

THE UNESCO 2001 CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE

Frequently Asked Questions



Wreck off Papua-New Guinea © UNESCO/A. Vanzo

While cultural heritage on land has increasingly benefitted from national and international safeguarding measures, underwater cultural heritage still lacks sufficient legal protection. The **UNESCO Convention on the Protection of the Underwater Cultural Heritage**, adopted in 2001, intends to enable States to better protect this heritage.

The most frequently asked questions concerning underwater cultural heritage and the 2001 Convention are answered in the present document.

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BACKGROUND

What is underwater cultural heritage?

Art. 1 paragraph 1 of the 2001 Convention states:

- (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.*

This definition of underwater cultural heritage includes ancient shipwrecks, like the *Mary Rose* wreck in Portsmouth, UK, the remains of the *Armada* of Philipp II of Spain or the ships of Christopher Columbus, as well as submerged sites and buildings such as the Alexandria Lighthouse, undersea rock art caves or Neolithic lakeside villages. However, it does not include installations still in operation, natural heritage or fossils.

Underwater cultural heritage can provide testimony to the cruelty of the slave trade, the ferocity of wars, the impact of natural disasters or the peaceful exchange between faraway regions. For present and future generations, it represents an invaluable source of information on ancient civilizations and historic seafaring, as well as unique diving and tourism opportunities.

Why is underwater cultural heritage so important?



English Long Bows from the *Mary Rose* wreck © UNESCO/U. Koschtial

Underwater cultural heritage encompasses many sites that have not been touched over centuries or even millennia. When a ship sinks or a city is destroyed the remains are conserved by the water like a kind of “time capsule”.

Furthermore due to the lack of oxygen, which would have facilitated the deterioration of biological material, and, until recently, its inaccessibility, underwater cultural heritage is often much better preserved than similar sites on land, which makes these sites unique. For instance, the only known English long-bows - made famous by the legend of Robin Hood - were discovered on the wreck of the *Mary Rose*.

Why does the underwater cultural heritage require urgent protection?

Shipwrecks and underwater ruins have become increasingly accessible. While professional equipment and a high level of training remain necessary to undertake excavations, submerged archaeological sites are no longer beyond the reach of treasure hunters. Thus, many undersea archaeological sites are pillaged without recourse to scientific and archaeological exploration methods. Similarly, the fishing industry, the laying of pipelines, and other ocean floor activities can damage or destroy such heritage.

This increase in pillaging and destruction is leading to the irretrievable loss of our common heritage. It was therefore not only a necessity but also a matter of urgency to adopt a specific international instrument for the legal and material protection of the underwater cultural heritage.

What is the 2001 Convention?

The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage has been elaborated and adopted by the Member States of UNESCO. It is an international treaty, which represents the response of the international community to the increasing looting and destruction of underwater cultural heritage.

The Convention sets a common standard for the protection of such heritage, with a view to preventing its being looted or destroyed. This standard is comparable to that granted by other UNESCO Conventions or national legislation on cultural heritage on land, and yet specific to archaeological sites under water. The Convention contains minimum requirements. Each State Party, if it so wishes, may choose to develop even higher standards of protection.

The Convention is an autonomous treaty aiming at the protection of underwater cultural heritage. It neither changes the sovereignty rights of States nor regulates the ownership of cultural property.

Parties to the Convention, which can only be Member States of UNESCO and certain other States and independent territories (Art. 26), accept certain obligations and rights towards each other (*inter partes*).

Why is there a need for an international convention on underwater cultural heritage?

There are three principal reasons:

- 1. To obtain comprehensive protection for underwater cultural heritage wherever it is located:*

The legal protection of submerged archaeological sites is currently insufficiently regulated, in particular when they lie in international waters. According to international law, such as the United Nations Convention on the Law of the Sea (UNCLOS)¹ and other treaties, only a small part of the world's oceans, adjacent to

¹ For a majority of States, the applicable jurisdiction in the various maritime Zones is regulated according to the United Nations Convention on the Law of the Sea (its text is available via the Website of the UN on

national territories – the Territorial Sea – falls within exclusive national jurisdiction. In most maritime zones, State authority is very limited. On the “High Sea”², only the State of nationality has jurisdiction over vessels and nationals³.

States can therefore not prohibit vessels of other States from intervening on sites located in international waters, as these do not fall under their authority. Only the State to which a treasure hunter belongs, can prohibit⁴ him to dive to a wreck in international waters, no matter how culturally valuable the site is⁵.

This lack of legal protection of underwater cultural heritage caused States to call for an international instrument to regulate cooperation among States and coordinate the protection of underwater archaeological sites in all maritime zones.

2. To harmonize the protection of underwater cultural heritage with that of heritage on land:

Submerged heritage has been less protected than cultural property located on land due to the fact that the latter has been the object of archaeological research over a longer period. As underwater cultural heritage has only recently become accessible, since the 1940s in fact, and because underwater archaeology is a nascent discipline, the standards for the protection of such heritage are not yet as developed and need to improve.

