



IMO
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**PROTECTION OF WRECKS (AMENDMENT) ACT 2019: AN ACT TO
AMEND THE PROTECTION OF WRECKS ACT CHAPTER 37:04 TO
INCORPORATE THE PROVISIONS OF THE CONVENTION ON THE
PROTECTION OF THE UNDERWATER CULTURAL HERITAGE
AND TO PROVIDE FOR THE EFFECTIVE IMPLEMENTATION
THEREOF**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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These artefacts represent an incredible cultural treasure not only for the people of Trinidad and Tobago but also to the world and by protecting underwater cultural heritage sites we allow these ships to continue their journey and to deliver their cargo of knowledge to us all.

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List of Abbreviations

CPUCH – Convention on the Protection of Underwater Cultural Heritage

ICOMOS – International Council on Monuments and Sites

ILA – International Law Association

STAB - UNESCO Scientific and Technical Advisory Body

UCH – Underwater Cultural Heritage

UNCLOS – United Nations Convention on the Law of the Sea

UNESCO – United Nations Educational Scientific and Cultural Organization

1. Introduction

Culture has been defined as that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.¹ Heritage is defined as the history, traditions and qualities that a country or society has had for many years and that are considered an important part of its character.² The term heritage has been further subdivided into many constituent types of heritage most relevant cultural heritage and underwater cultural heritage (UCH). Cultural heritage has been defined as,

[A]n expression of the ways of living, developed by a community and passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values. Cultural heritage is often expressed as either intangible or tangible cultural heritage.³

It follows therefore that UCH refers to anything fitting the aforementioned description found underwater. As it specifically refers to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection of the Underwater Cultural Heritage (CPUCH),⁴ UCH is defined as,

[A]ll traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years.⁵

The formal recognition of the significance of culture and heritage may be traced back to the nineteenth century.⁶ However, by and large the allure of underwater cultural heritage matured with the discovery of the *Titanic* in 1985 and the recovery of artefacts therefrom.⁷ The discovery was complimented by mass publicity which led to the increased awareness of the

¹ Edward Burnett Tylor, *Primitive Culture: Researches Into the Development of Mythology, Philosophy, Religion, Art, and Custom* (first published in 1871, Cambridge University Press 2010).

² Oxford Dictionary.

³ International Council on Monuments and Sites (ICOMOS), 'A Cultural Heritage Manifesto' <<http://www.icomos-uk.org/uploads/sidebar/PDF/A%20Cultural%20Heritage%20Manifesto.pdf>> accessed 29th January 2019.

⁴ Convention for the Protection of the Underwater Cultural Heritage 2001, adopted on 3 November 2001, in force since 2 January 2009 (2562 UNTS 1). Hereinafter referred to as the 'CPUCH.'

⁵ Article 1 of CPUCH.

⁶ Edward Burnett Tylor, *Primitive Culture: Researches Into the Development of Mythology, Philosophy, Religion, Art, and Custom* (first published in 1871, Cambridge University Press 2010).

⁷ *RMS Titanic Inc v The Wrecked and Abandoned Vessel believed to be the RMS Titanic*, USCA 4th Cir., 12 April 2002 (appeal to the Supreme Court declined, 7 October 2002).

concept of UCH and simultaneously disclosed the need for regulation as far as UCH in international waters is concerned.⁸ Thereafter in 1993 the UNESCO Executive Board at its 141st session adopted Decision 5.5.1, paragraph 15 of which invites the Director-General to consider the feasibility of drafting a new instrument for the protection of UCH.⁹

The International Law Association (ILA) has consultative status, as an international non-governmental organisation, with a number of the United Nations specialised agencies including, but not limited to UNESCO. In this instance the services of the ILA were employed and through the ILA's Committee on Cultural Heritage Law a draft of the CPUCH was adopted in 1994. UNESCO relied on the ILA draft and produced a draft convention in 1998. The draft was later approved in 2001¹⁰ and entered into force in 2009 despite the looming concerns regarding the extent of coastal State jurisdiction and the possible conflict with salvage law; the rights of owners; treatment of warships and the question of sovereign immunity; and the balance that should be struck between archaeological and commercial interests.¹¹ Trinidad and Tobago deposited its instrument of ratification in 2010.

Naturally because the CPUCH came after the United Nations Convention on The Law of The Sea (UNCLOS)¹² it is viewed as an expansion of the provisions relating to UCH particularly enunciated in Article 149.¹³ Article 149 of UNCLOS promotes the preservation or disposal for the benefit of mankind as a whole, of cultural heritage found beyond the 200-mile limit of national jurisdiction, with preferential rights given to States with a historical, cultural or archaeological link to the objects. The obligation of preservation under this provision in its ordinary sense means the act of keeping UCH as it is and safeguarding said site against being damaged or destroyed. Alternatively, the disposal of the UCH with the qualification of it benefitting mankind as a whole is significant since per the ordinary definition of mankind, the whole of human race constituent of men and women is contemplated in the stipulation for the

⁸ Notably there was an attempt by UNESCO to regulate UCH via its 1956 Recommendation on International Principles Applicable to Archaeological Excavations applied to underwater sites. However, the recommendation was limited to territorial waters. After this, in 1976, the Culture and Education Commission of the Council of Europe undertook a study of the subject of the protection of underwater cultural heritage. However, no text was adopted.

⁹ UNESCO Resolution 5.5.1 < <http://whc.unesco.org/archive/94-3-f12.htm> > accessed 29th January 2019.

¹⁰ 87 votes in favour; 4 against and 15 abstentions.

¹¹ Sarah Dromgoole, '2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage' (2003) 18 *IJMCL* 59.

¹² United Nations Convention on the Law of the Sea, adopted on 10 December 1982, in force since 16 November 1994 (1833 UNTS 3). Hereinafter referred to as UNCLOS.

¹³ Tullio Scovazzi, 'Protection of Underwater Cultural Heritage: The UNCLOS and 2001 UNESCO Convention' in David J Attard, M. Fitzmaurice and Norman A Martínez Gutiérrez (eds), *IMLI Manual on International Maritime Law* (First edition, Oxford University Press 2014) Vol I: Law of The Sea 443 at 451.

benefit of mankind which falls squarely into the subject matter of Part XI, under which Article 149 is found, addressing areas beyond national jurisdiction classified as the common heritage of mankind.

It must be mentioned however, that UNCLOS does not merely address UCH as it regards the Area. Article 303 of UNCLOS which falls under Part XVI General Provisions, stipulates that States have a duty to protect objects of an archaeological and historical nature found at sea, with no specification of a marine zone. It may be further gleaned from Article 303(2) that States are to promulgate domestic laws and/or establish regulations as the subsection empowers the coastal State to consider removal of archaeological and historical objects from the contiguous zone as an infringement within its territory or territorial sea of the laws and regulations giving rise to the penal powers enumerated in Article 33 of UNCLOS.

Pursuant to Article 2 of UNCLOS the sovereignty of coastal States extends beyond its land territory to the adjacent belt of sea known as the territorial sea, the air space over the territorial sea and of its bed and subsoil. Therefore, UCH situated within the 12 nautical miles fall under the sovereign jurisdiction of the coastal State. As it pertains to the other marine zones distinguished writers have surmised that a '*dangerous gap*' was left by UNCLOS in the regulation of underwater cultural heritage between 24 nautical miles from the coast and the commencement of the Area, that is the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.¹⁴ However it is humbly submitted that at most the provisions on UCH found in UNCLOS, may be described as superficial. Article 303 of UNCLOS provides that UCH is to be protected despite which region of the sea it is discovered through generous terminology of '*archaeological and historical objects found at sea,*' which specifies no particular marine zone. The general application of Article 303 to UCH despite where at sea it is located is further substantiated by the placement of the article under Part XVI General Provisions. As such a more apt submission would be that the CPUCH provides a more detailed delineation of the responsibilities of States as it regards UCH.

¹⁴ Roberta Garabello (ed), *The protection of the underwater cultural heritage: Before and after the 2001 UNESCO Convention* (Publications on ocean development vol. 41, M. Nijhoff op. 2003) 94.

2. The Anatomy of the CPUCH

The CPUCH begins with a thorough preamble highlighting, *inter alia*, the importance of protection of underwater cultural heritage as being integral in understanding the history of peoples, nations, and their relations with each other. The preamble further addresses the unfortunate fact that there has been increasing commercial exploitation of underwater cultural heritage and proposes that a suitable solution is the cooperation among States, international organizations, scientific institutions, professional organizations, archaeologists, divers, other interested parties and the public at large under the guidance of codified rules.

The articles commence thereafter comprising thirty-five (35) Articles and an Annex of thirty-five (35) ‘Rules concerning Activities Directed at Underwater Cultural Heritage,’ with the collective aim of ensuring and strengthening the protection of underwater cultural heritage.¹⁵ It is noteworthy that the CPUCH expressly stipulates that the Rules form an integral part of the CPUCH to the extent that reference to the CPUCH includes reference to the rules.¹⁶ The CPUCH follows the usual format of international instruments, that is by defining varying terms appearing therein. As aforementioned under the CPUCH, UCH refers to all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years. Notably however the CPUCH specifically excludes pipelines, cables and installations, other than pipelines and cables, placed on the seabed. Another nuance enunciated in Article 1 is the definition of ‘States Parties,’ which when read in conjunction with Article 26 facilitates accession to the CPUCH by States not members to UNESCO.¹⁷ Admirably a useful delineation of the principles governing the CPUCH are outlined in Article 2 with the most salient features being the preservation *in situ* of underwater cultural heritage being the first option, through individual action or joint cooperation by States with the underlying requirement of ensuring UCH is not commercially exploited and further that all actions undertaken are consistent with international law particularly as it pertains to sovereign immunities. The strong advocacy for *in situ*

¹⁵ Article 2 of CPUCH.

¹⁶ Article 33 of CPUCH.

¹⁷ States must however be 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 Article 26(2)(a). Interesting too is Article 26(2)(b) which allows for accession 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.

preservation of UCH has its genesis in Article 9 of the UNESCO Recommendations on International Principles Applicable to Archaeological Excavations adopted on 5th December 1956.¹⁸ Further the strong advocacy for *in situ* preservation by the CPUCH, has been expounded upon by UNESCO noting that *in situ* preservation allows for the authenticity and integrity of UCH to be preserved and simultaneously recognizes the subsisting reality, in many States, of limited funds to carry out excavation and restoration works.¹⁹

Another admirable obligation enunciated in Article 2 is that State Parties shall ensure that proper respect is given to all human remains located in maritime waters.²⁰ Articles 3 and 4 follow with useful guidance on the interpretation of the CPUCH by stipulating that it be read in a manner consistent with international law, including UNCLOS and further instructs that any activity pursuant to the CPUCH shall not be subject to the law of salvage with listed exceptions.²¹ Interestingly the CPUCH contains a wide provision mandating that States should exhaust all measures to mitigate against the adverse effects accruing from activities within its respective jurisdiction incidentally affecting UCH,²² after which a repeated appeal is made for cooperation of States via bilateral, regional or other multilateral agreements.²³

The CPUCH's close relation with UNCLOS is evidenced, *inter alia*, in the compartmentalization of protection of UCH according to the different marine zones delineated under UNCLOS.²⁴ States Parties have the discretion to declare that the Rules shall apply to inland waters not of a maritime character when accepting, approving or acceding to the

¹⁸ UNESCO 'Recommendations on International Principles Applicable to Archaeological Excavations' <http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html > accessed 29th January 2019.

¹⁹ UNESCO Convention on the Protection of the Underwater Cultural Heritage 'Frequently Asked Questions' <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UHC_FAQ_en.pdf> accessed 29th January 2019.

²⁰ The obligation is reiterated in Rule 5 of the Annex to CPUCH.

²¹ Article 4 (a)-(c) of CPUCH provides that the law of salvage applied where it is authorized by the competent authorities, and is in full conformity with CPUCH and ensures any recovery of the underwater cultural heritage achieves its maximum protection.

²² Article 5 of CPUCH.

²³ Article 6 of CPUCH. A poignant allowance under this article is the permission given to States to adopt rules and regulations which would ensure better protection of UCH than those adopted in CPUCH per Article 6(1). Additionally, per Article 6(3) CPUCH 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 not in conformity with the purposes of this Convention. Examples of such agreements are: Bilateral: the Agreement between the Netherlands and Australia concerning Old Dutch Shipwrecks signed by and entered into force between the governments of Australia and the Netherlands on 6 November 1972; Regional/Multilateral: 1992 European Convention on the Protection of the Archaeological Heritage (Revised).

²⁴ UNCLOS divides the oceans into six main marine zones, each with a different legal status: Internal Waters (UNCLOS Art. 8), Territorial Sea (UNCLOS Art.2; Part II), Contiguous Zone (UNCLOS Art.33), Exclusive Economic Zone (UNCLOS Part V), Continental Shelf (UNCLOS Part VI) and the High Seas (UNCLOS Part VII).

