

Motivating and Enabling Pacific States to Ratify the 2001 UCH Convention

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ABSTRACT

Ratifications of the 2001 UCH Convention by Pacific States has been poor. Using Solomon Islands and the Marshall Islands as case studies, this paper begins by considering the utility of the 2001 UCH Convention for these States before turning to the difficulties and challenges in enabling ratification. These include not only capacity issues but also the extent to which ratification requires amendment of existing laws and broader policy issues relating, for example, to tourism and international relations.

KEYWORDS: Solomon Islands; Marshall Islands; UNESCO

INTRODUCTION

There are 15 States widely regarded as Pacific States - Federated States of Micronesia (FSM), Marshall Islands, Kiribati, Nauru, Palau, Fiji, Solomon Islands, Papua New Guinea, Vanuatu, Samoa, Tonga, Tuvalu, New Zealand, Cook Islands and Niue – and a number of territories belonging to Australia, United States and France. Of these Pacific States only two have ratified the 2001 UCH Convention: FSM and Niue. With 72 States Party to the 2001 UCH Convention, this is a significant under-representation. The more so when considering the extent of the maritime zones (exclusive economic zones and continental shelf) of these States, which together make up the largest maritime domain in the world's largest ocean. This non-participation was reflected in the negotiations that led to the 2001 UCH Convention at which only New Zealand, Papua New Guinea and Samoa attended at least one of the four negotiation meeting; the remaining States did not attend at all.

UNESCO has sought to educate, facilitate and encourage Pacific States to engage with and ultimately ratify the 2001 UCH Convention. So far this has had limited immediate success. The resulting under-representation is not, however, confined to the 2001 UCH Convention, but across all the UNESCO Cultural Heritage Conventions. None are party to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict or the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Of the only three UN Member States not party to the World Heritage Convention, two are from the Pacific – Nauru and Tuvalu. Moreover, other than New Zealand, no Pacific State has more than one World heritage site, and some – Cook Islands, Niue, Samoa and Tonga – have none. And while all are party to the 2003 Intangible Cultural Heritage Convention, engagement in that Convention is also limited, with only four States having a single item each on the World List – FSM, Samoa, Tonga and Vanuatu; the rest have none.

In this broader heritage contest, the lack of representation in the World Heritage and Intangible Cultural Heritage lists is both a function of the increasingly complicated processes for nomination, and the concern that Pacific States do not have the resources to effectively manage and protect significant heritage that is subject to the relevant international Convention and the obligations contained therein. It is clear that a lack of human and financial resources constrain the ability of Pacific States to act. It is thus worth contextualising this by noting that the bottom seven positions of the 207 listed States in the World Bank's 2021 ranking by GDP were taken up by Pacific States: Tonga, FSM, Marshall Islands, Palau, Kiribati, Nauru and in last place Tuvalu (World Bank 2012). Not surprising many of the Pacific

States are also the smallest in the World by pollution, with all but New Zealand and Papua New Guinea having a pollution of less than 1 million, and in some cases considerably less. Palau has a population of around 18,000; Tuvalu 12,000 and Nauru 11,000 (Worldometer 2023). As a region, Oceania has the lowest pollution in the world with a total of less than 20 million, spread over the largest maritime domain (UN World Pollution Prospects 2002).

Against the backdrop, there are a range of underlying reasons for a lack of interest in the 2001 UCH Convention. In the context of current challenges faced by Pacific States, UCH is not a priority on the political and national agenda and not surprisingly there is “a lack of visibility, public support and understanding of the values attached to UCH, and the incompatibility with economic development projects.” (Nikishiwa 2017, 20) There is also a basic lack of understanding of the convention and uncertainty as to its relation with the 1982 UN Convention on the Law of the Sea.

This paper considers the difficulties Pacific States face in the process of considering ratification of the 2001 UCH Convention through a review of two case studies – Solomon Islands and Marshall Islands.

