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David Blackman

David Blackman  
Archaeologist  
Member of the scientific  
Committee of CUEBC

Uluburun shipwreck  
(1316 B.C.): Careful study of  
remains of the hull of this  
important shipwreck,  
in 42-61m depth close to the  
Turkish coast.



# The advantages for States in ratifying the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage

The debate has lasted for years: I remember a lively Round Table held during the Italian annual *Rassegna di Archeologia Subacquea* in Giardini Naxos in late 1997, after the *furor* in Italy over the work on ancient shipwrecks on Skerki Bank (in international waters between Sicily and Tunisia) by a US team led by Robert Ballard with a nuclear research submarine and ROV (remotely operated submersible). Now we have a UNESCO Convention to protect such sites, and we in the archaeological community are glad to see that Convention enter into force. How important and topical the subject remains, is shown by continuing threats and new threats to the Underwater Cultural Heritage (UCH) in international waters: for example, in the English Channel and Eastern Atlantic.

## The first attempt

The campaign for a Convention to protect the UCH in international waters began already in 1977 as a European initiative, in the Parliamentary Assembly of the Council of Europe in Strasbourg. A report on the need to fill this gap in the protection of our cultural heritage was presented by John Roper (a member of the British Parliament and of the Parliamentary Assembly, with cultural and nautical interests) to the Assembly's Committee on Culture and Education; the report contained a series of recommendations for action at international level (by the Committee of Ministers of the Council of Europe) and by the individual member states; and it was supported by detailed proposals on the necessary legal and archaeological procedures; long appendices were written on the archaeological aspects (by an archaeological adviser to the Committee, myself – I had been involved in the effort to achieve legislation for UK territorial waters) and on the legal aspects by the legal advisers to the Committee, two young lawyers of the Australian Foreign Service, Lyndel Prott and Pat O'Keefe, who had just negotiated a bilateral agreement with the Netherlands Government, on disposal of finds from Dutch East India Company wrecks found on the coast of Australia, mainly Western Australia (Prott and O'Keefe were to become key players for the next 25 years!).

The report was adopted unanimously by the Parliamentary Assembly, and passed to the Committee of Ministers for imple-



*Map showing location of Skerki Bank (Jason Project).*

mentation, particularly of the proposal to draw up a European Convention on the UCH; but the ad-hoc committee set up for this purpose failed to produce a unanimously agreed text, mainly because of bilateral disputes in the Aegean.

### **The campaign goes international**

Action through the Council of Europe then seemed to lapse; but those involved in the initiative did not give up, and continued to press for a Convention (now to be international rather than simply European in scope) through various channels, notably the International Law Association, where O'Keefe had played a key role, to arrive eventually in the forum of the competent UN body – UNESCO, where Lyndel Prott had become Head of the International Standards section of the Secretariat, and was to play a central role in achieving the Convention.

Over the years a series of notorious cases (e.g. the Skerki Bank affair in 1997, which I have already mentioned) had shown how much damage could be done to the UCH in international waters, on the deep seabed (now accessible to remotely operated submersibles - ROVs) where much of the missing information about ancient to late medieval ships and their cargoes is likely to be found. This built up the political will to move towards an international protection measure, and a



NR1: the U.S. Navy's deep diving nuclear research submarine.

Draft Convention was negotiated at a series of gruelling working meetings; however, a number of delegations ensured the watering down of the text - for which their representatives then did not vote when after these long debates the Draft Convention was adopted by the UNESCO General Assembly in 2001: 15 states abstained and 4 voted against. I note that Spain and Portugal soon ratified the Convention, and they have a world-wide UCH equivalent to that of the UK.

A number of states (notably the 'Western Maritime States') have said that they will not sign or ratify the Convention, though some have said that they support its general principles and objectives, particularly those set out in the Annex, based on the Charter that had been prepared in parallel and had recently been adopted by the International Council on Monuments and Sites (ICOMOS); and would adopt the Rules set out in the Annex, which represent internationally accepted standards of archaeological practice. It is fair now to ask of these countries, such as the UK, what they have done to respect and implement those Rules.

### **The British problem**

A conference on the Convention was organized in London in October 2005 by the Joint Nautical Archaeology Policy Committee (JNAPC), a British body which brings together informally representatives of the specialist non-governmental organizations (NGOs) and the relevant government departments, and as such performs a very useful role; the Nautical Archaeology Society published the Proceedings on behalf of the JNAPC.

The seminar looked at the situation in other countries, but specially concentrated on the U.K., as did the Declaration adopted at the end of the seminar: 'The Burlington House Declaration'. This Declaration basically welcomed the Convention; it noted that Her Majesty's Government had already assumed obligations under the UN Convention on the Law of the Sea (UNCLOS) 1982 (which it *had* ratified) 'to protect archaeological and historical material found in all sea areas and to co-operate for that purpose'; and welcomed the Government's support for



the general principles and objectives of the UNESCO Convention 2001, 'particularly those set out in the Annex, and noting that the Rules in the Annex represent internationally accepted standards of archaeological good practice.'

