

## **UNESCO Convention on the Protection of the Underwater Cultural Heritage and the Pacific Small Island Developing States (SIDS)**

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### **Abstract**

*This paper will begin by introducing the Convention on the Protection of the Underwater Cultural Heritage adopted by UNESCO in 2001 in terms of background, guiding principles, international cooperation mechanisms, Annex, as well as benefits and implications of ratification by countries. It will provide progress in its implementation at the global level. It will then provide progress in the Pacific Small Islands Developing States (SIDS), addressing their particular challenges and opportunities. The paper will suggest a possible inter-Convention cooperation for the UCH protection and management in the Pacific by analyzing the recent progress in the World Heritage Convention and the Intangible Cultural Heritage Convention in Pacific SIDS. The paper will conclude by summarizing the significance of the Underwater Cultural Heritage (henceforth UCH) protection and the UCH Convention not only in terms of its contribution to the advancement of knowledge of the history of humanity but also from the perspectives of the environmental protection, sustainable development and ocean governance.*

**Key words:** UNESCO, 2001 UCH Convention, Pacific, World Heritage Sites, International Cooperation

### **Introduction**

UNESCO is one of the specialized agencies of the UN. UNESCO's mission is to promote peace and the well-being of peoples in the world through international cooperation in education, science, culture and communication. Normative action is one of the core functions of UNESCO. Over the years, UNESCO adopted numerous international instruments. Among them, there are seven important Conventions in culture. These Conventions are: The Universal Copyright Convention (1952, 1971), The Convention for the Protection of Cultural Property in the Event of Armed Conflicts

(1954) and its two Protocols (1954 and 1999), The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property Illicit (1970), The Convention for the Protection of World Cultural and Natural Heritage (1972), The Convention for the Protection of the Underwater Cultural Heritage (2001), The Convention for the Safeguarding of the Intangible Cultural Heritage (2003), The Convention for the Protection and Promotion of the Diversity of Cultural Expressions (2005). The ultimate goal of UNESCO's normative action is to safeguard the cultural heritage and cultural diversity as the heritage of humanity. As the Preamble of the 1954 Hague Convention states that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world", UNESCO played a pioneering role in promoting the concept of the heritage of mankind that is also the important principle of the 1982 UN Convention on the Law of the Sea (UNCLOS). All together, these Conventions provide a comprehensive coverage of the culture sector. International NGOs such as the International Council of Museums (ICOM) and the International Council of Monuments and Sites (ICOMOS) have been playing important roles in their elaboration and implementation.

The ambassador of Malta to the UN, Arvid Pardo, in his speech to the UN General Assembly in 1967, raised the question of the sea bed and the ocean floor, which launched a process that led to the third UN Conference on the Law of the Sea during which UNCLOS was adopted in 1982. UNCLOS sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment, while seeking to establish a balance between "Freedom of the Ocean" and "Management of the Ocean". It also provides a definition of maritime zones. Part XI of UNCLOS established the International Seabed Authorities (ISA) to allow States Parties to organize, control and administer activities and resources in ocean areas beyond the limits of national jurisdiction, commonly referred to as "the Area", through the common heritage of mankind principle. It entered into force in 1994 and is supplemented by the 1994 Deep Seabed Mining Agreement and the 1995 Agreement regarding Fish Stocks. UNCLOS obliges States Parties to protect UCH under the term "archaeological and historical objects". UNCLOS includes two provisions concerning

UCH; i) Article 149 that stipulates the UCH protection in the Area and ii) Article 303 that sets out a general obligation for States to protect their UCH. These articles, however, were felt by cultural experts to be unsatisfactory and incomplete without providing details of the measures to be taken especially in the space beyond the Contiguous Zone, the Exclusive Economic Zone (EEZ) and the Continental Shelf. Moreover, Article 303 paragraph 3 leaves room for the commercial destruction of UCH and creates a legal vacuum concerning the protection of UCH.

