The UNESCO Convention on the Protection of the Underwater Cultural Heritage: a one-day workshop held on 23 May 2004

Compiled by
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Abbreviations

AIMA	Australasian Institute for Maritime Archaeology, Inc.
CPUCH	Convention on the Protection of the Underwater Cultural Heritage
DEH	Department of the Environment and Heritage
EEZ	Exclusive Economic Zone
ICOMOS	International Council on Monuments and Sites
ICROM	
ICUCH	International Committee on Underwater Cultural Heritage
ILA	International Law Association
NGO	Non-government Organisations
IUCN	International Union for Conservation of Nature
UCH	Underwater Cultural Heritage
UN	United Nations
WAM	Western Australian Museum
WAMM	Western Australian Maritime Museum

Introduction

On Sunday 23rd May, a workshop was held on the UNESCO Convention on the Protection of the Underwater Cultural Heritage at the Western Australian Maritime Museum, Victoria Quay, Fremantle. The objective of the workshop was to invite interested participants from all walks of life, whether in related fields or not, and provide them with an opportunity to familiarise with the Convention which could also prove useful for later lobbying and support for Australia to ratify the Convention.

The workshop consisted of a panel-audience discussion as well as presentation style format for sessions where articles and rules of the Convention needed to be highlighted and explained. The panel consisted of the following professionals:

No.	Panellist	Designation
1.	**Prof. Lyndel Prott**	Former Director of UNESCO Division of Cultural Heritage
2.	**Dr. Patrick O'Keefe**	Adjunct Prof., Australian National University
3.	**Mr. Aleks Seglenieks**	Senior Legal Officer, DEH, Canberra
4.	**Ms. Vicki Richards**	Research Chemist, Dept. of Materials Conservation, WAM
5.	**Mr. Graeme Henderson**	Director, WAMM
6.	**Mr. Jeremy Green**	Head of Maritime Archaeology, WAMM
7.	**Ms. Myra Stanbury**	Curator, Dept. of Maritime Archaeology, WAMM

Workshop program

The program for the workshop consisted of defining and explaining to the participants the UN CPUCH document and its importance for UCH. The workshop was divided into six sessions:

Venue: New Maritime Museum Theatre, Fremantle
Date: Sunday 23rd May 2004 **Time:** 09:00 – 17:00 **Cost:** $10.00/head

TIME	TOPICS	MAIN SPEAKERS
09:00 - 09:20	*Registration*	
09:20 - 09:45	Welcome & introduction: "What is the UNESCO Convention, and how does it affect the diving community, general public and government bureaus?" 1. Objectives and general principles of the Convention.	Graeme Henderson Lyndel Prott
09:45 - 10:30	**<u>Session 1: (Chair: G. Henderson)</u>** 1. Requirements for national implementing law. 2. Relevance to existing legislations. 3. Public awareness.	Lyndel Prott
10:30 - 11:00	*Morning tea*	
11:00 - 12:00	**<u>Session 2: (Chair: P. & L. O'Keefe)</u>** 1. Activities affecting UCH. 2. Salvage law (HS Act); illegal activities / Reporting & notification – based on WA system).	1. Graeme Henderson 2. Lyndel/Patrick/ Jeremy
12:00 - 13:00	**<u>Session 3: (Chair: P. & L. O'Keefe)</u>** 1. Foreign elements (Foreign ships, foreign applicants for permits, foreign team members); other jurisdictional issues. 2. Seizure and disposition of UCH (Eg. of *Vergulde Draeck*)	1. Lyndel Prott 2. Myra Stanbury
13:00 - 14:00	*Lunch*	
14:00 - 14:45	**<u>Session 4: (Chair: J. Green)</u>** 1. Competent authorities for ensuring proper implementation of Convention 2. Appropriate qualifications / supervision of permitted excavations.	1. Graeme Henderson 2. Jeremy Green
14:45 - 15:45	**<u>Session 5: (Chair: J. green)</u>** 1. International mechanisms of the Convention; meeting of state parties / scientific committee; ICUCH*. 2. International / regional collaboration in training- (Brief)	Patrick O'Keefe
15:45 - 16:00	*Afternoon tea*	
16:00 - 17:00	**<u>Session 6: (Chair: M. Stanbury)</u>** 1. Discussion / question & answer.	All

* International Committee on the Underwater Cultural Heritage Inc.

UNESCO CPUCH

- (1) Background

In 1988, the International Law Association established a Cultural Heritage Law Committee. This Committee produced a report containing a Draft Convention on the Protection of the Underwater Cultural Heritage, which was adopted at the Association's 66th Conference in Buenos Aires in 1994. The Draft was forwarded to UNESCO for consideration and formed the original basis for discussion leading to the *Convention on the Protection of the Underwater Cultural Heritage*. The Draft envisaged a State taking jurisdiction over a cultural heritage protection zone coexistent with its continental shelf. If a State did this, it was to take measures to ensure that activities within the zone affecting the UCH at a minimum complied with the provisions in a charter attached to the Convention. This charter was to contain provisions establishing standards for work in relation to UCH. At present, the UNESCO CPUCH is not yet a statutory document. It will be so once the first twenty countries (or Member States) join and ratify the Convention. These first twenty States to join will form the Scientific and Technical Advisory Body, which has the potential to become a significant force in the development of underwater archaeology.