3. To provide archaeologists with guidelines on how to treat underwater cultural heritage:

The widely applied and recognized Annex of the 2001 Convention establishes much needed ethics and standards for underwater archaeologists.

THE CONTENT OF THE 2001 CONVENTION

What are the basic features of the 2001 Convention?

The Convention

- § sets out **basic principles** for the protection of underwater cultural heritage;
- § provides a detailed **State cooperation system**; and

www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm). For States not parties to UNCLOS, its regulations do nonetheless in some parts apply as customary law. The 2001 Convention is a treaty independent from UNCLOS. It is possible for a State not party to UNCLOS to join the 2001 Convention.

² For States Parties to UNCLOS see Art. 86 ff UNCLOS.

³ For States Parties to UNCLOS see Art. 92 UNCLOS. A different situation may present itself in case of wrecks of State vessels and aircraft.

⁴ Attention: The issue of the ownership of the remains of the ship and its cargo is a question to be considered separately from the issue who had the right to permit or prohibit the intervention on the archaeological site.

⁵ For this reason, treasure hunters often claim that an exploited wreck lay in “international waters”, and it might prove difficult to show the contrary once an object is recovered and displaced from the site. This was, for instance, the case of the “Black Swan” where the salvors stated that the wreck (which proved later to be the *Nuestra Señora de las Mercedes*) was located on the seabed outside national jurisdiction. It was in the following a difficult, even if finally successful, task for the Spanish government to prove where exactly the 17 tons (!) of artefacts came from, recovered furtively by the salvage enterprise and brought to the harbour of Gibraltar.

§ provides widely recognized **practical Rules** for the treatment and research of underwater cultural heritage.

The Convention consists of a main text and an annex, which sets out the "Rules for activities directed at underwater cultural heritage". The 2001 Convention neither regulates the ownership of wrecks nor does it intend to change the sovereignty rights of States.

What are the main principles of the 2001 Convention?

There are four main principles:

1) *Obligation to Preserve Underwater Cultural Heritage*

States Parties should preserve underwater cultural heritage for the benefit of humanity and take action accordingly. This does not mean that ratifying States would necessarily have to undertake archaeological excavations; they only have to take measures according to their capabilities. However, the Convention encourages scientific research and public access.

2) *In situ Preservation as a Preferred Option*

The *in situ* preservation of underwater cultural heritage (i.e. in its original location) should be considered as the first and preferred option before allowing or engaging in any activities directed at this heritage. The recovery of objects may, however, be authorized for the purpose of making a significant contribution to the protection of, or knowledge about, underwater cultural heritage.

3) *No Commercial Exploitation*

The 2001 Convention stipulates that underwater cultural heritage should not be commercially exploited for trade or speculation, and that it should not be irretrievably dispersed⁶. This regulation is in conformity with the moral principles that already apply to cultural heritage on land. Naturally, it is not to be understood as preventing archaeological research or tourist access.

4) *Training and Information Sharing*

Currently, one of the major handicaps for the protection of heritage located under water is the fact that underwater archaeology is a very recent science. Many States do not yet have sufficiently trained underwater archaeologists. The Convention therefore encourages training in underwater archaeology, the transfer of technologies and the sharing of information.

⁶ As regards the existing salvage law and the law of finds, the Convention specifies in its Article 4 that they shall not apply to activities relating to underwater cultural heritage, unless these activities are authorized by competent authorities, are in full conformity with the Convention, and the greatest possible protection can be ensured for recovered objects.

What is the “Annex” of the 2001 Convention?

The best-known and most widely applied part of the 2001 Convention is certainly its Annex. It is one of the most important guidelines available for underwater archaeologists today.

The Annex of the 2001 Convention contains the detailed practical “Rules concerning activities directed at underwater cultural heritage”. They include regulations as to how a project is to be designed; guidelines regarding the competence and the qualifications required for persons undertaking activities; and methodologies on conservation and site management.

The 36 Rules of the Annex present a directly applicable operation scheme for underwater interventions. Over the years, they have become a reference document in the field of underwater excavations and archaeology, setting out regulations for a responsible management of such cultural heritage.

Every professional working in the field of underwater cultural heritage should strictly comply with these Rules⁷.

What costs are incurred by States Parties?

The 2001 Convention clearly states in its Article 2.4 that every State should take appropriate measures “*that are necessary to protect underwater cultural heritage, using for this purpose the best practicable means at their disposal and in accordance with their capabilities*”. This means that States are not requested to do more than what lies within their capabilities. There is also no obligation in the 2001 Convention to carry out excavations as long as safeguarding measures are undertaken.

Why does the Convention ban commercial exploitation of underwater sites?