With this as background, the UNESCO Convention for the Protection of the Underwater Cultural Heritage (herein after the UCH Convention) was prepared and adopted with the main goals to complement the provisions in UNCLOS for strengthening UCH protection. Acknowledging that “the importance of underwater cultural heritage as an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage” in its Preamble, the UCH Convention provides the working definition of UCH as “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”. Generally speaking, UCH, undisturbed *in situ*, is better preserved as compared to land-based cultural heritage. This is the reason why UCH is often called as a time capsule holding invaluable information for historians, archaeologists and scientists to reconstruct past cultures. The UCH Convention protects UCH from being commercially exploited for trade or speculation. The UCH Convention provides the linkages to the 1970 Convention on the actions related to illicit trafficking in cultural objects recovered from the sea. In order to resolve the conflict between ownership claims, salvage claims and cultural heritage interest, Article 4 of the UCH Convention states that “Any activity relating to UCH to which this Convention applies shall not be subject to the law of salvage or law of finds<sup>1</sup>, unless it; (a) is authorized by the competent authorities, and (b) is in full conformity with this Convention, and (c) ensures that any recovery of the UCH achieves its maximum protection”.

The UCH Convention establishes a protection regime for UCH by maritime zones determined by UNCLOS. States parties have the exclusive right to regulate activities in their internal and archipelagic waters and their territorial sea. Within their Contiguous

Zone, States Parties may regulate and authorize activities directed at UCH within their Contiguous Zone. The UCH Convention recognizes the right of the coastal states to prohibit or permit activities directed to UCH in their Exclusive Economic Zone (EEZ) and the Continental Shelf. Where there is a discovery of UCH or activities directed at UCH in these areas, Article 10 gives priority to the coastal states to act as a “Coordinating State” to coordinate consultations with all other States Parties which have declared an interest. Within the Area, a “Coordinating State” will be designated by the Director-General of UNESCO after inviting all the countries that declared an interest. The Director-General shall also invite International Seabeds Authorities (ISA) to consultations. In this way, the UCH Convention provides a comprehensive coverage of UCH regardless of its locations, greatly extending the legal protection of UCH. It must be noted that the UCH Convention does not regulate the ownership of UCH. Being aware of the responsibility entrusted to the coastal states especially in the developing world, the UCH Convention emphasizes the importance of UCH training and capacity building, technology transfer and information sharing, as well as awareness raising of the significance of UCH.

The UCH Convention provides in its Annex the important principle of the preference for the preservation *in situ* as well as practical rules for the UCH treatment and research based on internationally recognized best practice and the ICOMOS Charter for the Protection and Management of UCH in 1996. Joining the UCH Conventions, countries can ; i) achieve UCH protection at the same level as land-based cultural heritage, ii) protect UCH from looting and commercial exploitation, iii) ensure comprehensive protection of UCH regardless of their locations through state cooperation system. On the other hand, by joining the UCH Convention, States Parties shall pledge to protect UCH against lootings and commercial exploitations and apply the provisions of the UCH Convention and the Rules in its Annex. There is no financial implication involved in joining the UCH Convention.

The UCH Convention entered into force in January 2009. UNESCO provides a forum for the adoption of a common approach of all States Parties towards UCH protection through the Meetings of States Parties and its Scientific Advisory Body (SAB). SAB is composed of twelve expert members nominated by States Parties. They have a

scientific, professional and ethical background in the field of underwater archaeology, international law, materials science or UCH conservation. SAB assists States Parties in the implementation of the Convention and its Annex and the elaboration of the Operational Guidelines, while consulting with International Council of Monuments and Sites (ICOMOS) through its International Committee for the Protection of Underwater Cultural Heritage (ICPUCH) and other accredited NGOs in its deliberations.

