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UNDERWATER CULTURAL HERITAGE ACT

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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UNDERWATER CULTURAL HERITAGE ACT

EXPLANATORY NOTE

INTRODUCTION

All around the world there are numerous submerged archaeological and/or historical objects in the sea.¹ Unlike land based objects of archeological or historical characters, the need for the protection and preservation of underwater archaeological or historical objects for all mankind and future generations by an international legal instrument was not recognized by the international community until recently about two decades ago.

In 2001 when the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Convention on the Protection of Underwater Cultural Heritage (2001 Convention), its key purpose was to protect and preserve underwater cultural heritage from pillage and destruction caused by man-made activities either directly or indirectly. Underwater cultural heritage covers 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.² The 2001 Convention also goes further to describe an extensive list of all traces of human existence it applies to and what is not considered underwater cultural heritage like pipelines, cables and other installations placed on the seabed.³

Now turning to the subject of this explanatory note, the draft of the proposed legislation titled Underwater Cultural Heritage Act (UCH Act) is taken from the 2013 Underwater Cultural Heritage Model Act of UNESCO created specifically for the implementation of the 2001 Convention by

¹ For example, the underwater kingdom of Cleopatra which consists of old artifacts and statues and lies just offshore of Alexandria, Egypt; Lost Kingdom of Cleopatra – Legendary Lost City of Heracleion < <http://www.ancientpages.com/2014/04/01/lost-kingdom-cleopatra-legendary-lost-city-heracleion/>> accessed 10 April 2019. Another example is the wreck of the popular RMS Titanic which lies 350 miles off the coast of Newfoundland, Canada; Titanic Universe, The Titanic – RMS Titanic Ship Facts and & Information < <http://www.titanicuniverse.com/titanic-museum-pigeon-forge-tn/2529>> accessed 12 April 2019.

² Sub-paragraph (a) of Article 1, paragraph 1, of the UNESCO Convention on the Protection of Underwater Cultural Heritage.

³ Ibid, sub-paragraphs (b) and (c).

national legislation.⁴ The model act was modified to suit the drafting format and style of Papua New Guinea's national legislation.

The UCH Act is proposed to implement the 2001 Convention and specific articles of the United Nations Convention on the Law of the Sea 1981 (UNCLOS)⁵ which relate to underwater cultural heritage. Before the adoption of the 2001 Convention there was no specific international treaty on the protection of underwater cultural heritage. Despite this earlier on UNCLOS already recognized the need for the protection of underwater cultural heritage as per Article 149 and Article 303. Therefore, it is important to interpret and apply the 2001 Convention in a manner consistent with UNCLOS because UNCLOS amongst other things;

1. defines the high seas and the various maritime zones of a State's national waters;
2. contains regulations on sovereignty at sea;⁶
3. regulates the activities that are permitted and not permitted under international law in national waters and on the high seas; and
4. makes provision for the contiguous zone and the Area regarding the protection of objects of archaeological or historical character as a State's jurisdictional rights are limited in these two maritime zones.

This proposed legislation applies to both national and foreign underwater cultural heritage located within the national jurisdiction⁷ of Papua New Guinea ("PNG") and also applies to PNG nationals and vessels flying the State Flag wherever they may be beyond national jurisdiction.

This explanatory note elucidates why the proposed legislation should be adopted by Parliament and how PNG can implement the provisions of the 2001 Convention under the proposed

⁴ Model for a National Act on the Protection of Cultural Heritage < http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO_MODEL_UNDERWATER_ACT_2013.pdf> accessed 12 April 2019.

⁵ United Nations Convention on the Law of the Sea, Montego Bay, adopted on 10 December 1982; came into force on 16 November 1994

⁶ Underwater Cultural Heritage, Frequently Asked Questions on the 2001 Convention <www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/UNDERWATER/pdf/Infokit_en_Final.pdf> accessed as at 17 February 2019.

⁷ Covers the exclusive economic zone, continental shelf and the seabed and subsoil of all other maritime zones of PNG.

legislation. As PNG is not yet a party to the 2001 Convention, the explanatory note will discuss how PNG can become a party and the reasons for becoming a party.

This explanatory note is divided into four parts beginning with the background and key features of the 2001 Convention. The second part discusses the relevant articles on a State Party's rights and mandatory responsibilities under the 2001 Convention including the basis of PNG becoming a State Party to the 2001 Convention. The third part covers the proposed legislation, its structure, and drafting style. Finally, the fourth part of this explanatory note sets out how the proposed legislation intends to implement the provisions of the 2001 Convention. The explanatory note then winds-up by providing recommendations on certain points worth noting about the proposed legislation and the 2001 Convention, then concludes.

1. UNESCO CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE 2001 (2001 CONVENTION)

1.1 Background of the 2001 Convention

The concern for underwater cultural heritage by UNESCO dates as far back as 1956 when UNESCO included underwater sites in its Recommendation on International Principles Applicable to Archaeological Excavation however at that time there was no specific legal instrument on the high seas and the maritime zones to regulate activities in these various maritime boundaries.⁸

In 1994 the International Law Association in its plenary session in Buenos Aires adopted the draft Convention on the Protection of the Underwater Cultural Heritage and recognized UNESCO as the appropriate body to deal with it therefore transferred the draft to UNESCO.⁹

The General Assembly of the International Council of Monuments and Sites (ICOMOS) then in its meeting in Sofia, Bulgaria (5-9 October) in 1996 adopted the International Charter on the Protection and Management of the Underwater Cultural Heritage, of which the 2001 Convention adopted its principles from.¹⁰

⁸ The History of the 2001 Convention on the Protection of the Underwater Cultural Heritage <<https://unesdoc.unesco.org/ark:/48223/pf0000189450>> accessed 16 April 2019.

⁹ Ibid.

¹⁰ Ibid.

In 1997 UNESCO General Conference at its 29th session invited the Director General of UNESCO to call together a group of governmental experts.¹¹ The purpose of this group was to regulate via an international convention the protection of the underwater cultural heritage on the international level.¹² Between 1998 and 2001 several meetings of Governmental Experts on the Draft Convention on the Protection of the Underwater Cultural Heritage took place.¹³

On the 31st meeting session of the UNESCO in Paris the Convention on the Protection of Underwater Cultural Heritage was adopted on the November 2, 2001. On 2 January 2009, three months after the twentieth instrument was deposited as required by Article 27 (entry into force) of the 2001 Convention, the 2001 Convention came into force.¹⁴

1.2 Purpose and Principles of the 2001 Convention

The subject matter of the 2001 Convention i.e. “underwater cultural heritage” is defined under Article 1, paragraph 1 (a) as “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years 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”.

There are three main reasons for the adoption of the 2001 Convention, and they are as follows:¹⁵

1. to obtain comprehensive protection for underwater cultural heritage wherever it is located;
 2. to harmonize the protection of underwater cultural heritage with that of heritage on land;
- and

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Legal Instruments, Convention on the Protection of the Underwater Cultural Heritage. Paris, 2 November 2001 <<http://www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha>> accessed 10 April 2019.

¹⁵ Underwater Cultural Heritage, The Content, < <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/frequently-asked-questions/> > accessed 16 April 2019.

3. to provide archaeologists with guidelines on how to treat underwater cultural heritage.

The first purpose was to address jurisdictional issues regarding the different maritime zones and the high seas. The 2001 Convention in confronting this created a State cooperation system, apart from placing obligations on State Parties to regulate their national waters, nationals and vessels flying the State flag.

Cultural heritage on land has been given more attention for a longer period of time than that of underwater cultural heritage which has only been recently recognized. Therefore, the second purpose is to promote awareness of the existence and value of underwater cultural heritage, strengthen its protection and advance underwater archaeology with discoveries.

As for the third purpose, the Annex to the 2001 Convention answers this. Since underwater archaeology is a new and developing area the guidelines provided by the Annex is a necessity to assist in the preservation and protection of underwater cultural heritage.

In order for the 2001 Convention to achieve its purpose it has set principles in place which are covered by Article 2. But just to summarize, the main principles of the 2001 Convention are as follows:¹⁶

1. the obligation to preserve underwater cultural heritage;
2. *In situ* preservation as first option;
3. No commercial exploitation; and
4. Training and information sharing.¹⁷

1.3 Structure of the 2001 Convention

The 2001 Convention consists of the main text and the Annex of 36 Rules (“Annex”) concerning activities directed at underwater cultural heritage. The main text sets out basic principles for the protection of underwater cultural heritage and provides a detailed reporting and coordinating system in order to enable States to undertake such protection.¹⁸

¹⁶ Ibid.