Objects recovered from a shipwreck on sale
© UNESCO/U. Koschtial

First and foremost, underwater cultural heritage is not “treasure”, but “cultural heritage”. A wreck is not only a cargo, but also the remains of a ship, its passengers and their lives. A submerged city is as precious to archaeologists and historians as Pompeii, as such sites give valuable testimony to historic events, such as the sinking of the *Titanic*, the discovery of new continents or the defeat of Kublai Khan off the coast of Japan.

Commercial enterprises, in search of sellable objects, have on several occasions dumped half of the cargo recovered from a wreck back into the sea (destroying it forever), in order to keep prices on the market high. In such cases, no documentation is made available to archaeologists, no thought is given to the site and its historical context, and much of the most valuable

⁷ The text of the Annex is available via the UNESCO website: www.unesco.org/culture/en/underwater.

information is lost⁸. If a site is touched, it should therefore only be disturbed for scientific or public reasons and by archaeologists trained in conservation techniques and documentation.

Sometimes the objection is made that many thousands of miles of water cannot be protected and that sites need to be excavated to save them. Too many objects would then be recovered that could not be properly stored and should therefore be sold. However, many measures, like sonar buoys, metal cages or sand bag coverings allow efficient protection of sites, once they are found by national authorities.

In addition, the 2001 Convention calls for States to take measures against the illicit trafficking of cultural objects recovered from the sea. If a treasure hunter is unable to sell pillaged objects, the financial interest of illegal excavations will decrease.

Why does the Convention recommend 'in situ' preservation?



Objects recovered from a wreck and in need of conservation © UNESCO/U. Koschtial

According to the 2001 Convention, preserving underwater cultural heritage *in situ* must be considered as the first and preferred option before allowing or engaging in any activities involving this heritage.

This means that wrecks and submerged ruins should preferably be left on the seabed in their original location. The recovery of objects may, however, be authorized for the purpose of making a significant contribution to the protection of or knowledge about underwater cultural heritage. The preference given to *in situ* preservation reflects the importance of the historical context of the cultural

object and its scientific significance.

Recognizing this, several recent initiatives have undertaken to offer visitors *in situ* experiences, while at the same time ensuring the conservation and protection of the original site, in line with the principles of the UNESCO 2001 Convention. The first underwater museums are being opened or are under construction in Baiheliang, China, and in Alexandria, Egypt, and ambitious projects like the “Sea Orbiter” by the French architect J. Rougerie⁹ are drawing the attention of the public.

The principle of the preservation *in situ* is therefore a very modern one and in keeping with the latest developments in the presentation of cultural heritage. It also recognizes, however, that under normal circumstances, the concerned heritage is well preserved under water, owing to the low deterioration rate and lack of oxygen, and that it is therefore not *per se* in danger. Objects recovered from the seabed have to undergo a

⁸ A recently excavated tenth-century wreck found off Cirebon in Java yielded, for instance, 250,000 pieces of ceramic (while an equal number of pieces was thrown back and destroyed in order to obtain a certain price level on the market). However, no information about the unique Chinese wreck that once surrounded them, and which is considered by experts to have been much more interesting than the ceramics, was collected. In addition, the recovered objects suffered from oxidation due to lacking measures of conservation and lost most of their aesthetic appeal.

⁹ See the vessel described on www.rougerie.com/16..40.html as a “true mobile oceanographical base” drifting “in the currents hosting 18 oceanauts who will observe the life of the oceans on a permanent basis.”

very extensive conservation process, which can become quite expensive and always includes a risk of deterioration of the object. This is avoided by *in situ* preservation.

Does the 2001 Convention regulate the ownership of wrecks?

No. The 2001 Convention does *not* regulate the ownership of submerged historical remains. The ownership of the cultural property remains regulated by civil law, other domestic law and private international law.

Since the notion of wreck is often connected with the term “treasure”, the general public tends to focus on the issue of “who owns it?” However, the 2001 Convention does not intend to arbitrate quarrels or claims to ownership.

The Convention deals with the heritage aspect of the remains of ships and ruins. They should be preserved to give testimony to historic events – and often very tragic events, the ending of a journey and a loss of human lives. The sites concerned should therefore be preserved for their cultural and not their monetary value.

Does the 2001 Convention protect the remains of warships?

The 2001 Convention protects also the wrecks of ancient State vessels and aircraft (which include warships) as cultural heritage against looting and destruction.

It states in addition that:

- The Convention does not modify existing international law concerning sovereign immunities or States’ rights regarding their State vessels (Article 2.8)¹⁰;
- The Convention does not change or regulate ownership of wrecks and submerged ruins, including vessels subject to sovereign immunities;
- If a wreck of a State vessel is found *outside* territorial waters the consent of the Flag State is also required before interventions are undertaken within the framework of the Convention¹¹;
- The Convention stipulates that the Flag State should be informed if such a wreck is found within Territorial waters and other existing international law has of course to be respected¹².

