

## **Underwater Cultural Heritage Sites on the Way to World Heritage: To Ratify the 2001 Convention or not to Ratify?**

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### **Abstract**

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After several years of discussion and study, for the purpose of the Protection of Underwater Cultural Heritage, UNESCO has adopted a Convention in 2001 (hereafter the 2001 Convention). According to the 2001 convention, Underwater Cultural Heritage (UCH) is: "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." A convention is an agreement concluded among States in written form and governed by international law. It imposes agreed binding legal obligations on its Parties. Considering the fact that the more countries join the convention, the stronger it becomes and at a certain point it can become common practice, UNESCO Secretariat tries to encourage more countries to join the 2001 Convention. However ratification of the 2001 convention goes slowly. This research will present the efforts that are being done more recently in 2013 to motivate countries to ratify the convention. In addition, this study will analyze the benefits of ratification in terms of its effectiveness in promoting underwater archaeological practices. This paper has a focus on the practicality of the convention in promoting good practices rather than its legal rules and benefits. This study has benefited from direct observation of UNESCO activities, and the analysis of several initiatives, as well as a survey, conducted by the author, of underwater archaeology experts and fieldworkers.

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**Keywords:** Underwater Cultural Heritage, the 2001 Convention on the Protection of the Underwater Cultural heritage

### **Introduction**

Since 2001 there have been considerable debates about ratifying the Convention on Protection of Underwater Cultural Heritage (Garabello & Scovazzi, 2003).

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Meanwhile several countries which have pioneered underwater archaeology, such as the United Kingdom, USA, Canada and Australia, have not yet ratified the Convention, thus the question arises as how these countries benefit from the ratification of the 2001 Convention, and to what extent can ratifying this Convention assist such countries to better manage their underwater cultural heritage?

The UNESCO Secretariat states that ratifying the 2001 Convention would bring many benefits; among those, better and harmonized protection and conservation methodology, providing important professional guidance for managing underwater cultural heritage and reconciliation of international maritime law have been highlighted (Guerin, Draft; Maarleveld, 2008). Therefore, ratifying the convention is encouraged.

Following the last meeting of the Member of title the Scientific and Technical Advisory Body in 2013, one of the new goals of UNESCO is to prepare a report of best practices in the field of underwater archaeology undertaken by the State Parties. This document will include the best projects in the countries which have ratified the 2001 Convention. Through this initiative, UNESCO has two aims: the first is to highlight the benefits of joining the 2001 Convention and to encourage other States to ratify the convention, and the second is to put forward the case that underwater cultural heritage sites are eligible to be subscribed in the World Heritage list (World Heritage/UNESCO website). Following the Convention concerning the Protection of World Cultural and Natural Heritage, World Heritage properties are those immovable heritage sites, monuments and groups of buildings which are of outstanding universal value from the point of view of history, art or science (UNESCO Convention, 1972). Having a monument listed is considered a privilege and therefore it can be a motivation to ratify the 2001 Convention (STAB, 2013).

However, the question remains that to what extent ratification of the 2001 Convention would help the State Parties to achieve the benefits of protection, conservation and public access previously mentioned.

Also, is it important for all countries to have their underwater cultural heritage subscribed in the World Heritage list? Moreover, there are debates at the World Heritage Center about subscribing the underwater sites and the criteria that make these sites eligible to be subscribed.

The two sides of these arguments—the World Heritage Center and the Underwater Cultural Heritage section— have different viewpoints that will be discussed in this study.

This paper aims at introducing the criteria which UNESCO considers for the underwater cultural heritage best practice, and to present an evaluation of the best practice in the world in relation to the state of ratification of the 2001 Convention. For the purpose of this paper, however, best practice is not only taken forward by State Parties, but also from the countries which have not ratified the 2001 Convention. To inform the evaluation a comparative analysis has taken place based on the criteria for acceptable preservation methodologies, public presentation and access to underwater cultural heritage sites. The effect of joining the Convention in the present State Parties will be assessed.