CPUCH.²⁵ States have the exclusive right to regulate and authorize activities directed at UCH in its internal waters, archipelagic waters and territorial sea.²⁶ However, this seemingly limitless exercise of sovereignty is curtailed by the stipulation that the Rules in the Annex to the CPUCH be applied in the protection of UCH.²⁷ Further, having regard to the general practice regarding State vessels and aircraft,²⁸ States Parties are to inform the flag State and if applicable, other States with a verifiable link,²⁹ with respect to the discovery of such identifiable State vessels and aircraft.³⁰ In accordance with the recognition of the contiguous zone³¹ as a buffer zone for the application of laws and regulations of coastal States, the CPUCH provides that States Parties may regulate and authorize activities directed at UCH with the qualification that the annexed Rules must be applied.³² The CPUCH and the Annex collectively aim to improve 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 UCH in all marine areas.

A notable procedural diversion arises as it regards the exclusive economic zone and continental shelf. More specifically States Parties are to require that its nationals, vessels flying its flag or masters of said vessels report any discovery or intention to engage in activities directed at UCH in its³³ or another State's exclusive economic zone or continental shelf.³⁴ In the instance of another State's exclusive economic zone or continental shelf the national or the master may either make the report to the flag State Party and the other State Party, in whose exclusive economic zone or continental shelf the discovery is made.³⁵ Alternatively, the national or the master of the vessel may report to the flag State Party alone after which said State must inform all other State Parties.³⁶ Irrespective of the option exhausted, it is notable that the State Party

²⁵ Article 28 of CPUCH.

²⁶ Article 7 of CPUCH.

²⁷ Article 7(2) of CPUCH.

²⁸ *Odyssey Marine v. Unidentified, Shipwrecked Vessel*, 675 F. Supp. 2d 1126 - Dist. Court, MD Florida 2009, relying on *The Schooner Exchange v. McFaddon* (1812) indicated that the traditional notions of international comity requires mutual intercourse between States as sovereign immunity is premised upon the perfect and equally absolute independence of sovereigns.

²⁹ Especially a cultural, historical or archaeological link, with respect to the discovery of such identifiable State vessels and aircraft.

³⁰ Article 7(3) of CPUCH.

³¹ The zone contiguous to the territorial sea, not exceeding 24 nautical miles from the baselines from which the breadth of the territorial sea is measured, wherein the coastal State may exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. (UNCLOS Art. 33).

³² Article 8 of CPUCH.

³³ Article 9(1)(a) of CPUCH.

³⁴ Article 9(1)(b) of CPUCH.

³⁵ Article 9(1)(b)(i) of CPUCH.

³⁶ Article 9(1)(b)(ii) of CPUCH.

must notify the Director-General of UNESCO³⁷ of discoveries or activities reported to it.³⁸ Thereafter the Director-General must promptly supply all State Parties with the information garnered.³⁹ Following receipt of said information any State Party may declare to the State Party in whose exclusive economic zone or on whose continental shelf the UCH is located its interest in being consulted on how to ensure the effective protection of that UCH.⁴⁰ The CPUCH proceeds to reiterate that State Parties' in whose exclusive economic zone or on whose continental shelf UCH is located may prohibit or authorize activity directed at UCH in accordance with international law. However, should any activity be undertaken said State Party is required to consult all other State Parties⁴¹ which have declared an interest pursuant to Article 9 and coordinate consultations as Coordinating State or appoint a Coordinating State.⁴²

A similar regime of reporting and notification is stipulated under the CPUCH for the Area. It is a convenient point to indicate that 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 UCH, are not obliged to report discoveries.⁴³ Apart from the imposition of a responsibility on each State Party to protect UCH in the Area pursuant to Article 149 of UNCLOS,⁴⁴ State Parties are to require its nationals or

³⁷ Article (1)(4) of CPUCH indicates that Director-General means the Director-General of UNESCO.

³⁸ Article 9(3) of CPUCH.

³⁹ Article 9(4) of CPUCH.

⁴⁰ Pursuant to Article 9(5) such declaration shall be based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned.

⁴¹ Notably CPUCH provides that if necessary, prior to consultations, to prevent any immediate danger to the underwater cultural heritage, the Coordinating state may take all practicable measures and/or issue any necessary authorizations unilaterally or with assistance from other State Parties. Article 10(4) OF CPUCH.

⁴² Article 10(5)& (6) of CPUCH provides that 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.

⁴³ Article 13 of CPUCH however goes further mandating that 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 CPUCH.

⁴⁴ Article 149 of UNCLOS prescribes that 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 archaeological origin.

vessels flying its flag to report discovery or intention to engage in activities directed at UCH in the Area.⁴⁵ State Parties must then notify the Director-General of UNESCO and the Secretary-General of the International Seabed Authority.⁴⁶ After which Article 11 (3) and (4) replicate the procedure enunciated in Article 9(4) and (5) regarding the exclusive economic zone.⁴⁷ The replication continues in Article 12 with pronounced nuances. Namely the Director-General takes lead inviting States Parties who have declared an interest to consult and, inter alia, appoint a Coordinating State.⁴⁸ Noteworthy also is the obligation on the Director-General to invite the International Seabed Authority to participate in such consultations.⁴⁹ Another nuance is the provision in Article 12(3) empowering all States Parties, as opposed to only the Coordinating State, per Article 10(4), to take all practicable measures prior to consultations, to prevent any immediate danger to UCH, whether arising from human activity or any other cause including looting.

Before the CPUCH reverts to the common format of ending international conventions, that is with provisions addressing, inter alia, entry into force; reservations and denunciation,⁵⁰ the

⁴⁵ Article 11(1) of CPUCH.

⁴⁶ Article 11(2) of CPUCH.

⁴⁷ The Director General of UNESCO is to relay information to State Parties who may, thereafter indicate interest on the basis of a verifiable link.

⁴⁸ Article 12(4) and (6) of CPUCH outline the responsibilities of the Coordinating State:

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.

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.

Article 12(5) of CPUCH places it within the discretion of the Coordinating State to conduct preliminary research on the UCH. However, if said preliminary research is undertaken CPUCH mandates that the Director-General shall be promptly informed of such results, who in turn shall make such information available to other States Parties.

⁴⁹ Article 12(2) of CPUCH.

⁵⁰ Articles 23 to 35 of CPUCH. According to Article 23 a unique requirement under this article is the establishment of 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. The UNESCO Scientific and Technical Advisory Body (STAB) has proven itself to be a crucial organ of the 2001 UNESCO Convention. It consists of 12 elite experts in underwater archaeology and related fields and provides advice to States Parties in questions of a scientific or technical nature related to UCH. States that lack underwater archaeologists, but face problems due to chance discoveries, treasure-hunting or scientific doubts, can call on the UNESCO STAB for assistance. STAB does not only provide practical advice, but evaluates sites or issues through missions. Currently STAB as missions in Haiti; Madagascar and Panama. Notably however a pre-condition is that the requesting State has ratified the 2001 Convention. <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/advisory-body/missions/> accessed 04 April 2019.

CPUCH delineates obligations that require the force of municipal mechanisms including, but not limited to, the force of domestic law. In sum, States Parties are mandated to take all measures to:

- i. Prevent the entry into their territory, the dealing in, or the possession of, UCH illicitly exported and/or recovered, where recovery was contrary to the CPUCH;⁵¹
- ii. 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 UCH which is not in conformity with the CPUCH;⁵²
- iii. 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 the CPUCH;⁵³
- iv. Impose adequately severe sanctions for violations of measures implemented in accordance with the CPUCH;⁵⁴
- v. Seize UCH in its territory that has been recovered in a manner not in conformity with the CPUCH;⁵⁵

Article 25 of CPUCH addresses peaceful settlement of disputes and further evidences the relation between CPUCH and UNCLOS as the regime for settlement of disputes under Part XV of UNCLOS is transplanted as the dispute settlement method to be adopted should mediation either fail or not undertaken at all.

Article 26 outlines the procedure for ratification, acceptance, approval and accession. This article is significant as it evidences a concerted effort to achieve a globally harmonised approach as it pertains to UCH by facilitating accession to CPUCH by States who are not members to UNESCO and interestingly allows accession by territories which enjoy full internal self-government but have not attained full independence.

Article 29 of CPUCH is entitled limitations to geographical scope. The unique wording of this Article seems to allow quasi-reservation as States Parties are allowed, at the time of ratifying, accepting, approving or acceding to CPUCH, to make a declaration to the depositary that CPUCH is not applicable to specific parts of its territory, internal waters, archipelagic waters or territorial sea. However the possible detrimental effect such a declaration may have on the overall objectives of CPUCH is undermined by the stipulation that reasons must be given for such a such declaration and that States making such a declaration shall, to the extent practicable and as quickly as possible, promote conditions under which CPUCH 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.

⁵¹ Article 14 of CPUCH.

⁵² Article 15 of CPUCH.

⁵³ Article 16 of CPUCH.

⁵⁴ Article 17 of CPUCH. It is noteworthy that 17(2) requires that the sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance with CPUCH and to discourage violations wherever they occur and shall deprive offenders of the benefit deriving from their illegal activities. It is submitted that the wording *wherever they occur* may extend the responsibility to overseas territories and further the qualification that the sanction *deprive offenders of the benefit* gives way to monetary fines which may be punitive in nature. Article 17(3) of CPUCH adds another significant element to imposition of sanctions as it obliges States Parties to cooperate to ensure enforcement of sanctions imposed. The addition may be interpreted to allow regional approaches and

⁵⁵ Article 18 of CPUCH also requires that each State Party shall:

- i. record, protect and take all reasonable measures to stabilize underwater cultural heritage seized (Art. 18(2);

- vi. Take all practicable measures to raise public awareness regarding the value and significance of UCH and the importance of protecting it under the CPUCH;⁵⁶and
- vii. 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 UCH, as well as research and education.⁵⁷

Throughout the CPUCH an appeal to States Parties to cooperate reoccurs. However Articles 19 and 21 require particular mention as they respectfully impose a compulsory obligation of cooperation as it regards, inter alia, information sharing⁵⁸ utilising, where applicable, the appropriate international databases⁵⁹ and training in underwater archaeology.⁶⁰ A poignant stipulation as it regards information sharing is that said information, to the extent compatible with their national legislation, shall 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 UCH.⁶¹

An integral subject which is addressed consistently within the CPUCH, and which is of particular significance to States with a past of colonisation by multiple colonial powers is the subject of State vessels and aircraft.⁶² Article 3 requires that the CPUCH be interpreted in accordance with international law, including UNCLOS. Significantly the CPUCH specifies in Article 2(8) that the Convention does not modify State practice pertaining to sovereign immunities, nor any State's rights with respect to its State vessels and aircraft.

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- ii. 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 (Art. 18(3); and
 - iii. 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 (Art. 18(4)).

⁵⁶ Article 20 of CPUCH.

⁵⁷ Article 22 of CPUCH also prescribes a mandatory requirement that States Parties communicate to the Director-General the names and addresses of their competent authorities relating to underwater cultural heritage.

⁵⁸ Article 19 of CPUCH is not limited to cooperation for information sharing concerning UCH, 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 per Article 19(2) of COUCH. Pursuant to Article 19(1) of CPUCH States Parties shall cooperate and assist each other in the protection and management of underwater cultural heritage, including, where practicable, collaborating in the investigation, excavation, documentation, conservation, study and presentation of such heritage.

⁵⁹ Article 19(4) of CPUCH.

⁶⁰ Article 21 of CPUCH.

⁶¹ Article 19(3) of CPUCH.

⁶² Article 1(8) of CPUCH defines State vessels and aircraft as 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.

As far as international law is concerned a convenient commencement point is the latin maxim *par in parem non habet imperium*, which means ‘equals do not have authority over one another.’ The maxim is entrenched in international law and no doubt informed the development of the concept of immunity.⁶³ More particularly as it relates to State vessels and aircraft, immunity is ascribed in conventions dating as far back as 1926 with The International Convention for The Unification of Certain Rules Concerning The Immunity of State-Owned Ships, 1926, and Additional Protocol, 1934⁶⁴ which was followed by the 1958 Convention on the High Seas.⁶⁵ The most recent incarnation of the principle of immunity applied to State owned vessels is delineated in UNCLOS.⁶⁶ Notably no convention stipulates that the immunity extends to sunken State vessels and aircraft. However, a reasonable conclusion is that sunken State vessels and aircraft remain the property of the State whose flag it flew or the State which succeeded that State.⁶⁷ The aforementioned conclusion is pursuant to the concept of immunity as aforementioned in international law, which is incorporated into the CPOCH by virtue of Articles 2(8) and 3. State practice supports this interpretation.⁶⁸

An analysis of the anatomy of the CPOCH would be incomplete without referring to the annexed Rules as per Article 33. The Rules form an integral part of the CPOCH and reference to the Convention includes reference to the Rules. Essentially the Rules elaborate on the obligations delineated in the CPOCH. Notable elaborations pertain to the responsibilities of the competent authority established or assigned per Article 22. More specifically, pursuant to Rule 9 a project design⁶⁹ shall be developed and submitted to the competent authority for

⁶³ *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812).

