

Multinational Approaches to an International Convention

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Abstract. The expansion of coastal zones and the conglomeration of states throughout the world has led, in part, to the development of the concept of *underwater cultural heritage* (UCH) and its ensuing methodology within the discipline of maritime archaeology. The International Council of Monuments and Sites *2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (2001 Convention)* allows for the availability of uch to be standardized and directly measured. This paper will trace the progression of the term uch through academic analysis of legislative statues and international conventions. It will also examine the way in which government management direction of heritage resources has – and continues to - alter and continues to do so according to ongoing political shifts towards centralization or de-centralization. The possibilities of the *2001 Convention* will be explored through examination and comparison of the many organizations working within its remit, such as archaeological societies, university programs, shops and clubs. In order to absorb the ‘spirit of place’ must archaeologists not just allow for as many approaches as possible while gathering the resultant information.

Introduction

Globalization, ‘a multicentric, multiscalar, multitemporal, multiform, and multicausal process’ (Jessop 2006), brings ownership of underwater cultural heritage (uch) into question. National authorities therefore legislate, manage and edify their responsibility according to the *2001 Convention on the Protection of Underwater Cultural Heritage* (Art.1.1.a) (henceforth known as the 2001 Convention) (Gribble 2007). The complexity of a discipline ‘facing the ocean’ (Cunliffe 2001) demands specialised methodology to access the material culture. This paper lays out the evolution of this concept-term uch in international forums and its current stance in national legislation, management authorities and the resources they coordinate.

New technologies in the 1940’s resulted in SCUBA-diving which led to the ‘birth’ of the nautical archaeology discipline. Initially this entailed positivist methodologies that required recovery of material culture. The removal of artefacts led to a domino effect towards conservation practice, as there were no previous museum and/or research institutes with inventories of this nature. Protection of uch required a transmission of regulation and the development of new museums and institutions to house the water-logged materials and their subsequent conservation technologies. Initially excavation of submerged cultural heritage was possible by the technological advancement of the ‘self-contained underwater breathing apparatus’

(SCUBA) and was practiced by positivist terrestrial archaeologists whom developed the discipline of nautical archaeology. This recovery method required development in conservation practices and led to the opening of maritime museums (i.e. Bodrum Museum, Mary Rose Museum, Vasa Museum). Pioneers of the discipline started university programs. The cognitive abyss of academia brought to fruition the discipline of maritime archaeology, providing an arena for studying the full definition of uch (below), including its abstract context. Students from around the world have/are attending available programs in hopes to further the discipline. Their research and that of professionals is furthered by global communication through internet and advancing technology thereby providing a median to share national-typologies (databases), and partake in multinational projects.

1. Underwater Cultural Heritage

In academia the positivist framework of the New Archaeology in 1940-60's (Jasinski 1999), the study of the objects or 'cultural property', has since been replaced with a more complex and abstract 'cultural heritage'. This is reflected in the shift from unilateral hierarchy methodologies to present-day postmodernist globalisation (Gustafsson 1998; Law 2003).

1.1. INTERNATIONAL HISTORY OF THE UCH CONCEPT

The legitimate definition of uch includes,

all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously for 100 years or more
(2001 Convention)

The above definition was not arrived at easily and the development of the subject can be followed through its appearance in the following international conventions, charters and recommendations. Archaeology as a discipline started off solely focused on terrestrial materials so did the first international-archaeological conventions (*1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention* (Art 1a)). Later the term 'archaeological objects' was expanded to include all material culture (*1956 Recommendation on the International Principles Applicable to Archaeological Excavations* (I1); *1964 Charter for the Conservation and Restoration of Monuments and Sites*; *1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*; *1972 Convention concerning the Protection of the World Cultural and Natural Heritage*).

Accessibility issues arose with marine science technology advancement, which extended national borders and with them the responsibility first to the territorial sea and later to the continental shelf (*1958 Geneva Convention on the Territorial Sea and the Contiguous Zone* (TSC); *1964 United Nations (UN) Convention on the*

Continental Shelf). The UN Conference on the Law of the Sea (1977) council debate recognised the growing discipline of maritime archaeology and the need for a specific Assembly report on uch (Roper 1978). In the 1978 Recommendation for the Protection of Movable Cultural Property (11ai) archaeology is recognised as physically taking place underwater. It is not until the *1982 UN Convention on the Law of the Sea (UNCLOS)* that ‘underwater archaeological objects’ were protected.