¹⁷ Articles 19 and 21 of the 2001 Convention.

¹⁸ Underwater Cultural Heritage, Frequently Asked Questions on the 2001 Convention <www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/UNDERWATER/pdf/Infokit_en_Final.pdf> accessed 10 April 2019.

The Annex contains widely recognized and applied practical rules for the treatment and research of underwater cultural heritage.¹⁹ These rules contain regulations as to how a project is to be designed; guidelines regarding the competence and the qualifications required for persons undertaking activities; and methodologies on conservation and site management.²⁰ As per Article 33 of the 2001 Convention, the Annex forms an integral part of the 2001 Convention.

Therefore, with the above structure, the 2001 Convention in effect espouses the following:²¹

- a. it sets basic principles for the protection of underwater cultural heritage;
- b. it provides a detailed State cooperation system (especially on the high seas); and
- c. it provides widely recognized practical rules for the treatment and research of underwater cultural heritage.

Now that the background, purpose, principles and structure of the 2001 Convention has been discussed, this explanatory note will discuss next under part 2 the rights and responsibilities of a State Party under the 2001 Convention and the basis for becoming a State Party to the 2001 Convention next under the second part.

2. THE STATE'S RIGHTS AND RESPONSIBILITIES UNDER THE 2001 CONVENTION

To begin Article 1 and Article 2 of the 2001 Convention provides for definitions of terms used and sets out mandatory objectives and general principles for State Parties to abide by. Article 3 recognizes a State's rights, jurisdiction and duties under international law and UNCLOS pertaining to the 2001 Convention provisions. Article 4 then provides that the law of salvage does not apply to underwater cultural heritage except in accordance with Article 4.

2.1 Rights of a State Party under the 2001 Convention

Article 7, paragraph 1 gives the State Parties exclusive rights to regulate and authorize activities directed at underwater cultural heritage located within their internal waters, archipelagic waters

¹⁹ Ibid.

²⁰ Underwater Cultural Heritage, the Content, the Annex <<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/frequently-asked-questions/>> accessed 16 April 2019.

²¹ About the 2001 Convention on the protection of the underwater cultural heritage, <www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/> accessed 10 April 2019.

and territorial sea. As for those underwater cultural heritage located within the exclusive economic zones and or on the continental shelf, as per Article 10, paragraph 2 State Parties have the right to prohibit or authorize any activities directed at them and to ensure such a right is in line with international law including UNCLOS for the purpose of preventing interference of their sovereign rights or jurisdiction.

Member States to the 2001 Convention have various responsibilities, most of which are mandatory whilst others only become mandatory when the Member State takes certain actions in accordance with the provisions of the 2001 Convention.

2.2 Responsibilities of a State Party under the 2001 Convention

To begin, Article 5 requires the State to prevent or mitigate the effects of activities incidentally affecting underwater cultural heritage by using best practicable means. Regarding the State's responsibilities under its different national maritime zones, Articles 7 to 10 makes provisions for that. According to Article 7, paragraph 2 the State shall apply the Rules in the Annex of the 2001 Convention to activities directed at the underwater cultural heritage in its internal waters, archipelagic waters and territorial sea. In doing that the State is also to ensure this does not interfere with rules of international law and international agreements.

As for the contiguous zone Article 8 provides that it is compulsory to apply the Rules under the Annex to the 2001 Convention to the contiguous zone if the State chooses to regulate and authorize activities directed at the underwater cultural heritage in its contiguous zone. This is additional to the responsibilities that the State has under Articles 9 and 10 of the 2001 Convention regarding the exclusive economic zone and the continental zone and Article 303 of UNCLOS (archaeological or historical objects in the contiguous zone).

Now within the State's exclusive economic zone or on its continental shelf including the exclusive economic zone and continental shelf of another State, Article 9 places an obligation on the State to require its nationals and vessels flying its flag to report and notify the State (i.e. flag State) if they discover or intend to engage in activities directed at underwater cultural heritage in those zones. The other State whose exclusives economic zone or continental shelf is concerned shall also be informed according to Article 9.

Furthermore, paragraph 2 of Article 9 makes it mandatory for the State whose nationals and vessels have discovered the underwater cultural heritage to declare how it will transmit its reports on discoveries in the exclusive economic zone or continental shelf of another State Party. Paragraph 5 of Article 9 is significant in that it allows States which have a verifiable link to the concerned underwater cultural heritage located in or on another State's exclusive economic zone or continental shelf to declare its interest to be consulted on the handling and care of that underwater cultural heritage.

Article 10 goes beyond obligating the State Party to protect underwater cultural heritage in its exclusive economic zone and on the continental zone. Apart from regulating activities in its exclusive economic zone and on its continental shelf the State Party also has a duty to engage in the coordination of states to work together to ensure the effective protection of the underwater cultural heritage concerned, where another State Party has declared its interest to be consulted on the underwater cultural heritage as per paragraph 5 of Article 9.

As for the Area i.e. the and ocean floor and subsoil thereof, beyond the limits of national jurisdiction²², similar to Articles 9 and 10 the State Party has responsibilities of protecting, reporting and participating in the coordination of states to ensure the effective protection of the underwater cultural heritage concerned in accordance with Articles 11 and 12.

Article 11 paragraph 1 obligates State Parties to require their nationals and vessels flying the State flag to report to the State the discoveries or intended activities directed towards the underwater cultural heritage. Paragraph 2 of Article 11 then obligates the State Party to forward their report to the Director-General and Secretary of the International Seabed Authority.²³ If another State Party which has a verifiable link to the reported underwater cultural heritage declares its interest to be consulted on it, according to Article 12 the States concerned are required to take certain mandatory measures in coordinating the protection of the concerned underwater cultural heritage.

Generally, under international law warships, government ships and military aircrafts are exempted from the application of particular international rules because of sovereign immunity. However, under the 2001 Convention Article 13 places an obligation on State Parties to ensure that warships and other governmental vessels with military aircraft comply with Articles 9-12 as far as it is

²² Article 1, paragraph 1(1) of UNCLOS.

²³ International Seabed Authority as established under Part XI, Section 4 of UNCLOS.

reasonable and practicable and only to the extent that the State's adopted measures for them are appropriate and does not impair the operations or operational capabilities of warships and government ships with sovereign immunity.

Taking a step further in the protection of underwater cultural heritage, the 2001 Convention under Article 14 then obligates the States to prevent the entry and dealing of underwater cultural heritage into their territory where such entry or dealing was done contrary to the 2001 Convention. Article 15 going obliges the State to also take measures to prohibit activities directed at underwater cultural heritage in its territory, including maritime ports, artificial islands, and other installations and structures which are contrary to the 2001 Convention.

Now so as to cover any gaps under Article 9 and Article 11, Article 16 places an obligation on States to ensure that their nationals and vessels flying the State's flag do not engage in activities directed at underwater cultural heritage that is contrary to the 2001 Convention. Articles 17 and 18 then provides for sanctions and control measures State Parties are obligated to take in addressing the violation and breach of the 2001 Convention's provisions by offenders. Such measures include seizure of underwater cultural heritage which were obtained contrary to the 2001 Convention and their disposition after seizure.

Apart from implementing measures for the protection of underwater cultural heritage and providing sanctions for the violation of the 2001 Convention, Article 19 compels State Parties to cooperate in sharing information on discoveries, keeping proper records, protecting and managing underwater cultural heritage in line with the 2001 Convention. Article 20 adds on by obligating States to make public awareness on the value and significance of underwater cultural heritage and why they should be protected.

The above provisions of the 2001 Convention discussed are the obligations a State Party has under the 2001 Convention. Now that the rights and obligations of implementing the 2001 Convention have been discussed, the next and last point of discussion for this part of the paper is the basis for PNG to become a State Party to the 2001 Convention.

2.3 Basis for PNG to become a State Party to the 2001 Convention

PNG is a member State of UNESCO however is not a party to the 2001 Convention. To become a State Party to this convention PNG can sign an instrument of acceptance or approval and deposit it with the Director General of UNESCO.²⁴ The 2001 Convention will enter into force against the State three months after the date on which the State has deposited its instrument of acceptance or approval with the Director-General.²⁵

This means that once the 2001 Convention becomes effective, the State is bound to carry out its obligations under the 2001 Convention and also its rights under the 2001 Convention will become effective and recognized. The third sub-heading of the explanatory note will discuss a State Party's rights and obligations under the 2001 Convention. But for this sub-heading, the benefits of becoming a State Party to the 2001 Convention will be set out.