⁶⁴ The International Convention for The Unification of Certain Rules Concerning The Immunity of State-Owned Ships, 1926, and Additional Protocol, 1934, adopted on 10 April 1926 and 24 May 1934, in force since 8 January 1937 (176 *UNTS* p.199). Article 3(1) of this Convention provides that ships of war, State owned yachts, patrol vessels, hospital ships, fleet auxiliaries, supply ships and other vessels owned or operated by a State and employed exclusively at the time when the cause of action arises on Government and non-commercial service, and such ships shall not be subject to seizure, arrest or detention by any legal process, nor to any proceedings in rem.

⁶⁵ Convention on the High Seas, adopted on 29th April 1958, in force since 30 September 1962 (450 *UNTS* p. 11). Article 8 of this Convention states that warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

⁶⁶ Particularly Articles 32 and 95 of UNCLOS.

⁶⁷ V. Đ. Degan, *The Legal Situation of the Wreck of the Ironclad “Re d’Italia” Sunk in the 1866 Battle of Vis (Lissa)*, PPP god. 51 (2012), 166.

⁶⁸ Mariano J. Aznar Gómez. "Legal Status of Sunken Warships “Revisited”" *Spanish Yearbook of International Law* Vol. 9 (2003) 83. The writer, after referencing a multiplicity of cases including but not limited to the HMS Erebus and HMS Terror concludes that the practice of States and the status of international conventions currently in force has confirmed the view that the rule of immunity still applies on sunken warships, both as State vessels (sunken or not) and as public property...States retain title over their sunken warships even when located in territorial waters of another State. The writer further concludes that the difference between the position in the territorial sea and that in other marine zones is, logically, the need to respect the "legitimate interest" of the coastal State, which must authorize any intervention directed to the wreck.

⁶⁹ Rule 10 of the Annex to CPOCH outlines that the project design must be inclusive of:

authorization and appropriate peer review. Matters incidental to the project design which are specifically addressed in the Rules are assessments to determine, inter alia, the potential damage that may be caused to the surrounding environment;⁷⁰ securing funding to complete all stages of the project design⁷¹ and the stipulation that all activities directed at UCH shall be done under the direction of a qualified underwater archaeologist with scientific competence appropriate to the project.⁷² It is also noteworthy that in addition to drafting the project design, safety and environmental policies must be prepared to ensure the safety of the team and mitigate against undue disturbance of the seabed and marine life. Other notable stipulations in the Rules are:

- i. public awareness namely through access to *in situ* UCH;⁷³
- ii. deposit of interim and final report in public records;⁷⁴
- iii. public education and popular presentation of project results;⁷⁵ and
- iv. the imposition of a ten-year time limit for the consolidation of project archives available for professional and public access.⁷⁶

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- (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.

⁷⁰ Rule 14 of the Annex to CPUCH.

⁷¹ Rule 17 of the Annex to CPUCH.

⁷² Rule 22 of the Annex to CPUCH.

⁷³ Rule 7 of the Annex to CPUCH.

⁷⁴ Rules 30 and 31 of the Annex to CPUCH.

⁷⁵ Rule 35 and 36 of the Annex to CPUCH.

⁷⁶ Rule 33 of the Annex to CPUCH.

3. Relevance of CPUCH to Trinidad and Tobago

History discloses that the late 15th century marked the beginning of European discovery and colonisation in ‘The New World.’⁷⁷ The centuries thereafter ushered violent maritime battles between colonial powers in the quest for expanding territory.⁷⁸ Today ‘The New World’ has been subdivided majorly into sovereign States, however the waves that wash these shores also cradle vestiges of the tumultuous battles for territory waged there.

A poignant example of this may be found in the twin island Republic of Trinidad and Tobago where a myriad of wrecks predating the 20th century have been found. Trinidad and Tobago is the southernmost archipelagic State in the Caribbean situated northeast of Venezuela and northwest of Guyana.⁷⁹ One particularly notable occurrence as it relates to UCH is where Spanish ships were set ablaze on the orders of Rear Admiral Sebastián Ruiz de Apodaca in 1797.⁸⁰ These ships still rest in the waters off Chaguaramas, Trinidad while in Tobago at least sixteen, 17th century Dutch and French vessels rest in the Scarborough harbour following the battle of 1677 between the Dutch and the French.⁸¹ The aforementioned are merely examples of the more popular shipwrecks. However, many more shipwrecks lay strewn around the archipelagic State as a consistent reminder of the juggling act of ownership among European powers. A list of shipwrecks predating the 19th century located in the waters of Trinidad and Tobago is delineated in Appendix I.

Prior to the 1990s, these historical wrecks were primarily subject to exploration by marine interests, including but not limited to scuba divers. However, during the tenure of the third Prime Minister of Trinidad and Tobago, the Honourable Arthur Napoleon Raymond Robinson SC, OCC, TC, the issue of historical wrecks was unearthed with the creation of a deep-water harbour in Scarborough, Tobago. In the process of dredging the harbour artefacts from the maritime battles waged in those waters were effectively exhumed from their final resting place.

⁷⁷ Edward Everett Hale, *The Life of Christopher Columbus: From His Own Letters and Journals and Other Documents of His Time* (first published in 1891, G. L. Howe & Company 2007) 40.

⁷⁸ Charles Archibald, *The Story of Trinidad 1797 To 1900* (CreateSpace Independent Publishing Platform, 2018)

⁷⁹ The Commonwealth, ‘Trinidad and Tobago: Country Information’ < <http://thecommonwealth.org/our-member-countries/trinidad-and-tobago>> accessed 03 April 2019.

⁸⁰ Michael Anthony, *Profile Trinidad: A historical survey from the discovery to 1900* ([Repr.], MacMillan Caribbean 1992, 1975).

⁸¹ David Phillips, *La Magdalena: The story of Tobago, 1498 to 1898* (iUniverse 2004).

The artefacts uncovered became a source of international interest with the French Government claiming ownership of some artefacts. The Hansard Reports of the Parliament of Trinidad and Tobago dated Friday 5th August 1994 disclosed that the cannons, found in the Scarborough harbour, were of French origin, and estimated to be of value in excess of \$2 million Trinidad and Tobago dollars. The French Government was reportedly claiming ownership of these cannons under the precept that the ships were French warships and therefore still the property of the French Government.⁸²

Due to the brief historical facts aforementioned the current situation subsisting in Trinidad and Tobago is one in which many of the sunken vessels are linked to former colonial powers. In this vein the CPUCH is relevant as it provides a clear declaration as it regards the immunity of State vessels and aircraft through international law and the consistent obligation to confer with States with a verifiable link to UCH. Incorporating the CPUCH therefore provides a foundation upon which consultation may be had to ensure the preservation of UCH *in situ* or otherwise proper excavation. The thorough provisions in the CPUCH regarding the techniques to be employed and assistance of international agencies that may be secured dispenses the need to invent a strategy for dealing with UCH.

⁸² Trinidad and Tobago House of Representatives, 52nd Sitting - 3rd Session - 4th Parliament, <<http://www.ttparliament.org/hansards/hh19940805.pdf>> accessed 03 January 2019.

4. The Existing Legal Framework in Trinidad and Tobago

In an effort to undermine the French claim⁸³ and secure the artefacts as property of Trinidad and Tobago legislation was passed, namely, the Protection of Wrecks Act Chapter 37:04.⁸⁴ The long title of the Act discloses the Act's purpose as, 'an Act to secure the protection of wrecks in the Territorial Waters of Trinidad and Tobago and the sites of such wrecks from interference by unauthorised persons and for related purposes.' Thereafter section 2 defines pertinent terms. Notably the Act provides a definition of 'abandoned wrecks' and 'wrecks.' The former is defined as any wreck which has remained continuously upon the sea bed within the limits of the waters of Trinidad and Tobago for a period of fifty years or more and the latter is defined as 'including cargo, equipment, stores and other objects, flotsam, jetsam, lagan and derelict found in the waters or on the shores of Trinidad and Tobago.'

The maritime areas to which the Act applies are:

- i. 'the sea', defined as including any estuary or arm of the sea;
- ii. 'Trinidad and Tobago waters' defined as the breadth of the Territorial Sea of Trinidad and Tobago⁸⁵ and any part of a river within the ebb and flow of ordinary spring tides;
- iii. 'the sea bed' defined as any area submerged at high water of ordinary spring tides.

Other significant definitions are the definition of 'Minister' which refers to the Minister to whom the responsibility for shipping is assigned and 'Receiver,' which refers to the Principal Receiver of Wreck, under section 320 of the Shipping Act Chapter 50:10, who may be the Director of the Maritime Services Division or a person employed therein.⁸⁶ The subsequent sections in the Act broadly address the obligations of the Minister; Abandoned Wrecks and Offences and Penalties.

⁸³ Ibid.

⁸⁴ Protection of Wrecks Act Chapter 37:04. Hereinafter referred to as, 'the Act.'

⁸⁵ Section 3 of the Territorial Sea Act Chapter 1:51 adopts the limit set by Article 3 read in conjunction with Article 15 of the UNCLOS by defining the breadth of the territorial sea to be 12 nm measured from baselines. However, section 3 goes on to state that where the outer limits of the territorial sea of Trinidad and Tobago intersect foreign territorial waters the outer limits thereof shall be resolved through agreements or other means recognised by international law, which is in consonance with Article 15 of UNCLOS.

⁸⁶ Sections 403(3) and 403(2)(e), respectively, of the Shipping Act Chapter 50:10.

4.1 Obligations of the Minister

The Minister is empowered to make orders designating restricted and prohibited areas. Section 3 empowers the Minister, by order, to designate any area in Trinidad and Tobago waters as a restricted area where the Minister is satisfied that it may prove to be the site of a vessel lying wrecked on or in the sea bed,⁸⁷ and on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the sea bed in or near the abandoned wreck, the site ought to be protected from unauthorised interference.⁸⁸ Before issuing the order, the Minister is mandated to consult appropriate persons.⁸⁹ The obligation may only be dispensed with if the Minister is satisfied that the case is one of immediate urgency.⁹⁰ Regardless of whether consultation is had, the order issued by the Minister must identify where the vessel lies or formerly lay.⁹¹ The restriction may not be applicable to all persons as section 7 allows the Minister to grant licences, with or without conditions, to persons who are competent to carry out salvage operations or have another legitimate reason for undergoing licenced activities. The Minister is also entitled to vary or revoke said licence per section 7(1)(b).

Pursuant to section 8 should the Minister be satisfied that a vessel lying wrecked in Trinidad and Tobago waters is in a condition which makes it a potential danger to life or property necessitating protection from unauthorised interference, the Minister may, by order designate said area around the vessel as a prohibited area. Like the order for restricted areas, the order for prohibited areas must identify the vessel and the place where it is lying and specify an appropriate distance to ensure non-interference by unauthorised persons.⁹²

It is noteworthy that both orders by the Minister take immediate effect pursuant to section 9 which prescribes that orders made in accordance with sections 3 and 8 are subject to negative

⁸⁷ Section 3(1)(a) of the Act.

⁸⁸ Section 3(1)(b) of the Act.

⁸⁹ Section 3(4) of the Act imposes an obligation on the Minister to consult with appropriate persons but does not specify whom suffices as appropriate persons. Rather the determination of who suffices as appropriate persons is left to the discretion of the Minister as the words of the section state, *'the Minister shall consult with such persons as he considers appropriate having regard to the purposes of the Order.* If CPUCH were to be prayed in aid, appropriate persons would invariably include, but not be limited to, underwater archaeologists, divers and States with a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned.

⁹⁰ Section 3(5) of the Act.

⁹¹ Section 3(2) of the Act.

⁹² Section 8(2) of the Act.

resolution of parliament. The Interpretation Act Chapter 3:01 per section 75(7) prescribes that where the expression ‘subject to negative resolution of Parliament’ is used in relation to any statutory instruments or statutory documents it means that those instruments or documents shall take effect as soon as they are made, but within the prescribed period, be laid before each House of Parliament. The instruments or documents only become void where either House within the prescribed period resolves that any of those instruments or documents shall be annulled. However, such annulment shall not prejudice the validity of anything done previously pursuant to the instruments or documents.

The Minister is further empowered through section 10 to revoke orders given pursuant to sections 3 and 8. As it pertains to restricted and prohibited areas respectively, the Minister may revoke if of the opinion that there is not, or is no longer, any abandoned wreck in the area which requires protection under this Act⁹³ or where satisfied that the vessel is no longer in a condition which makes it a potential danger to life or property.⁹⁴

4.2 Abandoned Wrecks

Section 5 requires discovery of abandoned wrecks within Trinidad and Tobago waters to be reported to the Receiver within one month of said discovery. As it pertains to abandoned wrecks the Act stipulates that claims of all persons are automatically barred and vests the property in the State pursuant to section 4. Section 11(1) provides the exception of lawful excuse giving rise to the possibility of maintaining possession of an abandoned wreck, without which pursuant to section 11(2) the abandoned wreck shall be forfeited to the State. Notably no delineation of ‘lawful excuse’ is provided.