- (2) Responsibility of States

The original draft of the Convention envisaged a State taking jurisdiction over a cultural heritage protection zone, which is coexistent with its continental shelf. At the minimum, this includes States taking measures to ensure that activities within the zone affecting UCH had to comply with the provisions in a charter attached to the Convention. This Charter is to contain provisions establishing standards for work in relation to UCH. The UNESCO CPUCH 2001 is much more complex due to the political compromises that had to be made in reaching the final text. Unfortunately, they have made protection of the UCH more difficult in that States are now required to consult and implement various processes by committee and UNESCO is also involved. Unless there is much goodwill and efficient administrative procedures in place before a find is made, it will be difficult to achieve effective protection (O'Keefe, 2003). The essential role of the Convention is to provide guidelines, directives and objectives for each state to reach but they have to work out themselves how they are going to implement it.

The process of cooperation essentially begins with **Article 9** "Reporting and Notification in the Exclusive Economic Zone and Continental Shelf". **Articles 9** and **9(1)** on the processes of reporting and notification are indicative of the complex provisions according to which reports do have to be made by certain nationals and ship's captains. On becoming party to the Convention, States will have to put in place an effective system of reporting and ensure that the people concerned are aware of this. There are specific administrative issues to be

addressed such as to whom does the master of the vessel report – the maritime or the cultural authorities? Merely putting the system in place is insufficient. It will also have to be publicised widely. Furthermore, as part of the process, States will find it necessary to specify the nature of the information required. In the case of a discovery, there may not be much information available before further work is done on the site.

Paragraph 1(b)(ii) of Article 9: There is a possibility that this may involve states with no interest in the heritage concerned. It also requires efficient communication between a number of different entities within the States concerned. Paragraph 2 requires a State, on becoming party, to indicate how reports will be transmitted to other states. Consideration must also be made about who is responsible in sending the information out. Does UNESCO have to actually send it to each Member State or would it be sufficient to keep the information in such a way that it is available to any Member State that wants it.

- (3) Initial aims and process

Activities affecting UCH beyond the zone were to be prohibited unless they complied with the charter. If they did not comply, heritage brought ashore was to be seized and penal sanctions imposed. States would also refused to allow the use of their territory in support of non-complying activities. Consequently, the Draft Convention did not require States to take any action unless the person concerned ignored the charter provisions and then the action required was straightforward.

The International Law of the Sea: a brief historical perspective

The oceans have long been subject to the freedom-of-the-seas doctrine, a principle put forth in the seventeenth century, essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas was proclaimed to be free to all and belonging to none. While this situation prevailed into the twentieth century, by mid-century there was an impetus to extend national claims over offshore resources. There was growing concern over the toll taken on coastal fish stocks by long-distance fishing fleets and over the threat of pollution and wastes from transport ships and oil tankers carrying noxious cargoes that plied sea routes across the globe. The hazard of pollution was ever present, threatening coastal resorts and all forms of ocean life. The navies of maritime powers were competing to maintain a presence across the globe on the surface waters and even under the sea.

A tangle of claims included the following: spreading pollution; competing demands for lucrative fish stocks in coastal waters and adjacent seas; growing

tension between coastal nations' rights to these resources and those of distant-water fishermen; the prospects of a rich harvest of resources on the sea floor; and the increased presence of maritime powers and the pressures of long-distance navigation in addition to a seemingly outdated, if not inherently conflicting, freedom-of-the-seas doctrine. All these were threatening to transform the oceans into another arena for conflict and instability.

In 1945, President Harry S. Truman, responding in part to pressure from domestic oil interests, unilaterally extended United States jurisdiction over all natural resources on that nation's continental shelf - oil, gas, minerals, etc. This was the first major challenge to the freedom-of-the-seas doctrine but other nations soon followed suit: Argentina in 1946; Chile and Peru and in 1947; Ecuador in 1950; Egypt, Ethiopia, Saudi Arabia, Libya, Venezuela and some Eastern European countries after the second world war; then Indonesia and the Philippines; and Canada in 1970.

The UNESCO CPUCH workshop: welcoming and introduction

At the start of the workshop, Graeme Henderson welcomed the participants, and explained the range of stakeholders present. He then noted that the reason for coming together was a general familiarisation with the Convention - to put people in a position to progress the various stages of implementation in due course, with an appropriate knowledge base.

Objectives and general principles of the UNESCO CPUCH.

Lyndel Prott made known the provisions of the Convention which were equally important for public education, public information and for public responsibilities – not just for the diving community. She went on to provide some background insight on the United Nations International Convention of the Law of the Sea. The purpose behind the whole Convention was to save the assault on UCH for the benefit of every member of public and not just the archaeologists. The International Convention of the Law of the Sea was a very difficult Convention to negotiate. It contained over 300 articles on Law of the Sea and is a very complex piece of work. One of the things that emerged during the negotiations was that the lawyers who had been involved in the process had been so committed to it that it was difficult for them to sometimes see beyond that to the conservation issues.

It was clear both to UNESCO, the ILA, and the Division of Ocean Law in UN, New York, when they did the first draft, that the responsibility for protection lies with each State, and not UNESCO or some other body. Essentially, what the

Convention does is provide the States with guidelines, directives and objectives to reach, but States have to decide how they will implement these measures themselves.

