

# Preservation of Underwater Cultural Heritage in Taiwan: Legislation and Challenges

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## Abstract

*The Convention on the Protection of the Underwater Cultural Heritage was adopted in 2001 by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The convention acknowledges the importance of underwater cultural heritage as an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage. The responsibility of protecting and preserving the underwater cultural heritage therefore rests with all States (UNESCO, 2017.). By echoing the spirit of the above convention, the Legislative Yuan (Parliament) of Taiwan adopted the Underwater Cultural Heritage Preservation Act on November 24, 2015. The Act was promulgated by the President and was also put into force on 9 December 2015. The Law is in seven chapters with 44 articles. The chapters cover general provisions, attributed rights and international cooperation, activities involving underwater cultural heritage, in-situ preservation of underwater cultural heritage, excavation management in the sea, public education*

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*and professional training, penalties, and supplementary provisions. This paper introduces the recent research projects of underwater cultural heritage in Taiwan, illustrates the enactment process of the new law and highlights its main features. The paper concludes that it is essential to have further integration of management affairs, establishing national research institute, strengthening the international cooperation and the professional training, implementing related bylaws and mechanisms, and promoting public awareness, which also become daunting challenges faced by Taiwan as it marches toward the protection of its precious underwater cultural heritage.*

**Key words:** UCH, Taiwan, UNESCO

## **Introduction**

Underwater Cultural Heritage (UCH) refers to all traces of human existence having a cultural, historical, or archaeological character, such as ruins, architecture, handicrafts, human remains, boats, aircrafts, environments having an archaeological character and natural environments. According to Article 3 of Taiwan's *Underwater Cultural Heritage Preservation Act* promulgated on December 9, 2015, "Underwater Cultural Heritage" means all traces of human existence having a historical, cultural, archaeological, artistic, or scientific character which have been partially or totally under water, periodically or continuously: (1) sites, structures, buildings, artifacts and human remains, together with their archaeological and natural context; (2) vessels, aircrafts, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (3) objects of a prehistoric character. The UCH contains rich information related to cultures, history, geography and technology. A shipwreck, for instance, is testimony to trade and cultural dialogue between peoples. It also functions as a time capsule, providing a complete snapshot of the life on board at the time of sinking. Therefore, how to protect this common heritage of all mankind become the center of international concern.

## **Brief History of Legislation**

Since 2000, some scholars in Taiwan, Professor Wen-Yan Chiau (later served as legislator) with the National Taiwan Ocean University, have been concerned about the protection of UCH and have organized several international conferences. In 2005, Professor Chiau was commissioned by Construction and Planning Agency, Ministry of the Interior to conduct a literature study on UCH in Dongsha (Pratas) Islands in the South China Sea. He concluded that at least 28 wrecks were clearly recorded. Over the past ten years, the UCH research projects made by the Academia Sinica and the National Sun Yat-sen University, under the authorization of the Ministry of Culture, discovered nearly 100 wrecks in the waters around Taiwan, including *GUANG-BIN* Warship that participated in the first Sino-Japanese War and British *S.S. BOKHARA* were sunk in Penghu (Pescadores) Archipelagoes, British *SOBRAON* near Matsu Islands and the unknown "*GREEN ISLAND No. 1*" in East Taiwan (Bureau of Cultural Heritage, 2014). These wrecks are as valuable as "*NANHAI No. 1*" and "*DANDONG No. 1*" of China and the important research projects in other countries. In the past, however, such precious UCH resources in Taiwan were not protected through a proper mechanism and were possibly destroyed by illegal and unappropriated underwater activities. Moreover, the important principles and spirit of the UNESCO UCH Convention have not yet been implemented in the domestic laws and the existing *Cultural Heritage Preservation Act* does not apply to the preservation, protection and management of UCH. Thus, there is an urgent need to formulate an exclusive law for Taiwan to preserve, protect and manage its rich and valuable UCH.

