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**THE UNDERWATER
CULTURAL HERITAGE
(PROTECTION AND PRESERVATION)
ORDINANCE, 2009**

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requirements for the award of the Degree of Master of Laws (LL.M.)
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DEDICATED TO

The Prophet¹

Younas,²

who had a unique role in the history of shipping³

SHAFIQ UR RAHMAN

*Lt Commander
Pakistan Navy*

¹ *Peace and blessing of Allah be upon him*

² *Jonah*

³ *Quran 37:145-6; and The Bible (Book of Jonah: 10-15).*

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INTRODUCTION

Heritage in general had been a matter of national concern only as most of the laws regarding the protection of historic buildings of Europe, United States of America⁴ and India⁵ date back to the end of the 19th century.⁶ In various countries, there were quite a few associations but their scope was limited within their borders. Cultural internationalism, to some extent, is the outcome of the World War-I, with the creation of the League of Nations, and most of all of the World War-II, with the creation of the United Nations Organization (UN), and particularly the United Nations Educational Scientific and Cultural Organization (UNESCO).⁷

In an attempt to achieve the proper identification, protection, conservation, and preservation of the world common heritage, the Member States of UNESCO adopted the Convention concerning the Protection of the World Cultural and Natural Heritage (shortly the World Heritage Convention) in 1972.⁸ The Convention complemented heritage conservation programmes at the national level and provided for the establishment of a World Heritage Committee and a World Heritage Fund. On the basis of nominations submitted by States Parties to the Convention, the World Heritage Committee was to identify, *inter alia*, cultural, natural and mixed properties of outstanding universal value which are to be protected under the Convention, and to list those properties on the World Heritage List.

The cultural heritage on land has been benefitting from national and international protections. The underwater cultural heritage on the other hand had remained largely unprotected particularly in the backdrop of rapidly increasing lootings with improved diving technology, creation of art markets and collectors. Treasure hunters turned more and more to objects coming from the seabed. Thus legal

⁴ US Antiquities Act of 1906 (16USC431-433).

⁵ The Ancient Monuments Preservation Act 1904 (VII of 1904).

⁶ For example, in the Sub Continent being a British Colony, Lord Curzon, Viceroy of India from 1899 to 1907 was greatly interested in initiating archaeological activities in India. He activated and developed the Archaeological Survey of India by appointing Sir John Marshal as its Director General, a zealot whose accelerated efforts and activities gave prominence to important archaeological site museums.

⁷ http://www.international.icomos.org/hist_eng.htm, accessed on 2 Nov 2008.

⁸ For text of the Convention visit: <http://whc.unesco.org/en/conventiontext/>.

protection of the underwater cultural heritage required fast intensification of international attention. Shipwrecks and other underwater cultural heritage in every maritime zone remained threatened both by activities ‘directed at’ them, such as treasure hunting and by activities ‘incidentally affecting’ them such as mineral exploration and exploitation, pipeline and cable-laying, dredging and fishing. The cultural treasures in the danger of pillaging and destruction are immense. The use of the latest undersea technology⁹ which now permits the location and recovery of almost anything lost on the seafloor through the use of ships guided by Global Positioning Systems and Towing Sleds loaded with Side-Scan Sonar, Magnetic Anomaly Detectors, and cameras, has become common.

Over three million undiscovered shipwrecks are estimated¹⁰ to be spread across the ocean floor. Beside shipwrecks, remnants of ancient civilization, like the ruins of the Alexandria lighthouse¹¹ in Egypt, and complete cities, such as Jamaica’s Port Royal¹² and ancient city of Dwarka (see **Figure 1**) in Arabian Sea¹³ also lay under the waves. Many national laws do not adequately protect such heritage and wrecks or ruins located in international waters.



Figure 1: Images of ancient underwater city of Dwarka in Arabian Sea; Source: <http://deshgujarat.com>

It was the 1990s, when important precedents were set for the UNESCO by the court cases ensuing from the looting of Clive of India's Gold from the wreck of the British Ship *Doddington*¹⁴ and other incidents of precious wrecks’ removal such as

⁹ <http://www.unesco.org/bpi/eng/unescopress/2001/01-118e.shtml>, accessed on 30 Nov 2008.

¹⁰ Ruiz, Cristina; ‘Decisive Times for Underwater Archaeology: Who Owns the Watery Past?’, The Art Newspaper, September 2000; <http://shipwreck.net/artnewspapersept2000.html>, the article was accessed via internet on 28 Nov 2008.

¹¹ Lighthouse of Alexandria built around 280 BC was one of the Seven Wonders of the World. Of the 6, this was the last ancient wonders to be destroyed around 1480 AD. http://www.sevenwondersworld.com/wonders_of_world_lighthouse_alexandria.html, accessed on 22 Nov 2008.

¹² On June 7th, 1692, a massive earthquake hit Jamaica, causing buildings to slide and disappear beneath the sea. <http://nautarch.tamu.edu/portroyal/>, accessed on 22 Nov 2008.

¹³ <http://www.hindujagruti.org/news/1766.html>, accessed on 22 Nov 2008.

¹⁴ A British ship, bound for India, carrying a hoard of gold belonging to East India Company, struck a reef off Port Elizabeth (South Africa) on 17 July 1755; it wasn’t until 1977, after years of patient research, that the vessel was discovered by David Allen and Gerry van Niekerk. See

that of the Spanish Ships La Galga,¹⁵ Juna¹⁶ and the Nuestra Senora de Atocha¹⁷ by salvors on ‘Finders-Keepers’ basis, which were challenged by the respective countries of the ships’ origin in the courts.

BACKGROUND OF THE CONVENTION 2001

UNCLOS 1982¹⁸ includes two provisions that establish a general obligation of the Contracting States to protect underwater cultural heritage, without providing further details of the measures to be taken. Article 149 of the Convention reads as:

“Archaeological and historical objects: All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.”

Another article says:

“Archaeological and historical objects found at sea:

1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.

2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.

3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.

4. This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.”¹⁹

By virtue of paragraph 4 above, the framers had left the room open by impliedly allowing more specific regulations on the subject.

<http://www.doddingtonfamily.org/shipdoddingtonnotes.htm>. The gold and silver was controversially looted in recent times by Port Elizabeth treasure hunters. The high profile court case highlighted various shortcomings in both, the South African and the international maritime law. The UNESCO monitored the case closely, and it later set an important precedent for the UNESCO Convention of 2001. See: [http://en.wikipedia.org/wiki/Doddington_\(ship\)](http://en.wikipedia.org/wiki/Doddington_(ship)), accessed on 22 Nov 2008.

¹⁵ In 1750, a frigate commissioned into the Spanish Navy encountered hurricane in the vicinity of Bermuda and sank near American Coast. <http://www.discoversea.com/lagalga.html>, accessed on 1 Dec 2008.

¹⁶ A Spanish Navy frigate that sank in 1802 near American Coast <http://www.thehiddengalleon.com/Juno.htm>, accessed on 1 Dec 2008.

¹⁷ Spanish galleon Nuestra Senora de Atocha, which sank off the Florida Keys in 1622, <http://www.newworldtreasures.com/atochastory.htm>, accessed on 1 Dec 2008.

¹⁸ The United Nations Convention on the Law of the Sea, adopted by UNCLOS-III at Montego Bay on 10 December 1982 which entered into force in 1994, a year after signing by the 60th state to the treaty. To date 157 countries have joined in the Convention.

¹⁹ Article 303.

In 1993, UNESCO started to look into drafting a new convention for the protection of underwater cultural heritage. The experts met several times between 1993 & 2001 and drafted an international legal instrument for general application which was adopted by UNESCO's General Conference at its 31st session, on 2 November 2001 and named 'the Convention on the Protection of the Underwater Cultural Heritage'. Recognizing the importance of the underwater cultural heritage as an integral part of the cultural heritage of humanity, the Convention is intended to guarantee its preservation through international cooperation. As explained earlier, the 2001 Convention was the response of the international community to the looting and destruction of such heritage.

The Convention offers international standards of protection of such heritage. It consists of a comprehensive legal framework and protection regime providing appropriate legal, administrative and operational measures to be adopted by States Parties according to their respective capabilities.

The 2001 Convention is specifically dedicated to the protection of underwater cultural heritage by guaranteeing its preservation and facilitating cooperation among States; but it does not in any way tend to amend the regulations of UNCLOS or other international law.²⁰ 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 High Seas 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. No new jurisdiction or sovereign rights have been granted to States becoming parties to the Convention.²¹

By joining the 2001 Convention, every State agrees to use its own State jurisdiction, 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.

²⁰ See for example Art. 3 of the 2001 Convention.

²¹ http://portal.unesco.org/culture/en/ev.php-url_id=36042&url_do=do_printpage&url_section=201.html, accessed on 23 Nov 2008.