The following are the main benefits of becoming a party to the 2001 Convention;

1. The State's submerged cultural heritage (e.g. war relics, underwater caves, etc.) will be legally protected and preserved from pillage, looting and commercial exploitation;
2. The State can receive support from the Scientific and Technical Advisory Body of UNESCO to assist with its obligations under the 2001 Convention which will in turn benefit the State's own research and scientific teams/bodies via information sharing and experience gain;
3. The State will benefit from cooperation with other States;
4. State Sovereignty is highly regarded under the 2001 Convention therefore the State will only be expected to perform its obligations under the 2001 Convention according to its capabilities and capacity;
5. Caters for the preservation of the submerged cultural heritage, the result of which will benefit the public and future generations to come to appreciate the history and culture;
6. Also promotes sustainable development via tourism and regulated activities near the submerged cultural heritage sites; and
7. Promotes science research, provisions for training and underwater archeology.

Apart from the above, in accepting or approving the 2001 Convention the State would be taking the first step towards carrying out its duty under Article 149 (*Archaeological and historical objects*)

²⁴Article 26, paragraphs 1 and 3 of the 2001 Convention. As a member of UNESCO PNG does not need to accede but either accept or approve the 2001 Convention.

²⁵ Ibid, Article 27.

found in the Area) and Article 303 (*Archaeological and historical objects found at sea*) of UNCLOS of which PNG is a State Party to.

Now that that rights and responsibilities of a State Party under the 2001 Convention has been discussed with the basis for the State to become a party to the 2001 Convention, the next part will focus the main purpose of the explanatory note which is the proposed legislation of the UCH Act.

3. THE PROPOSED UNDERWATER CULTURAL HERITAGE ACT (UCH ACT) AND THE BASIS FOR BECOMING A PARTY TO THE 2001 CONVENTION

3.1 UCH Act and the Maritime Zones Act 2015; Protection of Underwater Cultural Heritage

During the colonial administration of Australia, the seabed and coast of PNG (particularly in the Bismarck Sea, Coral Sea and Solomon Sea) became a resting place for war aircrafts, warships, submarines and other vessels in the Second World War between Japan and the Allies.

These submerged war relics (for example Australia's flagship HMAS Canberra (I)) have attracted tourists from all over the world, particularly divers, however there are no specific national legislation in place to recognize their value, preserve and protect them from destruction, pillage and commercial exploitation.

In 2015 PNG adopted the Maritime Zones Act²⁶ ("MZA 2015") to regulate the State's maritime zones and in doing so the legislation also made provision for the protection of the marine environment and underwater cultural heritage.²⁷ The MZA 2015 is a relevant national legislation in recognizing the rights and jurisdiction of PNG in its maritime zones however a closer look at this legislation will show that it is more of a framework for further regulations to build on.

The UCH Act intends to go further than Part XIII of the MZA 2015 which provides for underwater cultural heritage. Part XIII makes provisions for further regulations to be made on regulating activities directed at underwater cultural heritage in PNG's national waters.²⁸

The UCH Act could be considered as the next step forward from the MZA 2015 regarding the protection of underwater cultural heritage as it sets out the measures for the protection of

²⁶ The Maritime Zones Act was adopted by the PNG Parliament in 2015 and came into force in 2017.

²⁷ Preamble of the Maritime Zones Act 2015.

²⁸ Section 49 (1) and Section 50 (3) (a) and (b) of the Maritime Zones Act 2015.

underwater cultural heritage, recognizes the competent national authority to enforce such measures and establishes penalty provisions for infringements. Furthermore, in line with the MZA 2015, the UCH Act will implement the provisions of the 2001 Convention and UNCLOS on the Protection of Underwater Cultural Heritage and historical or archeological objects.

The MZA 2015 acknowledged PNG as a party to the 2001 Convention²⁹ and inserted the 2001 Convention as Schedule 7 however according to UNESCO's record of State Parties³⁰ PNG has not deposited any instrument of ratification, acceptance or approval. The steps PNG can take to becoming a party to the 2001 Convention was discussed above under part 2.3 (basis for PNG to become a State Party to the 2001 Convention).

3.2 Structure of the UCH Act and the drafting style of PNG Act of Parliament

The structure of the UCH Act consists of ten parts (Parts I – X), under which are twenty-five sections (sections 1-25) and at the end three schedules (schedules 1-3). Schedule 1 is the full text of the 2001 Convention, schedule 2 is the rules concerning activities directed at underwater cultural heritage and schedule 3 contains five different versions of the export certificate for underwater cultural objects. Now regarding schedule 3 on the export certificate for underwater cultural heritage, the purpose of this document/s is to certify the exportation of underwater cultural heritage from the State where the circumstances permit under Section 10 (1) of the UCH Act. This is important because it avoids the unlawful trading of underwater cultural heritage whilst recognizing the lawful exportation of such underwater cultural heritage in compliance with the UCH Act.

Turning to the commencement provision of the UCH Act, for PNG acts of Parliament the commencement provision is usually provided before the interpretation provision. Depending on constitutional requirements the act can come into operation automatically on certification, on a specified date or on a date to be notified in the National Gazette.³¹ For the UCH Act the commencement provision provides that the proposed legislation will come into operation as per the latter, i.e. to be notified in the National Gazette.

²⁹ Section 50 (4) of the Maritime Zones Act 2015.

³⁰ Legal Instruments <<http://www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha>> accessed 9 April 2019.

³¹ Hudson Ramatlap, *Manual on Legislative Drafting* (University of Papua New Guinea, 2009), 23.

As noted in the introduction of this paper the UCH Act is taken from UNESCO's 2013 model act on the protection of underwater cultural heritage but was adjusted accordingly to follow the drafting style of PNG legislation. The body responsible for drafting legislation in PNG is the Office of the Legislative Counsel which is a statutory body established under the Legislative Drafting Service Act 1972. The drafting style used for the UCH Act follows those of this statutory body, practically from other enacted PNG legislation drafted by the Office of the Legislative Counsel.³²

Under this heading, the next two subheadings (3.3.1 and 3.3.2) will explain the peculiar drafting style or technique used in certain parts of the UCH Act.

3.2.1 Capitalized terms and terms in lowercase

Under the interpretation provision (section 2) of the UCH Act, some of the words defined are written in lower case while others have their first letters in capitals. The usage of the latter (capital) usually applies to proper nouns such as names of institutions, legally recognized bodies or places. An example in the UCH Act is Coordinating State and another example is the Area. As for those terms in small letters, this drafting style is applied to common nouns and verbs. An example is project design. It is worth noting that since the UCH Act was adopted from UNESCO's model act, certain terms in capital letters and small letters under the model act were kept under the UCH Act. Just to name a few, these terms are Area, Flag State, export certificate and Rules.

3.2.2 End notes and double border tables/frames in schedules

Now not all but some national legislation of PNG contains end notes which informs the reader that the particular provisions concerned is an amendment or references the instrument that repealed the particular provision concerned. The end notes do not form part of the legislation. The end notes are always located on the last page of the legislation after the last section or last schedule to the legislation.

³² The Pacific Islands Legal Institute's website provides the various legislation, case laws and other legal instruments of the Pacific Island Nations, including PNG for easy access at <http://www.paclii.org/>.

Therefore, under the UCH Act, end notes on particular provisions which require further deliberation by the Parliament have been inserted at the last page of the UCH Act after schedule 3.

Under schedules 1 and 2 of the UCH Act the 2001 Convention and the rules on activities directed at underwater cultural heritage were placed in double border tables or frames. This drafting technique is applied to adopted legislation and international conventions that are inserted in a national legislation. This is a practice adopted by the Office of the Legislative Counsel of PNG and was used in several acts of Parliament.

3.3 Procedure on the Adoption of a Legislation in PNG

PNG is a dualist State, therefore when it ratifies, accepts, accedes or approves an international convention through its Head of State or authorized Minister, that international convention does not form part of the municipal laws of PNG unless and until it is given the status of municipal law by or under a Constitutional Law or an Act of the Parliament.³³ In other words, the State will need to enact a national legislation which enforces the international convention to implement it within the State's national jurisdiction.

The following two paragraphs discusses PNG's process of adopting a legislation or act:³⁴

“First a Government department makes a proposal about the bill to the National Executive Council if it sees the need for a law on a particular matter. Sometimes private members may introduce a bill but usually that requires the support of the Government for it to be passed. Second, if the cabinet approves the proposal (of the Government Department), it instructs the Legislative Counsel to draft the law in its original form called a bill.