4.3 Offences and Penalties

Throughout the Act there is a delineation of offences in sections 3(3), 5, 6, 7(1)(c), 7(2), 8(3) and 11(1). In sum those sections respectively make it an offence where a person him/herself or through another:

⁹³ Section 10(a) of the Act.

⁹⁴ Section 10(b) of the Act.

- i. Tamper with, damages or removes any part of a vessel lying wrecked on or in the sea bed, or any object formerly contained in such a vessel;⁹⁵
- ii. Carries out diving or salvage operations directed to the exploration of any abandoned wreck or to removing objects from it;⁹⁶
- iii. Deposits anything which, if it were to fall on the site of an abandoned wreck, whether it so falls or not, would wholly or partly obliterate the site or obstruct access to it, or damage any part of the abandoned wreck;⁹⁷
- iv. Fails to notify the Receiver within one month of discovering an abandoned wreck within Trinidad and Tobago waters;⁹⁸
- v. Removes from Trinidad and Tobago waters or exports, an abandoned wreck otherwise than under the authority of a licence;⁹⁹
- vi. Acts done contrary to any condition or restriction of the licence issued by the Minister;¹⁰⁰
- vii. Disrupts licensed diving and/or salvage operations;¹⁰¹
- viii. Enters an area designated a prohibited area, that is an area with a wreck so designated because something contained in the vessel makes it a potential danger to life or property;¹⁰² and
- ix. Possesses an abandoned wreck without lawful excuse.¹⁰³

Pursuant to section 14 persons found guilty of the aforementioned offences will be liable on summary conviction to a fine of fifty thousand Trinidad and Tobago dollars and to imprisonment for three years. Section 13 provides that proceedings for said offences may be treated as having been committed in the Magisterial District located nearest to the waters within which the offence was committed. Notably however, section 12 states that the aforementioned offences ought not to be regarded as constituting an offence where it is done by a person,

⁹⁵ Section 3(3)(a) of the Act.

⁹⁶ Section 3(3)(b) of the Act.

⁹⁷ Section 3(3)(c) of the Act.

⁹⁸ Section 5 read in conjunction with section 14 of the Act.

⁹⁹ Section 6 of the Act.

¹⁰⁰ Section 7(1)(c) of the Act.

¹⁰¹ Section 7(2) of the Act.

¹⁰² Section 8(3) of the Act.

¹⁰³ Section 11(1) of the Act. Section 11(2) of the Act requires that abandoned wrecks unlawfully in the possession of a person shall be forfeited to the State.

- (a) In the course of any action taken by him for the sole purpose of dealing with an emergency of any description;¹⁰⁴ or
- (b) In exercising, or seeing to the exercise, functions conferred on him by or under an enactment or a body for which he acts;¹⁰⁵ or
- (c) Out of necessity due to stress of weather or navigational hazards.¹⁰⁶

The subject matter of the Act and the CPUCH evidently overlap. More specifically the facility of establishing restricted areas on the basis of historical, archaeological or artistic importance is in consonance with the CPUCH's objective of preservation of historical wrecks, preferably *in situ*, albeit with the use of different nomenclature. The provisions in this regard are complimented by the obligation to report discoveries of abandoned wrecks, pursuant to section 5, and the facility of making orders subject to a negative resolution of Parliament, pursuant to section 9, which promotes timely action. Further the clear designation of responsibility to the Minister, delineation of offences and penalties coincides with the obligations of States to enforce regulations. Nonetheless, the Act may be improved by the expanded enunciation of methodologies to be adopted in this regard as delineated in the CPUCH and its Annex.

A striking difference between the Act and the CPUCH is the age stipulation of fifty years in the Act and one hundred years in the CPUCH for items to suffice as UCH. Clarity as to what is to be done in such circumstances of disparity is delineated by UNESCO. UNESCO recognises the contractual nature of the CPUCH obliging States to respect the provisions therein. However, simultaneously UNESCO asserts that it is within the prerogative of every State to 'over-fulfil' its obligations and guarantee even better protection than required by the CPUCH by for instance protecting more recent submerged sites. Particularly significant is the example provided by UNESCO which falls squarely into the situation subsisting in Trinidad and Tobago. UNESCO stated,

[W]hen, for instance, a national law foresees protection of sites that are only 50 years old, it does not need to be changed when a State joins the 2001 Convention since that law is already in compliance with the 2001 Convention.¹⁰⁷

¹⁰⁴ Section 12(a) of the Act.

¹⁰⁵ Section 12(b) of the Act.

¹⁰⁶ Section 12(c) of the Act.

¹⁰⁷ UNESCO, 'Frequently Asked Questions'

It follows therefore that an amendment regarding the age of the UCH is not required. However, it must be borne in mind, that by so doing Trinidad and Tobago would be placing greater responsibilities upon itself as more sites will fall under the regime produced by the CPUCH. Apart from incorporating the CPUCH wholly by way of a schedule to the Act pertinent amendments are necessary. Section 2 outlining definitions would require replacing some terms with nomenclature consistent with the CPUCH including, but not limited to, substituting abandoned wreck with underwater cultural heritage and further inclusion of definitions of the CPUCH.

Section 3 which provides for orders designating restricted areas requires elaboration pursuant to the CPUCH to incorporate the further responsibilities including, but not limited to public awareness and the technical stipulations outlined in the Rules.

Sections 4 and 11 which vest abandoned wrecks found in the Territorial Sea as property of Trinidad and Tobago save and except with regard to persons with a lawful excuse is in complete contradiction with the CPUCH and would need to be repealed entirely. Sections 4 and 11 undermine the responsibility of States Parties to inform and consult foreign States with a verifiable link to the vessel and aircraft. The CPUCH provides a clear methodology to combat the impasse which may arise where competing claims may exist regarding UCH, as was the case with Trinidad and Tobago and France. It is therefore submitted that incorporating the CPUCH would be beneficial to Trinidad and Tobago as it enunciates a clear, legally enforceable regime for handling UCH for the benefit of all concerned parties.

< http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UHC_FAQ_en.pdf > accessed 09 April 2019.

5. Incorporation of the CPUCH in Trinidad and Tobago

The common law system which exists in Trinidad and Tobago is such that international conventions do not alter domestic law except to the extent that they are incorporated into domestic law by legislation.¹⁰⁸ As such international treaties like the CPUCH only become binding upon citizens when it is incorporated into domestic legislation. Further in Trinidad and Tobago, where a statute exists which addresses the subject matter of the Convention, an amendment to the said statute is made to incorporate said convention rather than the drafting of a completely new piece of legislation.¹⁰⁹

Trinidad and Tobago has legislation in the form of the Act which addresses the issue of UCH. As such this Act may be amended to incorporate the provisions of the CPUCH. The Act provides a useful foundation upon which the incorporation of the CPUCH may be facilitated as it identifies responsible entities in the persons of the Minister responsible for Shipping, which is currently the Minister of Works and Transport, and the Principal Receiver of Wreck, that is the Director of the Maritime Services Division. Further as aforementioned the Act contemplates in situ preservation of underwater cultural heritage by empowering the Minister to designate areas to be protected from unauthorised interference through the imposition of sanctions.

5.1 Amendment Procedure¹¹⁰

By virtue of section 53 of the Constitution of the Republic of Trinidad and Tobago Chapter 1:01¹¹¹ Parliament may make laws for the peace, order and good government of Trinidad and Tobago. The Parliament, by section 39 of the Constitution, comprises the President and the two Houses, the Senate and the House of Representatives. All three constituent parts of the Parliament are involved in the process of making a law.

¹⁰⁸ *Thomas v Baptiste* (1998) 54 WIR 387 at 422.

¹⁰⁹ Evidence of this practice may be gleaned from the amendment of the Continental Shelf Act Chapter 1:52 incorporating the provisions of the 1982 United Nations Convention on the Law of the Sea.

¹¹⁰ Ministry of the Attorney General, 'It's Your Right to Know- What are Laws?' <<http://www.ag.gov.tt/Features/Its-Your-Right-To-Know>> accessed 29 April 2019.

¹¹¹ Constitution of the Republic of Trinidad and Tobago Chapter 1:01 hereinafter referred to as 'the Constitution.'

The process of incorporation of the CPUCH requires a draft legislative proposal to be made, in either house, for amendments to the Act. The proposal may be advanced by the Minister with responsibility for Shipping, which is currently the Minister of Works and Transport, to the Cabinet for its approval. When the proposal is accepted by the Cabinet, the Attorney General would be directed to draft amendments to the legislation. Additionally, the Law Commission, will invite suggestions from the public regarding the proposed amendments to the Act. Following finalisation of the draft amendments to the Act by the proposing Minister, the approval of the Cabinet must be sought before it is sent to the House of Representatives or the Senate. The draft approved by Cabinet should be accompanied by an explanatory note located at the beginning enunciating the general purport of the bill.

Upon introduction of the draft to either House of Parliament, the draft will be referred to as a public Bill. The Bill will then undergo a first and second reading, committee of the whole, report from committee of the whole and a third reading in each house. After the Bill has been passed in both Houses it will be presented to the President for assent. The President's assent converts the bill into an Act of the Parliament of the Republic of Trinidad and Tobago.

Once Presidential Assent has been obtained, the Clerk of the House will have the amendment Act printed and published in the Trinidad and Tobago *Gazette*. The *Gazette* notification will show the Act No., the Short Title and the date of Assent. The amendments enunciated in the amendment Act will take effect on the date of assent by the President. Entry into force provisions are not used rather the date of assent is indicated in the amendment Act. Further in the alternative, the President may fix a date from which the amendment Act is to take effect. Until all the laws of Trinidad and Tobago are revised, the Act and the amendment Act will have to be read together to ascertain the changes. Subsequently, upon publication of the revised laws of Trinidad and Tobago, the changes occasioned by the amendment Act will be consolidated with the Act and, the fact that the Act was amended will be indicated on the first page of the Act stating that it was amended by 'Act No.' as was cited in the *Gazette*.

5.2 The Amended Act

The Act, a draft amendment Act and a draft of the Act with the amendments implemented is hereto attached. The format utilised prayed in aid substantially the UNESCO model for a National Act on the protection of cultural heritage.¹¹² However, the Act is punctuated by useful provisions found in the original Act. More specifically pursuant to Article 7 of CPUCH 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. As such the provisions empowering the Minister to establish restricted and prohibited areas were retained in addition to the stipulation that said orders are subject to the negative resolution of parliament. Other retained provisions include, but are not limited to, the offences albeit that the location has shifted to accommodate other provisions.

The UNESCO model was therefore not replicated entirely as effect had to be given to the style of drafting in Trinidad and Tobago regarding matters of punctuation and language which justifies, inter alia, the use of marginal notes, full stops at the end of the marginal notes and the list of sections in the arrangement of sections and the lack of an entry into force provision as provided in the UNESCO model.

¹¹² UNESCO Model for a National Act on The Protection of Cultural Heritage 2013.