Since 2001 until December 2013, 45 countries have gradually ratified the convention (UNESCO, UCH website). Some major maritime states were and still are reluctant to ratify the 2001 Convention (Maarleveld, 2007, 9-32) because of several reasons that will be explained more in detail in this paper. Several countries with rich underwater cultural heritage, and who have implemented the most high profile underwater archaeological projects in terms of study, conservation and presentation, have not yet ratified the 2001 Convention. This paper also asks the question whether the new initiative at UNESCO regarding listing the best practices, will encourage other countries to join the 2001 Convention. The paper also addresses the issue of whether ratification of the 2001 Convention has been effective in promoting underwater archaeology in countries with less developed techniques and knowledge of underwater archaeology?

### **Ratification Analysis**

As aforementioned, ratification of the 2001 Convention has proceeded slowly. States are skeptical to some extent of ratification due to the eccentricities of national politics, political structures, and resources within different levels of national government, the role of salvage law, the Convention's alleged diminution of Coastal State rights and several other issues (Dromgoole, 2013; Nafziger, 1994).

**Table 1: State Parties to the 2001 Convention until December 2013**

Countries and their regions								Jordan				
								Jordan				
								Iran				
								Grenada	Italy			
						S. Vincent		Kite/Nevis	Trinidad & Tobago	Palestine		
		Paraguay			Portugal	S. Lucia	Barbados	Haiti	Honduras	Jamaica		Antigua & Barbuda
		Panama		Spain	Mexico	Cambodia	Slovenia	Slovakia	Argentina	Morocco		France
		Cuba		Niger	Ecuador	Lebanon	Montenegro	Bosnia & Herzegovina	Congo	Namib		Belgium
		Bulgaria	Croatia	Libya	Lithuania	Romania	Ukraine	Albania	Gabon	Benin		Togo

Until December 2013, 45 countries, out of about 195 countries, have ratified the 2001 Convention. Table 1 shows the number of countries that ratified the Convention subsequent to its adoption by UNESCO in 2001. The first ratification occurred in 2003 followed by a relatively steady increase until 2009 which was the enforcement year, and then the rate decreased. A majority of countries which ratified the Convention are from the Central America and Caribbean regions. In 2012 no ratifications occurred. Several reasons can be put forward to explain this, such as, in general convincing countries and preparation to ratify are processes that take considerable time.

Within each country reaching agreement to ratify can take an extended period, perhaps due to the changes of government and political agendas. Furthermore, ratification of the 2001 Convention may not be considered a priority. In addition, due to the drastic reduction of fund, and budget cuts due the US refusal to pay a contribution to UNESCO since Palestine was accepted as a state party, all sections of UN organization were affected and the capacity of the Secretariat was also affected as they had to reduce their staff numbers and activities. Therefore the Secretariat of the 2001 Convention could not be as influential as they desired (Personal communication, Da Silva, 2013). UNESCO tries to increase the ratification though lobbying with countries, organizing conferences and workshops (Henderson & Viduka, 2014), as well as developing incentives. Two recent efforts to create motivation are: 1) Creating a list of best practices, and 2) Inscribing underwater cultural heritage in the World Heritage list (Guerin, 2013).

## Creating a List of Best Practices

In 2013, based on the decision made at the Scientific and Technical Advisory Body Meeting, it was decided to make a list of best practices of UCH activities in the ratified countries. This plan had two main goals: firstly to provide an inventory of good examples as a model for other countries to adopt the same or similar methods, and secondly, and most importantly, is to see if creating this list can encourage other states to ratify the convention. It is believed that branding with “UNESCO Best Practice” might be an incentive for some countries to ratify the Convention.

The 2001 Convention encourages information sharing and responsible public access from the start of any underwater archaeological research. It seeks ways of collaboration between the wider community and the underwater cultural heritage authorities and professionals. It is only through the understanding of the underwater cultural heritage and its enjoyment that people will be able to recognize the former as part of their identity and, therefore, will get engaged to preserve it. Therefore, two criteria for the best practice list were defined as:

- Providing public access (mostly *in situ* to be in accord with the Rule 1 Annex of the convention (Maarleveld et al, 2013)).
- Sufficient and proper efforts for protection and preservation.