When complete the bill is submitted to the cabinet and the responsible minister³⁵ introduces it on the floor of Parliament. Then the bill goes through three readings for introduction to the members of Parliament, discussion and deliberation on principal issues and the incorporation of proposed changes. After the third reading the bill is passed by Parliament

³³ Section 117 (7) of the Constitution of the Independent State of PNG.

³⁴ Mange Matui, *The Handbook on Papua New Guinea Laws* (Sterling Publishers Private Limited, 2012), 3-5.

³⁵ For the UCH Act it will be the Minister for Culture and Tourism.

to become an Act by being certified by the Speaker or via publication in the National Gazette made by the Head of State or Governor General in accordance with the advice of the National Executive Council”.

It has become a practice of certain States, including PNG to adopt a legislation which implements the provisions of certain international convention although the State is not a party to those international conventions. A State which adopts the provisions of an international convention into its national laws without becoming a party to that international convention can only enforce such provisions within its national jurisdiction and upon its nationals however cannot claim the benefits and rights granted to State Parties to that international convention on an international level i.e. beyond its national jurisdiction. Therefore, it is not enough that the State should adopt the UCH Act but should also become a party to the 2001 Convention.

Regarding the implementation of the provisions of international conventions, the fourth part of this explanatory note will now discuss how the UCH Act will implement the provisions of the 2001 Convention.

4. IMPLEMENTATION OF THE PROVISIONS OF THE 2001 CONVENTION BY THE UCH ACT

The UCH Act will implement the provisions of the 2001 Convention by:

1. Enforcement provisions for the application of the 2001 Convention to the State;
2. Recognizing a competent national authority (National Museum and Art Gallery) to take practicable measures in protecting the underwater cultural heritage and performing relevant functions to achieve the objectives of the 2001 Convention;
3. Providing regulatory provisions on the national waters of the State, nationals and vessels flying the State flag with regard to their activities affecting underwater cultural heritage; and
4. Setting out sanctions and penalty provisions for breaches of the UCH Act.

For point 1, paragraph (f) of the preamble to the UCH Act is the key provision to enforce the application of the 2001 Convention on the State. This provision makes it clear that PNG recognizes

that the provisions of the 2001 Convention applies to it and as such form part of PNG's national law.

With regard to point 2, the National Museum and Art Gallery has many key responsibilities under the National Museum and Art Gallery Act 1992 in protecting and conserving the natural and cultural heritage of PNG. Therefore, it is the competent national authority in accordance with Article 22 (competent authorities) paragraph 1 of the 2001 Convention to enforce the provisions of the UCH Act as per Part II (competent national authority), Part IV (permission of activities, permits and export certificates), Part VIII (ownership of underwater cultural heritage) and related provisions of the UCH Act, pertaining to the 2001 Convention.

As for point 3, these regulatory provisions set the scope of application of the UCH Act in line with the 2001 Convention by regulating activities directed at underwater cultural heritage within the national waters of the State and also beyond the national waters where PNG nationals and vessels flying the State's vessels are concerned. Section 1 (scope of the act), Part III (discovery, report and displacement of underwater cultural heritage) and Part V (underwater cultural heritage beyond the limits of national jurisdiction) of the UCH Act are the main provisions that point 3 refers to.

Finally, for point 4, sanctions and penalty provisions are important for every legislation to ensure that any breach of the provisions of the legislation are dealt with according to law and it is no exception that the UCH Act should not contain such measures. Therefore, Part IX (control, sanctions and seizures) of the UCH Act is one of the enforcement provisions for the 2001 Convention.

RECOMMENDATIONS

1. Aspects of the UCH Act for further Deliberation by Parliament

It is worth noting here that certain parts of the UCH Act are left for Parliament to decide further such as the penalty fees and imprisonment term for infringements pertaining to activities directed to underwater cultural heritage and related matters. Such details which require further deliberation have been clearly indicated in the UCH Act by reference to the end notes.

2. The 2001 Convention Benchmark of 100 Years and the UCH Act Benchmark of 50 years

The 2001 Convention set its benchmark on the age of underwater cultural heritage to be at least 100 years³⁶ whether periodically or continuously. However, with this standard certain underwater cultural heritage such as relics from the Second World War or any other discovered underwater cultural heritage less than 100 years cannot be afforded protection if strictly followed.

Since the 2001 Convention is by its very nature a contract, it obliges States to respect certain obligations and gives them certain rights.³⁷ Every State can of course “over-fulfil” its obligations and guarantee even better protection than required by the 2001 Convention to underwater cultural heritage, through its national laws.³⁸

This also means that when, 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.³⁹

Should PNG choose to become a party to the 2001 Convention by depositing an instrument of acceptance or approval, it would be advisable for the State to enact the UCH Act⁴⁰ and have it enter into force before accepting or approving the 2001 Convention as it will become effective on the State three months after acceptance or approval according to Article 27 (entry into force). The significance of this is to extend protection and conservation to those underwater cultural heritage objects that are less than 100 years whilst also technically avoiding to contravene the required 100-year bench mark of the 2001 Convention.

3. Declarations under the 2001 Convention

The 2001 Convention provides for 3 main declarations that States can make when becoming a party to the 2001 Convention and these 3 main declarations consists of one mandatory declaration and two discretionary declarations.⁴¹ For the mandatory declaration, Article 9 paragraph 2 of the 2001 Convention requires States to declare how they will transmit reports on discoveries in the

³⁶ Article 1, paragraph 1 (a) of the 2001 Convention.

³⁷ Underwater Cultural Heritage, Frequently Asked Questions on the 2001 Convention <<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/frequently-asked-questions/>> accessed 10 April 2019.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Benchmark of the underwater cultural heritage under the UCH Act is 50 years.

⁴¹ Underwater Cultural Heritage, Frequently Asked Questions on the 2001 Convention <<http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/frequently-asked-questions/>> accessed 10 April 2019.

exclusive economic zone or on the continental shelf of another State Party to the 2001 Convention. As this is mandatory under the 2001 Convention, such declaration must be written and attached with the instrument of accession or acceptance when the State deposits it with the Director-General of UNESCO.

As for the second declaration which is discretionary, Article 25 paragraph 5 applies to States that are not a party to UNCLOS, who may choose from Article 287 of UNCLOS which method it wishes to apply in its dispute settlements and to declare that. Since PNG is a party to UNCLOS, PNG does not need to consider it.

The other discretionary declaration which is the third main declaration is under Article 28 of the 2001 Convention which provides that States may declare that the Annex of Rules applies to their inland waters. The 2001 Convention does not define inland waters; however, Article 28 makes it clear that such inland waters are not of a maritime character, therefore, it is safe to presume Article 28 does not apply to the maritime zones of a State but to waters located within a State's territory such as rivers, lakes, estuaries and so forth. Note that the UCH Act's scope of application does not extend to inland waters.

This above point on inland waters shall be left to Parliament for further deliberation. However, if the State does decide to make such a declaration under Article 28 it must be written and submitted the same time as the instrument of acceptance or approval. Therefore, a careful consultation and deliberation is required to ensure the State safeguards its interests and understand its rights and responsibilities regarding the application of the Annex of Rules to the State's inland waters before approving or accepting the 2001 Convention.

4. Reservations under the 2001 Convention

With regard to reservations, Articles 29 and 30 of the 2001 Convention stipulates that the State is given the discretion to make a reservation regarding the application of the 2001 Convention to its territory, internal waters, archipelagic waters or territorial sea. Note that the 2001 Convention includes the Annex of Rules which is an integral part of the 2001 Convention therefore Articles 29 and 30 apply to it as well.

If the State chooses to make such a declaration, Article 29 makes it mandatory for the State to provide applicable conditions in line with the 2001 Convention to those areas which it declares the

2001 Convention does not apply to and withdraw its declaration where those conditions have been met either in part or whole.

CONCLUSION

The 2001 Convention along with UNCLOS goes beyond just the protection of underwater cultural heritage but in that capacity protects the environment within which such objects are located. Depending on the perspective one takes in considering the application and importance of the 2001 Convention with UNCLOS, it can be extensive to include protection of biodiversity, promoting tourism activities and creating research opportunities.

More opportunities can be made in the national interest of the State apart from the benefits discussed in this explanatory note if the State were to accept or approve the 2001 Convention, implement its provisions through the UCH Act and enforce the UCH Act. The State must also note that with such benefits comes responsibilities both to the international community and at the national level which the State must consistently strive to comply with in fulfilling its obligations.