Australia has had a useful experience in this respect because it is a Federation and it has a number of State schemes of legislation protecting shipwrecks. It also has a division of responsibilities between the Commonwealth and the States, and the Commonwealth has delegated much of its power in this respect to the States rather than to Canberra, for instance. This is sensible considering the physical size of Australia. However, some schemes of legislation have differentiated between inland waters such as lakes, rivers and bays because of the basis that these are associated more with land sites and, therefore, are the responsibility of land archaeologists. In addition, what happens at seas are sometimes dominated by a different administrative regime and quite often associated with Navies such as in France, Argentina and Uruguay – an aspect that has nothing to do with ships in internal waters. Therefore, how States regulate this varies but the Convention lays down certain rules with which that States have to comply. Lyndel also made known the fact that the question of salvage law (**Article 4**) was another very difficult issue to manage.

Session1: Requirements for National Implementing Law, relevance to existing legislations and public awareness

**Note: the tape recordings for this session could not be transcribed because it was inaudible. A summary is provided below for this session that was chaired by Lyndel Prott.*

Lyndel Prott pointed out that the rules essentially deal with two sorts of activities: those that are required by the rules and conditions of the project and those specific activities deemed illegal by the Convention. In respect of the former, the sanctions will usually involve cancellation of a permit, failure to renew a permit, refusal of another permit – even a refusal of any permit for a previous offender to operate anywhere in those waters. The other activities that are deemed illegal by the Convention are those outlined in **Rules 2,3,4,5,11 and 22**. Violations of these provisions can be punished by fines or, in more serious cases, imprisonment or confiscations, including possible confiscation of vessels, materials or equipment used in the illegal activity or excavations.

In Article 5, there is an important provision on activities that, incidentally, affects UCH. This provision was entered in at the legislation of the Canadian delegation. In essence, it stipulated that there is one set of rules for people who intentionally go out looking for a shipwreck to perform activities that will disturb the wreck and affect its preservation. On the other hand, there is a different category of people such as fishermen with their trawling nets, oil exploration companies or companies needing to lay cables on the sea floor. This group of people do not go

out looking for wrecks but their activities can, nevertheless, be harmful to any wrecks lying in the path of their activities, since their concern is to carry out a specific job. As a result, this provision was included to ensure that States try to regulate these activities which can be very damaging, and they may have to do so that under a different legislation such as one related to oil exploration or cable-laying. It is for every State to assess what the principle dangers are that might occur from these kinds of incidental activity. This one obligation States have to deal with seriously.

Session 2: Activities affecting Underwater Cultural Heritage; Salvage Law/Historic Shipwrecks Act 1976; illegal activities; and reporting and notification (Based of WA system).

At the start of this session, Graeme Henderson pointed out the range of activities directed at the UCH (including maritime archaeology and salvage), and those that incidentally affected the UCH (such as cables, trawling, etc). With regards to competent authorities for ensuring proper implementation of Convention, Graeme noted the range of activities currently carried out by the WA Maritime Museum under the Historic Shipwrecks program. He also stated that the WAMM is a very strong supporter of the Convention, having been involved in the process from the early stage through Graeme himself, and also Jeremy Green and Mack McCarthy who were members of various related committees particularly ICOMOS.

Graeme explained that UCH includes all traces of human existence having a cultural, historical or archaeological character, which have been partially or totally submerged underwater, periodically or totally for the 100 years. Sites can include structures, buildings, artefacts and human remains together with their archaeological and natural context. As well, it can include vessels, aircraft, other vehicles or any part thereof, their cargo or other contents together with its archaeological and natural context. Lastly, it includes objects of prehistoric character. Installations other than pipelines and cables are not UCH. Activities that affect UCH include archaeology itself, salvage, looting, recreational activities, trawling, drilling as well as elements like pipelines, cables, and installations. There are also natural events that affect UCH such as cyclones in the tropical areas, storms and earthquakes.

On the topic of reporting and notification, Jeremy Green presented an outline of the reporting procedures that are undertaken by the Department of Maritime Archaeology at WAMM. Discussions involved issues to do with State and Federal jurisdiction and the operation of the various Acts within Western Australia.

On the subject of illegal Activities and Notification, Jeremy's discussion dealt with what is protected and what objects are covered under the Acts. He covered the 75-year rule and inconsistencies between State and Federal Acts, and the

implementation of the Convention that will require the State Act to be rewritten. Questions from the floor ranged from issues to do with wreck trails to World War II sites.

The panel-audience discussion covered jurisdiction, including definitions of State and Commonwealth waters. Basically, if the mouth of a bay is narrower than the internal diameter of the widest interior points, than that is State waters. In addition, the Commonwealth Legislation states that all shipwrecks 75 years and older are automatically protected under legislation. In the past, people had to race to off to get Canberra to enact legislation to protect sites because they were not automatically protected. Now, however we have a rolling date every year where shipwrecks are automatically protected once they hit the year of their 75-year age. The UNESCO CPUCH stipulates 100 years so there will be no embarrassments that the legislation is less restrictive than the Convention. If the figures were reverse, than there would be a need to amend the legislation.

The State Act is somewhat different in that it covers shipwrecks lost before 1900. WA is in the process of trying to amend this to bring it in line with the Commonwealth legislation. At present, a 1910 wreck lying half in Commonwealth waters and half in State waters would only have the Commonwealth half protected. So there are inconsistencies with the two legislations.