Out of 45 states parties, 14 projects in 10 states, and one international example were selected (the international example, which is Titanic, is out of the scope of this paper.) In table 2, the list of these examples, with the states' ratification dates and date of the projects implementations have been presented. Most of the projects had been completed before the ratification. In preparing this list, some issues were also raised for further study, including those arising from the techniques that have been applied for protection. For instance in the case of 'Croatia's metal cage protection and underwater display', the first cage installed at the ZaPlaniku site near the island of Lastovo in 1990, the issues of metal erosion and its impact on the archaeological remains, as well as maintenance of the cage and the wreck were highlighted. Other issues which have been of concern are the designation issues and policy for conservation and protection including the age criteria, *in situ* management as opposed to recovery and terrestrial museum display. These issues are the topics which are going to be discussed in future meetings.

**Table 2: Some Examples from the Best Practice List, Drafted by UNESCO, with the States' Ratification Dates and Date of the Projects Implementations**

Country	Rat. Date	Projects	Start of underwater activities	
Examples of best practices	Barbados	2008	SUBMARINE VISITS	?
	Croatia	2004	METAL CAGE PROTECTION AND UNDERWATER DISPLAY	Since 1990s
	Cuba	2003	DIVING THE WRECKS OF THE SANTIAGO DE CUBA BATTLE	?
	Grenada	2009	SHIPWRECK DIVING	1997
	Italy	2010	THE UNDERWATER ARCHAEOLOGICAL PARK OF BAIÀ, And GAIOLA UNDERWATER PARK	2002 (Marine protected area)
	Jamaica	2011	PORT ROYAL- SITE	Excavation since 1950s No organized access yet
	Libya	2005	Suggestion of DIVE TRAIL OF APOLLONIA ON GLASS-BOTTOM BOAT	excavation since 1957 and start visiting planning in 2008-2009
	Portugal	2006	DIVE TRAIL ON THE OCEAN SHIPWRECK-	Started in 1993, and trail renewed in 2005
	Mexico	2006	UNDERWATER ARCHAEOLOGICAL MUSEUM	On example is from 2013
	Spain	2005	MUSEUM OF UNDERWATER ARCHAEOLOGY AND MARITIME MUSEUMS (Terrestrial)	Several museums established in different years.
		SITE VISIT TO ARCHAEOLOGICAL EXCAVATION	1992	

### Inscribing Underwater Cultural Heritage in the World Heritage List

The second effort is to list underwater cultural heritage in the UNESCO-World Heritage list (Guerin, 2013). Although there are debates on what can be considered as international cultural heritage and whether maritime culture is an international topic or more national and local (Maarleveld, 2012), listing as World Heritage would help State Parties to develop better management plans and improve the state of their heritage sites through benefiting from international collaborations, raising international awareness, and access to World Heritage Fund (UNESCO, World Heritage website). This is another initiative similar to the best practice regarding branding (Buckley, 2002), however with several more obstacles. The first and the foremost obstacle is that the World Heritage Center has not yet considered many types of underwater cultural heritage as sites and immovable heritage. According to the World Heritage Center, only immovable sites which are located inside the national territorial land and water of a country can be listed. The World Heritage Center considers shipwreck as movable objects.

Thus, the only types of submerged heritage that can be listed as World Heritage at the moment are the submerged cities and landscapes in the countries' territorial water, if evaluation of the sites fulfils the significant criteria. In this respect, the first step for enlisting as the World Heritage is that the evaluation criteria for World Heritage sites should be justifiable for underwater sites. Secondly, relevant criteria should be developed and established for assessing these sites as underwater entities. One development that should be recognized is the new World Heritage site of the 'Red Bay Basque Whaling Station' which was listed in 2013 and encompasses all the cultural remains on land and underwater including the remains of rendering ovens, cooperages, a wharf, living quarters and a cemetery, together with the underwater wrecks of vessels and whale bone deposits (UNESCO website). This is a combination of immovable sites and moveable objects that together have shaped the whole site and without each element in its context the site would not be complete.

