

Report on the Current Status of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage



Meeting of the Participation in Global Cultural Heritage Governance Committee

ILA 79th Biennial Conference Kyoto 2020 By Zoom

The Cultural Heritage Law Committee was the predecessor of the Participation Committee and when it was established by the International Law Association in 1988 its first project was to consider whether it should produce a draft convention dealing with the protection of Underwater Cultural Heritage. This work led to a final report annexing a draft Convention on the Protection of the Underwater Cultural Heritage adopted by the ILA at its Conference in Buenos Aires in 1994. This draft Convention was forwarded to UNESCO and led to the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage. The negotiations leading to the adoption of the 2001 Convention were particularly robust. Some delegations, like the Greek, considered the Convention did not go far enough while others argued it went too far and impugned their sovereign rights. The professional salvors were strongly opposed. This opposition continued after the Convention was adopted and signed on 2nd November 2001. Ratifications were slow to come in initially but on 9 January 2009 the Convention came into force after 20 States Parties ratified or accepted it and further ratifications have continued to accrue.

The 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage has now reached the milestone of 66 states parties with the ratification in 2018 of Micronesia and Costa Rica and in 2019 of Copa Verde, Niue and Switzerland, and Oman and Estonia in 2020. Some regions have many ratifications like the Mediterranean, the Black Sea and the Caribbean, while other regions are sparse, like Asia which only has Cambodia and Iran.

In the South Pacific, only the French territories (Tahiti, New Caledonia and its dependencies, and Wallis and Futuna Islands) Niue and the part of Micronesia south of the Equator have ratified. The key state is Australia where there has been little sense of urgency up until recently. However in 2018 the Underwater Cultural Heritage Act was passed and came into force in 2019. This makes it possible for Australia to make a decision on ratifying the Convention. Andy Viduka advises “the states, Northern Territory and Australian Government impacted portfolio consultation and consideration process over whether Australia should ratify the 2001 UNESCO Convention is well advanced and a Ministerial level decision to proceed to formal consideration through Treaty making process is expected in 2021.” It is unlikely that New Zealand will consider ratification until Australia’s decision is known.

The States Parties that have joined the Convention include countries like France, with a major Exclusive Economic Zone (EEZ) and maritime history, Spain and Portugal with historic state vessels

wrecked around the world, Italy and Egypt with ancient wrecks in their waters, and small Island states like Micronesia which have a significant EEZ but very limited capacity to deal with UCH. Some important States Parties are yet to ratify like the United Kingdom, the Netherlands, and Germany. The Netherlands and Germany have expressed interest in doing so from time to time but it has not been a priority. The COVID 19 Pandemic has provided a major distraction during 2020 as countries deal with its health and economic effects and UCH issues are inevitably set aside.

Even if the state has not actually ratified the Convention there can be the de facto application of the Rules in the Annex in practice as in N.Z., Australia, USA and the UK, although in some of these jurisdictions the application can be contentious, as in the case of the 1744 wreck of H.M.S. Victory in the UK.

In early 2018 Italy notified UNESCO of the discovery of several important wreck sites on the Skerki Banks, located in International Waters between Sicily, Sardinia and Tunisia that are highly threatened by uncontrolled trawl fishing, non-regulated ship movements and industrial work. This notification has triggered protection under the 2001 Convention and is the first of its kind.

By the end of July 2019 all of the wrecks arising from the First World War, including those from the scuttling of the German fleet at Scapa flow, had come within the timeframe of the Convention if the country/countries concerned had ratified or acceded to the Convention.

The 2001 Convention does not have a stand-alone entity to administer its functions instead that is the responsibility of UNESCO itself which has done this through regular meetings of the States Parties and the establishment of the Scientific and Technical Advisory Board (**STAB**) comprising 12 experts, which meets regularly and also investigates underwater cultural issues that are referred to it.

UNESCO has been expending considerable energy in the crucial phase of assisting the smaller states to acquire the necessary skills to apply the Convention through capacity building and encouraging best practice. UNESCO has held numerous regional meetings to achieve this, especially in Asia, Central America and the Caribbean. These meetings involve not only the relevant Government departments and agencies but also dive organisations and other non-government organisations, including local fishing communities. It has also published model implementation laws and training manuals and sought out and published examples of best practice.

In May 2019 UNESCO completed a thorough evaluation of the ways in which it promotes and administers the 2001 UCH Convention and produced an evaluation report which it is now implementing.

Despite the difficulties caused by the COVID19 Pandemic, UNESCO has been planning for the next meeting of the States Parties in the Northern Hemisphere Spring. The STAB has just met virtually and it has 2 missions underway in Guatemala and Paraguay.

UNESCO is also planning for the 20th anniversary of the Convention in 2021.

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