

The Committee Secretary, Joint Standing Committee on Treaties [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Dear Sir/Madam

I write as an individual ( [REDACTED] ) in regard to the inquiry into and report on the *Convention on the Protection of the Underwater Cultural Heritage* (Paris, 2 November 2001). I was the Director of the Western Australian Maritime Museum from 1992-2005 and the Western Australian Delegate to the Commonwealth Minister responsible for the *Historic Shipwrecks Act* 1976 during that time.

I applaud the idea of Australia becoming one of the States Party. It was committed Australians who took on the predominant role in the development of the Convention, it is a Convention for the benefit of Australia and humankind internationally, and it is particularly relevant to Australia as an island nation.

### 1. Events Leading to the Convention

For me the progress towards ratification has been a very personal journey. On Easter Sunday, 1963, I had just turned 16 when I made the first Australian waters underwater discovery of a 17<sup>th</sup> century Dutch East Indiaman shipwreck – the 1656 *Vergulde Draeck* or *Gilt Dragon*. I saw the wreckage on the seabed and drew the attention of my diving mates to what I had found. The discovery, during a spearfishing trip on my father's boat, off Ledge Point in Western Australia, made headlines in local newspapers and soon appeared in newspapers around the world (in 1996 a Select Committee of the State Parliament officially recognised me as the Sole Principal Discoverer of the wreck). But the thrill of finding an array of ancient cannon, anchors, ballast bricks, elephant tusks and beardman jugs, was soured after the first silver coins appeared. The coins evoked dreams of wealth for some, and in the absence of protective legislation one diver, seeing the wreck as treasure trove rather than as cultural heritage, used gelignite destructively to loot the silver bullion in the wreck. He set up camp on the adjacent coast during the winter months and used gelignite both as a way to break open the bullion chests on the seabed, and as a way to prevent me from returning to the wreck.

However, good things came of it. In the absence of protective heritage legislation my father, James Henderson and I, together with Alan Henderson and John Cowan who were in the water at the time of finding, persuaded the WA Museum to become responsible for historic shipwrecks. We signed a Crown Law Department Deed of Assignment in 1963, transferring our rights under common law as finders of the *Vergulde Draeck* to the Museum, in order to precipitate the protection of the site by the State Government. The Museum's acceptance of the Deed of Assignment initiated the field of Maritime Archaeology in Australia, and employment of research staff, soon after the first protective legislation. The WA Government's *Museum Act Amendment Act* of 1964 failed to deter looters of historic shipwrecks and we finders of the *Vergulde Draeck* lobbied successfully for effective legislation. The State Government's *Maritime Archaeology Act*, 1973, was an international first for post-medieval shipwrecks, protecting the Dutch and colonial period shipwrecks. It acknowledged the Australia Netherlands Committee on Old Dutch Shipwrecks (ANCODS) Agreement, whereby the Netherlands Government transferred what rights they had as heirs to the VOC to the Australian Government. A lack of certainty about territorial limits to the *Maritime Archaeology Act*, and growing interest in the underwater cultural heritage of the other Australian States, led to the development and passing of the Commonwealth's very successful *Historic Shipwrecks Act*, 1976.

I had joined the staff of the WA Museum in 1969, becoming the first Director of the WA Maritime Museum from 1992-2005. In 1988 the International Law Association (ILA) established its Committee on Cultural Heritage Law and in 1989 that Committee commenced preparation of a draft Convention on the Underwater Cultural Heritage. The ILA and the International Council on Monuments and Sites (ICOMOS) drew inspiration from the protective approaches taken within Australia to the underwater cultural heritage (UCH) and recognised the need for a partnered approach with UCH experts. In 1991,

at the invitation of ICOMOS, I brought together, as Chair, the International Committee of the Underwater Cultural Heritage (ICUCH), established initially with members from 17 countries, to progress the development of the draft convention initiated by the ILA.

I was also concerned that a lack of clear guidelines for the collecting activities of maritime museums around the world was contributing to destructive activities on the iconic *Titanic* wreck and other deep water sites in international waters. As Chairman of the International Congress of Maritime Museums Maritime Archaeology Sub-Committee, I coordinated the development of the ICMM standards, adopted in 1993, for the exploration of underwater cultural sites and the acquisition, preservation and exhibition of artifacts recovered from shipwrecks.

In 1996 ICOMOS ratified their *International Charter on the Protection and Management of Underwater Cultural Heritage*, developed with ICUCH, intended to ensure that all investigations are explicit in their aims, methodology and anticipated results so that the intention of each project is transparent to all. The ILA's International Committee on Cultural Heritage Law had, in 1992, reported on its Draft Convention on the Protection of the Underwater Cultural Heritage. ICUCH members, in association with Australian law expert Professor Patrick O'Keefe representing the ILA, developed the 'Rules concerning activities directed at underwater cultural heritage' comprising the Annex section of the Convention, which ultimately came into force in 2001. The Convention constitutes the most significant global advance in protecting the underwater cultural heritage.

## 2. Why Australia Should Adopt the Convention

- It is appropriate because of Australia's lead role in development of the Draft Convention. Other countries seeing Australia delaying adoption surely ask why should they adopt? Adoption will be recognition of Australia's leadership role.
- Technological advances allow greater access to UCH for looters.
- Australian expertise means that with Australia on board as a States Party we can play a supportive role in protection and exploration of UCH in our region. Cooperation between States is good diplomacy for Australia.
- Protection and promotion of UCH can bring economic benefits associated with tourism. For example the naming in WA of the Shipwreck Coast Drive [Perth, Western Australia: Shipwreck Coast Drive \(australiaforeveryone.com.au\)](http://Perth, Western Australia: Shipwreck Coast Drive (australiaforeveryone.com.au))
- The Convention sits well with Australia's *Underwater Cultural Heritage Act 2018*.

Sincerely

Graeme Henderson  
21 February