

THE 2001 CONVENTION: A FRAMEWORK FOR INTERNATIONAL COOPERATION IN SAFEGUARDING OUR UNDERWATER CULTURAL HERITAGE

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Conference participants,
Ladies and gentlemen,
Good morning.

On behalf of UNESCO, I am very pleased to be here at this Inaugural Asia-Pacific Conference on Underwater Cultural Heritage, in the company of distinguished scholars and professionals who have devoted their careers to the study and protection of this region's invaluable underwater cultural heritage. As the first academic conference on this significant theme focused on Asia and the Pacific, our gathering here today marks an important milestone.

I would like to take this opportunity to thank our host, the National Museum of the Philippines, for its warm hospitality, and to commend the organizers, the Asian Academy for Heritage Management and, in particular, Dr Mark Staniforth of Flinders University, for their initiative in making this conference a reality.

Challenges for Underwater Cultural Heritage

All around the world, our underwater cultural heritage is under threat. Unlike archaeological sites on land, which are under stringent legal protection and widely understood by the general public to be worthy of conservation, the sites underwater are still vulnerable to exploitation and destruction.

Looting by treasure hunters, commercial fishing, seabed exploitation, construction of offshore and on-shore maritime infrastructure, improvements in diving technology, environmental changes and the rise in marine tourism – these are all factors that have put this heritage at risk.

Here in the Asia-Pacific region, it is common knowledge that our waters are home to some of the world's richest archaeological remains, bearing witness to over three millennia of history concerning the region and, indeed, the world. The extensive

underwater cultural heritage ranges from ancient shipwrecks to the remains of submerged cities and settlements to other traces of maritime infrastructure.

Yet, the state of protection of the underwater cultural heritage in Asia and the Pacific is particularly worrying, as most States have very limited resources to adequately enact measures to protect such sites – from the policy level down to practical *in situ* protection operations. This leaves a gaping chasm which has resulted in the witting or unwitting destruction of the sites by a range of actors, from illicit treasure hunters to deep sea oil exploration companies.

Data compiled by UNESCO shows that at least seventy-two shipwrecks were reported to have been looted and/or commercially excavated in the region within a period of forty-seven years from 1963 to 2010. Of the seventy-two shipwrecks, only eight were excavated with government cooperation or participation of archaeologists from relevant agencies.

Commercial salvage operations by treasure hunters are of particular concern for UNESCO. With financial resources fueled by the growing market in antiquities, these operations have become increasingly ubiquitous. Driven by commercial motivations, such treasure hunting operations often result in destruction of the wreck site, selective recovery of high-value artefacts and a dispersal of finds into the hands of antique collectors in various countries. They do not provide the means to undertake the rigorous scientific inquiry and preservation measures for the sites and artefacts which is advocated by the international conservation community and by UNESCO.

National legislation governing the protection of underwater cultural heritage is greatly varied. Some countries provide a high level of protection, others provide a minimum level of protection, while many provide no protection at all. Moreover, the remit of national legislation is limited only to waters in the exclusive jurisdiction of states. Given that only a small part of the world's underwater cultural heritage are in territorial waters, this leaves a vast amount without any effective protection.

The Making of the 2001 Convention

In response to the international community's growing concern about the underwater cultural heritage, the Convention on the Protection of the Underwater Cultural Heritage was promulgated under the auspices of UNESCO.

The Convention is the key international treaty that sets a common framework and standard for the protection of underwater cultural heritage against looting and destruction. The Convention extends protection to cultural heritage underwater that is

comparable in spirit to the protection granted by existing international conventions or national legislation for cultural heritage on land.

The Convention helps to strengthen the international normative framework that UNESCO has been supporting in the fight against the illicit trafficking of cultural property. As an instrument dealing specifically with underwater cultural heritage, it fills the gap in the international law and reinforces the provisions of three other important conventions, namely:

- the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (known as the Hague Convention),
- the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property
- the 1995 UNIDROIT Convention on Stolen or Illegally Exported Objects

The Convention was the result of four years of intense negotiations which started in 1998 and included a wide range of stakeholders from government representatives to archaeologists, lawyers and NGOs. It was adopted by the UNESCO General Conference in 2001 and entered into force on 2 January 2009.

Popularly referred to as the 2001 Convention, at present, it has been ratified by forty countries: fourteen from Latin America and the Caribbean, eight from Africa, three from the Arab States and fourteen from Europe and North America. This includes both Spain and Portugal, two major maritime powers during the colonial era.