In view of this, the Ministry of Culture drafted a specific law called the "*Law on the Protection of Underwater Cultural Heritage of the Republic of*

*China*". After years of discussions, the draft of *Underwater Cultural Heritage Preservation Act* was finally proposed by the Executive Yuan (Cabinet) and submitted to the Legislative Yuan (Parliament) for discussion. The Draft was completed gradually through researches conducted by experts and scholars commissioned by the Ministry of Culture, expert meetings, national public hearings, and related legal operating procedures as well as the acquisition of public consensus (Ministry of Culture, 2015). In the Legislative Yuan, Legislator Wen-Yan Chiau and Legislator Pi-Han Chen also proposed the corresponding versions (Legislative Yuan, 2015). Since the 8th session of the Parliament had limited time for UCH discussions, Legislator Chiau consulted Professor Nien-Tsu Alfred Hu and some key officials with the Ministry of Culture and integrated three versions into one, which served as the basis of discussion upon the consent of the Committee. On November 9, 2015, the integrated version was reviewed by the Committee and submitted to the Legislative Yuan for determination. On November 24, 2015, the Legislative Yuan finally approved the *Underwater Cultural Heritage Preservation Act* through a three-reading procedure. The Act was promulgated by the President on December 9, 2015, becoming the first exclusive law regarding the preservation of UCH in Taiwan (Office of the President, R.O.C., 2015). The approval and implementation of the *Underwater Cultural Heritage Preservation Act* ensure the effective preservation, protection, and management of UCH in the waters around Taiwan under a specific and clear legislation.

## **Principles and Main Contents**

Taiwan's *Underwater Cultural Heritage Preservation Act* consists of seven chapters with 44 articles in total: Chapter One "General Provisions",

Chapter Two "Right Attribution and International Cooperation", Chapter Three "Activities Directed at Underwater Cultural Heritage", Chapter Four "In-situ Preservation of Underwater Cultural Heritage", Chapter Five "Excavating Out Of The Water", Chapter Six "Penalty Provisions" and Chapter Seven "Supplementary Provisions". Main contents of the Act are summarized as follows (Laws and Regulations Database of the Republic of China, 2017).

### **1. Respect and response to the spirit of the UNESCO Convention**

The themes of Taiwan's *Underwater Cultural Heritage Preservation Act* are to preserve, protect and manage UCH, build the historical connection, and develop the characteristic of the maritime country in accordance with the spirit of the UNESCO Convention and other international agreements. In this regard, the Act includes the principles of the Convention in many articles with the hope to preserve and manage UCH in Taiwan like that operated in many parts of the world. For example, Article 4 of the Act reflects the spirit of the Convention and stipulates that "Any activity involving underwater cultural heritage should avoid unnecessary interference with human remains and historical sites" and that "UCH should not be commercially exploited."

### **2. Carry out general survey and registry management**

Article 5 of the Act stipulates, "the competent authority shall undertake a general survey of underwater cultural heritage, or record and manage the files after conducting the investigation, research and review, in accordance with the procedures prescribed by this Act, on the reports from individuals or organizations that indicate a suspected underwater cultural heritage existed." In addition, Article 6 also regulated that the competent authority shall fully set up case data for the investigation,

research, excavation, preservation, and restoration for underwater cultural heritage. The data shall be permanently preserved in accordance with the *Archives Act* and its relevant regulations.

The survey of underwater cultural heritage is also stipulated in Article 9 of the Act : “Where an environmental impact assessment is required for an exploitation activity, or where a governmental agency and state-owned enterprise makes or ratifies a plan with respect to exploitation and utilization of a water area, it is required to conduct a prior investigation related to the existence of underwater cultural heritage or suspected underwater cultural heritage. A notification of the discovery shall submit to the competent authority if any.”

### **3. Establish a national institute for the preservation and research of UCH**

Referring to the foreign cases (e.g., Department of Underwater and Marine Archaeological Research, DRASSM, in Marseille, France), Article 7 of the Act stipulates that “the competent authority may designate a dedicated organization for the preservation and research of underwater cultural heritage to perform the investigation, research, excavation, restoration, education, promulgation, international cooperation, and other activities with respect to underwater cultural heritage.” For recruiting professionals to protect UCH in Taiwan, Article 11 of the Act also stipulates that “the competent authority shall educate and train the relevant professionals with respect to underwater cultural heritage in order to undertake the preservation of underwater cultural heritage.” The items, manners, procedures, examinations, evaluations, utilization, withdrawal, revocation, and other related affairs of the professionals will be further regulated by competent authorities after consulting related agencies.