The State Act also makes interesting inclusions that the Commonwealth legislation does not. For instance, the State Act covers objects that come from an historic ship (not shipwreck). So a bottle found by WAMM staff on Dirk Hartog Island that came from the St Alloüarn expedition of the French, which landed on the island in the late 18th century could not be covered under Commonwealth Act but we could protect it under the State Act. The ship had stopped but had not wrecked in our waters so the bottle did not come from a historic ‘shipwreck’ but from a historic ‘ship’. So, in theory, anything from an historic ship is protected under WA’s State Legislation.

Another interesting peculiarity involves the built structures on the West Wallabi islands which were part of the Batavia incident. Some survivors from the Batavia ship landed on West Wallabi Island and built some shelters, which are the earliest known European structures in Australia. Unfortunately, they cannot be protected under either legislations because the material that the structure was built from didn’t come from the ship; it was actually local stone. So, we are only able to protect the building itself under Heritage Legislation, and not under the historic shipwreck legislation. The situation, therefore, is that the shipwreck objects are protected under Commonwealth legislation and the building itself is protected under the Heritage legislation.

Salvage law

Patrick O'Keefe explained that there is occasional confusion with Salvage Law. Salvage is the reward someone gets for saving the property or life in danger at sea. It does not grant the person ownership. Patrick also advised that salvage was one of the three most highly controversial issues involved in negotiation of the Convention on the Protection of the Underwater Cultural Heritage. It was the first of the three to be resolved through a compromise, which neither excluded nor allowed free reign to salvage. The law of salvage and the law of finds may only apply to UCH if the conditions set out in **Article 4** are met. One of these is the activity alleged to attract such laws is in full conformity with the Convention, which includes the **Annex**. **Rules 1 and 2** will severely limit the scope of salvage. The primary objective of in situ preservation enshrined in **Rule 1** bears on the goal of salvage to "rescue" goods in danger. Moreover, **Rule 2** states that UCH shall not be "traded, sold, bought or bartered as commercial goods". It would be possible, for example, to establish a museum of UCH charging admission.

Lyndel explained that traditional salvage has been occurring for over the last 100 years and has become an illegal activity except within the special provision in **Rule 2** and **Article 4**. States need to comb through the Convention to see which activities really need to be legislated against. The **Annex** is helpful in this respect as it does two basic things: Firstly, it sets out rules for archaeological projects defining what the illegal activities are, what the conditions of those activities are, and what the authorisations were. Secondly, it has a series of other rules, which specify what constitutes illegal activities.

Commonwealth *Historic Shipwrecks Act 1976*

Myra Stanbury referred to the provisions for **seizure and forfeiture** in the *Historic Shipwrecks Act 1976* (**Section 25**), not only of cultural material, but also ships, equipment and any articles that are believed to have been used in committing an offence against the Act, including the sanctions for infringements. Certain offences under the Act are indictable (**Section 26**).

Issues concerning legal obligations and incentives for people to report historic shipwreck sites and relics; prohibited activities with respect to sites and relics (**Section 13**); questions of property transfer, ownership and legal obligations with regard to 'possession, custody or control' of historic shipwreck relics (**Sections 9, 10, 11**); and, public access/awareness of information about historic shipwreck sites were discussed in the context of the legislation, as well as public perceptions of the value of the UCH.

Session 3: Foreign elements: foreign ships, foreign applications for permits, foreign team members, and other jurisdictional issues; and seizure and disposition of UCH (E.g. *Vergulde Draeck*)

Lyndel went on to present on the six different maritime zones and their legal regimes. In inland archipelagos and territorial waters, the national State has full control (**Article 9**) up to 12 miles out. From 12-24 miles (contiguous zones) (**Article 8**) it can control (nautical) activities relating to UCH, in a provision in the **United Nations Law of the Sea Convention 1982** [Article 30 3(3)]. The notification and reporting provision on **Article 9** have met objections from States, which would not accept enforcement by coastal States over vessels or nationals of their (non-coastal State) nationality. In respect of the "area" (high seas and deep sea bed), the only control is over a national state's own vessels and nationals. Note the special procedures applying to state ships [(**Article 13**) and **Article 2(11)**].

Articles 7-12 have a series of rules that States have to acquire seriously. The Law of the Sea Convention divides the maritime area into six different zones and different rules apply to each of the zones. The Law of the Sea textbooks provide somewhat complicated diagrams on how this works. The inland waters are easier do define because these are rivers, lakes and anything in from the land boundary or the baselines that can be drawn across deep gulfs, historic bays and the like. The principle issue that people need to be aware of is that outside the Contiguous zone (i.e. outside of 24 miles from the coastline), there is a special regime set up for notification and reporting to other States who have an interest in this area. These are States of nationals which are undertaking activities in the area as well as those who have an historical interest in the wreck such as if it derived from a port in their country or the ship was built or traded there. In this instance, there is a State-to-State obligation to see that this is carried out.

There is also the Exclusive Economic Zone which goes out to 200 miles, the Continental Shelf which can goes out to 200 miles, and the deep seabed and ocean floor, which in the Law of the Sea Convention is called "The Area". In this area, a State is totally dependent on international collaboration because no coastal state has a right to do anything with a shipwreck in such an area. However, what it does have is a duty to control its own nationals and its own vessels in this area. This is an important responsibility, although it would not make much sense to archaeologists if a wreck is found lying on two different zones such as half in a Contiguous zone and half in its Territorial waters. A situation like this will be a difficult problem to solve. Another problem that can emerge is where there is a concave coastline and there are three States on that coastline, such as the case of Denmark, The Netherlands and Germany. In one particular case, The Netherlands had argued for a better area and in the end, the International Court of Justice split the difference and gave them an area in the middle.

