage in marine areas, namely deep waters, archipelagic waters, territorial seas, exclusive economic zones and continental shelves.

This study discusses the looting of underwater cultural heritage, namely the items in the wreck of the Fort Royal 1 Merchant Ship in the Mediterranean Sea, the looting had an impact not only on the loss of the French underwater cultural heritage but also the damage to the wreck of the Fort Royal 1 Merchant Ship. On April 27, 2022, the Fort Royal 1 Merchant Ship which sank for 2,000 years was discovered by archaeologists in a damaged state and contained looted items.(CBS News 2022) Archaeologists who were tasked with carrying out the first exploration of the wreck at that time discovered that several clay containers used to transport wine had been removed by looters by breaking into the wreck of the Fort Royal 1 Merchant Ship.(CBS News 2022) The Maritime Police in Marseille have imposed a shipping ban on the location or area where the wreck of the Fort Royal 1 Merchant Ship is located , and the Maritime Police in Marseille are also conducting an investigation into the looting and destruction of the wreck of the Fort Royal 1 Merchant Ship.(CBS News 2022)

The looting of goods in the Fort Royal 1 Merchant Ship proves that there is a lack of protection or security for underwater cultural heritage located on the seabed or included in the continental shelf area. This violates the provisions for the protection of underwater cultural heritage in the continental shelf area contained in Article 10 paragraph (1) of the 2001 UNESCO Convention which states *"No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article"* (If interpreted: "No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article"), due to the negligence of the French state in protecting underwater cultural heritage which in this case are the goods in the Fort Royal 1 Merchant Ship.

1. International Legal Protection of Underwater Cultural Heritage in the Mediterranean Sea

Cultural heritage is a legacy from the past that needs to be protected. It contributes to cultural identity and serves as a means of communication between communities.(Browne and Raff 2023) Protection of underwater cultural heritage was first regulated in UNCLOS 1982 Article 149 and Article 303. Article 149 and Article 303. In Article 149 of UNCLOS 1982 which reads *"All objects of an archeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archeological origin."* (If interpreted: "All objects of antiquity and which have historical value found in the Area must be maintained or used for the benefit of mankind as a

whole, with particular regard to the rights that are prioritized by the State of origin, or the State of cultural origin, or the State of origin of antiquity"). Although Article 149 of UNCLOS 1982 states that antiquity found in the Area must be maintained or used for the benefit of mankind.(Dromgoole 2013) Article 149 of UNCLOS 1982 does not explicitly discuss the protection of underwater cultural heritage and only prioritizes the maintenance and utilization of underwater cultural heritage in the Regional area, underwater cultural heritage located in other sea areas is not mentioned in this article. In Article 149 of UNCLOS 1982 there are no characteristics of an object categorized as an ancient object, such as how old the object is. (Dromgoole 2013)In the case of the looting of goods on the Fort Royal 1 Merchant Ship in the Mediterranean Sea, Article 149 of UNCLOS 1982 cannot be used as a legal basis because it does not fulfill the elements in Article 149 of UNCLOS 1982, Article 149 of UNCLOS 1982 only regulates the issue of protecting ancient objects found in the Regional zone.

Further protection is contained in Article 303 paragraph (1) and paragraph (2) of UNCLOS 1982 which reads (1) *"States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose."*; (2) *"In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article."* (If interpreted: (1) "States are obliged to protect archaeological objects and historical objects found in the sea and must cooperate for this purpose.; (2) To control the circulation of such objects, the Coastal State may, in applying Article 33, consider that the removal of such objects from the seabed in the area referred to in that article, without the consent of the coastal State concerned will constitute a violation in its territory or territorial sea, of the laws and regulations referred to in that article.") Protection of underwater cultural heritage in Article 303 paragraph (1) of UNCLOS 1982 is handed over to the state parties to cooperate in protecting underwater cultural heritage, the state has an obligation to protect underwater cultural heritage in its sea area based on the sovereignty they have, then in Article 303 paragraph (2) of UNCLOS 1982 focuses on the coastal state in terms of preventing unlawful acts, namely the illegal or unauthorized removal of underwater cultural heritage in the sea area belonging to the coastal state.