In UNCLOS the area open to unrestricted scientific research was circumscribed with the establishment of the 200 nautical mile (nm) Exclusive Economic Zone (EEZ). Although this was seen as counter productive to developed countries, it provided voice to developing countries as to what information was being gathered off their shores and notification as to who was conducting the research (UNCLOS 1982). At the time archaeologists saw the value of this protection for shipwrecks and prehistoric settlements (Van Meurs 1985) but the procedures of notifying authorities of found objects and the subsequent conservation did not occur until later.

The 1990’s was an important time for establishing international bodies and archaeological charters. The International Council of Monuments and Sites (ICOMOS), instated by the *1964 Venice Charter*, took global responsibility for archaeological material underwater with the *1990 Charter for the Protection and Management of Archaeological Heritage* (Art 1). ICOMOS later developed the *1996 Charter on the Protection of the Underwater Cultural Heritage* (1996 Charter). The International Committee on the Underwater Cultural Heritage (ICUCH) was instated in 1990 by ICOMOS Australia. ICUCH as a multinational-representative body composed of professional maritime archaeologists. The committee drafted the 2001 Convention Annex Rules, based in the main on the 1996 Charter. It has thus become the standard guide to the ethics and practices of uch management throughout the world. Many nations have accepted the definition of uch as above (Frigio 2004) and have since applied the Annex Rules to their management strategies (Gribble 2007). Debate continues over the main-body text.

As archaeology first began on land so did its jurisdiction. Article 5(1) of the TSC established state territory legislation integration of internal waterways (O’Keefe 2002). The ratification of UNCLOS enforced State jurisdictional zones (UNCLOS Art 149 and 303) and designated High Seas ownership of shipwrecks. Even so, UNCLOS presented a wide spectrum of rights that threatened the protection of uch. It is only in the 2001 Convention that procedures to protect materials along the full definition of uch are considered, but until it is ratified UNCLOS holds more weight on agreements between States (O’Keefe 2002).

2. National Management Strategy

The following section contains a non-exhaustive list of case studies for comparison on national management strategies in Australia, Canada, and four European countries (Belgium, England, France and Lithuania). These countries were chosen to be examined because over the last four years the author has taken part in meetings

and/or projects with resident maritime archaeologists and attended public discussions on uch-relevant national legislation. Other countries are not included as the author has yet to work in those areas and/or the discipline does not currently exist due to financial restraint.

Managing authorities should offer the best focal point for improving standards, methods and codes of procedures. Equal voice is acknowledged by including State representatives on the board of ICUCH (Law and Moser 2003). This forum recognises the complex management required to enforce legislation pertaining to seabed jurisdiction and cultural resource ownership. Disparate multinational management practices are steadily becoming homogenised under the 2001 Convention.

Methodology is reliant on the resources available so frequently wealthier countries can afford more authority and better technology (Law and Singleton 2004). This section introduces uch national management authority, the countries' current stance on the 2001 Convention, if existing - any sub-authorities and their responsibilities, methodology and available public programs.

2.1. AUSTRALIA

Australia has been involved with maritime archaeology administration from the start. ICOMOS Australia initiated ICUCH and were among the first to coordinate a bi-national agreement concerning common heritage and shared jurisdiction (*1972 Australia-Netherlands Agreement*), to deal with the case of the *Batavia*. National enforcement requested proclamation of all states to abide by the *1976 Historic Shipwrecks Act* and the *2003 Australian Heritage Council Act*. The Ministers responsibilities are filtered by agreements and delegations to all states and territories (Jeffery 1999). All state offices must report to the national Department of Environment, Water, Heritage and the Arts under the Australian Heritage Council. This centralized administration transfers some duties to the National Shipwrecks Advisory Committee established by the *1985 Heritage Act*. The Historic Shipwrecks Program's annual budget is divided amongst states and territories to implement activities to further uch research. Although uch activities in Australia are numerous, ongoing debate continues between all vested parties over the ratification of the 2001 Convention.

