# UNCPUCH Workshop

## AIMA13: Towards Ratification

**Thursday, 3rd October 2013**

Australian National University, Sir Roland Wilson Building
Research School of Humanities and the Arts, Canberra, Australia

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| 9:00 – 10:30  | **The UNESCO Convention on the Protection of the Underwater Cultural Heritage**  
Chair: Lyndel Pott  
- Patrick O’Keefe: The reasons for the Convention’s drafting  
- Graeme Henderson: The reasons for the Convention’s drafting, a maritime archaeologist’s perspective  
- Craig Forrest: The need for Australia to ratify the 2001 Convention |
| 10:30 – 11:00 | **Extent of progress toward ratification and the strategies employed**  
Chair: Bill Jeffery  
- Andrew Viduka: Australia’s consideration of the ratification process and current position  
- Bill Jeffery, Shawn Berry and Chris Ngivingivi: Maritime and Underwater Cultural Heritage developments in sub-Saharan Africa  
- Martijn Manders: The Netherlands towards ratification: activities in the light of the Convention  
- Alok Tripathi: India towards ratification |
| 11:00 – 12:30 | Lunch  
- **How ratification was achieved**  
Chair: Craig Forrest  
- Ulrike Guérin: Status and development of ratifications  
- Mariano J Aznar-Gómez: The processes and strategies employed in Spain  
- Marnix Pieters: The processes and strategies employed in Belgium |
| 12:30 – 13:30 | Lunch  
- **Achieving the ratification—Roundtable Discussion**  
Chair: Patrick O’Keefe  
- Implications of the above sessions and the Australian election for strategies for AIMA and the Department for Sustainability |
ABSTRACTS

The UNESCO Convention on the Protection of the Underwater Cultural Heritage
Chair: Lyndel Prott

Patrick O’Keefe: The reasons for the Convention’s drafting
In 1988, the International Law Association established a Committee on Cultural Heritage Law and I was appointed as the Chair. We chose as our first activity the drafting of a Convention on the Protection of the Underwater Cultural Heritage. The first issue was that of jurisdiction. We created a ‘cultural heritage zone’, which would apply from the edge of the territorial sea to the outer limit of the continental shelf. Here a coastal State would control activities affecting the underwater cultural heritage. Outside that Zone, States would prohibit their nationals and ships flying their flag from activities not complying with the Charter produced by ICOMOS. Breach of the prohibition would lead to seizure of the heritage when brought ashore unless a permit had been issued. A State was also to use its territorial jurisdiction to deny the use of facilities to anyone acting contrary to the Charter. Warships were to be excluded from coverage by the Convention. The law of salvage was also to be excluded. The Charter could be revised by ICOMOS with the result binding on States Parties unless they specifically objected.

Graeme Henderson: The reasons for the Convention’s drafting, a maritime archaeologist’s perspective
Awareness of the need for a comprehensive international instrument can be viewed as a series of related events and developments expanding from the local to the international. Looting commenced with the discovery in 1963 of two 17th century Dutch shipwrecks off the Western Australian coast. The State Government passed legislation, supported by Western Australian Museum management programmes, but the destruction continued. A diver’s challenge to the legislation in the High Court prompted the passing in 1976 of Commonwealth legislation and development of nationwide programmes. Concerned about implications of the 1985 Titanic discovery at a depth of 3,700 metres and Christie’s Geldermalsen porcelain auction, Australian practitioners took roles in developing non-prescriptive codes of practice, within Australia and with the International Council of Maritime Museums. But even as these codes were published there was evidence that they would be ineffectual without legal force. In 1990 the International Law Association’s Committee on Cultural Heritage Law produced a draft UNESCO Convention. In 1991 Australia ICOMOS established an international committee (ICUCH) to develop a charter. The ILA Committee envisaged that for the Convention to be effective, nationals would be required to abide by specified criteria in excavating historic wreck sites. In 1991 they invited ICUCH to prepare these criteria, and a modified version of its draft ICOMOS Charter was used as the Annex of the UNESCO Convention.

Craig Forrest: The need for Australia to ratify the 2001 Convention
Ratification of the Convention by Australia will enhance and extend the existing protective regime operative in Australian waters and that applicable to Australia’s heritage in other waters, particularly that which lies beyond coastal state jurisdiction. Ratification is also needed for a great number of other, related, reasons. It will further the unification of laws across national jurisdictions that protect underwater cultural heritage; it will facilitate the more effective implementation of the evolving cooperative international regime that now exists with the coming into force of the convention; and it will provide a cornerstone for ratification and implementation throughout the Asia-Pacific region.
Extent of progress toward ratification and the strategies employed
Chair: Bill Jeffery

Andrew Viduka: Australia’s consideration of the ratification process and current position
In June 2009 the Australian Government commenced a review of the Historic Shipwrecks Act 1976 and consideration of the requirements arising from the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage. The review involved consultation with individuals, Non-Government Organisations and State and Commonwealth Government agencies. This presentation gives an overview of the processes undertaken by the Australian Government, submission responses in regards to ratification and the current status of the legislative reform process and consideration of the requirements of the Underwater Cultural Heritage Convention.

Bill Jeffery, Shawn Berry and Chris Ngivingivi: Maritime and Underwater Cultural Heritage (MUCH) developments in sub-Saharan Africa
The aim of this presentation is to provide an overview of the current status of the maritime and underwater cultural heritage programmes in Tanzania and South Africa. These countries have long histories of Indigenous cultures, foreign contacts and influences and African adaptations using coastal and inland waterways, as well as coastal communities exploiting the riches of inland communities. Today, they contain numerous examples of the tangible and intangible heritage related to this history and contemporary practices. Some exploratory research and training has been conducted in Tanzania but the implementation by local residents of their own MUCH programme is still at an early stage. In South Africa they are implementing their own MUCH programme but the misconception that MUCH is only linked to the colonial past has resulted in a general apathy, resulting in a lack of funding and hampering its growth. The UNESCO Convention is being used as a framework in the development of these programmes. It can assist in highlighting the extensive histories, cultural landscapes and cultural identity of communities provided it is made relevant and beneficial to local communities who need to support its implementation.