ADVANTAGES OF RATIFICATION

The Pacific States were born by seafarers undertaking significant feats of seamanship and navigation over hundreds of years beginning as far back as 3,500 years ago. Little has been found of the physical remains of these endeavours, but better technology and a greater emphasis on Pacific indigenous heritage bodes well for the future. Much more recently, the western age of exploration, colonialisation and a world war have left UCH across the Pacific. Not only is this historically and archaeologically important heritage but is of great tourism potential and requires sustainable management.

The 2001 UCH Convention provides the bedrock upon which this UCH can be managed. It contains an internationally agreed legal framework supported by international best practice in maritime archaeology. Perhaps more importantly, the 2001 UCH Convention is essentially a framework for State cooperation, including in the sharing of information, training and in the use and transfer of relevant technology. Only through ratification and ‘membership’ as States Parties, can a State engage in deliberations about UCH in an international context; participate in the UNESCO organs of the 2001 UCH Convention, particularly in the Scientific and Technical Advisory Body and have access to the UCH Fund that supports various activities, including training, workshops, public awareness raising and technical missions.

There is little cost to ratification, with representation the only direct cost, and that, in any event, is a matter for each State to decide as to the level of participation. The only indirect cost is the law reform required to ensure a State gives effect to its international obligations arising out of the 2001 UCH Convention.

Despite these obvious advantages, Pacific States have not ratified the 2001 UCH Convention. The case of Solomon Islands and Marshall Island may highlight some of the reasons for this.

SOLOMON ISLANDS

The UCH resources of the Solomon Islands includes caves and sacrificial sites used for shark or crocodile worship, submerged villages and artificial islands, historic shipwrecks including the remains from *La Perouse* expedition of 1788, and famously, hundreds of planes and shipwrecks

resulting from the fierce battles of the WWII. Indeed, Iron Bottom Sound, between Guadalcanal and Savo Islands, is so named because of the number of WWII wrecks lying there. It is a particularly popular dive tourism site.

UNESCO's bid to encourage ratification of the 2001 UCH Convention in the Pacific began shortly after it came into force in 2009. UNESCO organised an inter-governmental meeting in Honiara, Solomon Islands, attended by representatives of Fiji, Kiribati, Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu (Takahashi 2011, 6). It was designed to stimulate interest and assist States in ratifying the 2001 UCH Convention; reinforce existing co-operation in the Asia Pacific Region and set up new linkages for the protection and management of UCH.

While useful in that it introduced the 2001 UCH Convention to Pacific States, little came of this meeting. UNESCO did publish *Underwater Cultural Heritage in Oceania* in 2010 to raise awareness within the region, and a Feasibility Study on a Pacific UCH Capacity Building programme did follow, but nothing appears to have come of that (Mckinnon and Kimura 2012). Pacific States did not show any real interest in pursuing ratification.

In 2021 UNESCO (author Ellen Lekka) and contracted consultants (author Craig Forrest, together with Matthew Carter and Ole Varmer) organised a consultation workshop on the 2001 UCH Convention in the Solomon Islands over two days: 23–24 June, bringing together key stakeholders representing government, industry, development partners and international experts to discuss possible ratification of the 2001 UCH Convention. A draft Gap Analysis was prepared to compare Solomon Islands' legislation to the requirements of the 2001 UCH Convention, as well as a National Interest Analysis detailing the benefits and obligations should Solomon Islands ratify. At that meeting, the Director of the Culture Division at the Ministry of Culture and Tourism (author Dennis Marita), spoke about the importance of the ocean to Solomon Islanders' identity, he declared that "Solomon Islands is a maritime country, and a great part of its heritage and history is based on the ocean". The Director also expressed the desire of the Solomon Islands Government to ratify the 2001 UCH Convention. This has yet to happen, and a number of reasons might explain why.