The only way for Flag States to save their heritage from pillaging and commercial exploitation, while preserving their ownership rights, is therefore the ratification of the

¹⁰ Article 2 para. 8 of the 2001 Convention regulates: “*Consistent with State practice and international law, including the United Nations Convention on the Law of the Sea, nothing in this Convention shall be interpreted as modifying the rules of international law and State practice pertaining to sovereign immunities, nor any State’s rights with respect to its State vessels and aircraft.*”

¹¹ Article 10 paragraph 7 regulates for the exclusive economic zone and the continental shelf: “*Subject to the provisions of paragraphs 2 and 4 of this Article, no activity directed at State vessels and aircraft shall be conducted without the agreement of the flag State and the collaboration of the Coordinating State.*”

Article 12 paragraph 7 regulates for the Area: “*No State Party shall undertake or authorize activities directed at State vessels and aircraft in the Area without the consent of the flag State.*”

¹²The 2001 Convention stipulates that this regulation has not to be interpreted as modifying already existing international law (see Art. 2.8 and Fn 9); Article 7 paragraph 3 regulates for archipelagic waters and territorial sea: “*Within their archipelagic waters and territorial sea, in the exercise of their sovereignty and in recognition of general practice among States, States Parties, with a view to cooperating on the best methods of protecting State vessels and aircraft, should inform the flag State Party to this Convention and, if applicable, other States with a verifiable link, especially a cultural, historical or archaeological link, with respect to the discovery of such identifiable State vessels and aircraft.*”

2001 Convention. Portugal¹³ and Spain, two nations with an impressive maritime history, which have ratified the Convention, agree that a comprehensive protection of all wrecks through State cooperation is the only way to prevent their destruction.

Can States Parties also protect recent shipwrecks?

States Parties to the 2001 Convention must respect the benchmark of 100 years minimum requirement, set by Article 1.1 (a) of the 2001 Convention. However, they can also do more, i.e. protect more recent submerged sites, as for example sites from the world wars of the twentieth century, like Truk Lagoon in Micronesia or Scapa Flow near Scotland.

Since the 2001 Convention is by its very nature a contract, it obliges States to respect certain obligations and gives them certain rights. Every State can of course “over-fulfil” its obligations and guarantee even better protection than required by the 2001 Convention to underwater cultural heritage, through its national laws.

This also means that when, for instance, a national law foresees protection of sites that are only 50 years old, it does not need to be changed when a State joins the 2001 Convention since that law is already in compliance with the 2001 Convention.

Is a certain degree of significance required for protection?

No. There is no minimum level of significance for a site or cultural object to be protected under the 2001 Convention, as this is impossible to define by a legal instrument. The importance of an archaeological site often lies in its historical context, its value and importance cannot be measured.

However, the 2001 Convention also states that the preservation of underwater cultural heritage on the seabed is the preferred option and that it should only be recovered if there is a scientific justification. The lack of a significance benchmark does therefore not mean that States Parties would have to excavate all existent submerged heritage.

What action does the Convention foresee against illicit trafficking?

The 2001 Convention contains several regulations concerning the prevention of the illicit trafficking of cultural property recovered from the sea (Articles 14 – 18).

States Parties must take all practicable measures to ensure that their own nationals and vessels do not engage in activities damaging or dispersing underwater cultural heritage. It furthermore stipulates that States Parties should take measures to prevent the entry into their territory, the dealing in, or the possession of underwater cultural heritage that was illicitly exported/and or recovered. States should also prohibit the use of their territory and maritime ports for activities harming the underwater cultural heritage.

¹³ Portugal, one of history's major seafaring nations, declared insofar during the elaboration of the 2001 Convention: “Portugal is of the opinion that the best contribution that it could make to the protection and valorization of the remains of its historical and cultural heritage located on the seabed of all continents, is not to reclaim this heritage – which it historically and culturally shares with the States on which's seabed it lies – because its basic claim and affirmation in its relations with any State on which's seabed such heritage lies are only the principles and the ethics that underlie this present draft Convention. It calls therefore, before anything else, for this heritage to be protected, exploited, studied and valued in the sole interest of science, culture and humanity...”

Each State Party should impose sanctions for violations of measures taken in the framework of the 2001 Convention's implementation, and should cooperate to ensure their enforcement. Seizure of illicitly recovered underwater cultural heritage should also be foreseen by national law.

The 2001 Convention does not contain a restitution-claim. However, the regulations of the Convention should be understood within the context of, and as complementary to, other UNESCO and UNIDROIT Conventions that regulate this issue¹⁴.

Why is a State Cooperation System proposed by the 2001 Convention?

Cooperation between States is the only way to assure the comprehensive protection of underwater cultural heritage.

If a State has no jurisdiction¹⁵ over a location it cannot prevent interference with it and prevent its looting. At sea, a State usually has exclusive jurisdiction only for its Territorial Sea¹⁶, limited jurisdiction over the Exclusive Economic Zone¹⁷ and the Continental Shelf, and jurisdiction only over its own vessels and nationals at High Sea.