APPENDIX I

Shipwrecks in Trinidad and Tobago 1572-1797

Year	Name	Island	Location	Type of Vessel	Hull	Ordinance	Cargo	Built	Commander	Reason for Loss	Depth
1572	Veracruz Squadron (5 Ships)	Tobago	North Side Island	Nao	Wood	-	Mining Equipment	-	-	Hurricane	50
1667	Dutch Ships	Tobago	Bloody Bay	Merchantmen	Wood	-	Troops	-	-	Sunk by English Squadron under Capt. John Beny	100
1677	Le Glorieux	Tobago	Scarborough Harbour	Warship	Wood	72	445 Men	Brest, France	Le Comte D'Estrees	Burnt in Battle	30-40
1677	Le Marquis	Tobago	Scarborough Harbour	Warship	Wood	48	300 Men	France	De Lessine	Burnt in Battle	30-40
1677	Fireship	Tobago	Scarborough Harbour	Fireship	Wood	None	25 Men	France	-	Burnt in Battle	30-40

1677	Swan	Tobago	Scarborough Harbour	Swan	Wood	None	50 Men	France	-	Burnt in Battle	30-40
1677	Gallot	Tobago	Scarborough Harbour	Gallot	Wood	None	50 Men	France	-	Burnt in Battle	30-40
1677	T'Huis de Kreuningen	Tobago	Scarborough Harbour	Warship	Wood	56	128 Men	Holland	Romar Vlack	Burnt in Battle	30-40
1677	Middleburg	Tobago	Scarborough Harbour	Warship	Wood	36	83 Men	Holland	Jan Swart	Burnt in Battle	30-40
1677	T'Wafen van Leyden	Tobago	Scarborough Harbour	Warship	Wood	34	73 Men	Holland	Galtje Galtjes	Burnt to Waterline on Shoreline	5-30
1677	De Goude Star	Tobago	Scarborough Harbour	Warship	Wood	28	74 Men	Holland	Pieter Cooremen	Burnt in Battle	30-40
1677	Popjesburgh	Tobago	Scarborough Harbour	Warship	Wood	24	52 Men	Holland	Pieter Stowijk	Burnt in Battle	30-40
1677	Herzog de Yorck	Tobago	Scarborough Harbour	Warship	Wood	26	35 Men	Holland	Frederick Sweers	Burnt in Battle	30-40
1677	De Goude Munnick	Tobago	Scarborough Harbour	Warship	Wood	31	25 Men	Holland	Direk Schoen	Burnt in Battle	30-40

1677	De Sphaera Mundi	Tobago	Scarborough Harbour	Warship	Wood	12	10 Men	Holland	Wylof Langrijs	Burnt in Battle	20-30
1677	De Zoyer	Tobago	Scarborough Harbour	Fireship	Wood	None	13 Men	Holland	Hiertje Carstens	Burnt in Battle	20-30
1677	De Fortuyn	Tobago	Scarborough Harbour	Dispatch	Wood	None	25 Men	Holland	Jan Erasmus	Burnt in Battle	20-30
1677	2 Transports	Tobago	Scarborough Harbour	Dispatch	Wood	None	-	Holland	-	Burnt in Battle	20-30
1687	Courland Ship	Tobago	Courland Bay	Armed Merchant	Wood	6 guns	General	-	Dietrich Von Altenbrock/Marrin	Storm	36
1690	Spanish Troopship	Trinidad	Serpents Mouth Soldado Rock	Troopship	Wood	-	Troops	-	-	Struck Soldado Rock	40
1731	N.S. De La Conception	Trinidad	Maracas Bar	Nao	Wood	-	General	-	Capt. Gotebo	Storm	40
1748	Chesterfield	Tobago	Minister Rock	Merchantman	Wood	-	General	-	-	Struck Minster Rock	40
1780	Friends	Trinidad	East Side of Island	Merchantman	Wood	-	General	-	Capt. Wood	-	-

1781	H.M.S Rattlesnake	Trinidad		Sloop	Wood	14 guns	War Supplies	Follestone	Phillip D'Avergne	-	-
1796	French Coursairs	Trinidad	Gaspar Grande/ Gulf of Paria	Brig	Wood	-	Pirates	-	-	Sunk by Frigates Alam & Zebra	120
1797	Capitana San Vincente	Trinidad	Gaspar Grande Island, Goodwill Bay	Warship	Wood	80 guns	War supplies	-	Brig. Jeronimo Mendoza	Burnt at Anchor	20-60
1797	Almiranta Arrogante	Trinidad	Gaspar Grande Island, Goodwill Bay	Warship	Wood	74 guns	War supplies	-	Capt. Rafael Bennazar	Burnt at Anchor	20-60
1797	Gallardo	Trinidad	Gaspar Grande Island, Goodwill Bay	Warship	Wood	74 guns	War supplies	-	Capt. Gabriel Sorondo	Burnt at Anchor	20-60

1797	Concha	Trinidad	Gaspar Grande Island, Goodwill Bay	Frigate	Wood	34 guns	War supplies	-	Capt. Manuel Urtizabel	Burnt at Anchor	20-60
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APPENDIX II

Unamended - Protection of Wrecks Act Chapter 37:04

Draft Amendment Bill

Draft Protection of Wrecks Act chapter 37:04 (as amended)



REPUBLIC OF TRINIDAD AND TOBAGO

BILL

[Assented __, 2019]

A BILL to amend the Protection of Wrecks Act, Chapter 37:04

- Enactment. ENACTED by the Parliament of Trinidad and Tobago as follows:
- Citation. 1. This Act may be cited as the Protection of Wrecks (Amendment) Act, 2019.
- Commencement. 2. This Act comes into effect on such date as is fixed by the President by Proclamation.
- Interpretation
Chap. 37:04. 3. In this Act, “Act” means the Protection of Wrecks Act.
- Act Amended. 4. The Act is amended—
- (a) in the Long Title by deleting the words “of wrecks in the Territorial Waters of Trinidad and Tobago and the sites of such wrecks from interference by unauthorised persons and for related purposes” and substituting the following:

“of underwater cultural heritage through the incorporation of the 2001 Convention on the Protection of the Underwater Cultural Heritage.”

(b) in section 2 by replacing it with the following –

In this Act-

“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;

“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;

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

“Competent Authority” means the Maritime Division of the Ministry of Works and Transport;

“continental shelf” means the seabed and subsoil of the submarine areas that extend beyond Trinidad and Tobago's territorial sea throughout the natural prolongation of Trinidad and Tobago's land territory to the outer edge of the continental margin as set out in the Continental Shel Act;

“Convention” means UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage including the Rules;

“Coordinating State” means the State with the responsibility of facilitating consultations, pursuant to the Convention, between the State in whose exclusive economic zone or continental shelf underwater cultural heritage is found and other States that have declared interest in the underwater cultural heritage based on a

verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned;

“Director-General” means the Director-General of UNESCO;

“exclusive economic zone” means the exclusive economic zone as defined by the Archipelagic Waters and Exclusive Economic Zone Act;

“export” means to take or cause to be taken out of Trinidad and Tobago;

“licence” means a licence granted by the Competent Authority under section 10;

“Minister” means the Minister to whom the responsibility for shipping is assigned;

“Receiver” means the Principal Receiver of Wreck under section 320 of the Shipping Act;

“Rules” means the Rules concerning activities directed at underwater cultural heritage, as referred to in Article 33 of the Convention;

“States Parties” means States which have consented to be bound by the Convention and for which the Convention is in force;

“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;

“Trinidad and Tobago waters” includes the internal waters and the territorial sea as defined in the Territorial Sea Act, and the archipelagic waters as defined in the Archipelagic Waters and Exclusive Economic Zone Act;

“underwater cultural heritage” means objects and sites, together with their context, having paleontological or scientific significance and 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 50 years such as –

(a) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;

(b) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and

(c) objects of prehistoric character;

but excluding:

(i) pipelines and cables placed on the seabed;

(ii) installations other than pipelines and cables, placed on the seabed which are still in use;

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

(c) in section 3 by replacing it with the following –

3(1) Subject to this Act, the Convention, the text of which is set out in the First Schedule, shall have the force of law in Trinidad and Tobago.

(2) This Act applies to –

(a) Trinidad and Tobago waters, including the seabed and the subsoil thereof;

(b) vessels flying the flag of Trinidad and Tobago; and

(c) nationals of Trinidad and Tobago wherever located.

(d) in section 4 by replacing it with the following –

4(1) If the Minister is satisfied with respect to any site in Trinidad and Tobago waters that—

(a) it is, or may prove to be, the site of underwater cultural heritage; and

(b) on account of the cultural, historical or archaeological character of the underwater cultural heritage which may be lying on the sea bed, the site ought to be protected from unauthorised interference, the Minister may by Order designate an area around the site as a restricted area.

4(2) An Order under this section shall –

(a) identify where the underwater cultural heritage is located;

(b) establish the parameters of the restricted area; and

(c) the distance specified for the purposes of paragraph (b) shall be such distance as is appropriate to ensure protection for the underwater cultural heritage.

4(3) Subject to section 9(2), a person commits an offence if, in a restricted area, he does any of the following things otherwise than under the authority of a licence –

(a) tampers with, damages or removes any part of underwater cultural heritage; or

(b) carries out diving or salvage operations directed to the exploration of any underwater cultural heritage or to removing said underwater cultural heritage from the sea bed, or uses equipment constructed or adapted for any purpose of diving or salvage operations; or

(c) deposits, so as to fall and lie abandoned on the sea bed, anything which, if it were to fall on the site of the underwater cultural heritage, whether it so falls or not, would wholly or partly obliterate the site or obstruct access to it, or damage any part of the underwater cultural heritage, and also commits an

offence if he causes or permits any of those things to be done by others in a restricted area, otherwise than under the authority of such a licence.

4(4) Before making an Order under this section, the Minister shall consult other States that have declared interest in the underwater cultural heritage based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned, archaeologists, divers, the public at large and all other persons as he considers appropriate having regard to the purposes of the Order.

4(5) The consultation referred to in subsection (4) may be dispensed with if the Minister is satisfied that the case is one in which an Order should be made as a matter of immediate urgency.

(e) in section 5 by replacing it with the following –

5(1) If the Minister is satisfied with respect to underwater cultural heritage in Trinidad and Tobago waters that—

(a) because of anything contained in it, the said underwater cultural heritage is in a condition which makes it a potential danger to life or property; and

(b) on that account it ought to be protected from unauthorised interference, he may by Order designate an area around the underwater cultural heritage as a prohibited area.

5(2) An Order under this section shall –

(a) identify where the underwater cultural heritage is located;

(b) establish the parameters of the prohibited area; and

(c) the distance specified for the purposes of paragraph (b) shall be such distance as is appropriate to ensure that unauthorised persons are kept away from the underwater cultural heritage.

5(3) Subject to section 9(2), a person commits an offence if, without authority in writing granted by the Minister, he enters a prohibited area, whether on the surface or under water.

5(4) Before making an Order under this section, the Minister shall consult other States that have declared interest in the underwater cultural heritage based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned, archaeologists, divers, the public at large and all other persons as he considers appropriate having regard to the purposes of the Order.

5(5) The consultation referred to in subsection (4) may be dispensed with if the Minister is satisfied that the case is one in which an Order should be made as a matter of immediate urgency.

(f) in section 6 by replacing it with the following –

An Order under section 4 or 5 shall be subject to a negative resolution of Parliament.

(g) in section 7 by replacing it with the following –

The Competent Authority shall operate under the direct supervision of the Minister.

(h) in section 8 by replacing it with the following –

8(1) The Competent Authority shall have primary responsibility to –

(a) ensure the effective control, protection, conservation and management of underwater cultural heritage and issue licences in that regard;

(b) encourage and foster research, public awareness, appreciation and education in underwater cultural heritage and foster the establishment of museums.

8(2) The Competent Authority shall establish and maintain an inventory of underwater cultural heritage together with –

(a) a list of underwater cultural heritage whose export would constitute an appreciable impoverishment of the national underwater cultural heritage;

(b) a list of underwater cultural heritage, that is located beyond the limits of national jurisdiction if that underwater cultural heritage has a verifiable link with Trinidad and Tobago.

8(3) The Competent Authority shall ensure the inventory is regularly updated and may grant access to the public provided said access does not endanger the protection of the underwater cultural heritage concerned.

8(4) The Competent Authority shall act as the Competent Authority pursuant to Article 22 of the Convention. The Director-General shall be notified of the name and address of the Competent Authority.

8(5) The Competent Authority may conduct any necessary research on underwater cultural heritage.

8(6) The Competent Authority may declare as underwater cultural heritage objects and sites, together with their context, having paleontological or scientific significance and/or any trace of human existence having a cultural, historical or archaeological character, which have been partially or totally underwater, periodically or continuously, for at least 50 years.

8(7) The Competent Authority may set conditions ensuring the return of the objects and the information or research acquired regarding objects exported pursuant to section 12(2).

(i) in section 9 by replacing it with the following:

9(1) No person shall search for, explore, investigate, interfere with, displace or remove underwater cultural heritage, without a licence issued by the Competent Authority.

9(2) Any person, who discovers underwater cultural heritage should leave it undisturbed, unless disturbance or recovery is authorized by the Competent Authority or if it –

(a) is under actual and immediate danger of serious damage or destruction; or

(b) poses an immediate danger to human life.

9(3) Any person, who displaces underwater cultural heritage shall declare this to the Competent Authority and shall deposit the objects with the Competent Authority.

9(4) Any person, who discovers underwater cultural heritage shall within one month of discovery report this to Competent Authority and the Receiver.

9(5) Any person who is aware of any activity by any unauthorised person that poses an actual and immediate danger of serious damage or destruction to underwater cultural heritage shall report that activity to the Competent Authority.

9(6) Any person wishing to apply for permission to undertake activity directed at underwater cultural heritage, must submit an application to the Competent Authority at least six months prior to the commencement of the intended activity. In case of immediate danger of destruction or damage to such cultural heritage a shorter application time may be admitted. The application must be submitted irrespective of whether the underwater cultural heritage is situated within, or beyond, national jurisdiction.

9(7) Nationals and the masters of vessels flying flag of Trinidad and Tobago flag shall report any discovery or intended activity directed at underwater cultural heritage, even if located beyond the limits of national jurisdiction, to the Competent Authority and the Receiver.

9(8) No person shall engage in any activity directed at underwater cultural heritage that is not in accordance with the Rules.