Each state manages varying uch organizations (Staniforth 1999) and offers minimum outputs of a Shipwreck Database and maritime heritage trail. The Government of South Australia's Department of Environment and Heritage, Heritage Branch administers the South Australia Maritime Museum and consults the Society for Underwater and Historical Research, both of which connect people and projects between Flinders University maritime archaeology program and avocational divers. In Western Australia the Western Australia Maritime Museum, which houses the Australian National Center of Excellence in Maritime Archaeology, doubles as government department and museum. It also runs the University of Western

Australia postgraduate program in maritime archaeology. The avocational club Maritime Archaeological Association of Western Australia works closely with the museum. In Victoria the government department is the Maritime Heritage Unit (MHU), part of Heritage Victoria, which falls under the auspices for the Department of Sustainability and Environment. Two avocational clubs, Maritime Archaeology Association of Victoria and Southern Ocean Exploration, provide information and train non-professional workforce for the MHU. The Australian National Maritime Museum and Queensland Museum in New South Wales hold and display such artefacts. The sole commercial outfit legally performing underwater archaeology assessments for the country is Cosmos Archaeology, located in Sydney. Tasmania and the Northern Territory run Maritime Heritage Offices but tend to coordinate activities with other states. All of the above mentioned institutions invite students and professionals from around the world to partake in projects and publish works in relation to other national on goings.

The Australian Institute for Maritime Archaeology (AIMA) is a non-governmental organization; its membership comprises such professionals within the Oceania Region. AIMA's activities include Nautical Archaeology Society (NAS) training, an annual conference and publishing newsletters, bulletins and special publications. AIMA is the forum in which all activities carried out by the above mentioned authorities can share past and ongoing projects between national and multinational professionals and students.

Museums throughout the country hold such artefacts from years of recovery (1970's – 90's); now practice is to leave the material *in situ*. Diving on wrecks is allowed without permit in accord that associated materials are not interfered-with, unless it is a 'protected zone'. *Historic Shipwrecks – Public Access* is the guide on conditions and requirements for permits. Discoverers of such must report finds to the jurisdictional state office and may receive a reward to make up for the loss of salvage return.

2.2. CANADA

The group responsible for such in Canada are the Underwater Unit (UU) who report to the Canadian Parks Service (CPS) which is managed under the Canadian Ministry of Heritage. Under the *2001 Canada Shipping Act* wreckage within the territorial sea must be reported to Receiver of Wreck, reward may be issued to compensate for salvage-return loss. The UU generally practice *in situ* preservation, the extent of which is apparent in the 'Marine Reserves' conservation projects and the long-awaited publication *Underwater Archaeology of Red Bay* (Grenier et al. 2007). The UU aims to centrally direct procedure and protection of such, this led to the organization of The 2001 Canada Shipping Act Regulatory Reform Project. During 2004 coordinators travelled across the country and carried-out consultations with Regional Canadian Marine Advisory Councils in effort to amend the *2001 Canada Shipping Act* to streamline with the 2001 Convention.

Currently all original provinces of Canada, according to the *1867 Constitution Act*, hold jurisdiction over their mandates and permit systems. In Western Canada the Vancouver Maritime Museum in union with the Underwater Archaeological Society of British Columbia (UASBC) produce newsletters and reports of their projects, run NAS courses, and hold conferences. In Central Canada Save Ontario Shipwrecks have similar goals and programs as UASBC. For example, they host NAS courses, run projects in the St. Lawrence and Great Lakes, and coordinate with the Great Lakes Institute and the Marine Museum of the Great Lakes. Apart from sporadic avocational involvement Quebec's contribution includes the post-graduate maritime archaeology program run out of the Université de Montréal and the Pointe-à-Carrière Museum. In Eastern Canada, Nova Scotia's Maritime Museum of the Atlantic is the designated authority in regards to the *Special Places Protection Act*, which requires that individuals hold a permit before disturbing heritage; the *Treasure Trove Act*, which requires a licence for individuals undertaking treasure hunting; and coordinates grants for Marine History Research. The Newfoundland Marine Archaeology Society (1969 – 1987) at one time taught classes at Memorial University, published journals and ran many field projects (Janette Ginns pers.comm.).