However, to this day, there has been only one signatory to the Convention from the Asia-Pacific region, that is, Cambodia.

The 2001 Convention: An Overview

How does the 2001 Convention contribute to the protection of the underwater cultural heritage?

The 2001 Convention starts by providing a shared understanding of what constitutes the underwater cultural heritage. It defines underwater cultural heritage as “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years”.

The 2001 Convention sets out basic principles for the protection of underwater cultural heritage, and attempts to harmonize the protection of underwater archaeological sites with that of heritage on land. It provides a detailed cooperation system among States.

Finally, it provides practical rules for the treatment and research of underwater cultural heritage in its Annex.

It should be noted that the 2001 Convention does not regulate the ownership of cultural property. As such, the Convention cannot be used to arbitrate quarrels or claims to ownership between the various parties concerned.

Similarly, the 2001 Convention has no bearing on the sovereignty of States. Article 3 of the Convention specifically says that it is not intended or designed to amend the regulations of 1982 United Nations Convention on the Law of the Sea (UNCLOS) or any other international law which outlines the definition and boundaries of maritime zones and the jurisdiction and sovereignty of States.

The 2001 Convention: Main Principles

The 2001 Convention is underpinned by four main principles.

1. States Parties have an obligation to preserve underwater cultural heritage
2. *In situ* preservation of underwater cultural heritage shall be considered as the first and preferred option
3. Underwater cultural heritage shall not be commercially exploited
4. States Parties should promote training and information sharing

The preference given to *in situ* preservation as the first option stresses the importance and scientific significance of the historical context of the cultural object, which should be respected. It also recognizes that, under normal circumstances, heritage is well preserved under water, due to the lack of oxygen and low rate of deterioration.

The Convention prohibits commercial exploitation for both trade and speculation; it also dissuades against the irretrievable dispersal of finds. Furthermore, the Convention requires States Parties to take measures against the illicit trafficking of cultural objects. In particular, they should prevent the entry into their territory, the dealing in, or the possession of underwater cultural heritage that was illicitly exported/and or recovered. States Parties should seize such property if it is found in their territories. The rationale is that if treasure hunters have a difficult time to sell looted objects, the financial motivation for conducting illegal excavations will eventually decrease.

Finally, the Convention promotes information sharing, training in underwater archaeology, and technology transfer with a view to raising public awareness concerning the significance of underwater cultural heritage. States Parties are

encouraged to cooperate and assist each other in the protection and management of such heritage, including collaborating in its investigation, conservation, study and presentation.

It should be understood that the 2001 Convention contains *minimum* requirements. Each State Party, if it so wishes, may choose to develop even higher standards of protection. For instance, Australia, under the 1976 Historic Shipwrecks Act, protects all shipwrecks and associated artefacts that are older than 75 years.

The 2001 Convention: A Framework for International Cooperation

The 2001 Convention provides States with a clear framework for cooperating with other States to protect underwater cultural heritage sites wherever they are located. Prior to the Convention, the existing international law did not furnish a sufficient basis for such cooperation. UNCLOS, for example, has only two provisions that establish an obligation of its States Parties to protect underwater cultural heritage, with Article 303 saying simply that the States “shall cooperate” to protect the underwater heritage (paragraph 3), without providing further details or a mechanism for doing so.

The 2001 Convention proposes a State Cooperation System for the protection of underwater cultural heritage. Within the current situation, a State usually has exclusive jurisdiction only within its Territorial Sea, limited jurisdiction over the Exclusive Economic Zone and Continental Shelf, and jurisdiction only over its own vessels and nationals at High Sea. As such, a Coastal State cannot prevent a vessel from another State from pillaging a site beyond its territorial seas. As for the Flag State of the pillaging vessel, it usually ignores the activities of its vessels and nationals, especially if they are undertaking activities very far away from its own territorial waters.

As the extension of jurisdiction of States at sea was not an option, the 2001 Convention chose to facilitate cooperation among States as the only way to resolve this situation. By joining the 2001 Convention, States agree to prohibit their nationals and vessels from looting underwater cultural heritage, regardless of its location. The Flag State sets legal regulations for its nationals and vessels, and other States help it in implementing them. If no State has jurisdiction over a site, a “Coordinating State” takes over the control, coordinating the cooperation among States Parties and implementing their decisions, while acting on their behalf and not in its own interest.