NO. ____ of 2019

UNDERWATER CULTURAL HERITAGE ACT 2019



No. _____ of 2019

Underwater Cultural Heritage Act

ARRANGEMENT OF SECTIONS

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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SCHEDULE 1.

SCHEDULE 2.

SCHEDULE 3.



NO ___ of 2019

AN ACT

Entitled

Underwater Cultural Heritage Act 2019,

Being an Act to –

- (a) provide for the identification, protection and conservation of Underwater Cultural Heritage located within the waters of Papua New Guinea, the seabed and subsoil of the waters of Papua New Guinea and the continental shelf; and
- (b) enable the cooperative implementation of national and international maritime heritage responsibilities; and
- (c) promote public awareness, understanding, appreciation and appropriate use of Underwater Cultural Heritage; and
- (d) provide for the functions and powers of the Competent National Authority, and for related purposes; and
- (e) be read as one with the *Maritime Zones Act 2015*; and
- (f) incorporate into the law of Papua New Guinea provisions of the Convention on the Protection of Underwater Cultural Heritage, recognizing its application to the Independent State of Papua New Guinea subject to the provisions of this Act, and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

PART I. – GENERAL PRINCIPLES

1. Scope of the Act

This Act applies to –

- (1) the waters of Papua New Guinea being internal waters, the archipelagic waters, the territorial sea, the contiguous zone, the exclusive economic zone;
- (2) the seabed and subsoil of the waters of Papua New Guinea;
- (3) the continental shelf; and
- (4) vessels flying the State flag and State nationals wherever located.

2. Interpretation

In this Act, unless the contrary intention appears –

- (1) “**Area**” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;
- (2) “**Competent National Authority**” means the National Museum and Art Gallery;
- (3) “**Convention**” means the United Nations Educational, Scientific and Cultural Organization Convention on Protection of the Underwater Cultural Heritage, adopted at Paris in France on 2 November 2001, a copy of the English language version of the text of which is set out in Schedule 1, as amended from time to time in accordance with Section 25 of this Act;
- (4) “**Coordinating State**” means the State with the responsibility of facilitating consultations, pursuant to the Convention, in order to assure the comprehensive protection of underwater cultural heritage;
- (5) “**export certificate**” means a non-transferable document which accompanies any exported cultural heritage and states its legal status and the purpose of the export;
- (6) “**Flag State**” means the flag of State Vessels and Aircraft;
- (7) “**International Seabed Authority**” means the Authority established under Article 156 of the United Nations Convention on the Law of the Sea 1982;
- (8) “**Minister**” means the Minister for Culture and Tourism of the Independent State of Papua New Guinea;
- (9) “**NGO**” means Non-Governmental Organizations.
- (10) “**Papua New Guinea Science and Technology Council**” means the Council whose establishment, power and functions are established under the *Papua New Guinea Science and Technology Council Act 1992*;

- (11)“**project design**” means a project described as such under Part II of the Rules concerning
 Activities directed at Underwater Cultural Heritage under Schedule 2;
- (12)“**Rules**” means the “Rules concerning Activities directed at Underwater Cultural Heritage”
 contained in the Schedule 2;
- (13)“**State flag**” means the flag of the Independent State of Papua New Guinea.
- (14)“**State Vessels and Aircraft**” means warships, and other vessels or aircraft that were owned
 or operated by another 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;
- (15)“**underwater cultural heritage**” means -
 (a) 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 more than 50 years such as, together with their archaeological and natural context:
 (i) sites, structures, and buildings;
 (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents;
 (iii) artefacts, human remains, and objects of prehistoric character; and
 (b) objects and sites, together with their context, having a paleontological or scientific significance, which are more than 50 years old;
- (16)“**UNESCO**” means the United Nations Educational, Scientific and Cultural Organization; and
- (17)“**Verifiable Link**” to Underwater Cultural Heritage is a relationship between a State and
 Underwater Cultural Heritage, in particular of a cultural, historical or archaeological character.

PART II. – COMPETENT NATIONAL AUTHORITY

3. Competent National Authority

The Competent National Authority for the protection of Underwater Cultural Heritage is the National Museum and Art Gallery whose functions and powers are established under the *National Museum and Art Gallery Act 1992* notwithstanding the provisions of this Act.

4. Designation

Subject to Section 2 (11) (a) of this Act, the Competent National Authority may declare as Underwater Cultural Heritage any trace of human existence having a cultural, historical or archaeological character.

5. Functions of the Competent National Authority

- (1) The Competent National Authority has the following functions-
 - (a) to ensure the effective control, protection, conservation, presentation and management of Underwater Cultural Heritage and issue permissions in that regard; and
 - (b) to encourage and foster research, public awareness, appreciation and education in Underwater Cultural Heritage, support NGO establishment and cooperation and foster the establishment of museums.
- (2) The Competent National Authority shall establish, entertain and maintain an inventory of Underwater Cultural Heritage located under water which includes also:
 - (a) a list of important public and private Underwater Cultural Heritage whose export would constitute an appreciable impoverishment of the national Underwater Cultural Heritage; and
 - (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 the State.
- (3) The inventory shall be regularly updated. It shall be open to limited public access. No information shall be disclosed if this would endanger the protection of the heritage concerned.
- (4) The Competent National Authority may conduct any necessary research on Underwater Cultural Heritage.

PART III. - DISCOVERY, REPORT AND DISPLACEMENT OF UNDERWATER CULTURAL HERITAGE

6. Report of Discoveries and intended Activities

- (1) No person shall search for, explore, investigate, interfere with, displace or remove Underwater Cultural Heritage without a permit issued by the Competent National Authority in accordance with Section 8 of this Act.
- (2) Any person, who discovers Underwater Cultural Heritage should leave it undisturbed, unless disturbance or recovery is authorized by the Competent National Authority or if it;
 - (a) is under actual and immediate danger of serious damage or destruction; or
 - (b) poses a concrete and immediate danger to human life.

- (3) Any person, who displaces Underwater Cultural Heritage, has to declare this to the Competent National Authority and has to deposit the object with it or hold it at its disposal in conditions ensuring conservation.
- (4) Any person, who discovers Underwater Cultural Heritage shall report this within three days of discovery or, in case of Underwater Cultural Heritage, on reaching the first national port, to the Competent National Authority.
- (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 National Authority.
- (6) Any person wishing to apply for permission to undertake an activity directed at Underwater Cultural Heritage, must submit an application to the Competent National Authority at least six months prior to the intended activity commencing. In case of immediate danger of destruction or damage to such Underwater Cultural Heritage a shorter application time may be admitted. In the case of Underwater Cultural Heritage, such an application must be submitted irrespective of whether the Underwater Cultural Heritage is situated within, or beyond, national jurisdiction.
- (7) Nationals and the masters of the vessels flying the State flag shall report any discovery of or an intended activity directed at Underwater Cultural Heritage even if located beyond the limits of national jurisdiction to the Competent National Authority.
- (8) No person shall engage in any activity directed at Underwater Cultural Heritage that is not in accordance with the Rules in the Schedule 2.
- (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 should report discoveries and shall make reports if this 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 State flag shall also report to the authorities of the concerned State.

7. Activities directed at Structures and Buildings

Activities directed at structures and buildings falling under the definition of Underwater Cultural Heritage need a permit by the Competent National Authority.

PART IV. - PERMISSION OF ACTIVITIES, PERMITS AND EXPORT CERTIFICATES

8. Permission of Activities

- (1) A permit for an activity directed at underwater cultural heritage including for example, search, intervention, recovery, displacement or excavation, as well as renovation and alteration may only be granted by the Competent National Authority.
- (2) The permit shall only be granted in the best interest of protection and if the concerned activity:
 - (a) significantly contributes to the protection of, enhancement or knowledge about, the concerned underwater cultural heritage;
 - (b) is in full conformity with this Act and the Rules in Schedule 2; and
 - (c) ensures in the case of Part II, Section 5 (1) a proper scientific study and, in case of recovery, maximum protection and conservation of recovered objects.
- (3) A permit shall only be granted based on a project design in accordance with the Rules under Schedule 2.
- (4) No permit shall be issued for any commercial exploitation of underwater cultural heritage.
- (5) A permit:
 - (a) shall contain conditions to ensure the proper conduct of the activity, documentation and conservation as well as its control and the access to the site by the Competent National Authority;
 - (b) shall be issued for a limited time period not exceeding 1 year and may be renewed after revision of the project by the Competent National Authority;
 - (c) may be revoked in case of non-compliance with the conditions mentioned in the permit, the Rules, the project design deposited with the Competent National Authority or in the interest of the proper protection of the concerned heritage;
 - (d) may contain any other condition deemed necessary by the Competent National Authority.
- (6) Permits are non-transferable. A public register of all permits issued shall be kept by the Competent National Authority.
- (7) Permitted activities shall only be executed:
 - (a) under the effective supervision of the person authorized;
 - (b) respecting proper safety measures and the protection of the environment.
- (8) A permit for activities directed at underwater cultural heritage located beyond the limits of national jurisdiction may only be issued, if:
 - (a) The Independent State of Papua New Guinea is the Coordinating State; or
 - (b) an immediate danger threatens the concerned heritage; or
 - (c) the concerned heritage is located in the exclusive economic zone or on the continental shelf and the permit is granted in order to prevent interference with sovereign rights or jurisdiction.
- (9) This Section does not prejudice State action to protect Cultural Heritage in case of immediate danger.