Most known archaeology sites are shore-side or below the waterline but there are no active professional maritime archaeology commercial companies in Canada. The Canadian Archaeological Services Branch have a shipwreck database but it is not yet available to the public (Daniel LaRoche pers. comm.).

2.3. EUROPE

The European Union is recognised as a centralized governing influence (Jessop 2004) because it is the umbrella under which councils are held between specialist Member State (MS) representatives. The European Union's (EU) *Maastricht Treaty* (Art 128) shapes an obligation to heritage. Under the *1992 European Convention on the Protection of the Archaeological Heritage* was amended (Boesten 2002; Roper 1978), *in situ* preservation of uch retains context. The European Commission released a paper in 2006 *Towards a Future Maritime Policy for the Union: A European vision for the oceans and seas*, section six of which deals exclusively with maritime heritage. It is a guide on how MS and Associate States can share jurisdiction of their common uch and introduces the "EU Atlas of the Seas" databank. Multiple European projects have occurred or are prospective towards this mandate: Monitoring, Safeguarding and Visualizing North-European Shipwreck Sites (<http://www.mossproject.com/>); Managing Cultural Heritage Underwater (<http://www.machuproject.eu/>); and Atlas Archaeology of 2 Seas (Atlas A2S). Below, in alphabetical order, are examples of uch management in four European countries the author has engaged with.

2.3.1. Belgium

In Belgium Cel Maritieme Archéologie en Varend Erfgoed (CMAVE) operates under the Vlaams Instituut voor het Onroerend Erfgoed (VIOE), with the *2007 Projet de loi: relatif à la protection des épaves*. Until this legislation existed most responsibility was on The Ministry of French Culture and the Ministry of Dutch Culture (*1931 Preservation of Monuments and Sites Act*, and all revisions henceforth) (Roper 1978). Belgium is currently in discussions to ratify the 2001 Convention.

VIOE manage the web database – Databank Maritiem en Fluviaal Archeologisch Erfgoed in de Steigers (<http://www.maritieme-archeologie.be/>). CMAVE train avocational clubs NAS procedure, and practice a combination of *in situ* and recovery maritime archaeology. The main public-outreach is an *in situ* medieval cog.

2.3.2. England

The managing authority in England is the Head of Maritime Archaeology of English Heritage (EH). This Head directs the Maritime Archaeology Team (MAT). MAT adopted its duties from the Department of Culture, Media and Sport (DCMS) and centralizes administration of the *1973 Protection of Wrecks Act*, the result of which is the Designated Historic Sites database (<http://www.english-heritage.org.uk/server/show/nav.8385>). Some transfer of duties is shared with the Advisory Committee for Historic Wreck Sites (ACHWS). EH applies the 2001 Convention Annex Rules but will not accept the text unless it is amended to recognize State-ownership of flag vessels regardless of their location.

All Local Councils are to report to EH on who holds permits. Protected wreck sites require a license granted by the Secretary of State to carry out diving or salvage operations.

English methodology has mostly shifted from recovery to *in situ* preservation (Muckelroy 1980; Roberts and Trow 2002). Recovered artefacts were/are conserved and held in local regional museums (i.e. Cornwall Maritime Museum, *Great Britain* Museum, Mary Rose Museum, National Maritime Museum). University programs currently run out of University of Bristol, University of Oxford, Southampton University, and University College London. Wessex Archaeology is the only underwater archaeology commercial company. The Institute of Field Archaeologists - Maritime Affairs Group provides bulletins of ongoing archaeological projects and set minimum standards of work within the country. NAS developed a training program and publication (Dean et al. 1992) due to the volume of avocational interest in England (Hampshire & Wright Trust for Maritime Archaeology, Shipwreck Heritage Association, London Maritime Archaeology Group, Halsewell Archaeological Group, etc.), which is also operational in other countries (see sections 2.1., 2.2. and 2.3.1.).