SALIENT FEATURES OF THE CONVENTION

General

The Convention contains 35 Articles and an Annex²² as an integral part. Unless expressly provided otherwise, a reference to the Convention includes a reference to the Rules of the Annex as well. The salient features²³ of the 2001 Convention are:

States Parties to the Convention pledge to preserve underwater cultural heritage²⁴ for the benefit of humanity.

Achieving an important compromise between protection and operational needs, protection of underwater cultural heritage from being commercially exploited for trade or speculation may not be construed as either preventing professional archaeology, the deposition of heritage recovered in a research project or preventing salvage activities or actions by finders as long as the requirements of the 2001 Convention are fulfilled.

The activities relating to underwater cultural heritage to which the Convention applies shall not be subject to the law of salvage or law of finds unless it is authorized by the competent authorities; is in full conformity with the Convention; and ensures that any recovery of the underwater cultural heritage achieves its maximum protection.

The preferred option that the Convention provides is the preservation *in situ*²⁵ of underwater cultural heritage. Recovery may however be authorized for the purpose of making a significant contribution to the protection or knowledge of underwater cultural heritage. The preference given to *in situ* preservation as the first option stresses the importance of the historical context of the cultural object and its scientific significance, and recognizes that such heritage is under normal circumstances well preserved underwater owing to the low deterioration rate and lack of oxygen and therefore not necessarily *per se* in danger.

²² which comprises 36 Rules.

²³ http://en.wikipedia.org/wiki/unesco_convention_on_the_protection_of_the_underwater_cultural_heritage, accessed on 2 Nov 2008.

²⁴ Article 1 (1)(a) refer to it as all traces of human existence having a cultural, historical or archaeological character that remained underwater, periodically or continuously, for at least 100 years.

²⁵ i.e. the current location on the seabed.

The 2001 Convention does not intend to rewrite the history of seafaring and navigation nor does it regulate the issue of ownership of wrecks or ruins between the States concerned. Furthermore, the Convention does not prejudice the rights or duties of states under international law, including the UNCLOS. Indeed, every State may become a party to the 2001 Convention, regardless of whether it is a State party to UNCLOS or not.

State Cooperation Mechanism

According to the Convention, depending on the location of the underwater cultural heritage, specific regimes for cooperation between coastal and flag states²⁶ have been created for application.

States Parties have the exclusive rights to regulate activities in their internal, archipelagic waters and their Territorial Sea. Within their Contiguous Zone, States Parties may regulate and authorize activities directed at underwater cultural heritage.

The 2001 Convention enjoins State Parties that within the Exclusive Economic Zone, or the Continental Shelf and within the Area,²⁷ a specific international cooperation regime encompassing notifications, consultations and coordination in the implementation of protective measures is established.

Miscellaneous

The Convention also contains regulations against the illicit trafficking of cultural property and on training in underwater archaeology. The transfer of technologies and information sharing is also encouraged and public awareness shall be raised concerning the value and significance of the underwater cultural heritage.

The Annex of the Convention contains the "Rules concerning activities directed at underwater cultural heritage", i.e. operation schemes for underwater interventions, which is internationally recognized as the reference document in the discipline of underwater archaeology.

The 2001 Convention sets a high standard of protection for underwater cultural heritage that shall be common to all its State Parties. It applies only among States

²⁶ In some cases other concerned States will also be involved.

²⁷ The seabed, ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

that have ratified the Convention.²⁸ A State, if it so wishes, may ensure an even higher standard of protection than required by the Convention.

POSITION OF PAKISTAN

By virtue of the Indian Independence Act 1947, the Islamic Republic of Pakistan was created on 14 August 1947. During Britain's rule in sub continent, the first law on protection of cultural heritage, i.e. The Ancient Monuments Act of 1904 was introduced containing compulsory clauses, prohibition and penal sections, covering all fields of archaeological activities and expeditions. In order to broaden its role and cover more modern trends in the field, Pakistan replaced the Act with the Antiquities Act 1975. Then in the 90s the Country legislated the National Fund for Cultural Heritage Act, 1994²⁹ and on provincial level the Sindh Cultural Heritage (Preservation) Act 1994 was issued.

The land where Pakistan is situated today had been a seat of world's leading Civilizations from times immemorial. According to careful estimation the Indus River Civilisation of Pakistan is as old as that of River Nile in Egypt, Euphrates and Tigris Rivers in Mesopotamia (present Iraq) and Yangtze River in China. At the time of independence, this legacy came to the Pakistanis as a treasure which may be called as Pakistan's national heritage. So rich and diversified is this heritage that Pakistani nation can be proud of its glorious past, be Islamic or pre-Islamic period as far back as pre-historic times. Perhaps, no other country of the world can produce the treasure of by gone days as can be found in Pakistan.³⁰ Therefore to protect the national heritage and save it from further deterioration and theft extensive efforts are required to be initiated.

UNDERWATER CULTURAL HERITAGE IN THE REGION

The sea that surrounds Pakistan has been a route for navigators from ancient times. Barbarikon, an ancient sea port near the modern-day city of Karachi, had much

²⁸ Article 27 of the Convention.

²⁹ The Primary purpose of the Fund is to promote the conservation and preservation of national heritage of Pakistan through various means, including financial and technical assistance and to create awareness amongst the people for appreciating the preservation of archaeological, architectural, historical and cultural heritage of Pakistan.

³⁰ Ahmad, Qazi Ijaz, "Museums in Pakistan 'May 18: World Museum Day'", Column Article, visited at <http://www.dawn.com/weekly/gallery/archive/080517/gallery2.htm>, accessed on 23 Nov 2008.

significance in the Hellenistic Era³¹ and Indian Ocean trade.³² There are evidences that prove that the waters in the Pakistani region³³ have been highway of trade between the oldest city of the world, Jericho (in Palestine) and Jarmo (in Iraq) on one side and Mehrgarh³⁴ in the Baluchistan and Harappa and Mohenjo-Daro³⁵ in Sind Provinces of Pakistan, on the other. The trade was undertaken by plying sailing boats up to the river mouth and then small boats were used for inland traffic in the Indus River.³⁶ There are also scriptural testimonies that the traders used to have various modes of financing comparable to modern days of banking.³⁷ With such an abundant evidence of the sea trade since ancient times, it is hard to disbelieve that there would have not been big shipping disasters in the region. It depends how the today's man with modern technology is able to locate anything underneath.



Figure 2: Alexander's fleet hit by tsunami in 325 BC around the area now known as Karachi in Pakistan.
Source: <http://www.drgeorgepc.com>

Alexander the Great after conquering Persia entered the Sub-Continent in 326 BC but once he declared to advance further to East, his armies mutinied forcing him to abandon his motives and headed back to Macedonia. So he turned south-wards and reached Morontobara where the coastal city of Karachi (see **Figure 2**) is situated

now. While preparing to voyage the fleet encountered tsunami and suffered losses in the coast between Indus and Hub rivers.³⁸

Of late, for instance, wrecks of The *SS John Barry*³⁹, *INS Kbukeri*⁴⁰, *PN Submarine Gbazji*⁴¹, (see **Figure 3**) and *Allah Mina*⁴² lie beneath the waters in the region of the

³¹ It represents the zenith of Greek influence in the ancient world from 323 BC to about 146 BC.

³² <http://en.wikipedia.org/wiki/barbarikon>, accessed on 15 Feb 2009.

³³ Territorial Sea as well as EEZ and adjoining High Seas beyond 200 NM.

³⁴ An agriculture city where the first settled life began in around 8000 BC.

³⁵ It dates back to around 5500 BC.

³⁶ Ratnagar, Shereen; the Westerly trade of the Harappa Civilization, Delhi, OUP, 1981, p. 180, visited at http://www.hindunet.org/hindu_history/sarasvati/dictionary/7398to.htm, on 3 Feb 2009.

³⁷ Chachi, Abdelkader; Origin and Development of Commercial and Islamic Banking Operations, *Journal of Islamic Economics*, King Abdulaziz University, Jeddah, Saudi Arabia, Vol. 18, No. 2, pp. 3-25 (2005 A.D/1426 A.H), visited at http://islamiccenter.kau.edu.sa/arabic/magallah/pdf/18_2/18-2-shashi_05.pdf, on 12 Feb 2009.

³⁸ <http://www.drgeorgepc.com/tsunami325bcindiaalexander.html>, accessed on 12 Feb 2009.

Pakistani territory that will become underwater cultural heritage after passage of 100 years in terms of the Convention.

Beside vestiges of shipwrecks in the waters, there can be located the civilization in the old port city of Debal, now referred to as Banbhore.⁴³ It has a succession from the first century BC to the thirteenth century AD. The Port's earlier phases are drowned,⁴⁴ but its surface still represents the best preserved early Islamic⁴⁵ urban form in South Asia and the region's best preserved mediaeval port⁴⁶.



