

The UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage and its Context

The UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage is the foremost international legal reference for the protection of underwater cultural heritage.

It was drafted by the international community to prevent the destruction of submerged archaeological sites, to regulate cooperation among States and to harmonize international research standards. Above all it was however also created to harmonize the protection of submerged heritage, which includes for instance ancient shipwrecks and sunken ruins, with the protection already accorded to cultural heritage on land¹.

The 2001 Convention does rebut pillage and the commercial exploitation² of heritage for individual profit, defines the scope of heritage and embraces the concept that heritage is a common asset encouraging responsible public access, knowledge sharing and public enjoyment. Altogether the Convention creates common criteria and best practice standards for the protection of underwater cultural heritage to promote its safeguarding.

The Convention is based on the common work of an international community of scientists and State experts, which began in 1976 and resulted in four intergovernmental meetings reuniting the then 193 Member States of UNESCO. It was adopted by the UNESCO General Conference in 2001 and is now open for ratification. This adoption replaced the otherwise usual signature of a treaty for ratification by the drafting States and by it the States engaged to not act against the spirit of the Convention from the adoption onwards. Already more than 50³ States have since ratified the Convention, recognizing officially to be fully bound by its regulations and definitions. More are in the process of preparing ratification. 16 States of the Latin-American and Caribbean region are by now State Party to the Convention.

The UN General Assembly has in 2011 by A/RES/66/231 recognized the special value of the Convention and stated that it 'calls upon States that have not yet done so to consider becoming parties to that Convention [de la UNESCO de 2001]'⁴.

¹ The Convention does not regulate the ownership of submerged sites, but focuses on standards for safeguarding. It does also not change the maritime zones provided for by international law.

² The Convention states expressly: "Underwater cultural heritage shall not be commercially exploited." (Article 2.7 of the Convention) and "The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods." (Rule 2 of the Annex of the Convention)

³ See www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha.

⁴ UN resolution from 24 December 2011 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/472/68/PDF/N1147268.pdf?OpenElement> (relevant parts on page 6/7)

The majority of professional associations of archaeologists and underwater archaeologists have equally officially endorsed the 2001 Convention and its definition of underwater cultural heritage⁵. Other legal texts have been inspired by the definitions of the 2001 Convention⁶ and it is itself in line with other legal treaties defining heritage⁷.

The 2001 Convention's Definition of Underwater Cultural Heritage

The UNESCO 2001 Convention defines in its Article 1:

For the purposes of this Convention:

1. (a) *“Underwater cultural heritage” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as:*

(i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;

(ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and

(iii) objects of prehistoric character.

(b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage.

(c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.

The UNESCO 2001 Convention's definition of cultural heritage does not contain any significance benchmark. Significance is difficult to measure. It can be different at the local, national or international level and depend, for instance, on the strength of historic relations or religious associations. Significance is also subject to change. It can be created and enhanced through research and through raising public awareness. The more a site is publicized and discussed in the media, the more significant it becomes. What is considered significant under present circumstances may also lose significance in the future. A site may, for instance, no longer be the only or best-known example of a certain phenomenon. Conversely, sites or remains that are not considered significant now, may prove of enormous consequence in the future. The realization that

⁵ Such as the World Archaeology Congress; the Australian National Cultural Heritage Forum; the Australasian Institute for Maritime Archaeology; the New South Wales Heritage Council; the Advisory Council on Underwater Archaeology; the Society for Historical Archaeology; the Massachusetts Board of Underwater Archaeological Resources; the Maryland Historical Trust; the Institute for Maritime History; the Maritime Archaeological and Historical Society; the North American Society for Oceanic History; the Council of American Maritime Museums; the Florida Public Archaeology Network; the ICOMOS Australia; the Foundation for Marine Archaeology of the Netherlands Antilles etc.

⁶ See for instance the Code of Good Practice for the Management of the Underwater Cultural Heritage in the Baltic Sea Region (COPUCH)

⁷ See for instance the European Convention on the Protection of the Archaeological Heritage

these changes happen, has considerably influenced the worldwide development of heritage policies. Precautionary and blanket approaches to protection, as well as a commitment to evaluate significance anew, whenever needed, are therefore part of many heritage policies.

The States that drafted the text of the UNESCO 2001 Convention and adopted it, have taken this into account in guaranteeing a blanket protection. This decision was made conscientiously, as during the elaboration of the Convention a significance benchmark had been originally discussed, but was not retained.

The 2001 Convention does not regulate ownership questions, but focuses solely on heritage values. Equally it does not give importance to the monetary value of finds, but only to their intrinsic cultural value.

Note on repetitive items: The definition used by the UNESCO 2001 Convention does not contain a benchmark of representativity or singularity. The fact that an item is found, while a similar has already been discovered, does not change its character as cultural heritage under the Convention (for instance in the case of coins). The reasoning behind is that also repetitiveness can be very valuable scientific information, for instance on the size of trade, vehicles, armament or the exhortations put on a population in order to obtain the artefacts in question⁸.

Note on cargoes: The 2001 Convention cites in its Article 1 explicitly as example of underwater cultural heritage “vessels, aircraft, other vehicles or any part thereof, *their cargo or other contents*, together with their archaeological and natural context...”. With this the Convention stresses explicitly the heritage character of the cargoes of vessels, without making any differentiation of their value, purpose or initial destination. Any per se exclusion of 'commercial loads consisting of materials in their raw state, serial movable who have had exchange or tax value such as coins and bullion, and industrial loads' from the identification as cultural heritage is not in line with the 2001 Convention's definition.

⁸ Often important cultural artefacts or works of art are available in several similar versions, without that this does diminish the interest of the individual piece. Cited may be the Greek-Roman statues, which were produced in certain look-alike types, as for instance the famous theme of the 'Apoxyomenos'. A version of this statue was recently found under water in Croatia and made major headlines and the delight of the public, while other statues of the type exist.