In general, application of the World Heritage to Underwater Cultural Heritage requires consideration in its own, irrespective of the 2001 Convention. The two conventions are quite unconnected and this is not necessarily a good thing, although there are some justifications of the links (Guerin, 2013), still they need stronger deliberation in order for the World Heritage Center to consider underwater cultural heritage for World Heritage listing. However, it can also be debated that the World Heritage Convention also has its shortcomings in protection of the world cultural-natural heritage since this convention has not yet been applied to the high seas due to the fact that it is only applicable to the territorial land and sea.

About 64 percent of the ocean lies in the high seas, a vast area that cannot be claimed by any nation but is the common property of all humanity (Douvere & Laffoley, 2010, 24). For these areas the United Nation Convention on the Law of the Sea (UNCLOS, 1982) has regulation concerning the activities in open seas and oceans, however with brief and insufficient attention to the underwater cultural heritage (Strati, 1995) (UNCLOS Articles: 149 and 303). Therefore, the 2001 Convention which focusses on underwater cultural assets, consistent with UNCLOS (Cogliati-Bantz & Forrest, 2013), provides a better protection vision for this type of heritage as common heritage of humanity or world heritage.

For the purpose of this study, a survey was run among experts in the field of underwater cultural heritage. One question was if listing an underwater cultural site as world heritage, with the prerequisite of ratification of the 2001 Convention by the relevant state, would encourage other states to ratify the 2001 Convention?

The results of the survey are presented in Table 3. What is striking is that the difference among the numbers of responses to yes, no and maybe is not significant, thus the remarks presented by several experts need more in-detailed analysis. At this point inclusion of underwater cultural sites in World Heritage List as a motivation for ratification of the 2001 Convention remains inconclusive.

**Table 3: Shows the Results of the Survey on the Effect of Listing as World Heritage site on Encouraging Countries to Ratify the 2001 Convention**

<b>Listing as WH results in more ratification of the 2001 Convention?</b>		
<b>Answer</b>	<b>Number</b>	<b>Remarks</b>
Yes	15	If only ratified States could nominate underwater sites for WH.
No	12	Many developed countries hesitate to sign the 2001 UNESCO Convention due to restriction of sovereignty and rights.
Maybe	12	Need to be analyzed more in details. Depends on the country. Ratification of 2001 does not coincide with WH designation. World Heritage sites will particularly help encourage nations to comply with some standards, the question is that whether the 2001 UNESCO Convention complies with these standards? Giving the same attention of land based heritage can be a good idea.

### **Benefits of Ratification and Reluctance of Pioneering Countries**

In addition to these sentiments, several benefits of ratification of the 2001 Convention have been stated by experts through different studies. First and foremost, the 2001 Convention is the first convention which sets out basic principles for the protection, treatment and research of underwater cultural heritage exclusively and promotes international cooperation for preservation and protection of this heritage (Luka, 2008; Mander, 2008). This convention provides information to enable politicians to judge and decide about underwater cultural heritage with more awareness. Ratification of this convention is a sign of an interest in preservation and protection of underwater cultural heritage. According to the Convention itself, joining the 2001 Convention guarantees [or better to say encourage] the preservation for the future, enables capacity building and the exchange of knowledge and prevents the commercial exploitation of Underwater Cultural Heritage (UNESCO Information Kit).



Although the 2001 Convention does not regulate the ownership of submerged heritage, through harmonizing states' national legislation in conformity with the Convention, many complications in regards to ownership can be addressed and it gives the right to prevent unauthorized interventions in cases of immediate danger in the Exclusive Economic Zone and the Area (Guerin, 2010).

In spite of these benefits, many countries which pioneered underwater archaeology have yet to ratify the Convention. These countries are the ones with extensive known heritage, often well preserved and presented underwater archaeological sites, which also encouraged the groundwork for the development of the 2001 Convention, and were the first contributors to legislation and conventions regarding underwater cultural heritage (Prott&Srongs, 1999). Thus the question rises as to what extent ratifying the 2001 Convention can benefit the already well-developed State Parties who have not ratified the 2001 Convention, and if ratification helps enhancing underwater cultural heritage practices in general and gaining the mentioned benefits.