Figure 3: File foto of Pakistani submarine 'Ghazi' which sank in 1971; Source: <http://en.wikipedia.org/>

INTERNATIONAL LAW AND LEGISLATION PROCEDURE IN PAKISTAN

The Constitution reaffirms the common aspiration of the people of Pakistan that they and their country should attain their rightful and honoured place in the World and adopt international law by making full contribution towards international peace, progress and happiness of humanity.⁴⁷

Some states regard international law at par with domestic law and enforce it as such, through their courts. But Pakistan is a Federal State⁴⁸ and follows the dualist approach. An international treaty⁴⁹ may be incorporated into domestic law either by

³⁹ An American liberty ship torpedoed off the coast of Oman by the Germans on 28 August 1944 resulting into its sinking to 8500 feet below the sea surface. Forty-five years later, however, in November 1994, the ship was excavated revealing vintage US Army trucks, tanks, and military equipment. See http://en.wikipedia.org/wiki/ss_john_barry, accessed on 22 Nov 2008.

⁴⁰ A frigate in service of the Indian Navy was sunk by a Pakistan Navy submarine PNS *Hangor* on 8 December 1971 during the Indo-Pakistani War, off the coast of Diu, Gujarat, India. See http://en.wikipedia.org/wiki/ins_khukri, accessed on 22 Nov 2008.

⁴¹ A Submarine leased by Pakistan from US in 1963, operated in the 1965 and 1971 wars between India and Pakistan and was Pakistan's first submarine and remained the flagship submarine for Pakistan Navy until it sank in 1971 off the fairway buoy of Visakhapatnam near eastern coast of India under unclear circumstances during the 1971 war. See http://en.wikipedia.org/wiki/pns_ghazi, accessed on 22 Nov 2008.

⁴² A cement barge which sank in the Persian Gulf in approximately 1972; The wreck site is now a popular for scuba divers, in particular because of the coral and other marine life attracted to the lime contained in the barge's cargo. See http://en.wikipedia.org/wiki/allah_mina, accessed on 22 Nov 2008.

⁴³ It is located on the Northern Bank of Gharo Creek, around 65 KM East of Karachi.

⁴⁴ perhaps in the sea-water forming 'creek'.

⁴⁵ Which started in 712 AD with expedition of the port city lead by Muhammad bin Qasim (at present the second port of Karachi has been named after him) the city was abandoned when the Indus River shifted its course in the eleventh century AD and the creek silted.

⁴⁶ <http://whc.unesco.org/en/tentativelists/1885/>, accessed 31 Oct 2008.

⁴⁷ Preamble read with Article 2A of the Constitution.

⁴⁸ Article 1 of the Constitution of Pakistan, 1973.

⁴⁹ International treaty includes those that relate to Maritime Affairs.

an Act of parliament or by an administrative procedure (an executive order).

The Constitution also lays stress on adherence to and enforcement of international obligations. The functions of external relations are assigned to the Federal Government.⁵⁰ Practically, the President, the Prime Minister or the Foreign Minister can sign an international treaty for Pakistan.

The Authority competent to legislate a Central Law in shape of an Act⁵¹ is the Parliament by virtue of Article 70 of the Constitution which provides that a bill for making of a new law can be originated in any of the two houses of the Parliament⁵² and if passed by both the houses without any amendment then it is submitted to the president for his assent.⁵³

However, by virtue of Article 89 of the Constitution, the legislative powers have also been given to the President of the country to issue law for an interim period when the parliament is not in session. The law so passed is known as an Ordinance and shall stand repealed at the expiration of four months unless earlier withdrawn by the president or disapproved by the parliament. The Ordinance has same force and effect as the Act of Parliament, and once it is laid before the National Assembly is deemed to be a Bill introduced by the Assembly.⁵⁴



Figure 4: Supreme Court of Pakistan, Islamabad

In case of a clash between treaty law and domestic law, Pakistani superior courts (**Figure-4**) have ruled that domestic law will prevail.⁵⁵ Moreover, any treaty law conflicting with the injunctions of *Shariah*⁵⁶ will also be subordinated to *Shariah*.⁵⁷

⁵⁰ Article 97 read with Schedule Four and Article 40.

⁵¹ Legislative Matters of the Country have been divided into three lists; Federal Legislative List, Provincial Legislative List and Concurrent Legislative List. For our purposes Articles 70 to 77 are relevant which deal with the matters in Federal Legislative List or Concurrent Legislative Lists only.

⁵² It includes both houses, National Assembly (lower house) and Senate (upper house) as well as the President of Pakistan. The parliament has been referred to in the Constitution 1973, as Majlis-e-Shoora, (Article 50).

⁵³ Sub article 1 of article 70 of the Constitution.

⁵⁴ Article 89(2)&(3).

⁵⁵ See, Aziz Khan, Commander Pakistan Navy v. The D G Ports and Shipping, 1991 CLC 362.

⁵⁶ i.e Islamic Law which is based on the principles of Holy Quran and Sunnah (traditions of the Holy Prophet, Muhammad PBUH).

⁵⁷ *A M. Qureshi v. The USSR*, PLD 1981 SC 377, and *Messrs. Majid Zarab Ltd. v. The Government of Pakistan*, PLD 1993 Karachi 93.

IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

On ratification, treaties/conventions become binding in Pakistan but international treaties/conventions are not directly enforceable. They have to be enforced through executive authorities or by the courts after adoption of the same through domestic legislation.⁵⁸ There are, however some cases where human rights or rapprochement⁵⁹ through harmonious construction were involved, the courts have taken a more lenient approach in giving effect to a treaty or convention, even though it may not have been adopted⁶⁰ Such verdicts establish the increasing recognition of application of international law in the domestic jurisdiction.

In giving effect to ‘the Convention on the Protection of the Underwater Cultural Heritage 2001’ for Pakistan, dualistic system approach such as in UK has been followed, in which an international convention is literally reproduced in its original form in order not to lose its own character as a consequence of interpretation and



Figure 5: Parliament House, Islamabad, Pakistan

construction of the local text etc.⁶¹ The scheme adopted in the instant legislation is the same. However deeming that Parliament (**Figure-5**) is not in session, the law has been termed as an Ordinance to be issued by the President.

It would not be out of place to mention that in making title of the Ordinance there is a little departure from the title of the Convention which uses the word ‘protection’ only. The proposed law has been named as the Underwater Cultural Heritage (Protection and Preservation) Ordinance, 2009. The reason why the word preservation has been added is that while the word ‘protection’ assumingly connotes safeguarding against stealing etc, the word ‘preservation’ in general sense

⁵⁸ Ibid.

⁵⁹ It comes from the French word ‘rapprocher’ (“to bring together”); In international relations a rapprochement is a re-establishment of cordial relations, as between two countries. en.wikipedia.org/wiki/rapprochement, accessed on 14 Feb 2009.

⁶⁰ E.g. Nasrullah Khan Henjra v. Government of Pakistan (PLD 1994 SC 23), Wajid Shamsul Hassan v. Federation of Pakistan, PLD 1997 Lah 617, and Shehla Zia v WAPDA, PLD 1994 SC 693.

⁶¹ Wit, Ralph DE; Multimodal Transport, First Edition, Lloyd’s of London Press Ltd., London, UK, 1995, p.511.

would mean and include *in situ* look after and maintenance of the heritage the doctrine which has substantively been provided in the Convention.⁶²

In the proposed Ordinance, the relevant administrative and procedural details have been provided which are deemed to be mandatory for putting into effect the purposes of the Convention. The convention has been added as the **Schedule** to the Ordinance hence forming substantial part of the law.

The Ordinance contains eight parts with 26 sections in all and a schedule that reproduces the Convention 2001. The flow of the topics covered in the Ordinance is as under:

PART I	Preliminary
PART II	Acquisition, Declaration and Protection of Heritage
PART III	Maritime Cultural Heritage Authority
PART IV	Provisions Regarding Internal Waters And Maritime Zones
PART V	Underwater Cultural Heritage Fund
PART VI	Public Access
PART VII	Penal Clauses
PART VIII	Miscellaneous
Schedule	the Convention on the Protection of the Underwater Cultural Heritage 2001

CONCLUSION

Given these details, it can be concluded that international law is gradually making inroads into the Pakistan's domestic sphere. Protection of underwater cultural heritage in Pakistan is a need of the day particularly in wake of the enforcement of the Convention 2001 with effect from 2 January 2009 for Twenty States⁶³ that have deposited their respective instruments of ratification, acceptance, approval or accession on or before 2 October 2008. For any other State, it shall enter into force three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.

It is right time for high ups in Pakistan to look into the matter. The choice of this drafting project is an effort to pave the way for Pakistan to embark upon journey towards new regime.

⁶² Article 2 read with the Rule 1,7 and 25 of the Convention.