### **UCH in Oceania**

The Pacific region covers about one-third of total surface area of the Earth, and comprises over one thousand islands and atolls. Reflecting on the long history of human settlements and interactions with other regions, the Pacific Ocean contains a wealth of UCH that spans human history from the Stone Age to the Atomic Age (UNESCO, 2010). For instance, the Oceania region was populated by the Austranesians, or Lapita people, and traces of their culture remain both above and under water. The Pacific islanders developed fishing infrastructures such as fish traps and fish ponds, unique indigenous UCH. Among the vessels built by the Pacific islanders, the Fijian Duras were double-hull sailing canoes of a length of up to 30 m. In the 17th and 18th century, the Pacific region was explored and “discovered” by navigators such as Magellan, Torres, Tasman, D’Urville, Drake, Cook and La Perouse. The Spanish dominated early Pacific colonizations and there are many shipwrecks related to the Spanish Manila galleon trade. Shipwrecks on the labor trade in the 19th century such as the Fijian sugar and Peruvian guano industries were found in the Pacific, while whalers, missionaries and traders have also left behind a legacy of underwater sites. More recently, the Pacific was among the major theatres of the Second World War. The Pacific holds numerous submerged ships, submarines and aircraft, some of them are war graves still containing human remains that must be approached with respect.

The Pacific region has taken a progressive approach to applying the principles and the guidelines in the UCH Convention to the region’s UCH. The First Regional Workshop on the Pacific UCH took place in 2009 in Honiara, Solomon Islands. The Workshop brought together representatives of the cultural authorities in the Pacific SIDS in order to share information on the current status of UCH protection and management in each country.

The Workshop participants identified priority areas for cooperation that included developing systematic recording and maintenance of a database of submerged and underwater sites, exploring licensing activities directed at underwater sites, and developing a training and education program for UCH archaeologists and managers. The papers presented at the Workshop were compiled, edited and published as UNESCO publication "Underwater Cultural Heritage in Oceania" in 2010. As a follow up, a feasibility study on the Pacific capacity building programme was prepared by Flinders University with UNESCO assistance. This study found the advantages of partnering with regional intergovernmental bodies such as the University of the South Pacific (USP) for this task. Palau was the first Pacific island state that organized the UCH Training Course in Koror in 2013 with UNESCO assistance.

Progress in UCH protection in the Pacific is being made within the framework of not only the UCH Program but also the World Heritage Program and the Intangible Cultural Heritage (ICH) program. The World Heritage Convention ratified by 190 countries reflects the global recognition of the intrinsic value of our heritage. As of today, 12 out of 14 Pacific member states are parties to the World Heritage Convention<sup>2</sup>, which has allowed Pacific countries to formulate a regional action plan and take a coordinated approach. ICOMOS Pacifika and Pacific Island Museum Association (henceforth PIMA) have been formed to provide Pacific perspective for the program implementation. Although the Pacific still remains the least represented region on the World Heritage List, over ten sites in the Pacific Small Island Developing States (henceforth SIDS) and territories are inscribed on the World Heritage List. Already enjoying the high visibility and increase in visitors and revenue from tourism, these World Heritage sites, some of which contain UCH elements, can be ideal places for the actual maritime survey and field work. With regard to the ICH program, the Pacific SIDS out of which 8 countries are now parties to the ICH Convention<sup>3</sup> have been developing related cultural policies. The safeguarding of the traditional ship building technologies and navigation systems as part of the Pacific ICH are intimately related to the understanding of UCH. The followings are some of the examples.

### **Yapese Stone Money Bank (Palau and the Yap State, Federated States of Micronesia)**

Before and during European contact, Yapese people travelled across the 400 km of open water to the Rock Islands in Palau where they quarried their stone disk money. They were transported back to the Yap Island by canoe. Some of them arrived safely in Yap, while, according to the oral histories transmitted among local communities, the biggest stone disk fell onto the seabed during its transport and remains on the ocean floor between Yap and Palau. Palau and FSM nominated “Yapese Stone Disk” as a trans-border site for inscription on the World Heritage List in 2011. This joint nomination, although deferred, has contributed to revitalizing the collaboration between the two countries, resulting in the establishment of a joint management committee for the heritage sites. On the other hand, “the Rock Islands and Southern Lagoon” that includes some archaeological elements became the first World Heritage Site in Palau in 2012. The government of Palau puts in place an added departure tax to finance local community efforts under the Protected Areas Network in the country. This has been attracting attention as a potential model for a sustainable financing mechanism for protected areas in other Pacific SIDS (UNESCO, 2012).