In the case of the looting of goods in the Fort Royal 1 Merchant Ship, in accordance with Article 303 paragraph (1) regarding the state's obligation to protect ancient objects at sea, protection has not been maximally carried out as evidenced by the looting of goods in the Fort Royal 1 Merchant Ship in the Mediterranean Sea. Article 149 and Article 303 of UNCLOS 1982 cannot be used as the main basis for protection of underwater cultural heritage in the case of the

looting of goods in the Fort Royal 1 Merchant Ship in the Mediterranean Sea, due to the existence of several elements that do not meet or are not in accordance with the case of the looting of the Fort Royal 1 Merchant Ship. Article 149 and Article 303 of UNCLOS 1982, do not expressly regulate warships and sunken state ships, both articles only talk about sunken antiques.(Dromgoole 2013)

The order regarding the protection of underwater cultural heritage is contained in the 2001 UNESCO Convention.(UNESCO 2013) The 2001 UNESCO Convention recognized the importance of underwater cultural heritage as an essential part of the cultural heritage of humanity and an essential element in the history of peoples, nations and their relationships with each other regarding the common heritage.(Kuo et al. 2023) The most important difference highlighted in the 2001 UNESCO Convention compared to UNCLOS 1982 is the provision on 'activities leading to underwater cultural heritage' and 'activities incidentally affecting underwater cultural heritage'.(Dromgoole 2013) Article 1 paragraph (6) of the UNESCO Convention defines 'activities directed at underwater cultural heritage' as " '*Activities directed at underwater cultural heritage*' means activities having underwater cultural heritage as their primary object and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage." (If interpreted: "'Activities directed at underwater cultural heritage' means activities that make underwater cultural heritage as their object and directly or indirectly, physically disturb or damage underwater cultural heritage.") Meanwhile, 'activities that incidentally affect underwater cultural heritage' according to Article 1 paragraph 7 of the 2001 UNESCO Convention " '*Activities incidentally affecting underwater cultural heritage*' means activities which, despite not having underwater cultural heritage as their primary object or one of their objects, may physically disturb or otherwise damage underwater cultural heritage" (If interpreted: "'Activities that incidentally affect underwater cultural heritage' means activities that, not making underwater cultural heritage as their primary object or one of their objects, but physically disturb or damage underwater cultural heritage").

The case of looting of underwater cultural heritage in this study is the wreck of the Fort Royal 1 Merchant Ship in the Mediterranean Sea, where the Mediterranean Sea is the largest and deepest sea on earth.(Browne and Raff 2023) The location of the wreck of the Fort Royal 1 Merchant Ship is on the seabed and is included in the continental shelf area. The theft of the goods in the wreck of the Fort Royal 1 Merchant Ship is certainly located on the continental shelf, this is not in accordance with the rules regarding the protection of underwater cultural heritage, namely Article 10 paragraph (1) of the 2001 UNESCO Convention which states " *No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article*" (If interpreted: "No authorization shall be granted for an

activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article"). The looting of goods in the wreck of the Fort Royal 1 Merchant Ship is included in activities that do not have authority and lead to underwater cultural heritage. The prohibition on activities directed at underwater cultural heritage such as looting can be implemented by the State Party that has ratified the 2001 UNESCO Convention, based on Article 10 paragraph (2) of the UNESCO Convention which states "*A State Party in whose exclusive economic zone or on whose continental shelf underwater cultural heritage is located has the right to prohibit or authorize any activity directed at such heritage to prevent interference with its sovereign rights or jurisdiction as provided for by international law including the United Nations Convention on the Law of the Sea.*" (If interpreted: "A State Party in whose exclusive economic zone or on whose continental shelf underwater cultural heritage is located, has the right to prohibit or authorize activities directed at such underwater cultural heritage to prevent interference with its sovereign rights or jurisdiction as regulated by international law including UNCLOS"). Article 10 paragraph (2) of the 2001 UNESCO Convention gives the State Party the right to authorize or prohibit any activity directed at underwater cultural heritage in the continental shelf or Exclusive Economic Zone to prevent interference with its sovereign rights or jurisdiction in these zones (UNESCO 2013).

The 2001 UNESCO Convention grants States Parties the right to exercise their sovereignty in protecting underwater cultural heritage from activities directed at underwater cultural heritage, particularly looting. France, as a State Party and also a Coastal State, has exclusive rights, namely sovereign rights, which mean that no other state can carry out such activities without the express consent of France as a coastal State. (N. Shaw 2008) In Annex Rule 1 of the 2001 UNESCO Convention, it states, "*The protection of underwater cultural heritage through in situ preservation shall be considered as the first option. Accordingly, 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 the protection or knowledge or enhancement of underwater cultural heritage.*" Based on the case of looting of goods on the Fort Royal 1 Merchant Ship in the Mediterranean Sea, there were activities that led to the illegal plunder of underwater cultural heritage and were not based on the protection of underwater cultural heritage as the first option as stated in Rule Annex 1 of the 2001 UNESCO Convention. The looting of goods on the Fort Royal 1 Merchant Ship was an activity that was not in line with the protection of underwater cultural heritage.