9(9) Warships, Government ships and military aircraft, operated for non-commercial purposes, undertaking their normal mode of operations, and not engaged in activities directed at underwater cultural heritage are not obliged to report discoveries. They shall, however, make reports so far as it is reasonable and practicable.

9(10) In case of discoveries or activities concerning underwater cultural heritage located in the exclusive economic zone or on the continental shelf of another State, nationals and vessels flying the flag of Trinidad and Tobago shall report to the Competent Authority, the Receiver and the authorities of the concerned State.

(j) in section 10 by replacing it with the following:

10(1) A licence for an activity directed at underwater cultural heritage shall only be granted by the Competent Authority unless the Minister prescribes otherwise.

10(2) The licence shall be in writing and shall only be granted where

—

(a) the applicant establishes a legitimate reason for the licence and is competent, and properly equipped, to carry out operations in a manner appropriate to the cultural, historical or archaeological importance of the underwater cultural heritage;

(b) the concerned activity significantly contributes to the protection of, enhancement or knowledge about, the concerned underwater cultural heritage;

(c) is in full conformity with this Act and the Rules; and

(d) a proper scientific study has been undertaken and, measures are in place to, if necessary, ensure maximum protection and conservation of recovered objects.

10(3) Applications for licences shall be accompanied by a project design in accordance with the Rules.

10(4) No licence shall be issued for any commercial exploitation of underwater cultural heritage.

10(5) A licence –

(a) shall contain conditions to regulate access to the underwater cultural heritage and ensure activities are conducted in accordance with this Act and the Rules;

(b) shall be issued for a limited time period not exceeding one year and may be renewed after revision of the project by the Competent Authority;

(c) may be revoked in case of non-compliance with the conditions mentioned in the licence, the Rules, the project design deposited with the Competent Authority or in the interest of the proper protection of the concerned underwater cultural heritage;

d) may contain any other condition deemed necessary by the Competent Authority.

10(6) Licences are non-transferable. A public register of all licences issued shall be kept by the Competent Authority.

10(7) Licenced activities shall only be executed –

a) under the effective supervision of the person so authorized;
and

b) respecting proper safety measures and the protection of the environment.

10(8) A licence for activities directed at underwater cultural heritage located beyond the limits of national jurisdiction may only be issued, if –

(a) Trinidad and Tobago is the Coordinating State; or

(b) an immediate danger threatens the underwater concerned heritage.

(k) in section 11 by replacing it with the following –

11(1) If any underwater cultural heritage is identified as a vessel or aircraft of another State the Competent Authority shall inform the flag State and States with a verifiable link to such underwater cultural heritage.

11(2) No activity shall be permitted or directed at such underwater cultural heritage satisfying subsection(1), located in the exclusive economic zone or on the continental shelf without the agreement of the flag State and, if applicable, the collaboration of the States which have assumed the obligation to coordinate protection measures under international law save and except where necessary to prevent immediate danger to the underwater cultural heritage concerned.

11(3) If the concerned underwater cultural heritage is located beyond the limits of national jurisdiction, no activity shall be directed at such underwater cultural heritage without the consent of the flag State save and except where necessary to prevent immediate danger to the underwater cultural heritage concerned.

(l) in section 12 by replacing it with the following –

12(1) An export certificate for underwater cultural heritage may be issued to a person by the Competent Authority if the underwater cultural heritage concerned –

- a) is not of national importance; and
- b) is not inscribed in the inventory of underwater cultural heritage; and
- c) has been recovered in compliance with the law.

12(2) A temporary export certificate may be granted if –

- (a) the export occurs for reasons of research, conservation, exhibition or similar reasons; and
- (b) if a return of the objects is guaranteed within four years.

12(3) No person shall export underwater cultural heritage without an export certificate in the form attached in the Annex.

12(4) Any person, wishing to apply for an export certificate shall do so by using the form annexed to this Act.

12(5) The export certificate is non-transferable and shall be used as indicated in the Annex. A copy of this certificate shall accompany any exported underwater cultural heritage.

12(6) The Competent Authority shall verify the provenance of any underwater cultural heritage acquired and shall not acquire any unlawfully recovered or unlawfully imported underwater cultural heritage.

(m) in section 13 by replacing it with the following –

13(1) The Competent Authority shall notify the Director-General and the Secretary- General of the International Seabed Authority of discoveries of or intended activities directed at underwater cultural heritage located beyond the limits of national jurisdiction.

13(2) In case of discoveries of or intended activities directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf of another State that State shall be informed by the Competent Authority.

(n) in section 14 by replacing it with the following –

14(1) Any declaration or invitation for consultation from other States and/or the Director-General regarding underwater cultural heritage shall be lodged with the Competent Authority.

14(2) Where the Competent Authority determines that Trinidad and Tobago has a verifiable link with certain underwater cultural heritage it shall declare the interest of Trinidad and Tobago, where said underwater cultural heritage is located in –

(a) the exclusive economic zone or on the continental shelf of another State to that State, if that State is a State Party to the Convention; or

(b) the Area, to the Director-General and any State who coordinates, controls, authorizes or undertakes activities directed at said underwater cultural heritage.

(o) Including the following sections –

15(1) In case of discoveries of or intended activities directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf of Trinidad and Tobago, the Competent Authority shall –

a) assume the responsibilities of “Coordinating State” and consult all States Parties to the Convention, which have declared their interest in said underwater cultural heritage, if this declaration is based on a verifiable link, especially a cultural, historical or archaeological link; or

b) declare, provided the Minister so directs, that Trinidad and Tobago does not wish to act as Coordinating State.

15(2) Where the relevant underwater cultural heritage is located in the Area and the Competent Authority has declared the interest of Trinidad and Tobago to be consulted, subsequent to the receipt of an invitation by the Director–General, the Competent Authority shall –

(a) suggest methods to protect the underwater cultural heritage;

(b) suggest which State should be appointed as Coordinating State; and

(c) conduct and coordinate consultations as Coordinating State if Trinidad and Tobago is so appointed.

16(1) If Trinidad and Tobago acts as Coordinating State according to the Convention the Competent Authority shall implement the measures of protection for the underwater cultural heritage which

have been agreed in consultation with all other States consulted and issue all necessary permits for such measures in conformity with the Rules, unless it has been agreed that another State Party shall do so.

16(2) In coordinating or authorizing activities and in implementing measures the Competent Authority shall act on behalf of all concerned States and for the benefit of humanity.

16(3) Particular regard shall be paid to the preferential rights of States with a cultural, historical or archaeological link to the underwater cultural heritage concerned.

17(1) The Competent Authority may, upon approval by the Minister, when requested by another State or States, assist the other State or States in taking measures to prevent immediate danger to underwater cultural heritage.

17(2) The Competent Authority shall, as far as practicable and, provided it is not contrary to national interests, when requested by another State or States, take all necessary measures to assist the other State or States in taking measures preventing immediate danger to underwater cultural heritage.

18(1) Any person or corporation, intending to undertake an activity in an area that contains underwater cultural heritage; or where there is a reasonable expectation that an area may contain underwater cultural heritage shall notify the Competent Authority of its intended activity at least one month prior to the commencement of that activity.

18(2) Impact assessments shall be conducted to ascertain the effect proposed activities pursuant to subsection (1) may have on underwater cultural heritage.

18(3) The Competent Authority may prohibit any activity if it may endanger or damage underwater cultural heritage.

19(1) Underwater cultural heritage is vested in the State, provided there is no existing ownership immediately prior to its discovery.

19(2) Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or the law of finds.

20(1) The Competent Authority may decide upon the public utility of an acquisition by the State of underwater cultural heritage, and may negotiate acquisition for the State.

20(2) If negotiations are not successful, the Competent Authority may, upon approval by the Minister, declare compulsory transfer of ownership against indemnification in the amount of the value of the object to its owner. The compulsory transfer shall be published in the *Trinidad and Tobago Gazette*, at which time, the concerned objects will vest immediately in the State.

20(3) If no agreement is reached about the amount of indemnification or if there is an objection to the declaration of compulsory transfer of ownership, proceedings may be brought to the Magisterial Court in the nearest district to where the objects were retrieved.

20(4) No person shall dispose of or acquire an object while it is under consideration for public acquisition or when compulsory transfer has been declared.

21(1) Underwater cultural heritage is subject to seizure if it was –

(a) recovered without a valid licence;

(b) stolen or illicitly imported, exported or the transfer of ownership was illegal.

21(2) Seized underwater cultural heritage shall be immediately recorded, protected and stabilized, as far as needed and practicable.

21(3) If the seized underwater cultural heritage was recovered from a site outside of Trinidad and Tobago waters, the Competent

Authority 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 this seizure.

22(1) Any underwater cultural heritage, which has been brought into Trinidad and Tobago –

- (a) without an export certificate pursuant to the regulations of the State of origin; or
- (b) stolen from a public institution or museum, in whose register it had been inscribed; or
- (c) lost by the owner;
- (d) illegally excavated or legally excavated but unlawfully retained; or
- (e) declared inalienable by the national authorities of the State of origin;

shall be returned. All expenses incident to the return and delivery of the underwater cultural heritage shall be borne by the requesting State and said State shall furnish the evidence necessary to establish its claim.

22(2) The Competent Authority shall inform the concerned State of underwater cultural heritage satisfying subsection (1) as soon as is reasonably practicable to do so.

22(3) The claim for return shall be brought through diplomatic offices to the attention of the Minister within a period of five years from the moment when the requesting State learns of the location of the underwater cultural heritage and the identity of its possessor, and in any case within a period of one hundred years from the time of the theft or of the export.

23(1) The Competent Authority shall have the right of access to any private or public property, aircraft or vessel, with the exception of property in the use of the military, and may conduct any inspection,

where reasonably necessary, regarding an object which appears to be underwater cultural heritage. Such inspection may only be undertaken after procurement of a judicial warrant from any Magisterial Court in accordance with section 41 of the Summary Courts Act.

23(2) The Competent Authority may remove or seize any such object for further inspection.

24(1) The entry into Trinidad and Tobago, the dealing in, or the possession of underwater cultural heritage unlawfully exported and/or recovered from another State or recovered in a manner not in conformity with this Act is prohibited.

24(2) The use of areas under the jurisdiction and control of Trinidad and Tobago, including maritime ports, artificial islands, installations and structures, in support of any illegal or damaging activity directed at underwater cultural heritage is prohibited.

25(1) A person or corporation, commits an offence if they/it –

- (a) undertake any research, activity or recovery directed at underwater cultural heritage, without a valid licence; or
- (b) disrupts licenced activities; or
- (c) fails to report discovery to the Competent Authority and the Receiver; or
- (d) damage or destroy underwater cultural heritage; or
- (e) export any underwater cultural heritage without a valid export certificate; or
- (f) alienate underwater cultural heritage, which is under consideration for public acquisition or has been publicly acquired;

and is liable to a fine of one hundred thousand dollars and to imprisonment for five years.

25(2) A person or corporation, who by hiding, falsifying or refusing factual information or by violent action steals, damages, destroys, exports or unlawfully recovers underwater cultural heritage or opposes any actions of the Competent Authority in an unlawful manner is guilty of an offence and is liable to a fine of up to one hundred thousand dollars and to imprisonment for five years.

26. Proceedings for an offence under this Act may be taken and the offence may be treated as having been committed in the Magisterial District located nearest to the Trinidad and Tobago waters in which the offence was committed.

Annex inserted. 4. The Act is amended by inserting the following Annex –

ANNEX I
EXPORT CERTIFICATE OF CULTURAL OBJECTS

Schedule 1
inserted.

Act is amended by inserting the following Schedule –

FIRST SCHEDULE
**2001 CONVENTION ON THE PROTECTION OF THE UNDERWATER
CULTURAL HERITAGE**

Passed in the House of Representatives this ____ day of _____, 2019.

Clerk of the House

Passed in the Senate this ____ day of _____, 2019.

Clerk of the Senate (Ag.)

Senate amendments were agreed to by the House of Representatives this ____ day of _____, 2019.

Clerk of the House

PROTECTION OF WRECKS ACT
CHAPTER 37:04

Act
13 of 1994
Amended by
___ of 2019

CHAPTER 37:04

PROTECTION OF WRECKS ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.

**PART I
PRELIMINARY**

2. Interpretation.
3. Convention to have force of law—Schedule.

**PART II
RESTRICTED AND PROHIBITED AREAS**

4. Protection of sites of underwater cultural heritage in Trinidad and Tobago waters.
5. Prohibition on approaching dangerous underwater cultural heritage.
6. Orders subject to negative resolution.

**PART III
REGULATION OF UNDERWATER CULTURAL HERITAGE**

7. Implementation of Convention under Minister's supervision.
8. Responsibilities of Competent Authority.
9. Report of Discoveries and intended Activities.
10. Licences.
11. Collaboration with other States.
12. Export Certificate.
13. Information and Notification to other States.
14. Receipt of Information and Declaration of Interest.
15. Consultation and Coordination.
16. Coordination of Measures.
17. Immediate Danger.
18. Activities incidentally affecting underwater cultural heritage.
19. Ownership of underwater cultural heritage.
20. Public Acquisition.