While the 2001 UCH Convention does not impose significant obligations on States Parties, each State does need to ensure that its legislation is capable of giving effect to these obligations. The extent to which each State can respond to this obligation is both a function of the complexity and modernity of its existing legislation and its capacity to amend that legislation or introduce new legislation. The Solomon Islands Gap Analysis revealed that the existing law applicable to wrecks, salvage and maritime jurisdiction (Shipping Act 1998; Protection of Wrecks and War Relics Act 1980) required some amendment, as did aspects of related legislation such as the Environment Act 1998 and Protected Areas Act 2010; though these do provide a sound footing for the implementation of the 2001 UCH Convention – subject to minor amendments. In many respects, while the needs for amendments were modest, the task of coordinating these across multiple legislative instruments (and relevant departments) is time consuming and requires dedicated human resources. Indeed, the age of some of the legislation that required amendment (eg. Protection of Wrecks and War Relics Act 1980) attests to the difficulty in generally keeping legislation contemporary and up to date. The main recommendation from the Gap Analysis was the adoption of a new stand-alone legislative instrument to give effect to the 2001 UCH Convention. Given that the 2001 UCH Convention provides the framework this should not be a particularly difficult legislative instrument to draft but it does require time and resources and a certain level of subject matter expertise.

Time and resources that are not easily directed to heritage, especially heritage like UCH, which is out of sight and not immediately relevant to much of the population, whose cultural traditions often favour intangible heritage (Jeffrey et al 2021, 137). This is hardly surprising when considering issues such as climate change and other threats that challenge a State's very existence. As such, attempts to address issues related to heritage are often tagged on to broader issues such as sustainable development. And these all compete for limited resources.

The nature of UCH in Solomon Islands may also play a role, in that the most obvious examples of UCH are not indigenous Solomon Islander heritage, but rather that from World War II (Forrest and Corrin 2013). It is often perceived in tourism terms and as a financial commodity, rather than genuine heritage. At the very least the idea of it being heritage does exist because of the emphasis placed on it by the two belligerent States: Japan and United States. That this heritage will not in fact fall within the scope of the 2001 UCH Convention until the early 2040s is not always appreciated and therefore coloured the view they have of the 2001 UCH Convention as to its role in Solomon Islands.

Solomon Islands has also not fared well in terms of its engagement with other international cultural heritage regimes. In 1998, East Rennell was inscribed on the World Heritage List. At the time, the World Heritage Committee noted that adequate long-term legislative, regulatory or institutional protection was not in place. Nevertheless, the property was inscribed on the list with a number of recommendations made to address these issues, but Solomon Islands failed to address them and, in 2003, the property formally entered the non-compliance response system, and in 2013, placed on the List of World Heritage in Danger where it remains (Hamman and Hølleland 2023, 98-99). This illustrates the significant capacity challenges faced in all areas of cultural heritage management and does not bode well for UCH without external assistance.

MARSHALL ISLANDS

Having been discovered by around 2000 years ago, the Marshallese archipelago, with 1225 islands and islets, is vast. The settlement of this archipelago required extraordinary navigational skills and seaworthy craft. While little physical remains of this early seafaring have been discovered, other traditional sites demonstrate the intimacy Marshallese have with the ocean, including coral reef heads featured in traditional oral history and ancient fish traps, some of which are still in use today. The UCH resources of the Marshall Islands also extend to the Japanese and United States wreckage of WWII; and the material evidence of nuclear testing at Bikini Atoll (Naone 2011, 1).

The notion of cultural heritage in Marshall Islands appears to be coloured by its association with the United States. After achieving self-governance in 1979, the Marshall Islands entered into a Compact of Free Association with the United States which allowed, amongst many things, for the Historic Preservation Office to continue its roles as provided for in the 1966 U.S. National Historic Preservation Act. Indeed, four sites are listed on the US National Register of Historic Places: Kwajalein Island Battlefield, Roi-Namur Battlefield, Debrum House and Marshall Islands War Memorial Park (Forrest and Jeffrey 2018). In 1991, the Historic Preservation Act was adopted by the Nitijela as a response to the perceived legal vacuum in relation to indigenous Marshallese historic preservation. This included submerged cultural heritage and was followed by the adoption of Regulations Governing Access to Prehistoric and Historic Submerged Resources. These provide for a reasonable

protective regime, though difficult to enforce given the vast distances involved and the limit enforcement capability (Naone 2011, 1 and 5).