If, therefore, a vessel from another State pillages a site off the coast of a State whose jurisdiction is no longer applicable, due to the distance from the coast, the Coastal State cannot prevent this. The Flag State of the vessel will however often ignore the activities of its vessels and nationals as the location of the concerned site can be very far away from its waters.

As the extension of the jurisdiction of States at sea was not an option the 2001 Convention chose to facilitate State cooperation, to find a solution to this situation.

In joining the Convention, States therefore agree to prohibit their nationals and vessels from looting underwater cultural heritage, regardless of its location, requesting them to report finds and activities and informing other States of this. The interested States can then cooperate in the protection of the archaeological sites. The Flag State sets legal regulations for its nationals and vessels and other States help it – through a Coordinating State - in implementing them as agreed between the concerned States and in accordance with the Convention.

This system will make it easier to take joint and effective action against treasure-hunting and pillaging being conducted in territories outside of the national jurisdiction of a Coastal State, without extending or diminishing State sovereignty rights.

¹⁴ See the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970* and the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995*.

¹⁵ "Jurisdiction" (from the Latin *iuris* meaning "law" and *dicere* meaning "to speak") is the authority to deal with legal matters and to administer justice within a defined area of responsibility.

¹⁶ For UNCLOS States Parties up to 12 nautical miles from the baseline.

¹⁷ For UNCLOS States Parties up to 200 nautical miles from the baseline.

How does the State Cooperation System work?

Depending on the location of the concerned underwater cultural heritage, specific regulations for the reporting and the coordination of activities are applicable according to the 2001 Convention.

In their Internal and Archipelagic Waters and Territorial Sea¹⁸, States Parties have the exclusive right to regulate activities. No specific cooperation scheme is therefore provided, as a general rule, States are expected to cooperate.

Within the Exclusive Economic Zone, the Continental Shelf and the Area¹⁹, an international cooperation scheme encompassing reporting and consultations is established (Articles 9 – 12). According to this cooperation scheme:

- Each State Party will prohibit its nationals and vessels from engaging in activities harming underwater cultural heritage and require them to report discoveries and activities concerning heritage located in the Exclusive Economic Zone, on the Continental Shelf, and in the Area, it will then inform the other States Parties;
- If no State has jurisdiction over the site (beside jurisdiction over its own nationals and vessels)²⁰, a “Coordinating State” takes over the control, coordinating the cooperation among States Parties and implementing their decisions, while acting on their behalf and not in its own interest;
- States Parties will take measures to prevent the dealing in underwater cultural heritage illicitly exported and/or recovered and seize it, if it is found in their territory.

The reasoning behind this cooperation scheme is the following: even if a State, party to the 2001 Convention, has no State jurisdiction over a site that is victim to looting, through UNESCO it can cooperate with the State Party under whose flag a pillaging ship sails or to which the treasure hunter belongs. This other State can take legal action to ensure proper protection by exercising its own jurisdiction on its nationals or vessels.

In order to ensure the functioning of the protection agreed upon by the cooperating States, a Coordinating State will implement decided measures in consultation with the other States.

Provided that a large number of States become Party to the 2001 Convention this system will eventually, render protection effective and ensure the safeguard of cultural heritage located on the seabed seawards from the Territorial Seas.

¹⁸ See FN 15.

¹⁹ “Area” is the term used for the seabed outside national jurisdiction.

²⁰ A State has however the right to prohibit or authorize any activity directed at such heritage to prevent interference with its sovereign rights or jurisdiction as far as these reach; Art. 10 para. 2 of the Convention regulates: “A State Party in whose exclusive economic zone or on whose continental shelf underwater cultural heritage is located has the right to prohibit or authorize any activity directed at such heritage to prevent interference with its sovereign rights or jurisdiction as provided for by international law including the United Nations Convention on the Law of the Sea.”

What is the function of the Coordinating State?

In the framework of the State Cooperation System of the 2001 Convention (foreseen for the Exclusive Economic Zone, the Continental Shelf and the Area) a “Coordinating State” shall issue authorizations to intervene on sites, controlling and regulating them as the representative of the other States Parties concerned.

For the Exclusive Economic Zone and the Continental Shelf, preference is given to the State that is the closest to the site to be selected as Coordinating State, unless it refuses to take over this responsibility. For the Area (the seabed outside national jurisdiction), UNESCO will invite consulting States Parties to name a Coordinating State.

However, the position of “Coordinating State” does not give additional sovereignty rights or jurisdiction to the State that assumes this responsibility²¹.

The Coordinating State must act “on behalf of the States Parties and not in its own interest”. In the Area it is even specified that it has also “...to act for the benefit of humanity”. The Coordinating State acts as decided by the States that have declared their interest in being consulted in regard to a concerned site²².