2.3.3. France

France manages uch within the 24 nm Contiguous Zone, in accordance to the National Archaeological Programme (Le Gurun 1999). Under influence from auspices of the European Council, France made amendments to national legislation and now function under the *Décrie No. 91-1226* for the application of *Loi No. 89-874, 1996 Ordre du 4 Janvier* and *1996 Ordre du 8 Février*. These respectively cover the regulation of archaeological excavations, creation and organization of the department of marine and underwater archaeological research and maritime cultural assets. The discovery of historic material must be reported to the nearest Maritime Affairs Service. The finder may receive a monetary reward, the sum of which is decided by the Ministry of Culture after consultation with the National Council for Archaeological Research. Further artefact(s) procedure falls under the Département des Recherches Archéologiques Subaquatiques et Sous-Marines (DRASSM), whom excavate underwater sites and manage avocational involvement within French Territorial Seas. Due to the marine historical power of French history France will not accept the 2001 Convention text unless it is amended to recognize State-ownership of flag vessels regardless of their location, however DRASSM applies the 2001 Convention Annex Rules.

The French primarily operate a recovery orientated methodology (Binant and Techer 1994; L'Hour and Veyrat 2005). Within the country DRASSM relies on Association Développement de Recherche Archéologie MARitime (ADRAMAR) and avocational divers to report finds and monitor known sites. ADRAMAR coordinates L'Atlas archéologique des biens culturels maritimes de l'Arc atlantique (<http://www.adramar.fr/index.php?id=5>) and occasionally teach a university class.

2.3.4. Lithuania

Lithuania legislates uch through the Lietuvos Respublikos Kultūros Ministerija. Renaldas Augustinavičius is the uch managing authority within the Kultūros Paveldo Departamentas, under the 2001 Convention, ratified June 12th 2006.

The private archaeology company Viejoji staiga kultūros paveldo išsaugojimo pajėgos runs excavations which are used as training grounds for avocational divers and future maritime archaeologists in the Baltic region. All recovered artefacts requiring conservation are sent to the restoration lab in the Lietuvos Nacionalinis Muziejus, otherwise materials are sent to local regional museums (Elena Pranckenaite pers. comm.). These activities add a water dimension to the Lithuanian Archaeology Society.

Discussion and Conclusions: Restricted Access Providing Availability

This paper introduced the historical background in international papers of the concept-term uch. A shift away from New Archaeology 'archaeological object' characterization towards agency brought-about the development of an abstract uch definition. Later regulations of uch reached a generally standardised level as expressed in the 2001 Convention. However, acceptance of the 2001 Convention is

complex given the disparate nature of development of various management strategies and bodies. The difficulty towards the 2001 Convention ratification lies in the fact that maritime history is global therefore what one country would consider national uch lies within the territory of another. Recovery methodology begs the question of ownership. The 2001 Convention attempts to compromise this situation with the practice of *in situ* preservation and multinational cooperation.

Perhaps if ‘spirit of place’ is defined then uch ownership and the consequent protection-practice questions can be resolved. All the above case studies prove that national authorities are currently training the public to respectfully interact with submerged material culture and/or, at the same time, removing them from heritage. Is it not more important to break that barrier between object and person and allow some interaction so that people may truly absorb the ‘spirit of place’ in their own definition?

What about abstract uch? Urbanization was developed out of centers of harbours and anchorages connecting vast trade networks. The mercantilist and war-related patriotic result transpired globally, now requiring wide-scale context research. This of course is a lot harder to relate to a general public outside of books, but movies and documentaries are on the up-rise to do just this. Simultaneously, maritime archaeologists must deal with the advancement of deep sea marine science technology and the people who can mostly afford this technology – treasure hunters. Perhaps here too we should embrace those who have the technology and involve them in our research. Is it not the archaeologist’s job to gather and disseminate *information*? Understandably we may lose some material culture along the way while we figure out a balance but we always have, look at the information lost from Mediterranean amphora before it was realised that cleaning the vessels or filling them full of air and rocketing them to the surface resulted in the loss of trace-elements absorbed from the original trade item to the container. We must be clear with ourselves what our priorities are and allow for some room to appreciate all angles of approach.

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