⁶³ <http://portal.unesco.org/la/convention.asp?ko=13520&language=e&order=alpha>, accessed on 23 Nov 2008.

REGISTERED No. M -.....
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The Gazette

of Pakistan

EXTRAORDINARY

PUBLISHED BY AUTHORITY

ISLAMABAD, THURSDAY, April 06, 2009

PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN

MINISTRY OF LAW, JUSTICE, HUMAN RIGHTS AND

PARLIAMENTARY AFFAIRS

(Law, Justice and Human Rights Division)

Islamabad the 06 April, 2009

No F __(__)/2009-Pub — The following Ordinance promulgated by the President is hereby published for general information: —

ORDINANCE NO. __ OF 2009

THE UNDERWATER CULTURAL HERITAGE (PROTECTION AND PRESERVATION) ORDINANCE, 2009

AN

ORDINANCE

to provide for the *protection and preservation of the Underwater Cultural Heritage*

WHEREAS Pakistan is a signatory to Convention on the Protection of the Underwater Cultural Heritage 2001 of Paris, 2 November 2001;

WHEREAS it is expedient to provide for the Protection and Preservation of the Underwater Cultural Heritage pursuant to the said Convention and for matters connected therewith;

AND, WHEREAS, the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1), of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:—

PART I

PRELIMINARY

1. Short title, extent, application and commencement:

(1) This Ordinance may be called the Underwater Cultural Heritage (Protection and Preservation) Ordinance, 2009.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once and shall be deemed to have taken effect from the second day of January, 2009.

2. Definitions:

In this Ordinance, unless there is anything repugnant⁶⁴ in the subject or context;

⁶⁴ denoting 'contrary', the word is used in almost all the Pakistani laws in the sections on "definitions".

1. “activities directed at underwater cultural heritage” means activities having underwater cultural heritage as their primary object and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage.
2. “activities incidentally affecting underwater cultural heritage” means activities which, despite not having underwater cultural heritage as their primary object or one of their objects, may physically disturb or otherwise damage underwater cultural heritage.
3. “Advisory Committee” means the Advisory Committee constituted under section 3 of this Ordinance;
4. “Authority” means the Pakistan Maritime Cultural Heritage Authority established pursuant to Part III of this Ordinance.
5. “contiguous zone” has the same meaning as assigned to it under the Territorial Waters and Maritime Zones Act, 1976 (Act LXXXII of 1976).
6. “continental shelf” has the same meaning as assigned to it under the Territorial Waters and Maritime Zones Act, 1976 (Act LXXXII of 1976).
7. “Convention” means the Convention on the Protection of the Underwater Cultural Heritage 2001, adopted by UNESCO at Paris on second day of November 2001, set forth in the Schedule to this Ordinance.
8. “Director-General” means the Director-General of the Pakistan Maritime Cultural Heritage Authority, and includes an Officer authorised by him to exercise or perform all or any of the powers or functions of the Director General under this Ordinance;
9. “Government” means Federal Government
10. “Pakistani ship” means a ship registered under the Merchant Shipping Ordinance, 2001 (Ordinance No. LII of 2001)
11. “Rules” means the Rules concerning activities directed at underwater cultural heritage, as mentioned in the Appendix of this Ordinance.
12. “States Parties” means the States which have consented to be bound by the 2001 Convention and for which the Convention is in force.
13. “State vessels and aircraft” means warships, and other vessels or aircraft that were owned or operated by a State and used, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage.
14. “territorial waters” has the same meaning as assigned to it under the Territorial Waters and Maritime Zones Act, 1976 (Act LXXXII of 1976).

15. “underwater cultural heritage” means:

(a) all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, 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.

(iv) any other site or object or class of such sites or objects declared by the Federal Government, by notification in the official Gazette, to be underwater cultural heritage for the purposes of this Ordinance;

(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.

18. “UNESCO” means the United Nations Educational, Scientific and Cultural Organization.

3. Advisory committee.

(1) For the purpose of ensuring and strengthening the protection and preservation of underwater cultural heritage as defined in Article 2 of the Convention set forth in the Schedule, in general, and provisions of this Ordinance in particular, the Government shall constitute an Advisory Committee consisting of a Chairman and six other members out of whom three shall be experts of marine history & technology, archaeologists, conservators and scholars of traditional arts and crafts.

(2) A member appointed by virtue of his office shall cease to be member on vacation of such office,

(3) The Chairman or a member, other than an ex-officio member, unless he resigns by addressing a letter to Government or is removed earlier, shall hold office during the pleasure of the Government.

(4) The Chairman may, if he so considers, co-opt any person as a member.

PART II

ACQUISITION, DECLARATION AND PROTECTION OF HERITAGE

4. Acquiring a site containing underwater cultural heritage

If the Government has reasonable grounds to believe that a site contains any underwater cultural heritage, it may direct the Provincial Government in which territory the site falls to acquire such site or any part thereof; and the Provincial Government shall thereupon acquire such site or part under the Land Acquisition Act, 1894 (I of 1894), as for public purpose.

5. Determination of underwater cultural heritage

If any question arises as to whether any site or objects are of value meriting to be considered as underwater cultural heritage, it shall be referred to the Government which shall after consultation with the Advisory Committee decide the same whose decision shall be final.

6. Declaration of underwater cultural heritage

(1) The Government may, on the recommendation of Committee or otherwise declare by notification in the Official Gazette, any site of value meriting to be considered as underwater cultural heritage, to be underwater cultural heritage within the meaning of this Ordinance.

(2) A copy of the notification under sub-section (1) shall be published in newspapers together with the intimation that objections, if any, to the issue of the notification received by Government within one month from the date of the notification shall be taken into consideration.

(3) On the expiry of the said period of one month, Government after considering the objections, if any, may confirm or withdraw the notification.

(4) A notification under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the premises or objects to which it relates is a protected underwater cultural heritage within the meaning of this Ordinance.

PART III

UNDERWATER CULTURAL HERITAGE AUTHORITY

7. Establishment of Authority:

(1) As soon as practicable after the commencement of this Ordinance there shall be established an authority to be known as the Pakistan Underwater Cultural Heritage Authority for carrying out the purposes of this Ordinance.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire and hold property, both movable and immovable and may, by the said name sue or be sued.

8. Management:

(1) The general direction and administration of the Authority and its affairs shall vest in the Board of Directors consisting of the following:

- | | | |
|-----|--|----------------------|
| i | Prime Minister | Patron |
| ii | An eminent person in the field of national heritage to be nominated by the Federal Government from amongst members specified at (vi) below, | Chairman |
| iii | Federal Minister in charge of Culture Division, | Co-Chairman |
| iv | Federal Minister for Finance | Member |
| v | Secretary, Culture Division, Government of Pakistan | Member |
| vi | Fifteen eminent persons in the field of National Heritage, including two Senators and four members of the National Assembly, to be nominated by the Federal Government | Member |
| vii | Director General, Department of Archaeology and Museums | Member/
Secretary |

(2) The Board of Directors may exercise all powers and do all acts and things which may be exercised or done by the Authority.

(3) The Board in discharging its functions shall act on sound principles of protection, preservation and maintenance of underwater cultural heritage, and shall be guided on questions of policy by the Convention on the Protection of the Underwater Cultural Heritage 2001 and such directions as the Government may from time to time give.

(4) In determining a question as to whether any matter is a matter of policy or not, the decision of the Government shall be final.

9. Terms of office of the Board Members:

(1) The Government shall appoint a Chairman, Vice-Chairman and a financial advisor from amongst the members.

(2) The Chairman and other members shall hold office during the pleasure of the Government and unless sooner removed the Chairman and Financial Advisor shall hold office for a period of five years and other members shall hold office for a period of four years.

(3) Any person, ceasing to be Chairman, Vice-Chairman, or member of the Board, by reason of the expiry of the term of his office, shall be eligible for reappointment for another term or for such shorter term as the Government may decide.

(4) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in or any defect in the constitution of the Board.

(5) The Chairman or any member may at any time resign provided that the resignation shall not take effect until accepted by the Government.

10. Headquarters of the Authority and meetings of the Board

(1) Until the Authority establishes its headquarters elsewhere within the specified regions, its headquarters shall be situated at Karachi.

(2) The meetings of the Board shall be held at such times and places and in such manners as the regulations may provide, provided that until regulations are made in this behalf, the meetings of the board shall be held as and when convened by the Chairman.

11. Acquisition of right in or guardianship of a underwater cultural heritage of the government

(1) The Authority, with the previous sanction of the Government, may purchase or assume custodianship of any underwater cultural heritage.

(2) The Authority, may accept the gift or bequest of any underwater cultural heritage.

(3) The owner of any underwater cultural heritage may, by written instrument, appoint the Authority as the guardian of the underwater cultural heritage, and the Authority may, with the sanction of Government, accept such guardianship.