#### **4. Establish a Review Mechanism**

Regarding the administrative aspects, Article 8 of the Act expressly stipulates that the competent authority shall convene the review committee of underwater cultural heritage to review the following subjects: (1) applications for activities directed at underwater cultural heritage; (2) coordination with other authorities in charge of other affairs with respect to activities incidentally affecting underwater cultural heritage; (3) the recordation and management of underwater cultural heritage; (4) the zoning of underwater cultural heritage protection areas; (5) subject substantially relating to the preservation of underwater cultural heritage.

#### **5. Report the discovery of cultural relics**

Pursuant to Article 13 of the Act, “anyone who discovers suspected underwater cultural heritage shall terminate any activity that has an influence on such heritage, maintain completeness of the site, and promptly report the discovery to the competent authority excepted that there is a need to prevent an urgent and severe danger or there is a substantial public interest at stake, such activity may not be terminated, and the discovery of such shall be reported to the competent authority.” After receiving the report referred to in the first paragraph, the competent authority may take the following measures: (1) restrict or terminate all or part of the activity which has an influence on the suspected underwater heritage in a specific water area; (2) undertake necessary investigation, research, and other related underwater operations; and (3) set up a temporary protection zone in the water area of the discovery site.

Article 18 of the Act also stipulates that the citizen or the vessel master of the country, who discovers suspected underwater cultural heritage or activities directed at underwater cultural heritage in the

exclusive economic area or on the continental shelf of other states, shall promptly report such discovery or activity to the competent authority. The government of Taiwan may report such discovery or activity referred to in the preceding paragraph to the relevant states or international organizations.

## **6. Stipulate right attribution and international cooperation**

The right attribution and international cooperation are included in Chapter 2 of the Act. For instance, Article 15 of the Act stipulates that “any underwater cultural heritage discovered in the internal waters and territorial sea of the Republic of China, except for the state vessels and aircraft in which a foreign state declares an interest, shall belong to the Republic of China.” “The Republic of China, in the exercise of its sovereignty, has the exclusive jurisdiction to regulate, authorize, or approve activities directed at underwater cultural heritage in the internal waters and territorial sea of the Republic of China.” With a view to cooperating on the best methods of protecting the state vessels and aircraft prescribed, however, the competent authority, should inform the flag state and, if applicable, other states with a cultural, historical or archaeological link, with respect to the discovery of such identifiable state vessels and aircraft. Additionally, Article 21 of the Act stipulates that the ROC government may enter into bilateral, regional or other multilateral agreements or develop existing agreements with other states or international organizations, for the preservation, protection, and management of underwater cultural heritage.

## **7. Strictly regulate activities directed at UCH**

Article 22 of the Act stipulates that “activities directed at underwater cultural heritage shall not be undertaken unless an application with an



underwater cultural heritage activity plan is filed by a scholar, experts, or academic/professional scientific research institutions to the competent authority and approved thereby.” With the case of international cooperation, the Act further regulates that “foreigner(s) shall cooperate with domestic scientific research organizations or institutions to file such application.” Pursuant to Article 23 of the Act, those activities directed at UCH should be supervised by the competent authority; The competent authority shall also stipulate the regulations related to the UCH activities including the operational procedure, qualification of relevant operational personnel, method for in situ preservation, method for evacuated, preservation or protection method after excavation, and other matters related to the underwater cultural heritage activities should be complied with. Practically, this highlights the importance of bylaws of the Act.