The Declaration therefore called on the British Government to 're-evaluate its position regarding the 2001 Convention with a view to considering how its specific reservations to that Convention may be overcome' (very diplomatic language!); in the interim, to pursue the Convention's principles and objectives in its own activities at national level; and to co-operate with UNESCO, the States Parties to the Convention and the International Seabed Authority, in their implementation of the Convention when it comes into force. The Government *more or less* rejected the declaration, confirming that its position was unchanged; and it is sad to note that it was necessary to hold a second Burlington House Conference in November 2010, because there is no sign of movement by the British Government.

### **The Convention comes into force**

In October 2005 the Convention was simply a draft text and a distant prospect. But gradually the number of states ratifying the Convention reached the figure 20, when the Convention came into force (on 2 January 2009). The basic operating committee (Meeting of States Parties) was then set up by those states which had ratified, and they will make important deci-



*The Jason: remotely operated submersible with robotic manipulator (1997).*



*The Jason Project: elevator system (1989).*

sions for the future. They have held two meetings in Paris (in March and December 2009) and set up a Scientific and Technical Advisory Body, consisting of 11 members (nationals of these states) nominated by the States Parties, whose number has now reached 35. The STAB met in Cartagena in June 2010. The International Centre for Underwater Archaeology in Zadar, Croatia, has been granted the auspices of UNESCO, in recognition that Croatia was one of the first states to ratify the convention.

Another important milestone is that Italy has ratified the Convention (January 2010); having spoken of the importance of an Italian ratification at a Ravello Lab meeting in October 2008, we applaud this decision. And now we await the ratification by France, already announced by Culture Minister Mitterrand; this breaks the hitherto solid negative front of the North European maritime states (France is both North European and Mediterranean!).

### **States still outside the Convention**

How will this progress affect the states which have refused to ratify the Convention?

We hope that they will feel more and more uncomfortable 'on the outside'. They should not be allowed to interfere in a process from which they have opted out, and yet they should be encouraged to support the operation of the Convention and particularly of its Meetings of States Parties and Scientific and Technical Advisory Body. After all, as signatories of the UN Convention on the Law of the Sea (weak on cultural heritage, but see article 303) they have a general obligation to protect this specific UCH.

We must also continue the debate, and try to persuade the 'non-ratifiers' of the advantages of ratification and full participation in decision-making and implementation of the Convention. We must contest the arguments used against ratification by different governments, and suggest that their fears are exaggerated: for example, over the question of 'sovereign immunity' for warships; the cost of implementing the Convention; and fears of 'creeping coastal state jurisdiction'.



These seem to be the principal concerns of the British Government – other ‘non-signatories’ may have different reservations.

More controversial for the British Government in the current situation are commercial operations by foreign salvage companies, working with all the latest deep-water technology and recovering valuable material from, e.g., the wreck of a 17<sup>th</sup>-century British warship located outside UK territorial waters, and landing it outside UK jurisdiction. The ‘*Black Swan*’ (code name) may after all have been a Spanish, not a British ship, but *Odyssey Marine Exploration, Inc.* (a leading underwater treasure-hunting company) have filed a claim for salvage rights in respect of wrecks in the English Channel. The low profile of the British government over the *Black Swan* dispute has been compared with the vigorous action of the Spanish government.

Other states like Spain and Portugal, with a long colonial tradition, and warships wrecked all over the globe, have understood that accession to the Convention could be said actually to reinforce the Doctrine of ‘Sovereign Immunity’ in relation to such remains, as it puts an obligation upon coastal states to report the discovery of such remains, to consult, and to co-op-



*Artefacts lifted from the Isis at a depth of 818m on Skerki Bank (dated to ca. A.D. 375).*



*NR1, submerged.*



erate on their protection from unauthorized interference. For example, British-related wrecks found in international waters can only be protected by the Convention, but a State must be a Party to the Convention to register an interest in UCH.

These arguments have been presented by us again last week in London, and we hope that our continuing dialogue with government officials will encourage a review of the British government's objections, and more appreciation of the advantages of ratification; also, more commitment to what it has already accepted: that the Convention's Annex is recognized government policy. This has not been evident in all the British government's decisions on 'Marine Historic Assets'.

#### **Issues to pursue**

Bilateral and multilateral agreements will have an important part to play, and the Convention (Art. 6) encourages States Parties to conclude such agreements. A number of existing bilateral agreements involve vessels of one state found in the territorial waters of another state, but recently some multilateral agreements involve wrecks beyond the jurisdiction of any state (e.g., on the Estonia and the Titanic). So far many of the agreements have come after the location of a wreck and damage to it. Some now advocate regional agreements for closed or semi-closed seas (an idea that goes back to Strasbourg,



1977), to provide protection before damage: this would be a good subject for an Italian initiative. Another idea is to promote agreements relating to a particular battle-site: the site of the Battle of Jutland has received much attention.

### **Conclusion**

These considerations must not weaken our principal aim, more than 30 years after our debates in Strasbourg: to persuade the 'non-signatory' states to ratify the 2001 Convention. Apart from Italy, Spain, and soon France, the 'non-signatories' are the states which have the technology to undertake deep-water recovery work, and their failure to ratify will leave a huge hole in the Convention's protective network, which relies to a large extent on flag states controlling the activities of their vessels. With a mixture of 'quiet diplomacy' and occasional public pressure, and with the new situation which has emerged with the coming into force of the Convention, I hope that it will be possible to persuade the 'non-signatories' to change their mind.