Whilst there was therefore some recognition of the importance of UCH, the Marshall Islands was not engaged in the negotiations that lead to the 2001 UCH Convention. Importantly though, it was engaged with the World Heritage Convention and in 2010 the Bikini Atoll Nuclear Test Site was inscribed on the World Heritage List; including the ships that were sunk during the 67 nuclear tests that took place there. These form an integral part of the World Heritage site and are the only UCH specifically protected in Marshall Islands. However, these wrecks are not only cultural resources but also an environmental threat. Other than the affect that atomic tests have had, and continue to have, on these wrecks, a number still have potentially polluting bunker fuel on board, and some still have unexpended ordinance, requiring intervention (Forrest and Jeffrey 2018, 61-64).

As part of its commitment to educate, facilitate and encourage States to ratify the 2001 UCH Convention, UNESCO commissioned desk-based reports on the State of the legislative framework and UCH related programme in the five States of Micronesia – including Marshall Islands (Forrest and Jeffrey 2018). The key recommendation was that Marshall Islands become a party and adopt a new Act to give effect to the Convention, at the same time making consequential amendments to the Historic Preservation Act, Regulation and Control of Shipping Act and Wrecks and Salvage Act, and others as appropriate. In 2021, this was followed by a more detailed consideration of this legislative framework together with a draft National Interest Analysis and a two-day workshop (7-8 December 2021) together with educational material, based on the model used for the work undertaken the previous year for Solomon Islands.

The recommendations arising out of that work were substantially similar to those for Solomon Islands: ratification of the 2001 UCH Convention with consequential, but limited, amendments to a range of legislation and the adoption of a new stand-alone legislative instrument to give effect to the 2001 UCH Convention. As yet, no action appears to have been taken following this work and recommendations. Trite, but again the underlying cause is a lack of resources.

SUSTAINED INSTITUTIONAL AND STATES PARTIES ASSISTANCE

Both Solomon Islands and Marshall Islands would benefit from ratification of the 2001 UCH Convention and both States appear eager to do so. The inevitable effect of consultants working remotely with no ongoing relationship with those in the States responsible for progressing the path to ratification has begun to toll on the momentum generated by the work undertaken in the past two years. Given these States' significant financial and capacity constraints, and where cultural heritage issues are a low priority given the geo-political and environmental challenges being addressed, it is difficult to criticise lack of progress. It thus falls to those assisting these States to persist in ongoing dialogue, and perhaps just a little bit of pressure, to ensure that momentum does not falter and fade entirely. There is thus a role to play for organisations such as UNESCO Pacific Office, Pacific Islands Museum Association, International Council of Monuments and Sites (ICOMOS) - both ICOMOS Pacifika and ICOMOS International Committee on Underwater Cultural Heritage), and the Pacific Heritage Hub at University of the South Pacific. All have an interest in assisting these States, but there appears to be little coordination and sharing of the load, in part because these organisations too face resourcing constraints. Perhaps what is needed is a more coordinated approach with one organisation that takes the lead and coordinates the efforts of all other organisations with an interest in the protection and management of the Pacific UCH.

The 2001 UCH Convention (article 2(2)) is, above all, a cooperative regime and States Parties are bound to cooperate as a fundamental principle of this regime. Australia is edging close to ratification. In 2018, the federal government adopted the Underwater Cultural Heritage Act that is consistent with the 2001 UCH Convention and will allow for Australia to fulfil its obligations following ratification. In March 2003 the Federal government's Joint Standing Committee on Treaties concluded its hearing and report on the 2001 UCH Convention by recommending ratification. If, as is now highly likely, ratification will take place, Australia will owe obligations to other States Parties, and if those were Pacific States, the benefits of having a relatively well resourced and highly skilled neighbour would be of significant benefit. Pacific States would do well to follow an Australian ratification.

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