Martijn Manders: The Netherlands towards ratification: Activities in the light of the Convention
The Netherlands are studying further steps for ratification of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage and the implications this will have on the country’s legislation, obligations, (new) responsibilities and capacity needed for off-shore industries. Where does the Netherlands stand at the moment? Why this change in insight? What are—according to the Ministry of Education, Culture and Science—the benefits of this? The process towards ratification has not only a legal component. Practically, there is a need for maritime archaeologists and maritime cultural heritage managers to prepare for this as well. This is not only important for governments and those who work there, but also other stakeholders who become more and more involved in the management of the underwater cultural heritage. This paper will describe the process and examples of projects that are, or soon will be, done in the light of the Convention. Still, the Dutch Cultural Heritage Agency (RCE) is aiming for ratification by the end of 2014. Will we make that date?

Alok Tripathi: India towards ratification
The importance of underwater cultural heritage was realised in the second half of the last century. A small project, started in 1981, marked the beginning of underwater archaeology in the country. Due to limited underwater activities in Indian waters, much of the sunken cultural heritage remained preserved and undisturbed. But sudden awareness and interest about the sunken cultural heritage, in the recent past, have attracted many people and organizations towards the search and study of underwater cultural heritage. As a result, attempts of exploring underwater archaeological sites and
retrieval of archaeological remains have increased.

India has been supporting the UNESCO Convention on the Protection of the Underwater Cultural Heritage since it was passed and voted in its favour. It is thus committed to implement the provisions of the Convention. The rules annexed to the Convention were approved, with certain modifications, by the Standing Committee of the Central Advisory Board of Archaeology in 2004, as guidelines for maintaining professional standards while considering the proposals for the excavation of underwater archaeological sites in Indian Waters.

Since the Convention is to be implemented in vast water areas, active cooperation of several Ministries and Departments would be necessary. It is satisfying that concerned ministries have recommended for ratification of the Convention.

The process for ratification was started a while ago but the slow rate in ratification of the Convention by other countries had an adverse effect. After it came into force the process has geared up again. This paper deals with the progress of underwater archaeology in India as well as progress made towards ratification of the 2001 Convention.

### How ratification was achieved
Chair: Craig Forrest

**Ulrike Guérin: Status and development of ratifications**

The 2001 Convention on the Protection of the Underwater Cultural Heritage entered into force on 2 January 2009. Today, it has been ratified by 45 States, these being Albania, Antigua, Barbuda, Belgium, Argentina, Barbados, 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, Togo, Trinidad and Tobago, Tunisia, and Ukraine.

Many more States are preparing to join. It is the foremost international treaty concerning submerged heritage. The Convention is strongly supported by underwater archaeologists who actively apply and enforce its regulations. Most professional associations of underwater archaeologists have thus officially endorsed the Convention and its Annex. Over time, it can be expected that the Convention will be ratified universally and that it will put an end to the brutal treasure hunting currently menacing major submerged archaeological sites.

The paper will present the current status of ratifications and the functioning of the Convention, and will also give a short overview of the views of selected States on the Convention.

**Mariano J Aznar-Gómez: The processes and strategies employed in Spain**

The UNESCO Convention on the Protection of the Underwater Cultural Heritage (‘UNESCO Convention’) was ratified by Spain on 6 June 2005 and incorporated in the domestic legal order soon after its entry into force. Unfortunately, there were no sound discussions in Spain about the legal consequences in the domestic realm of the ratification and how it will affect the practical protection of underwater cultural heritage (UCH). However, the impact of the ratification on Spain’s international legal policy was deeply assessed, as well as the political message Spain wished to send to the rest of the negotiating States —particularly the Latin-American States, the European partners and the United States.

This contribution will try to briefly evaluate some of these questions and discussions in order to offer a general tourn’horizon on the current position of Spain towards the UNESCO Convention and its implementation, both in the domestic and the international realm. It will try to (1) show the general views of Spain during the negotiation of the Convention and beyond; (2) evaluate the
problems of implementation of the Convention in the Spanish domestic order and the measures already adopted; and (3) assess generally the future application of the Convention and the interests embodied by Spain in that process.

Marnix Pieters: The processes and strategies employed in Belgium

The UNESCO Convention on the Protection of the Underwater Cultural Heritage (‘UNESCO Convention’) was ratified by Belgium very recently, on 5th of August 2013. After an introduction to the important constitutional and legal aspects of Belgium as well as to the recent development of maritime and underwater archaeology in this country, the ratification procedure, the intended implementations and the future challenges, will be presented in some detail.

Although Belgium has a very short coastline (merely 67 kilometres) and, compared to other countries, a comparatively smaller sea area (about 3500 square km), we hope to be of some influence in the southern part of the North Sea and hope to stimulate, together with France, neighboring countries to ratify this convention as well. It would be very welcome for the protection of especially World War I sunken heritage if the other coastal states along the Southern North Sea (The United Kingdom, The Netherlands, Germany and Denmark) would ratify this convention and by doing so, protect effectively the very much-endangered maritime heritage linked to the previous century.

Achieving the ratification—Roundtable Discussion

Chair: Patrick O’Keefe

This session is dedicated to discussing the implications of the above sessions and presentations, and the Australian election for strategies for AIMA and the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC), Canberra.