The French maritime territory in the Mediterranean Sea, where looting occurred, has regulations in place for looting located on the country's continental

shelf. These regulations are contained in Article L532-3 of *the 2004 Heritage Code of France* (*Code du patrimoine 2004*), which states , " Anyone who discovers maritime cultural property is required to leave it in place and not to damage it." *The 2004 Heritage Code of France* (*Code du patrimoine 2004*) explicitly prohibits looting and destruction of underwater cultural heritage. In the case of the looting of goods on the Fort Royal 1 Merchant Ship, not only looting occurred but also damage to the Fort Royal 1 Merchant Ship itself, so that this action clearly violates Article L532-3 3 of the *2004 Heritage Code of France* (*Code du patrimoine 2004*). The looting was an unfounded act because the goods found in the wreck of the Fort Royal 1 Merchant Ship were not claimed as private property but belonged to the French State and were located within the French continental shelf.

The act of looting goods on the Fort Royal 1 Merchant Ship is subject to sanctions that must be imposed according to international law. The 2001 UNESCO Convention on the imposition of sanctions is contained in Article 17 paragraph (1) of the 2001 UNESCO Convention which states " *Each State Party shall impose sanctions for violations of measures it has taken to implement this Convention.* " (If interpreted: "Each State Party shall impose sanctions for violations of measures it has taken to implement this Convention.") Based on Article 17 paragraph (1) of the 2001 UNESCO Convention, sanctions are left to each country in accordance with their respective sovereignty, referring to the case of looting goods on the Fort Royal 1 Merchant Ship, the French Marseille maritime police are in the process of investigating, and the area where the Fort Royal 1 Merchant Ship wreck is located is prohibited for navigation. The investigation was handed over to the French Marseille maritime police because the Marseille maritime police are under the Department of Marine Archaeology of the French Ministry of Culture. However, in this case, sanctions cannot be imposed because the perpetrators of the looting and destruction of the underwater cultural heritage have not been found. There are no French regulations regarding the imposition of sanctions for looting and destruction of underwater cultural heritage. So far, there are only regulations that if there is an accidental discovery of underwater cultural heritage, the discovery must be reported to the administrative authorities.

Legal protection of underwater cultural heritage by international law, particularly regarding looting in a country's continental shelf, has been clearly outlined in the 2001 UNESCO Convention. Looting in this case is prohibited because it can have negative impacts, especially on the country where the underwater cultural heritage is located. Looting is the activity of removing objects and deliberately destroying objects from archaeological sites with the aim of meeting the demand for antique collectors.(Arua et al. 2022) Looting is one form of commercialization of underwater cultural heritage, in accordance with Article 2 paragraph (7) of the 2001 UNESCO Convention which states "*Underwater cultural*

heritage shall not be commercially exploited" (If interpreted: "Underwater cultural heritage shall not be commercially exploited"). The shipwreck, in this case the Fort Royal 1 Merchant Ship, is included in the archaeological site which is a 'time capsule' regarding information about humans. (Dromgoole 2013) Annex Rule 2 of the 2001 UNESCO Convention also explains that underwater cultural heritage may not be traded, sold, bought, or exchanged for other valuables. The reasons for not allowing commercial exploitation of underwater cultural heritage are: a) underwater cultural heritage may not be traded, sold, bought, or exchanged as commercial goods; b) underwater cultural heritage may not be stolen or an object of illicit trade; c) underwater cultural heritage may not be exploited for trade; d) underwater cultural heritage may not be permanently distributed, and; e) underwater cultural heritage must be placed near where the underwater cultural heritage was found. (UNESCO 2013)

2. International Legal Responsibility for the Looting of Underwater Cultural Heritage

International law on state responsibility is international law that is based on customary international law. (I.D.G. Palguna 2019) A state can be held accountable for its unlawful acts or omissions. (Sefriani 2018). The concept of state responsibility in general is about violations, reasons, and consequences. (Crawford 2015). A state's actions are considered wrong if, a) based on international law it can be attributed to that state, and b) it gives rise to a violation of an international obligation. (I.D.G. Palguna 2019). The international responsibility of a state as the closest link to the core and theology of international law and the formation of the international legal order, in general as a global system in terms of introducing international legal subjects in implementing a functional rule. (Dimitrovska 2015) State responsibility in international law regarding a country's mistakes or negligence is stated in *the 2001 International Law Commission on the Responsibility of States for Internationally Wrongful Acts* or ILC 2001. Article 1 of the 2001 ILC on *the Responsibility of States for Internationally Wrongful Acts* states that " *Every Internationally wrongful act of a state entails the international responsibility of that State*" (If interpreted: "Every internationally wrongful act of a state requires international responsibility from that state"). Article 1 of the 2001 ILC establishes the basis for state responsibility, that every internationally wrongful act of a state requires responsibility. (Olleson 2007)