(4) When the Authority has accepted the guardianship of an underwater cultural heritage under sub-section (3), the owner shall except as expressly provided in this Ordinance, have the same status, right, title and interest in the underwater cultural heritage or object as if the Authority had not been appointed guardian thereof.

(5) When the Authority has accepted the guardianship of an underwater cultural heritage under sub-section (3), the provisions of this Ordinance relating to agreements executed under section 12 shall apply to the written instrument executed under the said section.

12. Preservation of underwater cultural heritage

(1) The Authority may, with the previous sanction of Government propose to the owner to enter into an agreement with Government for the protection and preservation of any underwater cultural heritage.

(2) An agreement under this section may provide for the following matters or for such of them as it may be found expedient, to be included in the agreement-

- (a) the maintenance and custody of the underwater cultural heritage and the duties of any person who may be employed to watch it;
- (b) the restriction of the owner's right to destroy, remove, alter, deface or otherwise do away with the underwater cultural heritage;
- (c) the facilities of access to the public or to any portion of the public and to persons deputed by the Authority to inspect or maintain the underwater cultural heritage;
- (d) the notice to be given to Government in case the site or object where the underwater cultural heritage is situated is offered for sale by the owner, and the right to reserve by Government to purchase such heritage, or any specified portion of such heritage, at its market value;
- (e) the payment of any expenses incurred by the owner or Government in connection with the protection and preservation of the underwater cultural heritage; and;
- (f) any matter connected with the protection and preservation of the underwater cultural heritage which is a subject of agreement between the owner and Government.

(3) The terms of any agreement under this section may be altered from time to time with the sanction of the Government.

(4) Either party may terminate an agreement under this section on giving three months notice in writing to the other party.

(5) An agreement under this section shall be binding on any person claiming to be owner of the underwater cultural heritage to which it relates, through or under party by whom or on whose behalf the agreement was executed.

(6) Any right acquired by Government in respect of expenses incurred for protection or preserving an underwater cultural heritage shall not be affected by the termination of an agreement under this section.

13. Maintenance of underwater cultural heritage

(1). The Authority shall maintain, protect and preserve every underwater cultural heritage in respect of which Government has acquired any of the rights mentioned in this Ordinance.

(2). The Authority may receive voluntary contributions and donations towards the cost of maintenance of an underwater cultural heritage and may give orders as to the management and application of any funds so received by it; provided that no contribution received under this section shall be expended to any purpose other than the purpose for which it was contributed.

(3). An underwater cultural heritage declared under this Ordinance shall not be used for any purpose inconsistent with its character.

PART IV

CULTURAL HERITAGE IN INTERNAL WATERS AND MARITIME ZONES

14. Underwater cultural heritage in internal waters and territorial sea

(1) Without prejudice to any other provision of this Ordinance, the traces of human existence as hereinbefore described, if found within internal waters and territorial sea shall be deemed to have acquired the status of underwater cultural heritage after lapse of 50 years of the last untouched or unclaimed activity.

(2) Notwithstanding any other rules of international law regarding the protection of underwater cultural heritage, the Rules mentioned in Annex to the Schedule of this Ordinance shall also be applied to activities directed at underwater cultural heritage or activities incidentally affecting the underwater cultural heritage in the internal waters and territorial sea.

(3). In the exercise of the sovereignty, in recognition of general practice among States and with a view to cooperating on the best methods of protecting State vessels and aircraft, if such vessels or aircraft are found within Pakistani waters and territorial sea, the flag State Party to this Convention and, if applicable, other States with a verifiable link, especially a cultural, historical or archaeological link, be informed through normal diplomatic channels about the discovery of such identifiable State vessels and aircraft.

15. Underwater cultural heritage in the contiguous zone

Without prejudice to the provisions of this Ordinance, and in accordance with Article 303, paragraph 2, of the United Nations Convention on the Law of the Sea, the Authority may authorize, if it deems fit, activities directed at underwater cultural heritage within the contiguous zone provided that in so doing, the Authority shall seek the prior sanction of the Government.

16. Reporting and notification in the exclusive economic zone and on the continental shelf

(1) When a Pakistani national or a vessel flying Pakistani flag discovers or intends to engage in activities directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf, the Pakistani national or the master of the vessel shall report such discovery or activity to the Authority.

(2) When such discovery is made in the exclusive economic zone or activities are intended to be directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf of another State Party, the Pakistani national or the master of the vessel shall report such discovery or activity to the Authority.

(3) The Authority may declare to the State Party in whose exclusive economic zone or on whose continental shelf the underwater cultural heritage is located its interest in being consulted on how to ensure the effective protection of that underwater cultural heritage. Such declaration shall be based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned.

17. Cooperation and Information-Sharing

(1) The Authority shall with the approval of the Government, devise a mechanism of cooperating, assisting with other state whether parties to the convention or not, and if practicable, collaborating in the investigation, excavation, documentation, conservation and study of, the protection and management of underwater cultural heritage.

(2) The Authority shall, prior sharing information between other states or UNESCO, regarding the discovery or location of underwater cultural heritage, take into account all aspects relating to the fact that the disclosure of such information might not endanger or otherwise put at risk the preservation of such underwater cultural heritage. In doing so the Authority shall seek prior approval of the Government.

(3) The Authority shall take appropriate measures to disseminate and notify to all concerned the information about underwater cultural heritage excavated or recovered contrary to this Convention or otherwise in violation of international law.

18. Relationship to law of salvage and law of finds

(1) Any activity relating to underwater cultural heritage to which this Ordinance applies shall not be subject to the law of salvage or law of finds, unless it:

(a) is authorized by the Authority, and

- (b) is in full conformity with the purposes of this Ordinance, and
- (c) ensures that any recovery of the underwater cultural heritage shall achieve its maximum protection and preservation.

PART V

UNDERWATER CULTURAL HERITAGE FUND

19. Establishment of the Fund

As soon as may be practicable, after the commencement of this Ordinance, the Federal Government shall establish the National Fund for Underwater Cultural Heritage to carry out the purposes of this Ordinance.

20. Purposes and objectives of the Fund

- (1) The primary purpose of the fund is to promote the protection and preservation of the underwater cultural heritage of Pakistan through various means, including financial and technical assistance, and to create awareness amongst the people for appreciating, protection and preservation of the underwater cultural heritage of Pakistan.
- (2) In particular and without prejudice to the foregoing purposes, the Fund shall be used to;
 - (a) undertake measures for protection, preservation and conservation of the underwater cultural heritage having archaeological, historical and architectural value;
 - (b) acquire or hold in lease any material and cultural property or part thereof;
 - (c) provide assistance for protection, preservation and maintenance of a historical or archaeological monument or an archaeological site of the nature of the underwater cultural heritage;
 - (d) create and strengthen cooperation and coordination with international, national, provincial and regional organizations in protection, preservation and conservation of the underwater cultural heritage;
 - (e) provide financial and technical assistance towards protection and preservation of the underwater cultural heritage, and for furtherance of academic, scientific and intellectual discourses on the subjects relevant thereto;
 - (f) undertake promotional activities for enhancement of resources of the fund;and

(g) undertake and promote research and arrange materials for publication of periodicals, monographs and publicity material, including pamphlets, advertisements in newspapers and posters in furtherance of the objectives of Ordinance .

21. Sources of Fund

(1) The Fund shall be initially financed by the Government by allocation in annual budget of the country. Following shall also be additional sources of the fund, namely:-

- (a) grants from the Federal Government and Provincial Governments;
- (b) aid and assistance from local, national and international agencies;
- (c) contributions from the private organizations and individuals; and
- (d) income and earnings from the movable and immovable properties acquired by or leased to, the Fund.

(2) The amount credited to the Fund shall not lapse at the end of a financial year and shall be available for utilization at any time.

PART VI

PUBLIC ACCESS

22. Right of access to underwater cultural heritage

(1) Subject to such rules as may be made by Government, the public shall have a right of access to any underwater cultural heritage maintained by Government under this Ordinance.

(2) In making any rule under sub-section (1) Government may provide that a breach of it shall be punishable with fine which may extend to twenty five thousand rupees.

PART VII

PENAL CLAUSES

23. Penalty

Where any person including the owner, is found guilty of stealing, destroying, removing, injuring, altering, defacing or otherwise doing away with the underwater cultural heritage maintained by Government under this Ordinance or in respect of which an agreement has been executed under section 12, shall be punishable with

fine which may extend to two lakh⁶⁵ rupees, or with imprisonment of either description which may extend to three years, or with both.

PART VIII

MISCELLANEOUS

24. Overriding effect

(1) The provision of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

(2) In the event of any inconsistency between this Ordinance, any other law, or any judgment of any court and the Convention, the Convention shall prevail to the extent of the inconsistency.

(3) Nothing in this Ordinance shall be construed, interpreted or inferred as modifying the rules pertaining to sovereign immunities, nor any State's rights with respect to its State vessels and aircrafts, granted under State practice and international law, including the United Nations Convention on the Law of the Sea.