#### **8. In situ preservation and planning for UCH protected areas**

With echoing to the spirit of the Convention, Article 27 of the Act expressly stipulates that “the preservation in situ of UCH shall be the first option before allowing or engaging in any activities directed at this heritage.” And, the proper means for in situ preservation may include recordation management, protection zone, or other proper preservation measures. When the review committees make a decision that it is necessary to designate a specific underwater cultural heritage protection zone, according to Article 28, the competent authority should consult with relevant authorities to designate and publicize an underwater cultural heritage protection zone within such water area to preserve the underwater heritage in situ. To allow the public engagement, Article 28 also regulated that the authority should hold a public hearing or explanation session inviting civilians or groups with an interest at stake to attend.

Article 30 of the Act regulates the content of the management and protection plan, which include the following: (1) basic data: location, measure of area, significance of the underwater cultural heritage, description and scope diagram of research; (2) range classification; (3) accountable authority distribution and reporting system (4) routine maintenance: preservation, maintenance and recordation of the environmental landscape; (5) emergency maintenance: prevention of natural or human damage and emergency disaster disposal; (6) education and promotion: production and exhibition of promotional material as well as education activities; (7) source of funding; (8) management plan of entrust; and (9) other matters related to management and protection.

For well managing UCH, Article 31 of the Act regulates the activities that are prohibited within UCH protection zone, such as salvage of UCH, usage of explosives, trawling or anchoring, mining, installation of electric cables and pipelines, discarding waste water or hazardous substances, dredging and construction of ocean engineering. As for management and protection of the underwater cultural heritage and settling illegal matters, according to Article 32, the competent authority may request assistance from the Coast Guard Administration to help in the enforcement of the Act.

## **9. Regulate the conditions for UCH salvage**

In principle, the underwater cultural heritage shall not be excavated out of the water. Pursuant to Article 34, exceptions are only limited to the following situations: (1) the underwater cultural heritage related to historical status or recognition of the nation: (2) the absence of such underwater cultural heritage could be detrimental to a full understanding of human history; (3) the underwater cultural heritage is of substantial commercial value that cannot be protected without excavating it out of the water; (4) excavation is necessary for the investigation and research of

underwater cultural heritage; (5) the underwater cultural heritage cannot be sufficiently preserved, protected or managed without excavating it out of the water due to an emergency or the change of the existing environment; (6) other situations in which the competent authority deems necessary to excavate out of the water.

While excavation to be undertaken, pursuant to Article 35 of the Act, the preservation and maintenance plan for UCH should be proposed at the same time, and in which “non-destructive technology and survey method shall be used preferentially.” In addition, the expertise of underwater archaeology, underwater operators, and preservative scientist shall jointly participate in the measure for the excavation or emergency disposal.

#### **10. Stipulate strict penalties for protecting UCH**

Chapter 6 of the Act strictly stipulates the penalty provisions. As Article 37 regulates, for instance, any person who commits any of the following offenses shall be liable to imprisonment for up to five years, detention, and/or a fine of NT\$200,000 to NT\$10,000,000: theft of UCH with an intention to possess for his own or for a third person, damage of UCH within the protection zone or temporary protection zone, conveyance of UCH which belongs to the Republic of China out of the country, and undertaking UCH activities without prior approval of the competent authority. It is hope that the penalties can effectively stop the illegal activities which are harmful to the protection of UCH in this country.

#### **Challenges Ahead**

Over the past few decades, Taiwan has realized its richness of UCH through academic research and investigation, research projects commissioned by Ministry of Culture, findings by the local civil groups, fishermen or diving enthusiasts. However, these precious cultural relics

and artifacts were not protected properly due to the absence of related laws on the preservation of UCH in this country. Since the implementation of Taiwan's *Underwater Cultural Heritage Preservation Act* is still in its infancy, the protection of UCH is unavoidably encountering many challenges as follows (Chiau and Kuo, 2014).

### **Dissemination and Implementation of bylaws**

The *Underwater Cultural Heritage Preservation Act* is a fundamental law of Taiwan for the protection of UCH. In late 2016, the Ministry of Culture had already formulated some 9 bylaws for implementing the Act. They include the enforcement regulations on : UCH survey and management before development in the marine area, seabed and subsoil management, activities directed at UCH, UCH professionals training, promotion of public education on UCH, delineation and management of UCH protection zone, and incentives and subsidy on UCH research and protection. However, the challenges are to disseminate those concept of protecting UCH and smoothly implement those tasks among various stakeholders.