The looting of underwater cultural heritage, which causes the loss of human historical heritage and the damage to the underwater cultural heritage, certainly needs to be accounted for. In the case of the looting of goods in the wreck of the Fort Royal 1 Merchant Ship, in addition to the loss of underwater cultural heritage, namely wine containers, the wreck of the Fort Royal 1 Merchant Ship was also damaged due to looting carried out by destroying it by looters. The loss and

damage to the underwater cultural heritage belonging to the state also causes the loss of historical objects and scientific information. Responsibility is certainly not only borne by the State, in this case France, but also to the community in terms of maintaining and preserving underwater cultural heritage. Responsibility does not only talk about the protection of underwater cultural heritage, but also about the loss and damage to the underwater cultural heritage itself. The existence of French negligence in protecting underwater cultural heritage, France's negligence fulfills one of the elements stated in Article 2 letter b ILC 2001 which states "*There is an internationally wrongful act of a State when conduct consisting of an action or commission: (b) constitutes a breach of an international obligation of the State.*" (If interpreted: "There is an internationally wrongful act of a State when the act consisting of an act or omission: (b) constitutes a violation by a State of an international obligation.") The conditions for an internationally wrongful act in Article 2 letter b ILC 2001 are that the behavior consisting of an act or omission must be attributed to the State and the violation must violate an international obligation. (Olleson 2007)

The violation by the state, namely France, of international obligations regarding the protection of underwater cultural heritage, these obligations are stated in Article 9 paragraph (1) of the 2001 UNESCO Convention which states "*All States Parties have a responsibility to protect underwater cultural heritage in the exclusive economic zone and on the continental shelf in conformity with this Convention.*" (If interpreted: "Each Contracting State has a responsibility in terms of protecting underwater cultural heritage located in the exclusive economic zone and continental shelf in accordance with the provisions of this Convention.") France has so far not taken any further action regarding its responsibility, the case is still in the investigation stage by the Marseille Maritime Police as the party appointed by the Department of Archaeology of the French Ministry of Culture and France has imposed a ban on shipping that passes the location of the wreck of the Fort Royal 1 Merchant Ship, the action that France can take in terms of being responsible for its negligence in protecting underwater cultural heritage refers to the case of looting of goods in the Fort Royal 1 Merchant Ship, France in this case according to Article 30 of the ILC 2001 on *Responsibility of States for Internationally Wrongful Acts* has an obligation namely "*The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if its continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.*" (If interpreted: "The State responsible for an internationally wrongful act has the following obligations: (a) to stop the act if it continues; (b) to offer appropriate insurance and guarantees with the aim of preventing recurrence, if the circumstances require it.") Article 30 of the ILC 2001 confirms that a State that has committed an internationally wrongful act by violating one or more of its international obligations must end the violation if the violation continues, or provide guarantees so that there will be no recurrence of

the violation.(Olleson 2007) France has been proven to have violated its international obligations as a country in terms of protecting underwater cultural heritage, in this case the wine container on the wreck of the Fort Royal 1 Merchant Ship.

The damage to the wreck of the Fort Royal 1 Merchant Ship also requires serious accountability. Actions that can be taken by France regarding the damage to the wreck of the Fort Royal 1 Merchant Ship can be through the form of accountability according to the ILC 2001, namely restitution. Accountability through restitution is stated in Article 35 of the ILC 2001 which reads *"A state responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: a) is not materially impossible; b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation"* (If interpreted: "A state responsible for an internationally wrongful act is obliged to make restitution, namely to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: a) is not materially impossible to return or cannot be found; b) does not involve a burden out of all proportion to the benefit derived from restitution instead of compensation.)