(4) Nothing in this Ordinance shall be construed to prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea, 1982.

25. Rules

The Government may, by notification in the official Gazette, make rules to carry out the purpose of this Ordinance including safety, security and protection of the persons acting under this Ordinance.

26. Savings.

(1) It may be appreciated by all concerned that no act or activity undertaken in good faith on the basis of this Ordinance shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

(2). No suit or prosecution or other legal proceedings shall lie against Government, the Authority, the Committee, the Chairman, a member, an officer or any other person of the Committee in respect of anything done or intended to be done in good faith under this Ordinance or rules made thereunder.

⁶⁵ 0.2 million

SCHEDULE

[See Section 2(7)]

Convention on the Protection of the Underwater Cultural Heritage 2001

Done at Paris, 2 November 2001

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 15 October to 3 November 2001, at its 31st session,

Acknowledging 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,

Realizing the importance of protecting and preserving the underwater cultural heritage and that responsibility therefor rests with all States,

Noting growing public interest in and public appreciation of underwater cultural heritage,

Convinced of the importance of research, information and education to the protection and preservation of underwater cultural heritage,

Convinced of the public's right to enjoy the educational and recreational benefits of responsible non-intrusive access to in situ underwater cultural heritage, and of the value of public education to contribute to awareness, appreciation and protection of that heritage,

Aware of the fact that underwater cultural heritage is threatened by unauthorized activities directed at it, and of the need for stronger measures to prevent such activities,

Conscious of the need to respond appropriately to the possible negative impact on underwater cultural heritage of legitimate activities that may incidentally affect it,

Deeply concerned by the increasing commercial exploitation of underwater cultural heritage, and in particular by certain activities aimed at the sale, acquisition or barter of underwater cultural heritage,

Aware of the availability of advanced technology that enhances discovery of and access to underwater cultural heritage,

Believing that cooperation among States, international organizations, scientific institutions, professional organizations, archaeologists, divers, other interested parties and the public at large is essential for the protection of underwater cultural heritage,

Considering that survey, excavation and protection of underwater cultural heritage necessitate the availability and application of special scientific methods and the use of suitable techniques and equipment as well as a high degree of professional specialization, all of which indicate a need for uniform governing criteria,

Realizing the need to codify and progressively develop rules relating to the protection and preservation of underwater cultural heritage in conformity with international law and practice,

including the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the UNESCO Convention for the Protection of the World Cultural and Natural Heritage of 16 November 1972 and the United Nations Convention on the Law of the Sea of 10 December 1982,

Committed to improving the effectiveness of measures at international, regional and national levels for the preservation in situ or, if necessary for scientific or protective purposes, the careful recovery of underwater cultural heritage,

Having decided at its twenty-ninth session that this question should be made the subject of an international convention,

Adopts this second day of November 2001 this Convention.

Article 1 – Definitions

For the purposes of this Convention:

1. (a) “Underwater cultural heritage” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, 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.

2. (a) “States Parties” means States which have consented to be bound by this Convention and for which this Convention is in force.

(b) This Convention applies *mutatis mutandis* to those territories referred to in Article 26, paragraph 2(b), which become Parties to this Convention in accordance with the conditions set out in that paragraph, and to that extent “States Parties” refers to those territories.

3. “UNESCO” means the United Nations Educational, Scientific and Cultural Organization.

4. “Director-General” means the Director-General of UNESCO.

5. “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

6. “Activities directed at underwater cultural heritage” means activities having underwater cultural heritage as their primary object and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage.
7. “Activities incidentally affecting underwater cultural heritage” means activities which, despite not having underwater cultural heritage as their primary object or one of their objects, may physically disturb or otherwise damage underwater cultural heritage.
8. “State vessels and aircraft” means warships, and other vessels or aircraft that were owned or operated by a State and used, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage.
9. “Rules” means the Rules concerning activities directed at underwater cultural heritage, as referred to in Article 33 of this Convention.

Article 2 – Objectives and General Principles

1. This Convention aims to ensure and strengthen the protection of underwater cultural heritage.
2. States Parties shall cooperate in the protection of underwater cultural heritage.
3. States Parties shall preserve underwater cultural heritage for the benefit of humanity in conformity with the provisions of this Convention.
4. States Parties shall, individually or jointly as appropriate, take all appropriate measures in conformity with this Convention and with international law 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.
5. The preservation in situ of underwater cultural heritage shall be considered as the first option before allowing or engaging in any activities directed at this heritage.
6. Recovered underwater cultural heritage shall be deposited, conserved and managed in a manner that ensures its long-term preservation.
7. Underwater cultural heritage shall not be commercially exploited.
8. 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.
9. States Parties shall ensure that proper respect is given to all human remains located in maritime waters.
10. Responsible non-intrusive access to observe or document in situ underwater cultural heritage shall be encouraged to create public awareness, appreciation, and protection of the heritage except where such access is incompatible with its protection and management.

11. No act or activity undertaken on the basis of this Convention shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

Article 3 – 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.

Article 4 – Relationship to Law of Salvage and Law of Finds

Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or law of finds, 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 underwater cultural heritage achieves its maximum protection.

Article 5 – Activities Incidentally Affecting Underwater Cultural Heritage

Each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage.

Article 6 – Bilateral, Regional or Other Multilateral Agreements

1. States Parties are encouraged to enter into bilateral, regional or other multilateral agreements or develop existing agreements, for the preservation of underwater cultural heritage. All such agreements shall be in full conformity with the provisions of this Convention and shall not dilute its universal character. States may, in such agreements, adopt rules and regulations which would ensure better protection of underwater cultural heritage than those adopted in this Convention.
2. The Parties to such bilateral, regional or other multilateral agreements may invite States with a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned to join such agreements.
3. This Convention shall not alter the rights and obligations of States Parties regarding the protection of sunken vessels, arising from other bilateral, regional or other multilateral agreements concluded before its adoption, and, in particular, those that are in conformity with the purposes of this Convention.

Article 7 – Underwater Cultural Heritage in Internal Waters, Archipelagic Waters and Territorial Sea

1. States Parties, in the exercise of their sovereignty, have the exclusive right to regulate and authorize activities directed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.
2. Without prejudice to other international agreements and rules of international law regarding the protection of underwater cultural heritage, States Parties shall require that the Rules be applied to activities directed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.
3. 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.

Article 8 – Underwater Cultural Heritage in the Contiguous Zone

Without prejudice to and in addition to Articles 9 and 10, and in accordance with Article 303, paragraph 2, of the United Nations Convention on the Law of the Sea, States Parties may regulate and authorize activities directed at underwater cultural heritage within their contiguous zone. In so doing, they shall require that the Rules be applied.

Article 9 – Reporting and Notification in the Exclusive Economic Zone and on the Continental Shelf

1. All States Parties have a responsibility to protect underwater cultural heritage in the exclusive economic zone and on the continental shelf in conformity with this Convention.

Accordingly:

- (a) a State Party shall require that when its national, or a vessel flying its flag, discovers or intends to engage in activities directed at underwater cultural heritage located in its exclusive economic zone or on its continental shelf, the national or the master of the vessel shall report such discovery or activity to it;
- (b) in the exclusive economic zone or on the continental shelf of another State Party:
 - (i) States Parties shall require the national or the master of the vessel to report such discovery or activity to them and to that other State Party;
 - (ii) alternatively, a State Party shall require the national or master of the vessel to report such discovery or activity to it and shall ensure the rapid and effective transmission of such reports to all other States Parties.

2. On depositing its instrument of ratification, acceptance, approval or accession, a State Party shall declare the manner in which reports will be transmitted under paragraph 1(b) of this Article.
3. A State Party shall notify the Director-General of discoveries or activities reported to it under paragraph 1 of this Article.
4. The Director-General shall promptly make available to all States Parties any information notified to him under paragraph 3 of this Article.
5. Any State Party may declare to the State Party in whose exclusive economic zone or on whose continental shelf the underwater cultural heritage is located its interest in being consulted on how to ensure the effective protection of that underwater cultural heritage. Such declaration shall be based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned.