The reason a Coordinating State shall take over control of the site is that wreck sites are often of interest to many States. They may, however, be very distant from concerned States (e.g. Spanish Galleons in Caribbean waters), and it is therefore more practical to have the State closest to their location control their protection. Similarly, treasure hunters often travel very far to interesting and “valuable” sites in order to undertake commercial excavations, and they can therefore not easily be controlled by their home countries.

The closer State, selected as Coordinating State, would therefore represent the other States in close agreement with them.

What do the terms Territorial Sea, Exclusive Economic Zone, Continental Shelf and Area mean?

The 2001 Convention does not define the terms Territorial Sea, Exclusive Economic Zone and Continental Shelf, which it however uses (it does define “Area” to mean the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction²³). The different maritime zones and the sovereignty rights applying in them have been defined by international law, in particular by the United Nations Convention on the Law of the Sea (UNCLOS).

According to UNCLOS, and in abbreviated form:

- Territorial Sea refers to the waters up to 12 nautical miles from the Baseline.

²¹ See for the EEZ: Article 10 paragraph 6 of the 2001 Convention: “... the Coordinating State shall act on behalf of the States Parties as a whole and not in its own interest. Any such action shall not in itself constitute a basis for the assertion of any preferential or jurisdictional rights not provided for in international law, including the United Nations Convention on the Law of the Sea.”

²² See Article 10 and 12 of the 2001 Convention.

²³ See Article 1.5: “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction; This definition does of course not change any existing sovereignty rights, as the question of where “outside national jurisdiction” of a State lies is not addressed.

- Exclusive Economic Zone (EEZ) refers to the Area adjacent and beyond the Territorial Sea and up to 200 nautical miles.
- Continental Shelf refers to the sea up to the fall of the continental shelf into the deep sea or at least up to the end of the EEZ.
- Area refers to the seabed and ocean floor beyond the limits of national jurisdiction.

This does not mean that the definitions and regulations of sovereignty rights of UNCLOS apply to a State that joins the 2001 Convention – both treaties are independent of each other. They apply only to the States that are party to UNCLOS; for other States other international law applies. The 2001 Convention respects the existing regulations on these issues as given and does not change them. It even expressly stipulates in its Article 3: *Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.*

Can the State Cooperation System function fast enough to prevent immediate danger to sites?

Yes. Articles 10 and 12 of the 2001 Convention regarding the State Cooperation System regulate also situations where a wreck or ruin located in the Exclusive Economic Zone or in the Area is in immediate danger and fast action is needed. Therefore in such cases, even if a State generally has to consult with the other interested States before taking action, it can take already measures to immediately prevent pillaging or destruction of sites²⁴.

These regulations do only concern situations of immediate danger. If no such immediate danger exists, States are expected to cooperate and consult each other.

THE 2001 CONVENTION AND INTERNATIONAL LAW

What is UNCLOS and what is its relationship to the 2001 Convention?

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is one of the most important international treaties regulating the law of the Sea. More than 150 States are party to this Convention²⁵. One of its most significant achievements is the regulation of sovereignty rights and jurisdiction at Sea, and the definition of maritime zones.

UNCLOS includes two provisions (Articles 149 and 303) that establish a general obligation of its States Parties to protect underwater cultural heritage, without however providing further regulations or details of the measures to be taken. Its creators allowed

²⁴ For the Exclusive Economic Zone it regulates that the Coordinating State, which is usually the State closest to the site “may take all practicable measures, and/or issue any necessary authorizations in conformity with this Convention and, if necessary prior to consultations, to prevent any immediate danger to the underwater cultural heritage, whether arising from human activities or any other cause, including looting. In taking such measures assistance may be requested from other States Parties.” (Art. 10.4); For the Area, it stipulates the right of all States Parties to take measures to prevent immediate danger to submerged archaeological sites, if necessary, prior to consultations.(Art. 12)

²⁵ See www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm. For UNCLOS States Parties see Article 92 of UNCLOS.

therefore for more specific regulations for underwater cultural heritage in Article 303, paragraph 4.

The 2001 Convention is an international agreement specifically dedicated to the protection of underwater cultural heritage. It was designed to guarantee its preservation and facilitate cooperation among States. It is not, however, intended or designed to amend the regulations of UNCLOS or other international law (Art. 3 of the 2001 Convention)²⁶.

On the contrary, many regulations of the 2001 Convention were specifically drafted for the purposes of accommodating the current regulations on State sovereignty, respecting the desire of States to maintain the Sea as free as possible from any State's jurisdiction. They nevertheless provide States with a tool for preventing undesired interventions and looting of archaeological sites, in cooperation with other States.

In joining the 2001 Convention, every State agrees to use its own State jurisdiction as far as it reaches in order to protect underwater cultural heritage. In the event of a widespread ratification, this will then result in a comprehensive safeguarding net through State cooperation. No new jurisdiction or sovereignty rights are granted to States becoming Parties.