### **Establishment of a national-level research institution**

Pursuant to Article 7 of the Act, the Ministry of Culture may appoint an institute responsible for UCH preservation, protection and management. It is believed that this national-level institute is able to best integrate various research resources, including technologies, professions and budgets. The DRASSM established in Marseille, France, for instance, is a national-level research institute with a history of more than 50 years. Having equipped with research vessels and many professionals, the Institute has been participating in various international UCH projects and has achieved abundant results with solid budgets and operations. In

2009, the National Research Institute of Maritime Cultural Heritage was established in Korea to promote the country's maritime culture and exchange research results with other international research institutions or museums. These institutes are all worth referring to as Taiwan establishing its own one.

### **Enhancing technologies and professionals training**

The technologies such as side scan sonar, multibeam depth sounding system, sub-bottom profiler and magnetometer have been applied in UCH survey and research in Taiwan (Liu, 2010). However, there is a necessity for developing and/or enhancing new technologies especially for those UCH buried in shallow waters, lagoons, estuaries and river bed.

On the other hand, it is in short of UCH professionals in Taiwan. Over the past ten years, although several training workshops for underwater archaeology have been held in Taiwan, few trainees are willing to engage in underwater archaeology due to limited job opportunities. After the Act is promulgated, the demand for professionals will definitely increase. The Ministry of Culture should be keen to training and employment of UCH professionals, especially their appropriate and stable job opportunities. The Ministry should also have professionals recruited in its subordinated agencies and even engage the international professional certification in order to provide appropriate and safe jobs for UCH professionals.

### **Strengthening international exchange and cooperation**

Pursuant to Article 19 of the *Convention on the Protection of Underwater Cultural Heritage* promulgated, the UNESCO urges the international cooperation and information sharing regarding the protection of UCH. As mentioned above, the research, protection and management of UCH is still in its infancy in Taiwan. As a cultural entity and a responsible country,

there is essential to learn from and/or work with other countries for better managing the common heritage for all mankind.

### **Raising the public awareness on UCH protection**

With the development of underwater technologies and diving techniques, it is easy to dive into the deep sea, resulting in more opportunities of discovery, collection and destruction of UCH. However, different from treasure hunting, the concept of preservation of UCH must promote through the nation-wide education and propaganda to raise the public awareness of the protection of UCH. Firstly, the government may include UCH concepts in the textbooks for the public schools and encourage universities to establish related departments on UCH research. Secondly, many countries establish maritime museums and marine parks to encourage the public to engage in cultural tourism. For example, underwater museum in Alexandria, Egypt, Mary Rose in the UK, Baiheliang Underwater Museum in China, Underwater Archaeological Park in Finland and Dalarö Blue Park in Sweden showcase the creativity by combining nature and cultures. These examples are all worth referring to for raising the public awareness on UCH. In the aspect of social education, the educational promotion for diving enthusiasts is especially important in this case.

### **Improving integration among related government agencies**

The management of UCH involves many aspects, including investigation, research, excavation, repair, education, promotion, supervision, enforcement, international cooperation and other related activities. Many government departments and agencies may engage in the administrative procedures in Taiwan, including Ministry of Culture, Ministry of Education, Council of Agriculture, Coast Guard Administration, Ministry of the Interior,

Ministry of Foreign Affairs, Ministry of Transportation and Communications and local governments. Related stakeholders and interested parties, such as fishermen, diving clubs, or recreation industries are also involved. In view of this, a better governance of UCH issues will rely on the close cross-department cooperation. And, integration among the related agencies is a must and represents a daunting challenge faced by Taiwan.

### **Concluding Remarks**

Although Taiwan's *Underwater Cultural Heritage Preservation Act* is promulgated, daunting challenges remain in the implementation of this brand new legal system. It is hope the government can facilitate the establishment of a national research institute of UCH, training programs for professionals and the public awareness of the protection of UCH. International cooperation and information sharing also deserve the priority.

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