Article 10 – Protection of Underwater Cultural Heritage in the Exclusive Economic Zone and on the Continental Shelf

1. No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this Article.
2. 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.
3. Where there is a discovery of underwater cultural heritage or it is intended that activity shall be directed at underwater cultural heritage in a State Party's exclusive economic zone or on its continental shelf, that State Party shall:
 - (a) consult all other States Parties which have declared an interest under Article 9, paragraph 5, on how best to protect the underwater cultural heritage;
 - (b) coordinate such consultations as "Coordinating State", unless it expressly declares that it does not wish to do so, in which case the States Parties which have declared an interest under Article 9, paragraph 5, shall appoint a Coordinating State.
4. Without prejudice to the duty of all States Parties to protect underwater cultural heritage by way of all practicable measures taken in accordance with international law to prevent immediate danger to the underwater cultural heritage, including looting, the Coordinating State 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.
5. The Coordinating State:

(a) shall implement measures of protection which have been agreed by the consulting States, which include the Coordinating State, unless the consulting States, which include the Coordinating State, agree that another State Party shall implement those measures;

(b) shall issue all necessary authorizations for such agreed measures in conformity with the Rules, unless the consulting States, which include the Coordinating State, agree that another State Party shall issue those authorizations;

(c) may conduct any necessary preliminary research on the underwater cultural heritage and shall issue all necessary authorizations therefore, and shall promptly inform the Director-General of the results, who in turn will make such information promptly available to other States Parties.

6. In coordinating consultations, taking measures, conducting preliminary research and/or issuing authorizations pursuant to this Article, 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.

7. 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 11 – Reporting and Notification in the Area

1. States Parties have a responsibility to protect underwater cultural heritage in the Area in conformity with this Convention and Article 149 of the United Nations Convention on the Law of the Sea. Accordingly when a national, or a vessel flying the flag of a State Party, discovers or intends to engage in activities directed at underwater cultural heritage located in the Area, that State Party shall require its national, or the master of the vessel, to report such discovery or activity to it.

2. States Parties shall notify the Director-General and the Secretary-General of the International Seabed Authority of such discoveries or activities reported to them.

3. The Director-General shall promptly make available to all States Parties any such information supplied by States Parties.

4. Any State Party may declare to the Director-General its interest in being consulted on how to ensure the effective protection of that underwater cultural heritage. Such declaration shall be based on a verifiable link to the underwater cultural heritage concerned, particular regard being paid to the preferential rights of States of cultural, historical or archaeological origin.

Article 12 – Protection of Underwater Cultural Heritage in the Area

1. No authorization shall be granted for any activity directed at underwater cultural heritage located in the Area except in conformity with the provisions of this Article.

2. The Director-General shall invite all States Parties which have declared an interest under Article 11, paragraph 4, to consult on how best to protect the underwater cultural heritage, and to appoint a State Party to coordinate such consultations as the “Coordinating State”. The Director-General shall also invite the International Seabed Authority to participate in such consultations.

3. All States Parties may take all practicable measures in conformity with this Convention, if necessary prior to consultations, to prevent any immediate danger to the underwater cultural heritage, whether arising from human activity or any other cause including looting.

4. The Coordinating State shall:

(a) implement measures of protection which have been agreed by the consulting States, which include the Coordinating State, unless the consulting States, which include the Coordinating State, agree that another State Party shall implement those measures; and

(b) issue all necessary authorizations for such agreed measures, in conformity with this Convention, unless the consulting States, which include the Coordinating State, agree that another State Party shall issue those authorizations.

5. The Coordinating State may conduct any necessary preliminary research on the underwater cultural heritage and shall issue all necessary authorizations therefor, and shall promptly inform the Director-General of the results, who in turn shall make such information available to other States Parties.

6. In coordinating consultations, taking measures, conducting preliminary research, and/or issuing authorizations pursuant to this Article, the Coordinating State shall act for the benefit of humanity as a whole, on behalf of all States Parties. Particular regard shall be paid to the preferential rights of States of cultural, historical or archaeological origin in respect of the underwater cultural heritage concerned.

7. No State Party shall undertake or authorize activities directed at State vessels and aircraft in the Area without the consent of the flag State.

Article 13 – Sovereign Immunity

Warships and other government ships or military aircraft with sovereign immunity, operated for non-commercial purposes, undertaking their normal mode of operations, and not engaged in activities directed at underwater cultural heritage, shall not be obliged to report discoveries of underwater cultural heritage under Articles 9, 10, 11 and 12 of this Convention. However States Parties shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of their warships or other government ships or military aircraft with sovereign immunity operated for non-commercial purposes, that they comply, as far as is reasonable and practicable, with Articles 9, 10, 11 and 12 of this Convention.

Article 14 – Control of Entry into the Territory, Dealing and Possession

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.

Article 15 – Non-use of Areas under the Jurisdiction of States Parties

States Parties shall take measures to prohibit the use of their territory, including their maritime ports, as well as artificial islands, installations and structures under their exclusive jurisdiction or control, in support of any activity directed at underwater cultural heritage which is not in conformity with this Convention.

Article 16 – Measures Relating to Nationals and Vessels

States Parties shall take all practicable measures to ensure that their nationals and vessels flying their flag do not engage in any activity directed at underwater cultural heritage in a manner not in conformity with this Convention.

Article 17 – Sanctions

1. Each State Party shall impose sanctions for violations of measures it has taken to implement this Convention.
2. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance with this Convention and to discourage violations wherever they occur and shall deprive offenders of the benefit deriving from their illegal activities.
3. States Parties shall cooperate to ensure enforcement of sanctions imposed under this Article.

Article 18 – Seizure and Disposition of Underwater Cultural Heritage

1. Each State Party shall take measures providing for the seizure of underwater cultural heritage in its territory that has been recovered in a manner not in conformity with this Convention.
2. Each State Party shall record, protect and take all reasonable measures to stabilize underwater cultural heritage seized under this Convention.
3. Each State Party shall notify the Director-General and any other State with a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned of any seizure of underwater cultural heritage that it has made under this Convention.
4. A State Party which has seized underwater cultural heritage shall ensure that its disposition be for the public benefit, taking into account the need for conservation and research; the need for reassembly of a dispersed collection; the need for public access, exhibition and education;

and the interests of any State with a verifiable link, especially a cultural, historical or archaeological link, in respect of the underwater cultural heritage concerned.

Article 19 – Cooperation and Information-Sharing

1. States Parties shall cooperate and assist each other in the protection and management of underwater cultural heritage under this Convention, including, where practicable, collaborating in the investigation, excavation, documentation, conservation, study and presentation of such heritage.
2. To the extent compatible with the purposes of this Convention, each State Party undertakes to share information with other States Parties concerning underwater cultural heritage, including discovery of heritage, location of heritage, heritage excavated or recovered contrary to this Convention or otherwise in violation of international law, pertinent scientific methodology and technology, and legal developments relating to such heritage.
3. Information shared between States Parties, or between UNESCO and States Parties, regarding the discovery or location of underwater cultural heritage shall, to the extent compatible with their national legislation, be kept confidential and reserved to competent authorities of States Parties as long as the disclosure of such information might endanger or otherwise put at risk the preservation of such underwater cultural heritage.
4. Each State Party shall take all practicable measures to disseminate information, including where feasible through appropriate international databases, about underwater cultural heritage excavated or recovered contrary to this Convention or otherwise in violation of international law.

Article 20 – Public Awareness

Each State Party shall take all practicable measures to raise public awareness regarding the value and significance of underwater cultural heritage and the importance of protecting it under this Convention.

Article 21 – Training in Underwater Archaeology

States Parties shall cooperate in the provision of training in underwater archaeology, in techniques for the conservation of underwater cultural heritage and, on agreed terms, in the transfer of technology relating to underwater cultural heritage.

Article 22 – Competent Authorities

1. In order to ensure the proper implementation of this Convention, States Parties shall establish competent authorities or reinforce the existing ones where appropriate, with the aim of providing for the establishment, maintenance and updating of an inventory of underwater cultural heritage, the effective protection, conservation, presentation and management of underwater cultural heritage, as well as research and education.

2. States Parties shall communicate to the Director-General the names and addresses of their competent authorities relating to underwater cultural heritage.

Article 23 – Meetings of States Parties

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.

Article 24 – Secretariat for this Convention

1. The Director-General shall be responsible for the functions of the Secretariat for this Convention.

2. The duties of the Secretariat shall include:

(a) organizing Meetings of States Parties as provided for in Article 23, paragraph 1; and

(b) assisting States Parties in implementing the decisions of the Meetings of States Parties.

Article 25 – Peaceful Settlement of Disputes

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention shall be subject to negotiations in good faith or other peaceful means of settlement of their own choice.

2. If those negotiations do not settle the dispute within a reasonable period of time, it may be submitted to UNESCO for mediation, by agreement between the States Parties concerned.

3. If mediation is not undertaken or if there is no settlement by mediation, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea apply *mutatis mutandis* to any dispute between States Parties to this Convention concerning the interpretation or application of this Convention, whether or not they are also Parties to the United Nations Convention on the Law of the Sea.

4. Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea pursuant to Article 287 of the latter shall apply to the

settlement of disputes under this Article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

5. A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

Article 26 – 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.

Article 27 – Entry into Force

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument referred to in Article 26, but solely with respect to the twenty States or territories that have so deposited their instruments. It shall enter into force for each other State or territory three months after the date on which that State or territory has deposited its instrument.