Is it necessary to join UNCLOS before becoming a State Party to the 2001 Convention?

No. The 2001 Convention is independent of any other treaty. States may become party to the 2001 Convention, regardless of whether they are already State Party to the United Nations Convention on the Law of the Sea (UNCLOS) or other international agreements or not²⁷.

Does the 2001 Convention change the scope of the jurisdiction of States or the definition of maritime zones?

No. The 2001 Convention does neither intend to change the definition nor the boundaries of maritime zones defined in other treaties, including UNCLOS, nor the jurisdiction and sovereignty rights of States.

If a State has agreements with its neighbour States regulating jurisdiction in certain areas, gulfs or streets, they are not modified by the 2001 Convention.

The Convention does not include definitions of the terms "Territorial Sea", "Exclusive Economic Zone" or "Contiguous Zone", because it respects the existing delimitations²⁸.

²⁶ Article 3 of the 2001 Convention regulates the relationship between this Convention and the United Nations Convention on the Law of the Sea: *Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.*

²⁷ Ecuador and the Libyan Arab Jamahiriya ratified for instance the 2001 Convention without having joined UNCLOS before.

²⁸ The use of these terms does however not mean that the definitions and limitations of UNCLOS apply if a State joins the 2001 Convention. The regulations of UNCLOS apply to States that ratified UNCLOS (in cases where both concerned States are party to UNCLOS). If this is not the case, other international law, including customary law, applies; see also Article 3 of the 2001 Convention.

Is the 2001 Convention retroactive?

No. The 2001 Convention is not retroactive. Accordingly, it takes effect for a State only when it becomes a State Party, i.e. three months after the deposit of its instrument of ratification.

Does ratification of the 2001 Convention affect prior agreements?

As expressly regulated in Article 6 paragraph 3, the 2001 Convention does not alter the rights and obligations of States Parties regarding the protection of sunken vessels, which arise from other bilateral, regional or multilateral agreements concluded before its adoption, and, in particular, those that are in conformity with the purposes of the 2001 Convention.

OPERATION

What is the procedure for joining the 2001 Convention?

After its adoption, the 2001 Convention does not automatically apply to all Member States of UNESCO. It only applies to States that become party to it²⁹.

In general the steps for joining are:

- a political consideration of ratification at the national level;
- a national authorization process (by parliament or a similar authority) to allow the executive authorities of a State to declare the consent of the State to be bound by the Convention; and
- the external expression of the will and consent of the State to be bound by the Convention at the international level.

The will and consent to be bound by the 2001 Convention is expressed by ratification, acceptance, approval or accession (see Article 26). The instrument has to be made known to UNESCO as the depositary.

A simple signature of the Convention or an exchange of instruments among the concerned States is not sufficient to become State party. UNESCO is the authority responsible for accepting instruments of ratification of the Convention, and only those instruments handed over to UNESCO take legal effect.

²⁹ Article 26 of the 2001 Convention states, concerning ratification, acceptance, approval or accession:
1. *This Convention shall be subject to ratification, acceptance or approval by Member States of UNESCO.*
2. *This Convention shall be subject to accession:*
(a) by States that are not members of UNESCO but are members of the United Nations or of a specialized agency within the United Nations system or of the International Atomic Energy Agency, as well as by States Parties to the Statute of the International Court of Justice and any other State invited to accede to this Convention by the General Conference of UNESCO;
(b) by territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters.
3. *The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General.*

In every case, the consent to be bound by the 2001 Convention has to be expressly declared in writing; the verbal acceptance of a State is not valid.

There is one difference made between the various instruments for joining: UNESCO Member States may ratify, accept or approve to join the 2001 Convention, while certain Non-Member States and certain territories may accede. Although “Ratification”, “Acceptance”, “Approval” and “Accession” are different terms, their ultimate effect in international law is the same – the State joins the Convention and is from that moment on bound by it³⁰.

What declarations must a State consider in ratifying?

The 2001 Convention contains three regulations regarding declarations: Article 9 paragraph 2; Article 25 paragraph 5 and Article 28.

The first requires a State joining the Convention to declare how reports on discoveries in the Exclusive Economic Zone shall be transmitted; the second stipulates that States not Parties to UNCLOS may choose among the different means of dispute resolution cited in Article 287 and the third specifies that States may declare the Rules, contained in the Annex of the Convention, applicable to their internal waters.

Declarations by States wishing to become parties should be made in a letter accompanying the instrument of ratification/ acceptance/ approval/ accession, and should not be included in the instrument itself.

Declarations made by States that have ratified the 2001 Convention can be consulted on the following Website www.unesco.org/en/underwater (see below the text of the Convention).

States Parties should also communicate to the Director-General of UNESCO the names and addresses of their competent authorities responsible for the underwater cultural heritage (Article 22).

What benefits can States derive from ratifying?