9. Activities directed at the Remains of State Vessels and Aircraft

- (1) If any underwater cultural heritage is identified as a State Vessel or Aircraft of another State the national authorities should inform the Flag State and States with a Verifiable Link to such underwater cultural heritage.
- (2) No activity shall be permitted or directed at such heritage if it is 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 other than to prevent immediate danger.
- (3) If the concerned heritage is located beyond the limits of national jurisdiction, no activity shall be directed at such heritage without the consent of the Flag State other than to prevent immediate danger.

10. Export Certificate

- (1) An export certificate for may be issued to a person by the Competent National Authority if the heritage concerned;
 - (a) is not of national importance;
 - (b) its export would not constitute a significant impoverishment of the national heritage or is not inscribed in the inventory of underwater cultural heritage located on land or under water; 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, exhibitions or similar reasons;
 - (b) and if a return of the objects is ensured within 3 years or as determined by the Competent National Authority. The Competent National Authority can set conditions ensuring the return of the object and the information or research result connected to it, if deemed necessary.
- (3) No person shall export underwater cultural heritage without an export certificate in the form attached in the Schedule 3.
- (4) Any person, wishing to apply for an export certificate shall do so by using the form under Schedule 3.
- (5) The export certificate is non-transferable and shall be used as indicated in Schedule 3. A copy of this certificate has to accompany any exported underwater cultural heritage.
- (6) State institutions shall verify the provenance of any underwater cultural heritage they acquire and shall not acquire any unlawfully recovered or unlawfully exported or imported underwater cultural heritage.

- (7) The Competent National Authority shall publicise this Act by appropriate means, particularly among persons likely to export or import cultural property.

PART V. - UNDERWATER CULTURAL HERITAGE BEYOND THE LIMITS OF NATIONAL JURISDICTION

11. Information and Notification to other States

- (1) The Competent National Authority shall notify the Director-General of UNESCO of discoveries of or intended activities directed at underwater cultural heritage located beyond the limits of national jurisdiction. Any discovery or intended activity concerning underwater cultural heritage located in the Area shall also be notified by the Competent National Authority to the Secretary-General of the International Seabed Authority.
- (2) In case of discoveries or intended activities directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf of another State Party to the Convention all States Parties to the Convention shall be informed.

12. Receipt of Information and Declaration of Interest

- (1) Any declaration or invitation for consultation from other States and/or the Director-General of UNESCO regarding underwater cultural heritage shall be lodged with the Minister, acting on behalf of the Competent National Authority.
- (2) Where the Competent National Authority determines that the State has a Verifiable Link with certain underwater cultural heritage it shall declare the interest of the State, where it 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;
- (b) the Area, to the Director-General of UNESCO and any State who coordinates, controls,
- authorizes or undertakes a search of or activities directed at such heritage.

13. Consultation and Coordination

- (1) In case of discoveries of or intended activities directed at underwater cultural heritage located in the national exclusive economic zone or on the continental shelf, the Competent National Authority shall;

- (a) consult all States Parties to the Convention, which have declared their interest on how to best protect such heritage, if this declaration is based on a Verifiable Link as “Coordinating State”; or
 - (b) make a declaration that it does not wish to act as Coordinating State if a reasonable motive exists that makes it desirable for the State not to act as such.
- (2) Where the relevant underwater cultural heritage is located in the Area and the Competent National Authority has declared the interest of the State to be consulted and is invited by the Director-General of UNESCO it shall:
- (a) declare how this underwater cultural heritage should be best protected;
 - (b) declare which State should be appointed as Coordinating State; and
 - (c) conduct and coordinate consultations as Coordinating State if the State who enacts the Act was appointed to this function.

14. Coordination of Measures

- (1) If the State acts as Coordinating State according to the Convention the Competent National 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 National 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 of cultural, historical or archaeological origin in respect of the underwater cultural heritage concerned.

PART VI. - IMMEDIATE DANGER TO UNDERWATER CULTURAL HERITAGE

15. Immediate Danger

- (1) The Competent National Authority shall take all practicable measures, and/or issue any necessary permits, if necessary prior to any consultations, to prevent immediate danger to any underwater cultural heritage. In taking such measures, the Competent National Authority may seek assistance from other States.
- (2) The Competent National 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.

PART VII. - ACTIVITIES INCIDENTALLY AFFECTING UNDERWATER CULTURAL HERITAGE

16. Activities incidentally affecting Underwater Cultural Heritage

- (1) In this Act, the Rules under Schedule 2 are based on the Rules annexed to the Convention on the Protection of the underwater cultural heritage. If changes are made to them in the case of the present section consideration would need to be given to the Rules annexed to the 2001 Convention.
- (2) 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 such as:-
 - (a) known underwater cultural heritage sites or settlements;
 - (b) ports or former ports;
 - (c) shipping or trade routes; or
 - (d) marine battlefields;has to notify the Competent National Authority of its intended activity at least [60 days]ⁱ prior to the commencement of that activity. The intended activity shall be prohibited if it endangers or damages such heritage more than appears to be reasonable in comparison to the achieved public benefit.
- (3) Industrial activities impacting areas, where underwater cultural heritage is or may possibly be present, have to undertake an impact assessment study as part of their application for the authorization of the concerned development or other project.
- (4) The competent national authority has to be consulted mandatorily in the authorization of development and resource extraction projects that concern areas where underwater cultural heritage is or may possibly be present.
- (5) The public and private developers of such projects shall provide the funds and be responsible for:
 - (a) the assessment of the project area and the identification of underwater cultural heritage therein;
 - (b) the prevention, to the extent possible, of impact to underwater cultural heritage caused by the project in the project area and its surrounding environment;
 - (c) the mitigation of negative effects caused by the project in the project area and its surrounding environment;
 - (d) the conservation of the affected underwater cultural heritage; and the promotion of affected underwater cultural heritage and the dissemination of knowledge about it.

PART VIII. - OWNERSHIP OF UNDERWATER CULTURAL HERITAGE

17. Ownership of underwater cultural heritage

- (1) Underwater cultural heritage is owned by the State, provided there is no existing ownership immediately prior to its discovery.
- (2) The law of finds does not apply to underwater cultural heritage. The law of salvage does not apply to underwater cultural heritage.
- (3) A person who discovers underwater cultural heritage may be rewarded at the discretion of the Competent National Authority.

18. Public Acquisition

- (1) The Competent National Authority acting upon the advice of the Minister may decide upon the public utility of an acquisition by the State of any underwater cultural heritage, and if applicable, its context or the site where it is located. If such utility is given, it may negotiate acquisition for the State.
- (2) If negotiations are not successful, the Competent National Authority may in the case of objects, upon approval by the Minister declare compulsory transfer of ownership against indemnification in the amount of the value of the object to its owner, and publish this decision in the National Gazette. Upon publication, the concerned object vests immediately in the State.
- (3) If no agreement can be reached about the amount of indemnification or if there is an objection to the declaration of compulsory transfer of ownership, a proceeding may be brought to National Court of the Independent State of Papua New Guinea.
- (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.
- (5) For sites, buildings and structures the applicable national laws apply.

PART IX. - CONTROL, SANCTIONS AND SEIZURE

19. Seizure and Disposition of Underwater Cultural Heritage

- (1) Underwater cultural heritage is subject to seizure if;-
 - (a) it has been recovered without a valid permit;
 - (b) was stolen or illicitly imported, exported or the transfer of ownership was illegal.
- (2) Seized Cultural Heritage shall be immediately recorded, protected and stabilized, as far as needed and practicable. The disposition shall be for the public benefit, taking into account the need for conservation and research, the 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 Cultural Heritage concerned.