## **An Overview of the Pioneering Countries**

On the top of the list of the pioneering countries in underwater archaeological activities are USA, Australia, China, UK and Canada. Here a brief overview of the state of underwater cultural heritage regulation and activities been presented.

### **United Kingdom**

United Kingdom started with the Protection of Wrecks in 1973 as a temporary legal measure to prevent illegal salvage of historic sites and it is one of the earliest examples of historic shipwreck legislation. In subsequent years, extensive detailed guidance on historic vessels, marine development control, and the assessment, evaluation, mitigation and monitoring of the underwater archaeological sites, has been produced. The UK has established several museums, conducts projects, and developed educational programs. The UK Government has stated that it regards the Rules annexed to the 2001 Convention as representing good practice for underwater archaeology, and although there has been a lot of debates, yet the UK has not ratified the 2001 Convention (British Academy website). Non-governmental organizations have conducted a research project assessing the impacts of ratification (UK UNESCO 2001 Convention Review Group, 2014).

Considering the adoption of the first rule of the 2001 Convention regarding *in situ* conservation, there have been several examples of management *in situ*, such as stabilization and reburial (Camidge, 2009; Matthew, 1998).

## **Australia**

During 1960s and 70s, Australia has been a pioneer in development and introduction of legislation for the protection of historic shipwrecks. One of the earliest documents to protect underwater cultural heritage and mainly historic shipwrecks is the Australian Historic Shipwreck Act of 1976 (HAS). Australia has stressed the significance of the sites and ruled that all the shipwrecks or the sites need to be evaluated and the resulting statement of significance should serve as a guide to the development of appropriate management strategies (Australia Department of Planning, 2009; Nutley, 1996). Australia has established several museums, underwater trails and educational programs, and encourages research, promotes site and artifacts management, funding, training, volunteer programs and public presentation and access. The most recent initiative of Australia in order to ratify the 2001 Convention has been the Australasian Institute for Maritime Archaeology (AIMA) 2013 Conference which was held in 2013 to discuss legal issues around ratification of the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage with specific reference to Australia and countries in South East Asia and the Pacific Region (AIMA, 2013).

## **USA**

In the USA, particular processes for different types of underwater cultural heritage are applied. The types of heritage range from submerged prehistoric landscapes and sites to vessels and wrecks from the modern era. The Abandoned Shipwreck Act (ASA) of 1987 was the first USA law to regulate the US underwater cultural heritage. In 1972 a new program was initiated by Federal Agency National Oceanographic and Atmospheric Administration (NOAA) to designate a Sanctuary area that is considered to be 'historically, culturally, archaeologically and paleontologically significant'. Therefore, the scope of underwater cultural heritage was extended beyond shipwreck sites.

One of the first countries which integrated cultural heritage into Marine Protected Areas and highlighted the importance of submerged cultural-natural heritage (NOAA), the USA also has many museums and underwater trails, projects, educational program and it is engaged in international cooperation (Florida Heritage website).

## China

In 1987 The Underwater Archaeology Center of China was established. 'The Regulation of the People's Republic of China Concerning the administration of the Work for the Protection of the Underwater Cultural relics 1989' has been one of the background materials of study for the 2001 Convention. China has several maritime museums, projects, provided *in situ* access to underwater cultural sites and has applied hightechnology approaches. One of the highlights of their projects is the Baihelianginitiative where a museum was constructed on an ancient site which was submerged due to a newly constructed dam. This project has been recognized as a good practice by UNESCO (UNESCO Museum website), however it was not listed in the best practice list since China has not ratified the 2001 Convention.

## Issues with Ratification, and Debates

Some issues that these more advanced countries have with the 2001 Convention and made them reluctant to ratify the Convention stem mostly from political complications, sovereign immunity and ownership (Staniforth, 2009; Neyland, 1996). In addition, contradictory analyses by experts in this field make the ratification of the 2001 Convention more tentative.