Ratifying the 2001 Convention provides the following advantages to a State:

§ *The protection of underwater cultural heritage is brought to the same level as the protection for land based sites.*

The 2001 Convention contains certain basic principles for States to consider in their efforts towards a protection of submerged archaeological sites, such as the preference given to *in situ* preservation or the objection to commercial exploitation of heritage. This will in the long term assure a preservation of underwater cultural heritage similar to sites on land.

§ *States Parties will benefit from cooperation with other States Parties.*

³⁰ For a model instrument of ratification see:
http://portal.unesco.org/unesco/ev.php?URL_ID=27541&URL_DO=DO_TOPIC&URL_SECTION=201&reload=1189608412

The cooperation of States with each other and the common effort in a legal protection of heritage sites will ensure that in the future, wrecks and ruins outside the Territorial Sea of a State will also be protected. Also States pledge to co-operate and assist one another to protect and manage the underwater cultural heritage and to exchange, in so far as possible, information. This cooperation will be of a considerable advantage to States Parties, particularly concerning capacity-building.

§ *The 2001 Convention helps to protect heritage from pillaging and looting.*

States Parties take common action against the illegal recovery and trafficking of cultural property³¹ and have the possibility to help each other by seizing underwater cultural heritage in their territories that has been recovered in a manner not in conformity with the 2001 Convention.

§ *The 2001 Convention provides practical guidelines on how to research underwater cultural heritage.*

The Annex of the 2001 Convention provides archaeologists and national authorities worldwide very reliable guidelines on how to work on underwater cultural heritage sites and what to consider when doing so.

Can reservations be made to the 2001 Convention?

Yes, one type of reservation can be made. A State, considering ratifying the Convention can limit the geographical scope of the application of the 2001 Convention and may make a declaration that the Convention shall not be applicable to specific parts of its territory, internal waters, archipelagic waters or territorial sea (Article 29 and 30).

If such a reservation is made, it must be done in writing, identify the reasons for such declaration and be communicated to UNESCO. The withdrawal of a reservation or of an objection to a reservation must also be made in writing. Reservations that are made by a State joining the 2001 Convention should be made in a letter accompanying the instrument of ratification/ acceptance/ approval/ accession and should not be included in the instrument itself.

When does the 2001 Convention enter into force?

Article 27 of the 2001 Convention states that it will enter into force three months after the date of the deposit of the twentieth instrument of ratification, but solely with respect to the twenty States or territories that have so deposited their instruments. It will enter into force for each other State or territory three months after the date on which that State or territory has deposited its instrument.

What is the effect of the entry into force?

The entry into force of the Convention, which occurs three months after the date of the deposit of the twentieth instrument of ratification, triggers several effects.

³¹ See Art. 14 of the 2001 Convention: "States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to this Convention", as well as Articles 17 and 18 on sanctions and seizure."

First, States Parties have from that day on to comply with the regulations of the 2001 Convention, and must respect its principles and adapt their national law accordingly.

Second, States will profit from the international cooperation scheme for submerged archaeological sites located outside the Territorial Sea. States Parties are obligated to take legal measures for protecting submerged sites against undesired interventions by their own nationals and vessels, to inform other States of discoveries or activities regarding these sites, and to cooperate in their protection. They will benefit from measures taken by the other States Parties. This system will make it easier to take joint and effective action against treasure hunting and pillaging occurring outside the national jurisdiction of a State.

The Director-General of UNESCO will assure a Secretariat for the 2001 Convention. Within one year of the entry into force he will convene a Meeting of States Parties of this Convention and thereafter at least once every two years. At the request of a majority of States Parties, the Director-General will convene an Extraordinary Meeting of States Parties.

Furthermore, in joining the Convention, States Parties may profit from receiving technical and scientific assistance. Article 23³² of the 2001 Convention foresees that the meeting of its States Parties may establish a Scientific and Technical Advisory Body composed of experts nominated by the States Parties with due regard to the principle of equitable geographical distribution and the desirability of gender balance. As soon as it is established it will assist the Meeting of States Parties in questions of a scientific or technical nature regarding the implementation of the Rules (which are contained in the Annex of the Convention). States Parties will decide if this advisory body should be established and what form it should take.

³² Article 23 Meetings of States Parties states:

1. *The Director-General shall convene a Meeting of States Parties within one year of the entry into force of this Convention and thereafter at least once every two years. At the request of a majority of States Parties, the Director-General shall convene an Extraordinary Meeting of States Parties.*
2. *The Meeting of States Parties shall decide on its functions and responsibilities.*
3. *The Meeting of States Parties shall adopt its own Rules of Procedure.*
4. *The Meeting of States Parties may establish a Scientific and Technical Advisory Body composed of experts nominated by the States Parties with due regard to the principle of equitable geographical distribution and the desirability of a gender balance.*
5. *The Scientific and Technical Advisory Body shall appropriately assist the Meeting of States Parties in questions of a scientific or technical nature regarding the implementation of the Rules.*