**PART IV
COMPLIANCE AND ENFORCEMENT**

21. Seizure and Disposition of Underwater Cultural Heritage.
22. Return of Illegally Trafficked Underwater Cultural Heritage.
23. Access to Premises.
24. Prohibition of Use and Entry into State Territory, Dealing, Possession.
25. Offences and Penalties.
26. Place of Proceedings.

ANNEX 1 EXPORT CERTIFICATE FOR CULTURAL OBJECTS

FIRST SCHEDULE

CHAPTER 37:04

PROTECTION OF WRECKS ACT

13 of 1994.

An Act to secure the protection of underwater cultural heritage through the incorporation of the 2001 Convention on the Protection of the Underwater Cultural Heritage.

Commencement.

[22ND AUGUST 1994]

Short Title.

1. This Act may be cited as the Protection of Wrecks Act.

PART I

PRELIMINARY

Interpretation.

2. In this Act –

“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;

“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;

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

“Competent Authority” means the Maritime Division of the Ministry of Works and Transport;

“continental shelf” means the seabed and subsoil of the submarine areas that extend beyond Trinidad and Tobago's territorial sea throughout the natural prolongation of Trinidad and Tobago's land territory to the outer edge of the continental margin as set out in the Continental Shelf Act;

Ch. 1:52.

“Convention” means UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage including the Rules;

“Coordinating State” means the State with the responsibility of facilitating consultations, pursuant to the Convention, between the State in whose exclusive economic zone or continental shelf underwater cultural heritage is found and other States that have declared interest in the underwater cultural heritage based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned;

“Director-General” means the Director-General of UNESCO;

Ch. 51:06. “exclusive economic zone” means the exclusive economic zone as defined by the Archipelagic Waters and Exclusive Economic Zone Act;

“export” means to take or cause to be taken out of Trinidad and Tobago;

“licence” means a licence granted by the Competent Authority under section 10;

“Minister” means the Minister to whom the responsibility for shipping is assigned;

Ch. 50:10. “Receiver” means the Principal Receiver of Wreck under section 320 of the Shipping Act;

“Rules” means the Rules concerning activities directed at underwater cultural heritage, as referred to in Article 33 of the Convention;

“States Parties” means States which have consented to be bound by the Convention and for which the Convention is in force;

“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;

Ch. 1:51. “Trinidad and Tobago waters” includes the internal waters and the territorial sea as defined in the Territorial Sea Act, and the archipelagic waters as defined in the Archipelagic Waters and Exclusive Economic Zone Act;

Ch. 51:06.

“underwater cultural heritage” means objects and sites, together with their context, having paleontological or scientific significance and 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 50 years such as –

(a) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;

(b) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and

(c) objects of prehistoric character;

but excluding:

(i) pipelines and cables placed on the seabed;

(ii) installations other than pipelines and cables, placed on the seabed which are still in use;

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

Treaty to have force of law—
Schedule.

3. (1) Subject to this Act, the Convention, the text of which is set out in the First Schedule, shall have the force of law in Trinidad and Tobago.

(2) This Act applies to –

(a) Trinidad and Tobago waters, including the seabed and the subsoil thereof;

(b) vessels flying the flag of Trinidad and Tobago; and

(c) nationals of Trinidad and Tobago wherever located.

PART II RESTRICTED AND PROHIBITED AREAS

Protection of sites.

4. (1) If the Minister is satisfied with respect to any site in Trinidad and Tobago waters that—

(a) it is, or may prove to be, the site of underwater cultural heritage; and

(b) on account of the cultural, historical or archaeological character of the underwater cultural heritage which may be lying on the sea bed, the site ought to be protected from unauthorised interference, the Minister may by Order designate an area around the site as a restricted area.

(2) An Order under this section shall –

(a) identify where the underwater cultural heritage is located;

(b) establish the parameters of the restricted area; and

(c) the distance specified for the purposes of paragraph (b) shall be such distance as is appropriate to ensure protection for the underwater cultural heritage.

(3) Subject to section 9(2), a person commits an offence if, in a restricted area, he does any of the following things otherwise than under the authority of a licence –

(a) tampers with, damages or removes any part of underwater cultural heritage;

or

(b) carries out diving or salvage operations directed to the exploration of any underwater cultural heritage or to removing said underwater cultural heritage from the sea bed, or uses equipment constructed or adapted for any purpose of diving or salvage operations; or

(c) deposits, so as to fall and lie abandoned on the sea bed, anything which, if it were to fall on the site of the underwater cultural heritage, whether it so falls or not, would wholly or partly obliterate the site or obstruct access to it, or damage any part of the underwater cultural heritage, and also commits an offence if he causes or permits any of those things to be done by others in a restricted area, otherwise than under the authority of such a licence.

(4) Before making an Order under this section, the Minister shall consult other States that have declared interest in the underwater cultural heritage based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned, archaeologists, divers, the public at large and all other persons as he considers appropriate having regard to the purposes of the Order.

(5) The consultation referred to in subsection (4) may be dispensed with if the Minister is satisfied that the case is one in which an Order should be made as a matter of immediate urgency.

Prohibition on approaching dangerous sites.

5. (1) If the Minister is satisfied with respect to underwater cultural heritage in Trinidad and Tobago waters that—

(a) because of anything contained in it, the said underwater cultural heritage is in a condition which makes it a potential danger to life or property; and

(b) on that account it ought to be protected from unauthorised interference, he may by Order designate an area around the underwater cultural heritage as a prohibited area.

(2) An Order under this section shall –

(a) identify where the underwater cultural heritage is located;

(b) establish the parameters of the prohibited area; and

(c) the distance specified for the purposes of paragraph (b) shall be such distance as is appropriate to ensure that unauthorised persons are kept away from the underwater cultural heritage.

(3) Subject to section 9(2), a person commits an offence if, without authority in writing granted by the Minister, he enters a prohibited area, whether on the surface or underwater.

(4) Before making an Order under this section, the Minister shall consult other States that have declared interest in the underwater cultural heritage based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned, archaeologists, divers, the public at large and all other persons as he considers appropriate having regard to the purposes of the Order.

(5) The consultation referred to in subsection (4) may be dispensed with if the Minister is satisfied that the case is one in which an Order should be made as a matter of immediate urgency.

6. An Order under section 4 or 5 shall be subject to a negative resolution of Parliament.

PART III REGULATION OF UNDERWATER CULTURAL HERITAGE

Minister's
Supervision.

7. The Competent Authority shall operate under the direct supervision of the Minister.

Responsibilities
of Competent
Authority.

8. (1) The Competent Authority shall have primary responsibility to –

(a) ensure the effective control, protection, conservation and management of underwater cultural heritage and issue licences in that regard;

(b) encourage and foster research, public awareness, appreciation and education in underwater cultural heritage and foster the establishment of museums.

(2) The Competent Authority shall establish and maintain an inventory of underwater cultural heritage together with –

(a) a list of underwater cultural heritage whose export would constitute an appreciable impoverishment of the national underwater cultural heritage;

(b) a list of underwater cultural heritage, that is located beyond the limits of national jurisdiction if that underwater cultural heritage has a verifiable link with Trinidad and Tobago.

(3) The Competent Authority shall ensure the inventory is regularly updated and may grant access to the public provided said access does not endanger the protection of the underwater cultural heritage concerned.

(4) The Competent Authority shall act as the Competent Authority pursuant to Article 22 of the Convention. The Director-General shall be notified of the name and address of the Competent Authority.

(5) The Competent Authority may conduct any necessary research on underwater cultural heritage.

(6) The Competent Authority may declare as underwater cultural heritage objects and sites, together with their context, having a paleontological or scientific significance and/or any trace of human existence of a cultural, historical or archaeological character, which have been partially or totally underwater, periodically or continuously, for at least 50 years.

(7) The Competent Authority may set conditions ensuring the return of the objects and the information or research acquired regarding objects exported pursuant to section 12(2).

Report of Discoveries and intended Activities.

9. (1) No person shall search for, explore, investigate, interfere with, displace or remove underwater cultural heritage, without a licence issued by the Competent Authority.

(2) Any person, who discovers underwater cultural heritage should leave it undisturbed, unless disturbance or recovery is authorized by the Competent Authority or if it –

(a) is under actual and immediate danger of serious damage or destruction; or

(b) poses an immediate danger to human life.

(3) Any person, who displaces underwater cultural heritage shall declare this to the Competent Authority and shall deposit the objects with the Competent Authority.

(4) Any person, who discovers underwater cultural heritage shall within one month of discovery report this to Competent Authority and the Receiver.

(5) Any person who is aware of any activity by any unauthorised person that poses an actual and immediate danger of serious damage or destruction to underwater cultural heritage shall report that activity to the Competent Authority.

(6) Any person wishing to apply for permission to undertake activity directed at underwater cultural heritage, must submit an application to the Competent Authority at least six months prior to the commencement of the intended activity. In case of immediate danger of destruction or damage to such underwater cultural heritage a shorter application time may be admitted. The application must be submitted irrespective of whether the underwater cultural heritage is situated within, or beyond, national jurisdiction.

(7) Nationals and the masters of vessels flying the flag of Trinidad and Tobago shall report any discovery or intended activity directed at underwater cultural heritage, even if located beyond the limits of national jurisdiction, to the Competent Authority and the Receiver.

(8) No person shall engage in any activity directed at underwater cultural heritage that is not in accordance with the Rules.

(9) Warships, Government ships and military aircraft, operated for non-commercial purposes, undertaking their normal mode of operations, and not engaged in activities directed at underwater cultural heritage are not obliged to report discoveries to the Competent Authority and the Receiver. They shall, however, make reports so far as is reasonable and practicable.

(10) In case of discoveries or activities concerning underwater cultural heritage located in the exclusive economic zone or on the continental shelf of another State, nationals and vessels flying the flag of Trinidad and Tobago shall report to the Competent Authority, the Receiver and the authorities of the concerned State.

Licences.

10. (1) A licence for an activity directed at underwater cultural heritage shall only be granted by the Competent Authority unless the Minister prescribes otherwise.

(2) The licence shall be in writing and shall only be granted where –

(a) the applicant establishes a legitimate reason for the licence and is competent, and properly equipped, to carry out operations in a manner appropriate to the

cultural, historical or archaeological importance of the underwater cultural heritage;

(b) the concerned activity significantly contributes to the protection of, enhancement or knowledge about, the concerned underwater cultural heritage;

(c) is in full conformity with this Act and the Rules; and

(d) a proper scientific study has been undertaken and, measures are in place to, if necessary, ensure maximum protection and conservation of recovered objects.

(3) Applications for licences shall be accompanied by a project design in accordance with the Rules.

(4) No licence shall be issued for any commercial exploitation of underwater cultural heritage.

(5) A licence –

(a) shall contain conditions to regulate access to the underwater cultural heritage and ensure activities are conducted in accordance with this Act and the Rules;

(b) shall be issued for a limited time period not exceeding one year and may be renewed after revision of the project by the Competent Authority;

(c) may be revoked in case of non-compliance with the conditions mentioned in the licence, the Rules, the project design deposited with the Competent Authority or in the interest of the proper protection of the concerned underwater cultural heritage;

(d) may contain any other condition deemed necessary by the Competent Authority.

(6) Licences are non-transferable. A public register of all licences issued shall be kept by the Competent Authority.

(7) Licenced activities shall only be executed –

(a) under the effective supervision of the person so authorized; and

(b) respecting proper safety measures and the protection of the environment.

(8) A licence for activities directed at underwater cultural heritage located beyond the limits of national jurisdiction may only be issued, if –

(a) Trinidad and Tobago is the Coordinating State; or

(b) an immediate danger threatens the concerned underwater cultural heritage.

Collaboration
with other States.

11. (1) If any underwater cultural heritage is identified as a vessel or aircraft of another State the Competent Authority shall inform the flag State and States with a verifiable link to such underwater cultural heritage.

(2) No activity shall be permitted or directed at underwater cultural heritage, satisfying subsection (1), located in the exclusive economic zone or on the continental shelf without the agreement of the flag State and, if applicable, the collaboration of the States which have assumed the obligation to coordinate protection measures under international law save and except where necessary to prevent immediate danger to the underwater cultural heritage concerned.

(3) If the concerned underwater cultural heritage is located beyond the limits of national jurisdiction, no activity shall be directed at such underwater cultural heritage without the consent of the flag State save and except where necessary to prevent immediate danger to the underwater cultural heritage concerned.

Export
Certificate.

12. (1) An export certificate for underwater cultural heritage may be issued to a person by the Competent Authority if the underwater cultural heritage concerned –

(a) is not of national importance; and

(b) is not inscribed in the inventory of underwater cultural heritage; and

(c) has been recovered in compliance with the law.