These issues, among several others, relate to the Convention's enforcement, its over-inclusive definition of cultural heritage, and its vague language, and ignoring the necessity for a significant requirement except for the 100-year cutoff date (Bederman, 1999). In addition some countries with pre-existing national legislation see the ratification as an obstacle requiring the alteration of their long-established laws.

On the other hand, in some studies several facts have been considered as potential benefits for developed countries. States such as Spain and France which had issues with ratification had considered some potential benefits in respect to sunken warships that have led these states to ratify the Convention. These countries see that joining the 2001 Convention would give them a more controlling position on the activities and law making. Also, they can benefit from the arrangements among State Parties to report discoveries and activities when they are in the Exclusive Economic Zone and Continental Shelf of other countries. Additionally, there are benefits out of co-operation between States Parties in the protection of underwater cultural heritage - particularly between Coastal States and Flag States. For instance, a Coastal State who has ratified the 2001 Convention is obliged to consult with a flag state in case that the flag state's vessel would be intervened by the Coastal State (Strati, 2006 and 2013; Risvas, 2013). In several countries, such as the UK, procedures for the treatment of human remains has been an issue (UK UNESCO 2001 Convention Review Group, 2014), but through one of the fundamental principles of the 2001 Convention (Article 2(9)) it has been recorded that States Parties must ensure that proper respect is given to all human remains

## Analysis and Conclusion

As a result of the present study, a record of the countries in regards to their ratification status, and the state of Underwater Cultural Heritage preservation has been formulated and presented in Table 3. Based on these categories, it seems there is no strong correlation between the state of Underwater Cultural Heritage activities and ratification of the Convention.

Table 4: Categorization of the States Based on Ratification and State of Site Preservation and Public Access

State of ratification	Protection-Preservation	Public presentation	Examples	Remarks
Ratified	Good	Good	Spain, Italy, etc.	Considering differences in the natural environment preservation and access can be <i>in situ</i> or not. There are variety of approaches for preservation and providing access to the sites.
Unratified	Good	Good	USA, Sweden, etc.	
Ratified	None or little	None or little	Iran	Iran has been mentioned here since it is the home country of the author who has the thorough insight into the situation.

In the end, although the motivations seem to be helpful and several benefits have been listed as the result of ratification, they are not enough for the developed countries and these countries need a clearer and more convincing articulation of benefits that would arise from their ratification. Although declaring a country's management procedures as best practice could be a motivation for ratification since it might be promoting tourism and collaborations among countries, it was highlighted that implementing a best practice project has not been a result of ratification. In addition, listing as World Heritage can be considered as a motivation for some countries that can benefit from the World Heritage brand for tourism promotion and international recognition, however ratification of the 2001 Convention should be a prerequisite if an underwater site is supposed to be listed as World Heritage. Even in this case, advanced countries with developed tourism and high level of underwater cultural heritage experiences might not see this as an additional motivating reason.

Ratification might be a signal of interest in promoting activities, or it might have other political and legal motives (e.g. for smaller countries to get more international attention.)

Two issues that are striking here are that the 2001 Convention and ratification are engaged more with the issues regarding shipwrecks, and the convention has more legal and political goals and concerns rather than practical scientific purposes, especially in comparison with other UNESCO Conventions.

In addition, although it is an advantage that the 2001 Convention is an umbrella for protection of underwater heritage anywhere in the world's seas (territorial and international), combining the issues of national and international waters and the properties in these areas has complicated the subject of the 2001 Convention. There are points to be learned from World Heritage experiences; for instance after so much effort to include the natural heritage of the Open Sea (Sargasso) as World Heritage site, the World Heritage Center decided not to pursue it due to its complicated political and international issues (IUCN, 2014).

Considering all concerns referred to in this paper including political and legal issues as well as practical ones that countries have with the ratification of the 2001 Convention, it seems that a revision of the Convention about 13 years from its adoption will be helpful to clarify these concerns.

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