The country responsible for the looting of goods in the Fort Royal 1 Merchant Ship is France, therefore France can make restitution, namely returning the conditions to their original state, namely before the looting and destruction of underwater cultural heritage. The process of restitution is being carried out, namely an investigation by the Marseille maritime police as the party appointed by the French Department of Archaeology. The investigation aims to find the perpetrators who looted goods in the Fort Royal 1 Merchant Ship, namely wine containers and damaged the wreck of the Fort Royal 1 Merchant Ship. According to the provisions stated in Article 35 of the ILC 2001, restitution can be made if there is material that may be returned.(Crawford 2002) The wine containers, looted from the Fort Royal 1 Merchant Ship, are among the items that can be returned. The search for the perpetrators of the looting and destruction of the Fort Royal 1 Merchant Ship is also one of the applications of accountability through restitution by France. Restitution is the most appropriate form of reparation, because restitution is based on the principle that the responsible state is obliged to eliminate the consequences of its wrongful actions by rebuilding the situation as it was before. Regarding the damage that occurred to the Fort Royal 1 Merchant Ship wreck, France is still in the process of investigating the perpetrators of the looting and searching for the wine containers as underwater cultural heritage that was looted. There has been no repair of the damage to the Fort Royal 1 Merchant Ship wreck caused by the looting.

The second form of state responsibility that can be carried out by France as the country responsible for the looting of goods on the Fort Royal 1 Merchant Ship and the damage to the wreck of the Fort Royal 1 Merchant Ship is through satisfaction. Responsibility through satisfaction is contained in Article 37 paragraph (1) ILC 2001 *"State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation"* (If interpreted: "The state responsible for an internationally wrongful act is obliged to provide satisfaction for the injury or damage caused by that act as long as it cannot be repaired by restitution or compensation.") Based on the case of the looting of goods on the Fort Royal 1 Merchant Ship and the damage to the wreck of the Fort Royal 1 Merchant Ship, there was damage to the wreck of the Fort Royal 1 Merchant Ship that could not possibly be returned or repaired financially. Satisfaction is a way out for damage that cannot be repaired financially (Crawford 2013) and satisfaction is present as a solution if accountability through restitution or compensation cannot be implemented. (Crawford 2013) The damage that occurred to the wreck of the Fort Royal 1 Merchant Ship cannot be restored to its original condition considering that the wreck is hundreds of years old, therefore, responsibility can be carried out through satisfaction, namely providing compensation for the damage to the wreck of the Fort Royal 1 Merchant Ship.

Damage to underwater cultural heritage in the case of looting of goods in the wreck of the Fort Royal 1 Merchant Ship due to deliberate human actions is a negative impact arising from looting, underwater cultural heritage is a fragile object, therefore underwater cultural heritage is vulnerable to damage due to looting activities. (UNESCO 2013) France should be able to take the best measures in order to prevent damage or adverse impacts on underwater cultural heritage, as stated in Article 5 of the 2001 UNESCO Convention which states *"Each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage."* (If translated: "Each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction that incidentally affect underwater cultural heritage.")

CONCLUSION

1. Protection of underwater cultural heritage located on the continental shelf or seabed is contained in Article 10 paragraph (1) of the 2001 UNESCO Convention. Based on the case of the looting of goods on the Fort Royal 1 Merchant Ship and the destruction of the wreck of the Fort Royal 1 Merchant Ship in the Mediterranean Sea, it is proven that the protection of underwater cultural heritage by France as a state party that has the obligation to protect underwater cultural heritage located on the continental shelf is not strict

enough. For the looting of goods on the Fort Royal 1 Merchant Ship and the destruction of the wreck of the Fort Royal 1 Merchant Ship, the state party, namely France, can impose sanctions as stated in Article 17 paragraph (1) of the 2001 UNESCO Convention.

2. The looting of goods on the Fort Royal 1 Merchant Ship and the destruction of the wreck of the Fort Royal 1 Merchant Ship requires the state party to be responsible for the internationally wrongful act. The first responsibility that can be carried out is through restitution. Restitution based on Article 35 of the ILC 2001 is to restore the condition to its original state if possible. Restitution can be applied in this case by finding the perpetrator or party who looted the goods on the Fort Royal 1 Merchant Ship. The next responsibility is satisfaction. Satisfaction based on Article 37 paragraph (1) of the ILC 2001 is to provide compensation for injury or damage arising from international wrongdoing. The damage to the wreck of the Fort Royal 1 Merchant Ship that arose due to looting cannot be repaired to its original state, therefore the state party, namely France, is obliged to provide compensation for the damage caused by the looting.

SUGGESTION

France, as the country home to the underwater cultural heritage, has strict and stringent regulations and safeguards to prevent any illegal activity, such as looting, from occurring. It is hoped that the looting of the items on the Fort Royal 1 merchant ship will be resolved soon, preventing further looting of other underwater cultural heritage sites.

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