### **Levuka Historical Port Town (Fiji)**

Fiji shipwrecks, ranging from sailing ships to steamships, are mainly located around the Lomaiviti Island Group, where Levuka is located. Levuka is the first colonial capital of Fiji ceded to the British in 1874. “Levuka Historical Port Town” became the first World Heritage site in Fiji in June 2013. Levuka developed from the early 19th century as a center of commercial activity by Americans and Europeans who built a colonial port town was influenced in its development by the indigenous community. The buffer zone of Levuka World Heritage site includes offshore waters under which the important UCH are submerged according to the Levuka Maritime Archaeological Survey conducted by the Australian National Maritime Museum in 1998.

### **Bikini Atoll Nuclear Test Site (Marshall Islands)**

From 1946 to 1958, after the displacement of the local inhabitants, 67 nuclear tests were carried out in the Marshall archipelago by USA, including the explosion of the first H-bomb (1952). Bikini Atoll has conserved direct tangible evidence that is highly

significant in conveying the power of the nuclear tests, including a unique collection of shipwrecks at the bottom of the lagoon. These vessels sunk in 1946 by two separate nuclear detonations were a group of warships from the US Navy and the Imperial Japanese Navy that were assembled for Operation Crossroads. Dr J. Delgado, Institute of Nautical Archaeology, USA, states “The sunken test ships, as well as associated aircraft, test vehicles, and test equipment, cables, test bunkers, and the atomic craters (the gigantic Bravo crater) on the sea floor inside the lagoon are a museum of the beginnings of the atomic age, and as such, have been inscribed on the UNESCO World Heritage List in 2010” (UNESCO, 2010). The property is protected by the Historic and Cultural Preservation Act (1991). The main threats to the property are the effects of climate change and the presence of stocks of bombs and fuel in the underwater part of the property.

### **Empowering Pacific SIDS for UCH protection**

Under UNCLOS, Pacific SIDS have sovereign rights over the management of the natural resources, marine scientific research, the protection and preservation of the marine environment in their territorial waters and EEZ that is almost 100 times larger than their total island area. From this perspective, Pacific SIDS are not small but large maritime states and communities. These resources include not only mineral resources, fishery stocks, biological diversity, but also cultural, historical and archaeological resources such as UCH. Unfortunately the current level of attentions and considerations given to UCH in the Pacific is not adequate. This makes Pacific UCH particularly vulnerable to the risks, including commercial fishing, construction of offshore and onshore maritime infrastructure, environmental changes and the rise in marine tourism that may make an adverse impact on UCH protection.

Special attention needs to be given to a growing interest in a Deep Sea Mining (henceforth DSM) in the Pacific. Several SIDS have private sector interests actively engaged in their EEZ and in the Area over which ISA has responsibility for approving programs of work. There are 13 programs of work approved for exploration for polymetallic manganese nodules in the Area in the Pacific, including 3 programs of work in “Reserve Areas” for developing countries to sponsor programs of work with private entities. New applications for contracts for exploration for Cobalt-Rich Crusts were

approved by ISA in 2013. The impacts of DSM activities on the marine environment are unknown. Like the land-based mining projects, DSM projects must be carried out after the Environmental Impact Assessment (EIA) including archaeological and UCH components has been completed. Several projects have been launched notably by the Council of Regional Organisations in the Pacific (CROP) in order to assist Pacific SIDS in safeguarding its resources against commercial interests by establishing appropriate measures.

With regard to legal protection, EU-funded Deep Sea Minerals (DSM) project implemented by the Secretariat of the Pacific Community (henceforth SPC) (2012) through the Applied Geoscience and Technology Division (henceforth SOPAC) advises Pacific SIDS to improve legal frameworks, increase technical capacity and to develop effective monitoring systems. As for UCH, the guidelines advise them to include wording along the following lines: i) Any object of an archaeological or historical nature found by any Title Holder or person conducting Marine Scientific Research within the jurisdiction or control of the [country] shall be reported to the [regulating body] and treated in accordance with its instructions, and shall be safeguarded pending receipt of those instructions and ii) The instructions given by the [regulating body] shall take into account Article 149 and/or 303 of UNCLOS. UNESCO has been in touch with SOPAC-SPC in order to strengthen the above guidelines and provide technical assistance for countries from the perspective of UCH protection.