The Convention also provides specific regulations for the reporting and the coordination of activities, depending on the location of an underwater cultural heritage site. In their Internal and Archipelagic Waters and Territorial Sea, States Parties have the exclusive

right to regulate activities. For activities further afield, for instance, in the Exclusive Economic Zone and the Continental Shelf, States Parties should report discoveries and activities concerning heritage in these areas, and inform other States Parties. Interested States can then cooperate in the protection of these sites.

This system makes it easier for States to take joint and effective action against treasure-hunting and pillaging being conducted in territories outside the national jurisdiction of any Coastal State. In the event that a large number of States join the 2001 Convention, this international cooperation scheme will eventually render comprehensive protection of underwater heritage sites around the world.

Initiatives and Next Steps for Protecting UCH in Asia and the Pacific

Even though ratification of the 2001 Convention is still pending among most Member States in Asia and the Pacific, a number of initiatives have already been implemented which are consistent with the spirit and intention of the Convention. That said, on the whole, legislation, institutions and professional expertise still need to be substantially strengthened, as the issue of underwater cultural heritage is relatively new in the region.

UNESCO has been supporting Member States to raise awareness among policy makers and the general public, and to build national capacities in the protection and management of underwater cultural heritage.

Of particular concern in the region is the lack of trained professionals who are qualified to protect and manage underwater cultural heritage. Without adequate human resources at the frontlines, efforts to apply the principles and regulations of the 2001 Convention will be difficult, even if policy and legislative measures are enhanced.

In order to respond to this need, UNESCO has trained over 70 underwater archaeologists and professionals in allied fields since 2009 through a regional programme supported by the Norwegian government. A Field Training Centre has been set up in Chanthaburi, Thailand, which is hosted by the Royal Thai Government's Fine Arts Department. Trainees hailing from as far afield as the western reaches of the Indian Ocean (like Kenya) and as far east as the Pacific islands have received rigorous instruction in various aspects of managing underwater cultural heritage during Foundation Courses, including GIS applications and techniques for *in situ* preservation in two Advanced Courses.

To reinforce these skills, a number of graduates of the training courses were sponsored by UNESCO to take part in an actual survey and research project organized by the Sri Lankan Maritime Archaeology Unit on an ancient shipwreck in southern Sri Lanka.

The curriculum and materials used in the training course will be made available in early 2012 as a standard training package for underwater cultural heritage. Already, the UNESCO-affiliated training centre in Zadar, Croatia has already expressed interest in using these materials for their upcoming training courses.

As a way of reaching out to a broader audience, an interactive exhibition on underwater cultural heritage was organized for three months from August to October in 2010 at the Siam Ocean World Bangkok, viewed by an estimated 150,000 visitors. The exhibition material, which includes a full-scale model of a ship wreck, is now a part of the permanent exhibition of the National Maritime Museum in Thailand. It can also be accessed online through UNESCO Bangkok's website as a virtual exhibition.

To sustain these efforts in the future, the Thai Government has indicated its commitment to sustain the Field Training Centre over the long term. This welcome gesture will allow trainees from around the region to continue to benefit from the fully-equipped facilities of the Centre, one of the leading venues of its kind in Asia and the Pacific, and indeed, the world.

Conclusion

The success of the 2001 Convention hinges on the commitment of States to put into action this framework for international cooperation to protect the underwater cultural heritage. As a large part of this heritage is found on ocean floors located outside national jurisdiction, by definition, it cannot be sufficiently protected by any State alone, but only by a community of States.

Until such time that a significant number of States ratify the Convention, the Asia-Pacific region will remain vulnerable to pillaging by treasure hunters and the destruction of underwater cultural heritage will continue.

On behalf of UNESCO, I urge you, as policy makers, as leading scholars, and as professionals, to help support the process for the ratification of the 2001 Convention in your countries. It is only through our cooperation that this vulnerable heritage can be protected for future generations to come.

Thank you.

For further information

Tutorial on the Annex to the 2001 Convention:

<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/underwater-heritage-tutorial/tutorial/>

Code of Ethics for Diving on Submerged Archaeological Sites:

<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/scuba-diving/>

Frequently Asked Questions about the 2001 Convention:

<http://www.unesco.org/culture/underwater/faq-en/>

Reference:

_____.2006.*Finishing the Interrupted Voyage: Papers of the UNESCO Asia-Pacific Workshop on the 2001 Convention on the Protection of the Underwater Cultural Heritage*.L.V.Prott(ed.),Leicester,UNESCO/Institute of Arts and Law.