There is also a very important provision for National Legislation, which is **Article 15**. This is an obligation for States to ensure that areas in their control are not used in support of non-conforming operations. For instance, it should be ensured that Fremantle is not going to be used by salvors who are looting Indonesian wrecks. On being party to the Convention, a State will have an obligation to ensure its resources are not being used to exploit the heritage of another country. This provision is important as it automatically builds a network of cooperation. Aside from laying the provisions, States must also make clear what will be the consequences if another State were to violate the measures it has placed to implement this Convention. States should also cooperate to ensure enforcement of sanctions imposed under this Article, such as using legal techniques for extradition of people who have committed really serious offences such as if they have undertaken criminal activities.

Australia's legislation is a reasonably good base from which to begin any alterations. The provision on ensuring that a state or territory is not used by people who are exploiting or not conforming to another's state legislation in order to complement the Convention needs to be worked on. As well, how the relevant obligations are distributed between the Commonwealth and the States/Territories is in need of some discussions.

According to **Article 20**, all State parties are required to take all practicable measures to raise public awareness regarding the value and significance of UCH and the importance of protecting it under the Convention. One of the concerns at the initial stages of discussions on the draft Convention was the fear of raising negative awareness on UCH, such as an increase in treasure hunting activities. Some countries were not wise enough to ask for advice from UNESCO when approached by treasure hunting companies offering them a stake of the profits to be made from selling the valuable cargo of some wrecks. Sri Lanka was one country that had immediately asked UNESCO's advice when approached by a company which made such an offer. Upon UNESCO's advice that it should know what it was going to do with the materials, how it was going to stabilise the site, and the conservation processes it was to have in place for the materials, Sri Lanka decided to wait till it had established a proper conservation laboratory and received assured compliance from the company before it allowed the activities to take place. On the other hand, some companies have lied to countries about the provisions of UNESCO so it does show that States do need to be aware of the articles and rules and what their obligations are regarding the preservation of UCH.

The **Annex** is the archaeological heart of the Convention and its philosophy reflects the Sophia Charter. Parties to the Convention are required to also comply with the Annex. In the beginning, when the Charter was being drawn up, it became clear to those involved that archaeologists rather than lawyers were needed to define the basic standards that should be applied. By that stage, ICOMOS has had charters on monuments, terrestrial archaeological sites and

historic cities but none on underwater sites. Prof. Prott had brought this to the attention of ICOMOS who responded by creating a sub-committee called ICUCH, with Graeme Henderson as its first president.

One of the important rules is on public awareness. If a major project is being carried out, the public is obliged to be informed about it including the wider significance of the wreck. This has not been anticipated as a problem in Australia but some other countries have had archaeologists see themselves as more elite, eventually writing their results in journals using technical terms. The result is that the information is not delivered across to the general public. **Rules 26 and 27** – on producing the basic documentation – are vital. Some companies produce nice books but without adequate documentation and, therefore, not an archaeological report. These rules are, therefore, important and the Convention has done its best to ensure this is dealt with to adequate standards.

In the preamble to the Convention, there is another provision in **Paragraph 4** regarding the public's right to enjoy the educational and recreational benefits of responsible non-intrusive access to *in situ* archaeological cultural heritage. This would include the value of public education to contribute to awareness, appreciation and protection of that heritage. This is an important stream that runs through the Convention as well as the Annex and needs to be emphasised. This is because those who opposed the Convention often give the reason that "the archaeologists just want to keep this resource for themselves as they think they are the only ones who are entitled to do anything with these wrecks". This is not the philosophy of the Convention and it never has been.

Jurisdictional issues

Patrick O'Keefe and Lyndel Prott chaired this session, which concentrated firstly on jurisdictional issues, which were the most controversial in the negotiation for the Convention on the Protection of the Underwater Cultural Heritage. There were a number of these issues but the most difficult to resolve concerned activities directed at UCH on the continental shelf or in the EEZ of a State where such activities were undertaken by a vessel or persons from another State. Could the coastal State have jurisdiction over that vessel or persons? Some States regarded this a logical solution but others saw it as an example of "creeping jurisdiction" by States wishing to exploit the negotiations for other ends. The solution adopted was a "constructive ambiguity" which in effect gives certain powers to the coastal State.
Basically, when the Convention was drafted, one of the principle issues people worried about concerned conflicts of jurisdiction and, therefore, conflicts of interests between different States. **Article 7** deals with internal waters, archipelagic waters and territorial sea. Internal waters include lakes and rivers, that is, such bodies of waters lying within the State or Territory. With regards to archipelagic waters, there is a special provision in the Law of Sea Convention for