- (3) If the underwater cultural heritage is seized which had been recovered from a site outside of the national territorial waters, the Competent National Authority shall notify the Director-General of UNESCO and any other State with a Verifiable Link, especially a cultural, historical or archaeological link, to the heritage concerned of this seizure.
- (4) The authorities authorized to seize are the Royal Papua New Guinea Constabulary, Papua New Guinea Defense Force and the National Maritime Safety Authority.

20. Access to Premises

- (1) The aforementioned authorities under subsection (4) of Section 19 to this Act 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 conduct any inspection if this is reasonably necessary to fulfil its tasks, in particular regarding an object, which appears to be underwater cultural heritage, provided that a judicial warrant is granted by the National Court of the Independent State of Papua New Guinea.
- (2) It may remove or seize any such object for further inspection and safekeeping and shall report the seizure immediately to the Competent National Authority.

21. Prohibition of Use and Entry into State Territory, Dealing, Possession

- (1) The entry into national territory, 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 the Convention is prohibited.
- (2) The use of State territory under national jurisdiction and control, including maritime ports, artificial islands, installations and structures, in support of any illegal or damaging activity directed at underwater cultural heritage is prohibited.

22. Infringements and Sanctions

- (1) A person or corporation, who
 - (a) undertakes any research, activity or recovery directed at underwater cultural heritage without a valid permit;
 - (b) damages or destroys underwater cultural heritage;
 - (c) exports any underwater cultural heritage without a valid export certificate;
 - (d) alienates underwater cultural heritage, which is under consideration for public acquisition or has been publicly acquired;
 - (e) commits an offence prohibited under Section 21 (1) or Section 21 (2);is guilty of an offence and is liable to a fine not exceeding [K100, 000.00]ⁱⁱ or, in the case of a person, to imprisonment for a term not exceeding [5 years]ⁱⁱⁱ or to both a fine and imprisonment.

(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 National Authority in an unlawful manner is guilty of an offence and is liable to a fine of not exceeding [K100, 000.00]^{iv} or in the case of a person, to imprisonment for a term not exceeding [5 years]^v or to both a fine and imprisonment.

PART XI. – MISCELLANEOUS

23. Return of Illegally Trafficked Underwater Cultural Heritage

- (1) Any underwater cultural heritage, which has been brought into the State, be it
- (a) without an export certificate, if this is mandatory due to the regulations of the State of origin;
 - (b) has been stolen from a public institution or museum, in whose register it had been inscribed;
 - (c) was lost against the will of the owner;
 - (d) was illegally excavated or legally excavated but unlawfully retained; or
 - (e) was declared inalienable by the national authorities of the State of origin, shall be returned.
- (2) All expenses incident to the return and delivery of the underwater cultural heritage shall be borne by the requesting State and this State has to furnish at its expense the evidence necessary to establish its claim.
- (3) As soon as the Competent National Authority learns of a case falling under subsection 1 it shall inform the embassy of the concerned State or of the State likely to be concerned.
- (4) The claim for return shall be brought through diplomatic offices to the attention of the Ministry of Foreign Affairs and Trade within a period of 3 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, otherwise it loses its claim.
- (5) A claim for return of underwater cultural heritage forming an integral part of a classified site, or belonging to a public collection, shall not be subject to time limitations other than a period of one year from when the claimant knew the location of the object and the identity of its possessor.

24. Regulations

The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that

are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for offences against this Act and the Regulations and other related purposes.

25. Amendments

The Minister may, by notice in the National Gazette, amend Schedule 2 or Schedule 3 in conformity with any amendments made to the Convention as are adopted by the Independent State of Papua New Guinea, after consultation with the Competent National Authority acting on the advice of the Papua New Guinea Science and Technology Council.

SCHEDULE 1.

Sec. 2 (3)
CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE 2001
The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 15 October to 3 November 2001, at its 31st session,
<u>Acknowledging</u> 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,
<u>Realizing</u> the importance of protecting and preserving the underwater cultural heritage and that responsibility therefor rests with all States,
<u>Noting</u> growing public interest in and public appreciation of underwater cultural heritage,
<u>Convinced</u> of the importance of research, information and education to the protection and preservation of underwater cultural heritage,
<u>Convinced</u> of the public's right to enjoy the educational and recreational benefits of responsible non-intrusive access to <i>in situ</i> underwater cultural heritage, and of the value of public education to contribute to awareness, appreciation and protection of that heritage,
<u>Aware</u> 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,
<u>Conscious</u> of the need to respond appropriately to the possible negative impact on underwater cultural heritage of legitimate activities that may incidentally affect it,
<u>Deeply</u> 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,
<u>Aware</u> of the availability of advanced technology that enhances discovery of and access to underwater cultural heritage,
<u>Believing</u> 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,
<u>Considering</u> 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,
<u>Realizing</u> 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,
<u>Committed</u> to improving the effectiveness of measures at international, regional and national levels for the preservation <i>in situ</i> or, if necessary for scientific or protective purposes, the careful recovery of underwater cultural heritage,
<u>Having</u> 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 <i>mutatis mutandis</i> 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 <i>in situ</i> 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 therefor, 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

<p>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.</p>
<p>Article 14 – Control of entry into the territory, dealing and possession</p>
<p>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.</p>
<p>Article 15 – Non-use of areas under the jurisdiction of States Parties</p>
<p>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.</p>
<p>Article 16 – Measures relating to nationals and vessels</p>
<p>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.</p>
<p>Article 17 – Sanctions</p>
<ol style="list-style-type: none"> 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.
<p>Article 18 – Seizure and disposition of underwater cultural heritage</p>
<ol style="list-style-type: none"> 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.
<p>Article 19 – Cooperation and information-sharing</p>
<ol style="list-style-type: none"> 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 <i>in situ</i> preservation shall be considered as the first option. Accordingly, activities directed at underwater cultural heritage shall be authorized in a manner consistent with the protection of that heritage, and subject to that requirement may be authorized for the purpose of making a significant contribution to protection or knowledge or enhancement of underwater cultural heritage. Rule 2. The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods. This Rule cannot be interpreted as preventing: (a) the provision of professional archaeological services or necessary services incidental thereto whose nature and purpose are in full conformity with this Convention and are subject to the authorization of the competent authorities; (b) the deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities. Rule 3. Activities directed at underwater cultural heritage shall not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project. Rule 4. Activities directed at underwater cultural heritage must use nondestructive techniques and survey methods in preference to recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains. Rule 5. Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites. Rule 6. Activities directed at underwater cultural heritage shall be strictly regulated to ensure proper recording of cultural, historical and archaeological information. Rule 7. Public access to <i>in situ</i> 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; 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.

<p>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.</p>
<p>VII. Competence and qualifications</p>
<p>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.</p> <p>Rule 23. All persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project.</p>
<p>VIII. Conservation and site management</p>
<p>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.</p> <p>Rule 25. The site management programme shall provide for the protection and management <i>in situ</i> 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.</p>
<p>IX. Documentation</p>
<p>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.</p> <p>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.</p>
<p>X. Safety</p>
<p>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.</p>
<p>XI. Environment</p>
<p>Rule 29. An environmental policy shall be prepared that is adequate to ensure that the seabed and marine life are not unduly disturbed.</p>
<p>XII. Reporting</p>
<p>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.</p> <p>Rule 31. Reports shall include:</p> <ul style="list-style-type: none"> (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.
<p>XIII. Curation of project archives</p>
<p>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.</p> <p>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.</p> <p>Rule 34. The project archives shall be managed according to international professional standards, and subject to the authorization of the competent authorities.</p>
<p>XIV. Dissemination</p>

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.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its thirty-first session, which was held in Paris and declared closed the third day of November 2001.

SCHEDULE 2.