UNESCO has extended its assistance to a range of activities to enhance SIDS capacities in UCH protection. Besides, as part of its advocacy activity, UNESCO will organize a workshop on UCH and SIDS before the UN 3rd International Conference on Small Island Developing States (Samoa, 1 - 4 September 2014). Following the Conferences held in Barbados (1994) and Mauritius (2005), the 3rd SIDS Conference in Samoa will be held to renew the international community's commitment to the sustainable future of SIDS and forge a genuine and durable partnership for this endeavor. UNESCO workshop on UCH and SIDS will bring together eminent experts in UCH from SIDS States Parties to the UCH Convention in the Caribbean region and international experts with the aims of enhancing the awareness of the importance of the UCH Convention. It is hoped that this workshop will provide an opportunity for mutual

learning and networking among SIDS, let alone the increased ratification of the UCH Convention by SIDS.

## **Conclusion**

The Ocean Declaration adopted at the Pacific World Heritage Workshop in Maupiti, French Polynesia, in 2009, emphasizes the cultural link amongst the peoples of the Pacific that extends beyond the artificial boundaries of the current geopolitical system and reinforces the ocean as being intrinsic to the identity, ways of life, values, knowledge and practices of Pacific peoples (UNESCO, 2012). The recent positive progress in the heritage safeguarding in the Pacific as shown in the increased number of the Pacific States Parties to the World Heritage Convention and ICH Convention represents an opportunity for inter-Convention cooperation in UCH protection and management in the Pacific. At the same time, much more efforts are needed to promote the UCH Convention in the Pacific, since to this day among forty-five States Parties there has been no signatory to the UCH Convention from the Pacific<sup>4</sup>. This situation makes the Pacific region particularly under-represented in the activities related to the UCH Convention. Ratification of the UCH Convention by the Pacific countries would increase the representation of the region as well as bolster the Convention's universality. It must be noted that, guided by the principles embodied in the UCH Convention as well as its State Cooperation System, the UCH Convention will empower Pacific SIDS by promoting the sharing of duties and obligations among the coastal states and the broader international community. The UCH Convention will also assist them in strengthening its ocean governance by establishing necessary legal frameworks and building capacities. The diversity of UCH linking Pacific SIDS with other countries within and outside the region will also foster cultural exchange, cooperation, mutual understanding and peace. The significance of the UCH Convention and the importance of the participation of Pacific SIDS in its implementation must be understood from this perspective.

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## Endnote

<sup>1</sup>The law of salvage is a concept in maritime law which states that a person who saves another person's ship or cargo from peril or loss at sea is entitled to a reward commensurate with the value of the property so saved. The law of salvage never grants ownership, but grants compensation or the right to retain the objects by way of a maritime link, as long as the salvage award has not been paid. The law of finds has been applied to sunken and abandoned vessels and the finder is granted ownership of the objects.

<sup>2</sup>Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Vanuatu.

<sup>3</sup>Federated States of Micronesia, Fiji, Nauru, Palau, PNG, Samoa, Tonga, Vanuatu.

<sup>4</sup>Albania; Antigua & Barbuda, Argentina, Barbados, Belgium, Benin, Bosnia and Herzegovina; Bulgaria, Cambodia, Croatia, Cuba, Democratic Republic of the Congo, Ecuador, France, Gabon, Grenada, Haiti, Honduras, Iran (Islamic Republic of), Italy, Jamaica, Jordan, Lebanon, Libya, Lithuania, Mexico, Montenegro, Morocco, Namibia, Nigeria, Panama, Palestine, Paraguay, Portugal, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Slovakia, Slovenia, Spain, Trinidad and Tobago, Tunisia, Ukraine.

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## Biography

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