States like Indonesia and The Philippines, which are a collection of islands and where the waters between these islands can be considered archipelagic and within the control of that State. This attracted an intense argument from countries like Australia, which has big navies and who wanted the right to travel through these waters. The rationale was that if Australia needed to send its navy fleets north in a hurry, it would be faster to travel through these waters than de-touring around the outermost islands. So this concept was devised that these archipelagic waters are under the control of the island State but other States still had a right to travel through them. Territorial sea is 12 miles from the baseline. Nation States, which are party to this Convention, have the right to regulate and authorise activities directed to UCH in their internal waters, archipelagic waters and territorial sea. Some European countries were very interested in the internal waters aspect, particularly Hungary, because of their large internal lakes and rivers which contains significant maritime or prehistoric cultural materials. There is also a further provision in **Article 7** that member States will cooperate by informing flag States (if applicable) with a link to a shipwreck (if they have identified it as such) that they have discovered such a wreck and will be carrying out work on it, even if this wreck is within the territorial waters of the member State. This was brought into this Convention because there is no similar provision in International Law for a State to claim ownership of or prevent work on a shipwreck or submarine that has sunk in the waters of another State. After much argument, the provision stipulated for flag States to be notified but they have no power to stop a State, which has the wreck, from doing any work on it. The next type of zone concerns the Contiguous zone which gives the coastal State the right to operate its control out of the 24-mile limit.

Much more complicated is the EEZ and the Continental Shelf. The EEZ is the water over the Continental Shelf and the Continental Shelf is the seabed. The geographical definition of Continental Shelf is to the edge of the area where the seabed drops to the deep ocean floor. However, during negotiations on the Law of Sea Convention, States such as Chile, which has a deep trough very close to the coastline, considered it a great disadvantage to them as their continental shelf area would be much lesser than countries like Australia. Consequently, it was agreed that for that Convention the Continental Shelf should go out to the 200-mile limit and States with troughs close to their land mass are still able to benefit.

Parties ratifying the Convention will have to declare the manner in which reports will be transmitted through the different levels and/or agencies in accordance with reporting and notifying under this provision. This may involve national vessels having to report to coastal States about activities directed at UCH if they notice such incidents. If a coastal State finds a wreck which ‘belongs’ to another country, the coastal State is required to inform that country, such as in the case of the Dutch VOC ships. In any case, the coastal State would benefit because they would want to access the records from the country that ‘owned’ the ship in order to find out the historical background and significance of that ship. Countries

tend to see this responsibility differently depending on their geographical positions. For instance, European countries that are closer together may see this differently from Australia which has no close neighbours off some of its shores and would, therefore, have to look after resources in its own Continental Shelf and would not be able to expect another State to do so. The Continental Shelf and EEZ covers the whole of the deep seabed. **Article 11** in the UN CPUCH has some relation to Article 149 of the UN Law of the Sea Convention in this respect. No State should be given preferential right here as it is a free transit zone. However, there is a responsibility to protect UCH in these areas and the Government of the relevant Coastal State should take responsibility otherwise it becomes a free-for-all situation on wrecks in the deep seabed. So these are the provisions on these different zones.

There is a special provision in **Article 13** on Sovereign immunity of State ships. It does not matter where these ships are discovered, if it is in the Contiguous zone, Continental Shelf or the deep seabed, they are to be treated as State ships and they are immune to operation. The one exception is Territorial sea. There is no provision for this. While notifications must still be carried out, operations on these areas are not subject to consent.

Seizure and disposition of UCH (E.g. *Vergulde Draeck*)

As indicated by the Chair, this issue is dealt with in the Convention in **Articles 14, 15, 17 and 18**. Myra Stanbury explained that the main objective is to make it unprofitable for people to exploit shipwrecks contrary to the provisions of the Convention for material excavated in such circumstances to be seized and the persons concerned subjected to sanctions. Under **Article 18**, each State is to take appropriate measures to seize UCH in its territory (i.e. Territorial Sea and Inland Waters) that has not been recovered in a manner not in conformity with the Convention (Paragraph 1); to record, protect and stabilize seized UCH (Paragraph 2); to notify the Director-General and any other States with a verifiable link to the UCH concerned of any seizure it has made under the Convention (Paragraph 3); and, ensure that the disposition of any seized UCH be for the public benefit, taking into account the need for conservation and research; etc. (Paragraph 4).

Patrick O'Keefe pointed out that seizure of material is an effective way of depriving offenders of economic gain from their illegal activities after other sanctions (fines etc.) have been imposed. However, there are likely to be some difficulties. On the point of ownership of property, Myra pointed out that the **National rules** on dealing with ownership of property might present problems, particularly where UCH material has changed hands several times. For instance, if a person buys property in England and it has been stolen, under their limitation periods after 6 years, if it was bought in good faith, they receive good title. These implications with respect to the Convention have not been fully investigated.

A similar issue arises in regard to **Human Rights**, particularly in Europe where the first protocol to the European Convention on Human Rights guarantees the right of property. Difficulties could occur if a State tried to seize property that has arrived in its territory through a chain of various transactions, even though it was excavated in a manner not in conformity with the Convention. When a State becomes party to the Convention it will have to look at the ownership of property issue and decide what is going to be allowed and what is not, and under what circumstances it will seize.

On the subject of funding, if a State seizes material, then Paragraph 2 stipulates that it has to be recorded and protected. This has implications for Government with regard to funding to take account of such requirements. Further funding may also be required to fulfil the need to reasonably stabilize UCH, which could prove quite costly.

On the point of reporting and notification, paragraph 3 requires that any seizure be reported to the Director-General and any other State with a 'verifiable link' to the seized UCH.