Sec. 2 (12)
RULES CONCERNING ACTIVITIES DIRECTED AT UNDERWATER CULTURAL HERITAGE
I. General Rules
Rule 1. Protection Standards 1.) Activities directed at Underwater Cultural Heritage of an archaeological character, shall be authorized in a manner consistent with their protection and for the purpose of making a significant contribution to their protection and enhancement or to gain knowledge about them. 2.) The preservation of Underwater Cultural Heritage of an archaeological character in its original location in situ shall be considered as the first option before allowing or engaging in any activity, including a recovery or displacement. It shall not be commercially exploited, bartered or sold. This shall not be interpreted as prohibiting responsible public access, museum exhibition, exchange between museums or scientific research.
Rule 2. Rejection of Commercial Exploitation 1.) The commercial exploitation of Underwater Cultural Heritage of an archaeological character, for trade or speculation or its irretrievable dispersal is fundamentally incompatible with its protection and proper management. It shall not be traded, sold, bought or bartered as commercial goods. 2.) 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 conformity with the law and are authorized by the Competent National Authority; b) the deposition of material recovered in the course of an authorized research project, provided such deposition does not prejudice the scientific or cultural interest or integrity of this material or results in its dispersal and is in accordance with Rule 21.
Rule 3. Mitigation of Adverse Effects 1.) Activities directed at Underwater Cultural Heritage of an archaeological character, shall affect them not more adversely than necessary for the objectives of the project. 2.) Non-destructive techniques and survey methods must be used in preference to excavation and recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for protection, the methods and techniques used must be as non-destructive as possible and the preservation of the remains should be ensured.
Rule 4. Human Remains and Venerated Sites 1.) Activities directed at Underwater Cultural Heritage of an archaeological character, shall avoid the unnecessary disturbance of human remains or venerated sites. 2.) No public exhibition or media publication of human remains shall be made a) against the pronounced wish of the family or State of origin of a deceased; b) without scientific necessity or a considerable public interest, this being also the interest of public information and education; c) without respecting the dignity of the deceased.
Rule 5. International Cooperation International cooperation in the conduct of activities directed at Underwater Cultural Heritage of an archaeological character, shall be encouraged. It shall further the: a) exchange and use of historical, technical and scientific knowledge; b) exchange and use of archaeologists and other relevant professionals; and c) effectiveness of protection measures.
Rule 6. Content of Project Design 1.) Prior to the permission of any activity directed at Underwater Cultural Heritage of an archaeological character, a project design shall be developed and submitted to the Competent National Authority. 2.) The project design needs to include: a) the project description and its objectives; b) an assessment of previous or preliminary studies and the vulnerability of the site or objects;

- c) the methodology to be used and the techniques to be employed;
 - d) the anticipated funding and its sources;
 - e) a timetable to assure the completion of all stages 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;
 - 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) a report preparation;
 - o) a plan for the deposition of archives, documentation and recovered Underwater Cultural Heritage ; and
 - p) a programme for publication.
- 3.) The project design shall furthermore
- a) demonstrate the ability to fund the project through to completion; and
 - b) include a contingency plan that will ensure conservation of Underwater Cultural Heritage and supporting documentation in the event of any interruption of funding or any interruption or termination of the project.

Rule 7. Compliance with the Project Design

- 1.) Activities directed at Underwater Cultural Heritage of an archaeological character, shall be carried out in accordance with the project design as approved by the Competent National Authority.
- 2.) Where unexpected discoveries are made or circumstances change, the project design shall be reviewed and amended subject to approval by the Competent National Authority.

Rule 8. Immediate Danger

In cases of immediate danger, urgency or chance discoveries, activities, 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 if this is in the interest of protection.

II. SPECIFIC RULES

Rule 9. Project Objective, Methodology and Techniques

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

Rule 10. Preliminary Work and Prior Assessments

- 1.) Any work preliminary to the start of the intended activity shall include an assessment that evaluates the significance and vulnerability of the concerned Underwater Cultural Heritage and the surrounding natural environment to be impacted by the proposed project, and the potential to obtain data that would meet the project objectives.
- 2.) 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.

Rule 11. Funding

Except in cases of immediate danger to the concerned Underwater Cultural Heritage an adequate funding base shall be assured in advance of any activity, which needs to be sufficient to complete all stages of the project design, including conservation, documentation and curation of recovered artefacts, report preparation and dissemination.

Rule 12. Project duration – timetable

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

Rule 13. Composition of the Team, Competence and Qualifications

- 1.) Activities directed at Underwater Cultural Heritage of an archaeological character, shall only be undertaken under the direction and control of, and in the regular presence of, a qualified archaeologist with scientific competence appropriate to the particular project in question.
- 2.) All persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project.

Rule 14. Conservation Programme

The conservation programme for artefacts and the site shall be elaborated in close cooperation with the competent authorities and provide for the treatment of the Underwater Cultural Heritage during the activities directed at them, during transit and in the long term. Conservation shall be carried out in accordance with professional state-of-the-art standards.

Rule 15. Site Management Programme

A site management programme shall be elaborated in close cooperation with the competent authorities and provide for the protection and management *in situ* of the Underwater Cultural Heritage of an archaeological character, in the course of and upon termination of fieldwork. It shall include public information, reasonable provision for site stabilization, monitoring, and protection against interference.

Rule 16. Documentation

- 1.) The documentation programme shall set out thorough documentation including a progress report of activities, in accordance with current professional standards of archaeological documentation.
- 2.) 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, field notes, plans, drawings, sections, and photographs or recording in other media.

Rule 17. Safety

- 1.) 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.
- 2.) In the case of activities directed at Underwater Cultural Heritage safety measures have to include appropriate dive training for the project team as well as adequate technical and medical equipment.

Rule 18. Environment

An environmental policy shall be prepared that is adequate to ensure that the environment, including fauna and flora are not unduly disturbed.

Rule 19. Reporting

- 1.) Interim and final reports shall be made available according to the timetable set out in the project design, and deposited with the Competent National Authority and in relevant public records.
- 2.) They shall include:
 - a) an account of the project objectives;
 - b) an account of the methods and techniques employed;
 - c) an account of the results achieved;
 - d) graphic and photographic documentation on all phases of the activity;
 - e) recommendations concerning conservation and curation of the site and of any material removed; and
 - f) recommendations for future activities.

Rule 20. Curation of Project Archives

- 1.) Arrangements for curation of the project archives shall be agreed to before any activity commences, and shall be set out in the project design.
- 2.) The project archives, including any material recovered 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, compatible with conservation of the Underwater Cultural Heritage concerned.
- 3.) The project archives shall be managed according to international professional standards and subject to the approval by the Competent National Authority.

Rule 21. Public Education and Dissemination

- 1.) Projects shall provide for public education and popular presentation of the project results where appropriate.
- 2.) 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 possible confidential or sensitive nature of any of the information; and


b) deposited in relevant public records.

SCHEDULE 3.

Sec. 10 (5)

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)			

(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 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			
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(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

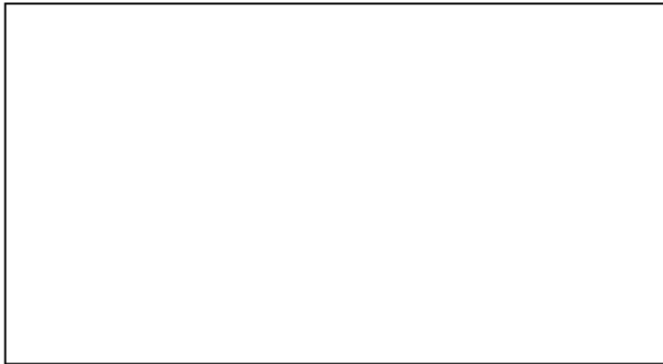
Each heading must be completed, except headings 2, 12 and 18 if they do not apply

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		
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(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 4

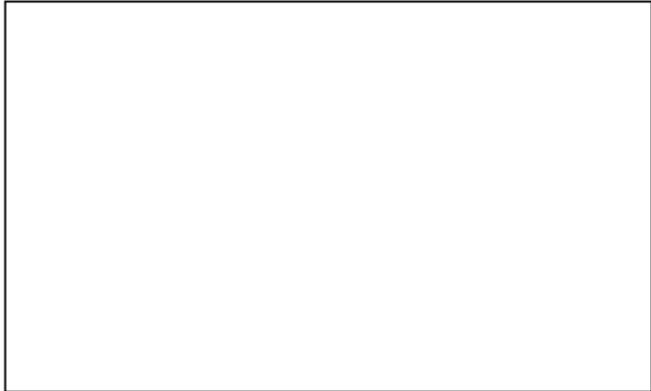
Each heading must be completed, except headings 2, 12 and 18 if they do not apply

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).		

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 5

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

Copy for authorities at importation	5	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 :

Endnotes

- ⁱ To be determined by Parliament.
- ⁱⁱ The fines are to be determined by Parliament.
- ⁱⁱⁱ Term of imprisonment to be determined by Parliament.
- ^{iv} Refer to endnote i.
- ^v Refer to endnote ii.