Article 28 – Declaration as to Inland Waters

When ratifying, accepting, approving or acceding to this Convention or at any time thereafter, any State or territory may declare that the Rules shall apply to inland waters not of a maritime character.

Article 29 – Limitations to Geographical Scope

At the time of ratifying, accepting, approving or acceding to this Convention, a State or territory may make a declaration to the depositary that this Convention shall not be applicable to specific parts of its territory, internal waters, archipelagic waters or territorial sea, and shall identify therein the reasons for such declaration. Such State shall, to the extent practicable and as quickly as possible, promote conditions under which this Convention will apply to the areas specified in its declaration, and to that end shall also withdraw its declaration in whole or in part as soon as that has been achieved.

Article 30 – Reservations

With the exception of Article 29, no reservations may be made to this Convention.

Article 31 – Amendments

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next Meeting of States Parties for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.

3. Once adopted, amendments to this Convention shall be subject to ratification, acceptance, approval or accession by the States Parties.

4. Amendments shall enter into force, but solely with respect to the States Parties that have ratified, accepted, approved or acceded to them, three months after the deposit of the instruments referred to in paragraph 3 of this Article by two thirds of the States Parties. Thereafter, for each State or territory that ratifies, accepts, approves or accedes to it, the amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.

5. A State or territory which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention by that State or territory, be considered:

(a) as a Party to this Convention as so amended; and

(b) as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article 32 – Denunciation

1. A State Party may, by written notification addressed to the Director-General, denounce this Convention.
2. The denunciation shall take effect twelve months after the date of receipt of the notification, unless the notification specifies a later date.
3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 33 – The Rules

The Rules annexed to this Convention form an integral part of it and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Rules.

Article 34 – Registration with the United Nations

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General.

Article 35 – Authoritative Texts

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

ANNEX

**RULES CONCERNING ACTIVITIES DIRECTED AT UNDERWATER
CULTURAL HERITAGE****I. General Principles**

Rule 1. The protection of underwater cultural heritage through in situ preservation shall be considered as the first option. Accordingly, activities directed at underwater cultural heritage shall be authorized in a manner consistent with the protection of that heritage, and subject to that requirement may be authorized for the purpose of making a significant contribution to protection or knowledge or enhancement of underwater cultural heritage.

Rule 2. The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.

This Rule cannot be interpreted as preventing:

(a) the provision of professional archaeological services or necessary services incidental thereto whose nature and purpose are in full conformity with this Convention and are subject to the authorization of the competent authorities;

(b) the deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities.

Rule 3. Activities directed at underwater cultural heritage shall not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project.

Rule 4. Activities directed at underwater cultural heritage must use nondestructive techniques and survey methods in preference to recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains.

Rule 5. Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites.

Rule 6. Activities directed at underwater cultural heritage shall be strictly regulated to ensure proper recording of cultural, historical and archaeological information.

Rule 7. Public access to in situ underwater cultural heritage shall be promoted, except where such access is incompatible with protection and management.

Rule 8. International cooperation in the conduct of activities directed at underwater cultural heritage shall be encouraged in order to further the effective exchange or use of archaeologists and other relevant professionals.

II. Project Design

Rule 9. Prior to any activity directed at underwater cultural heritage, a project design for the activity shall be developed and submitted to the competent authorities for authorization and appropriate peer review.

Rule 10. The project design shall include:

- (a) an evaluation of previous or preliminary studies;
- (b) the project statement and objectives;
- (c) the methodology to be used and the techniques to be employed;
- (d) the anticipated funding;
- (e) an expected timetable for completion of the project;
- (f) the composition of the team and the qualifications, responsibilities and experience of each team member;
- (g) plans for post-fieldwork analysis and other activities;
- (h) a conservation programme for artefacts and the site in close cooperation with the competent authorities;
- (i) a site management and maintenance policy for the whole duration of the project;
- (j) a documentation programme;
- (k) a safety policy;
- (l) an environmental policy;
- (m) arrangements for collaboration with museums and other institutions, in particular scientific institutions;
- (n) report preparation;
- (o) deposition of archives, including underwater cultural heritage removed; and
- (p) a programme for publication.

Rule 11. Activities directed at underwater cultural heritage shall be carried out in accordance with the project design approved by the competent authorities.

Rule 12. Where unexpected discoveries are made or circumstances change, the project design shall be reviewed and amended with the approval of the competent authorities.

Rule 13. In cases of urgency or chance discoveries, activities directed at the underwater cultural heritage, including conservation measures or activities for a period of short duration, in particular site stabilization, may be authorized in the absence of a project design in order to protect the underwater cultural heritage.

III. Preliminary Work

Rule 14. The preliminary work referred to in Rule 10 (a) shall include an assessment that evaluates the significance and vulnerability of the underwater cultural heritage and the surrounding natural environment to damage by the proposed project, and the potential to obtain data that would meet the project objectives.

Rule 15. The assessment shall also include background studies of available historical and archaeological evidence, the archaeological and environmental characteristics of the site, and the consequences of any potential intrusion for the long-term stability of the underwater cultural heritage affected by the activities.

IV. Project Objective, Methodology and Techniques

Rule 16. The methodology shall comply with the project objectives, and the techniques employed shall be as non-intrusive as possible.

V. Funding

Rule 17. Except in cases of emergency to protect underwater cultural heritage, an adequate funding base shall be assured in advance of any activity, sufficient to complete all stages of the project design, including conservation, documentation and curation of recovered artefacts, and report preparation and dissemination.

Rule 18. The project design shall demonstrate an ability, such as by securing a bond, to fund the project through to completion.

Rule 19. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption of anticipated funding.

VI. Project Duration – Timetable

Rule 20. An adequate timetable shall be developed to assure in advance of any activity directed at underwater cultural heritage the completion of all stages of the project design, including conservation, documentation and curation of recovered underwater cultural heritage, as well as report preparation and dissemination.

Rule 21. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption or termination of the project.

VII. Competence and Qualifications

Rule 22. Activities directed at underwater cultural heritage shall only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologist with scientific competence appropriate to the project.

Rule 23. All persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project.

VIII. Conservation and site Management

Rule 24. The conservation programme shall provide for the treatment of the archaeological remains during the activities directed at underwater cultural heritage, during transit and in the long term. Conservation shall be carried out in accordance with current professional standards.

Rule 25. The site management programme shall provide for the protection and management in situ of underwater cultural heritage, in the course of and upon termination of fieldwork. The programme shall include public information, reasonable provision for site stabilization, monitoring, and protection against interference.

IX. Documentation

Rule 26. The documentation programme shall set out thorough documentation including a progress report of activities directed at underwater cultural heritage, in accordance with current professional standards of archaeological documentation.

Rule 27. Documentation shall include, at a minimum, a comprehensive record of the site, including the provenance of underwater cultural heritage moved or removed in the course of the activities directed at underwater cultural heritage, field notes, plans, drawings, sections, and photographs or recording in other media.

X. Safety

Rule 28. A safety policy shall be prepared that is adequate to ensure the safety and health of the project team and third parties and that is in conformity with any applicable statutory and professional requirements.

XI. Environment

Rule 29. An environmental policy shall be prepared that is adequate to ensure that the seabed and marine life are not unduly disturbed.

XII. Reporting

Rule 30. Interim and final reports shall be made available according to the timetable set out in the project design, and deposited in relevant public records.

Rule 31. Reports shall include:

- (a) an account of the objectives;
- (b) an account of the methods and techniques employed;
- (c) an account of the results achieved;
- (d) basic graphic and photographic documentation on all phases of the activity;
- (e) recommendations concerning conservation and curation of the site and of any underwater cultural heritage removed; and
- (f) recommendations for future activities.

XIII. Curation of Project Archives

Rule 32. Arrangements for curation of the project archives shall be agreed to before any activity commences, and shall be set out in the project design.

Rule 33. The project archives, including any underwater cultural heritage removed and a copy of all supporting documentation shall, as far as possible, be kept together and intact as a collection in a manner that is available for professional and public access as well as for the curation of the archives. This should be done as rapidly as possible and in any case not later than ten years from the completion of the project, in so far as may be compatible with conservation of the underwater cultural heritage.

Rule 34. The project archives shall be managed according to international professional standards, and subject to the authorization of the competent authorities.

XIV. Dissemination

Rule 35. Projects shall provide for public education and popular presentation of the project results where appropriate.

Rule 36. A final synthesis of a project shall be:

(a) made public as soon as possible, having regard to the complexity of the project and the confidential or sensitive nature of the information; and

(b) deposited in relevant public records.

Done in Paris this 6th day of November 2001 in two authentic copies bearing the signature of the President of the thirty-first session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization and certified true copies of which shall be delivered to all the States and territories referred to in Article 26 as well as to the United Nations.

signed
ASIF ALI ZARDARI,
President

signed
Secretary
Ministry of Law