On the point of deposition of material, States which have seized UCH not excavated in conformity with the Convention will have to take into account the need to accord with the various interests set out in Paragraph 4, which includes conservation and research, the need for reassembly of a dispersed collection, need for public access, exhibition and education, as well as the interests of any State with a verifiable link to the UCH.

Lyndel Prott and Patrick O'Keefe, in response to questions from the floor regarding such goods in antique shops or peoples' homes, confirmed that the Convention is based on the **1970 UNESCO Convention on *Illicit Trafficking of Cultural Material*** and does not apply to material before 1970. In addition, it does not apply in a particular country until that country ratifies the Convention. The Australian PMCH Act, however, goes further in that it applies to material that was exported in any period. If it was an illegal export (e.g. if it was exported in 1930 from Greece and it was illegal at that time to export from Greece), then the Act covers it. If it was not illegal, however, then it is not covered.

A summary of session 3

In summary, Lyndel had talked about the basic activities of the Convention, which are to extend the underwater heritage the same standards of protection as those that apply to land-based heritage. A complication in this basic objective has been the application of the International Law of the Sea to most of the areas of activity by underwater archaeologists. Important considerations are set out in the preamble to the Convention: control of unauthorized activities; prevention of

commercial exploitation without regard to the archaeological significance of a site; enhancing international cooperation and learning from experience from the 1970 UNESCO Convention on elicit traffic, enhanced international collaboration to prevent use of jurisdictions that avoid the standards of the Convention. Important general principles are set out in **Article 2**: international collaboration, preservation *in situ* as a first option, prohibition of commercial exploitation, respect for human remains, and responsible, non-intrusive access for the public.

While Australia already has well worked out legislation, some states have none. Aspects of the Convention will need to be considered in the context of the law of each Australian state and of the Commonwealth. These include the hard-fought provision on salvage (**Article 4**); rules for activities which accidentally affect underwater cultural heritage (**Article 5**); the different rules in the Convention for each of the different maritime zones; the rules to do warships (**Article 19**); the non-use of national areas in support of non-conformance operations (**Article 19**); the enforcement of rules on Australian vessels and nationals in areas outside Australia; and sanctions (**Article 17-18**). Another very important thread is the public awareness [**Articles 2(10); 20 and rules 35 and 26-27**] on documentation. The preamble also emphasises the importance of research, information and education.

Seizure and disposition of underwater cultural heritage is dealt with in the Convention in **Articles 14, 15, 17 and 18**. The basic thrust behind these is to make it unprofitable for a person to exploit a wreck contrary to the provisions of the Convention. Material excavated in such circumstances is to be seized and the persons concerned subjected to sanctions.

Basically, this is also to encourage State parties to prevent entry into their territory ships dealing in or are in possession of UCH illicitly exported or recovered by means contrary to the Convention. This was not an easy clause to negotiate because of the International Convention on ‘use of ports’ for ships in distress or in provisioning. This no doubt has to be applied with caution and commonsense. State parties need to ensure that vessels do not use their facilities to support such operations.

Article 16 covers a State’s nationals in foreign waters. States need to ensure that Nationals and vessels flying its flag do not engage in activities directed at UCH in a manner that does not conform to the Convention. As well, if they enter into another Continental Shelf, they have to apply the provisions of this Convention, such as if they discover a shipwreck while carrying out works on the seabed. Otherwise, they will be in trouble with their own government. It is an effort to try and reinforce international collaboration in the protection of shipwrecks.

The issue of flags of convenience is to some extent a regional one has gone unresolved for a while now. Singapore is one of the biggest problems. It was not

involved in the negotiations and it is well known that some salvors operate out of Singapore. An effort must be made to persuade Singapore to enter the Convention at some stage although that could take many years. However, other States in the area are quite keen on the Convention because they are suffering from this problem. So, if these other States come into the Convention, it may add pressure and make it difficult for Singapore to stay out.

The significance of wrecks may be determined by the sorts of questions it can answer such as why the VOC wrecks were discovered in Australian waters. For a ship like the *Titanic*, we know where it was going, why it sank, who was on it, right down to the smallest of details. This is not to say the *Titanic* is of no significance, but there was concern about this issue during negotiations. **Article 17** deals with the application of sanctions. This takes a more philosophical position because of arguments about the benefits of sanctions, and the sorts of problems that flow from the position of different sanctions. Under national law, offences relating to UCH are covered either by jail, imprisonment or fine. In international Conventions such as this UN CPUCH, imposing is almost relative because what is a significant amount to one (poorer) country might be deemed insignificant to another. There is a need therefore to set adequate sanctions which will deter both the locals as well as internationals in carrying out unauthorised activities directed at UCH. The other aspect is found in **Paragraph 2** of **Article 17** "…and shall deprive the offenders of the benefit deriving from their illegal activities". This is then dealt with in **Article 18**, which relates to seizure. However, one difficulty is that if the material is not seized and simply left with the person after imposing a fine on them, this still leaves them with the aesthetic value of the object. So in imposing various sanctions, States have a number of issues to consider. **Article 18**, **paragraph 1**, relates to material taken from territorial sea and internal waters. There is also the issue of States being obliged to seize materials in its territory that have been recovered via illicit or unauthorised means. But the problem may arise that someone has properly bought this material from another person who stole it from a site. How then does a State deal with this situation? Does the State, if party to the Convention, seize the property?