(2) A temporary export certificate may be granted if –

(a) the export occurs for reasons of research, conservation, exhibition or similar reasons; and

(b) if a return of the objects is guaranteed within four years.

(3) No person shall export underwater cultural heritage without an export certificate in the form attached in the Annex.

(4) Any person, wishing to apply for an export certificate shall do so by using the form annexed to this Act.

(5) The export certificate is non-transferable and shall be used as indicated in the Annex. A copy of this certificate shall accompany any exported underwater cultural heritage.

(6) The Competent Authority shall verify the provenance of any underwater cultural heritage acquired and shall not acquire any unlawfully recovered or unlawfully imported underwater cultural heritage.

Information
and
Notification to
other States.

13. (1) The Competent Authority shall notify the Director-General and the Secretary-General of the International Seabed Authority of discoveries of or intended activities directed at underwater cultural heritage located beyond the limits of national jurisdiction.

(2) In case of discoveries of or intended activities directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf of another State that State shall be informed by the Competent Authority.

Receipt of
Information
and Declaration
of Interest.

14. (1) Any declaration or invitation for consultation from other States and/or the Director-General regarding underwater cultural heritage shall be lodged with the Competent Authority.

(2) Where the Competent Authority determines that Trinidad and Tobago has a verifiable link with certain underwater cultural heritage it shall declare the interest of Trinidad and Tobago, where said underwater cultural heritage is located in –

(a) the exclusive economic zone or on the continental shelf of another State to that State, if that State is a State Party to the Convention; or

(b) the Area, to the Director-General and any State who coordinates, controls, authorizes or undertakes activities directed at said underwater cultural heritage.

Consultation
and
Coordination.

15. (1) In case of discoveries of or intended activities directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf of Trinidad and Tobago, the Competent Authority shall –

(a) assume the responsibilities of “Coordinating State” and consult all States Parties to the Convention, which have declared their interest in said underwater

cultural heritage, if this declaration is based on a verifiable link, especially a cultural, historical or archaeological link; or

(b) declare, provided the Minister so directs, that Trinidad and Tobago does not wish to act as Coordinating State.

(2) Where the relevant underwater cultural heritage is located in the Area and the Competent Authority has declared the interest of Trinidad and Tobago to be consulted, subsequent to the receipt of an invitation by the Director-General, the Competent Authority shall –

(a) suggest methods to protect the underwater cultural heritage;

(b) suggest which State should be appointed as Coordinating State; and

(c) conduct and coordinate consultations as Coordinating State if Trinidad and Tobago is so appointed.

Coordination of Measures.

16. (1) If Trinidad and Tobago acts as Coordinating State according to the Convention the Competent Authority shall implement the measures of protection for the underwater cultural heritage which have been agreed in consultation with all other States consulted and issue all necessary permits for such measures in conformity with the Rules, unless it has been agreed that another State Party shall do so.

(2) In coordinating or authorizing activities and in implementing measures the Competent Authority shall act on behalf of all concerned States and for the benefit of humanity.

(3) Particular regard shall be paid to the preferential rights of States with a cultural, historical or archaeological link to the underwater cultural heritage concerned.

Immediate Danger.

17. (1) The Competent Authority shall take all practicable measures, and/or issue licences, if necessary, prior to any consultations, to prevent immediate danger to any underwater cultural heritage.

(2) The Competent Authority may, upon approval by the Minister, when requested by another State or States, assist the other State or States in taking measures to prevent immediate danger to underwater cultural heritage.

Incidental
Activities.

18. (1) Any person or corporation, intending to undertake an activity in an area that contains underwater cultural heritage; or where there is a reasonable expectation that an area may contain underwater cultural heritage shall notify the Competent Authority of its intended activity at least one month prior to the commencement of that activity.

(2) Impact assessments shall be conducted to ascertain the effect proposed activities under subsection (1) may have on underwater cultural heritage.

(3) The Competent Authority may prohibit any activity if it may endanger or damage underwater cultural heritage.

Ownership.

19. (1) Underwater cultural heritage is vested in the State, provided there is no existing ownership immediately prior to its discovery.

(2) Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or the law of finds.

Public
acquisition.

20. (1) The Competent Authority may decide upon the public utility of an acquisition by the State of underwater cultural heritage, and may negotiate acquisition of said underwater cultural heritage for the State.

(2) If negotiations are not successful, the Competent Authority may, upon approval by the Minister, declare compulsory transfer of ownership against indemnification in the amount of the value of the object to its owner. The compulsory transfer shall be published in the *Trinidad and Tobago Gazette*, at which time, the concerned objects will vest immediately in the State.

(3) If no agreement is reached about the amount of indemnification or if there is an objection to the declaration of compulsory transfer of ownership, proceedings may be brought to the Magisterial Court in the nearest district to where the objects were retrieved.

(4) No person shall dispose of or acquire an object while it is under consideration for public acquisition or when compulsory transfer has been declared.

PART IV COMPLIANCE AND ENFORCEMENT

Seizure.

21. (1) Underwater cultural heritage is subject to seizure if it was—

(a) recovered without a valid licence; or

(b) stolen or illicitly imported, exported or the transfer of ownership was illegal.

(2) Seized underwater cultural heritage shall be immediately recorded, protected and stabilized, as far as needed and practicable.

(3) If the seized underwater cultural heritage was recovered from a site outside of Trinidad and Tobago waters, the Competent Authority 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 this seizure.

Return of
Illegally
Trafficked
Underwater
Cultural
Heritage.

22. (1) Any underwater cultural heritage, which has been brought into Trinidad and Tobago –

(a) without an export certificate pursuant to the regulations of the State of origin;
or

(b) stolen from a public institution or museum, in whose register it had been inscribed; or

(c) lost by the owner; or

(d) illegally excavated or legally excavated but unlawfully retained; or

(e) declared inalienable by the national authorities of the State of origin;

shall be returned. All expenses incident to the return and delivery of the underwater cultural heritage shall be borne by the requesting State and said State shall furnish the evidence necessary to establish its claim.

(2) The Competent Authority shall inform the concerned State of underwater cultural heritage satisfying subsection (1) as soon as is reasonably practicable to do so.

(3) The claim for return shall be brought through diplomatic offices to the attention of the Minister within a period of five years from the moment when the requesting State learns of the location of the underwater cultural heritage and the identity of its possessor, and in any case within a period of one hundred years from the time of the theft or of the export.

- Access. 23. (1) The Competent Authority shall have the right of access to any private or public property, aircraft or vessel, with the exception of property in the use of the military, and may conduct any inspection, where reasonably necessary, regarding an object which appears to be underwater cultural heritage. Such inspection may only be undertaken after procurement of a judicial warrant from any Magisterial Court in accordance with section 41 of the Summary Courts Act.
- Ch. 4:20. (2) The Competent Authority may remove or seize any such object for further inspection.
- Prohibition of activities. 24. (1) The entry into Trinidad and Tobago, the dealing in, or the possession of underwater cultural heritage unlawfully exported and/or recovered from another State or recovered in a manner not in conformity with this Act is prohibited.
- (2) The use of areas under the jurisdiction and control of Trinidad and Tobago, including maritime ports, artificial islands, installations and structures, in support of any illegal or damaging activity directed at underwater cultural heritage is prohibited.
- Offences and Penalties. 25. (1) A person or corporation, commits an offence if they/it –
- (a) undertake any research, activity or recovery directed at underwater cultural heritage, without a valid licence; or
 - (b) disrupts licenced activities; or
 - (c) fails to report discovery to the Competent Authority and the Receiver; or
 - (d) damage or destroy underwater cultural heritage; or
 - (e) export any underwater cultural heritage without a valid export certificate; or
 - (f) alienate underwater cultural heritage, which is under consideration for public acquisition or has been publicly acquired;
- and is liable to a fine of one hundred thousand dollars and to imprisonment for five years.
- (2) A person or corporation, who by hiding, falsifying or refusing factual information or by violent action steals, damages, destroys, exports or unlawfully recovers underwater cultural heritage or opposes any actions of the Competent Authority in


an unlawful manner is guilty of an offence and is liable to a fine of up to one hundred thousand dollars and to imprisonment for five years.

Place of
proceedings.

26. Proceedings for an offence under this Act may be taken and the offence may be treated as having been committed in the Magisterial District located nearest to the Trinidad and Tobago waters in which the offence was committed.

ANNEX 1 EXPORT CERTIFICATE FOR CULTURAL OBJECTS


This document is issued in 5 copies, each heading must be completed, except headings 2, 12 and 18 if they do not apply

Application	1	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
		3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From: ___ / ___ / ___ Country of destination :
		5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
		7. Owner of the cultural object (name and address)	
		8. Photograph of the cultural object : 9 x 12 centimetres minimum	
			
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)			

14. Material(s) and Technique(s)	
15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :	
16. Legal status and use of the cultural object Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) : Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :	
17. Attached documents /special identification methods <input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) : <input type="checkbox"/> List <input type="checkbox"/> Catalogue <input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents	
18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)	
19. Application I hereby apply for an export authorization for the cultural object described above and declare that the information in this application and the supporting documents is true. Place and date : Signature : (Position and name of signatory)	20. Signature and stamp of issuing authority Place and date :

EXPORT CERTIFICATE FOR CULTURAL OBJECTS COPY 2

Each heading must be completed, except headings 2, 12 and 18 if they do not apply


Applicant's copy	2	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
		3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From: ___ / ___ / ___ Country of destination :
		5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
		7. Owner of the cultural object (name and address)	
		8. Photograph of the cultural object: 9 x 12 centimetres minimum	
			

(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)	
9. Dimensions and net weight of the cultural object (possibly with its stand)	10. Inventory number or other identification <input type="checkbox"/> Inventory : No. <input type="checkbox"/> No existing inventory <input type="checkbox"/> Other classification : No. <input type="checkbox"/> No other existing classification
11. Description of the cultural object (a) Type : (e) Geographical origin : (b) Author /co-author: (f) Dating : (c) Title or, failing that, subject matter: (g) Other information for identification purposes: (d) Scientific name (if there is one):	
12. Number of cultural objects in the collection Presented : Not presented :	13. Copy, attribution, period, studio and/or style
14. Material(s) and Technique(s)	
15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :	
16. Legal status and use of the cultural object Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) : Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :	
17. Attached documents /special identification methods <input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) : <input type="checkbox"/> List <input type="checkbox"/> Catalogue <input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents	
18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)	
19. Endorsement by Customs Export Office	20. Signature and stamp of issuing authority

Signature and stamp :	
Customs office :	
Country :	
Export document No. :	
Dated:	Place and date :

EXPORT CERTIFICATE FOR CULTURAL OBJECTS COPY 3

Each heading must be completed, except headings 2, 12 and 18 if they do not apply

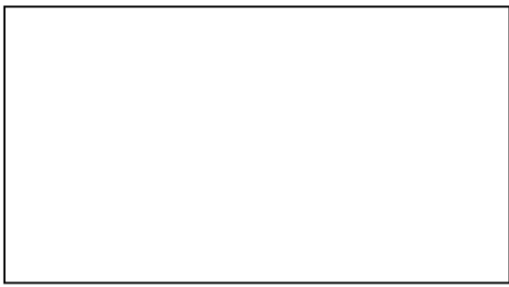
3 issuing authority's copy	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From: ___ / ___ / ___ Country of destination :
	5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object: 9 x 12 centimetres minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).		

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter: (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	

18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)	
19. Endorsement by Customs Export Office Signature and stamp Customs office : Country : Export document No.: Dated:	20. Signature and stamp of issuing authority Place and date :
21. Customs exit office Stamp and date :	

EXPORT CERTIFICATE FOR CULTURAL OBJECTS COPY 4

Each heading must be completed, except headings 2, 12 and 18 if they do not apply


4 Copy for Customs authorities at exportation	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
	3. Issuing authority (name and address)	4. Export authorization No. Duration: _____ From : ___ / ___ / ___ Country of destination :
	5. Initial consignee (and subsequent consignee(s) if known) (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimetres minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).		

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (to be specified) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	

18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)	
19. Endorsement by Customs Export Office Signature and stamp Customs office : Country : Export document No. : Dated:	20. Signature and stamp of issuing authority Place and date :
21. Customs exit office Stamp and date :	

EXPORT CERTIFICATE FOR CULTURAL OBJECTS COPY 5

Each heading must be completed, except for headings 2, 12 and 18 if they do not apply

5 Copy for authorities at importation	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___ Country of destination :
	5. Initial consignee (and subsequent consignee(s) if known) (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimetres minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).		

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (to be specified) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	

18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)	
19. Endorsement by Customs Export Office Signature and stamp Customs office : Country : Export document No. : Dated:	20. Signature and stamp of issuing authority Place and date :
21. Customs exit office Stamp and date :	

2001 CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE

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 under water, periodically or continuously, for at least 100 years such as:

(i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;

(ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and

(iii) objects of prehistoric character.

(b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage.

(c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.

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 non-destructive 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.