The other aspect is the question of Human Rights. This will apply more in Europe because of the European Convention on Human Rights and the first protocol to this Convention guarantees the right of property. This can be a problem when seizing property from someone who bought it by legitimate means even though the materials was initially recovered by means contradictory to the UN CPUCH. This just means that States becoming party to the UN CPUCH Convention must consider all these issues and circumstances. Paragraph 2 of **Article 18** covers recording and protecting of seized materials. This can be a problem as museums, for instance, would not normally draw up a budget to include for providing treatment of seized materials. As such, governments of States becoming party to the Convention need to realise this, and may need to increase their funding to take into account these potential requirements.

Aleks Seglenieks made the point that Australian legislation already has some models that could be contemplated for the sanctions that might be required under the Convention, citing the Commonwealth ***Protection of Movable Cultural Heritage Act 1986*** **[PMCH]** as an example. This Act has sanctions by way of **seizure** of goods. The Act essentially controls the movement of items of historical and cultural significance into and out of Australia. Provisions in the Act also make it an offence to import items that were prohibited from export from the country of origin. If requested to do so by a foreign nation, and if found, the Act enables those items to be seized, and subject to certain review rights that the person in possession has. Then, they can become forfeited to the Commonwealth and dealt with in accordance with directions from the Minister—usually to the effect that the goods/material are returned to the country submitting the original request for their repatriation. The seizure of Chinese porcelain illegally excavated from the *Tek Sing* in Indonesia and returned to that nation was given as an example of the implementation of the Act.

Signature to the Convention

UNESCO has a very specific procedure for signature to the Convention. States do not sign their Conventions, they adopt it at a general conference, and this takes the place of 'signature' as such. The UNESCO CPUCH was adopted at the general conference in 2001 and it is now open for ratification. Two States have ratified: Panama on 4 Apr 2003 and Bulgaria on 7 Oct 2003. (Since then, Croatia has also ratified it on 1 Dec 2004). The United States has expressed that it will not become party to the Convention and it probably will not indeed join in the next decade or so. A great deal of patience is always required with these Conventions. It took 30 years to get the United Kingdom into the illicit traffic Conventions, and UN CPUCH has only just happened. Once more States become party to the Convention, it will put pressure on other States to do likewise. Australia needs to get its legislation in conformity with the Convention because its jurisdiction is split between State and Commonwealth. This must be done otherwise a State could land itself in an embarrassing situation in trying to administer legislation, which happens to be contrary to the Convention. This will take time to do in a Federation as every State has to assess its legislation. Ultimately, the Commonwealth is responsible for the International relations of Australia so it will not be satisfied if one of its States is doing something to embarrass the country. The States can be helpful in informing the Commonwealth of the sorts of examples they might be faced with that might be affected by the Convention, and where provisions are lacking in the legislation – State or Commonwealth. There are several things that need to be considered and these include looking at defence issues, security issues, Law of the Sea issues, preservation issues and how it is going to affect their relations with other States in the region.

Session 4: Competent authorities for ensuring proper implementation of the Convention, and appropriate qualifications/supervision of permitted excavations

On the subject of competent authorities, Aleks Seglenieks outlined the jurisdictional problems relating to the implementation of the Convention and the option to either have the States agreeing to the ratification of the Convention or for the Commonwealth to legislate using its Foreign Affairs power. Graeme Henderson then outlined the involvement of the WAM in shipwrecks and maritime archaeology.

On the subject of appropriate qualifications and competent authorities, Jeremy discussed the issue that, largely, in Australia the existing legislation defines who is the competent authority and it is this authority that decides who has appropriate qualifications. The issue of different approaches in different States was discussed. In some States the authority contracts work out and there is a need in these situations to determine what the appropriate qualifications are. The approach in other countries was touched on and in particular countries that operate with treasure hunters. The Convention, if ratified by such countries, will preclude such arrangements.

Patrick O'Keefe gave the example of the *Lucitania* which sank right at the edge of the Irish Territorial Sea. A few years ago, an American court gave salvage rights over the *Lucitania* to an American salvor. The Irish took the view that this was exceeding their jurisdiction and refused to ignore the matter, making it known that the salvor had to get a permit from them if they wanted to do anything on the wreck. Here was a clash of jurisdictions.

A question for the floor was asked: how can wrecks less than 100 years old be protected, since the *Titanic* for instance is one such case? Jeremy responded that such wrecks would not be protected by this dimension, which also includes all World War II wrecks. Lyndel explained that the ILA draft had included a provision that a State could protect wrecks that were more than 50 years old if they had a special significance. However, on the last night of negotiations, this provision was completely dropped from the negotiations. This does not mean that a State cannot still protect wrecks more than 50 years old as they can do it via their own legislation. Jeremy pointed out that the Minister can also declare a site protected that is less than 100 years old, as there are provisions for such declarations under the Commonwealth legislation. The HMAS Sydney was one interesting site that emerged but the Minister could not declare it protected without being sure that it was indeed in Australian Territorial waters or within the boundaries of the Continental Shelf.

Training programs (international and regional collaboration)

The AIMA/NAS course as well as tertiary programmes in maritime archaeology were discussed. These included issues relating to who decides on the competent authority in international waters. The discussion then turned to the problem of poor or underdeveloped countries and how these countries could be helped in implementing the Convention and the role of First World countries in this process. Discussion included international training programmes and the involvement of the Department of Maritime Archaeology in this field in China, Thailand, the Philippines and Sri Lanka. The issue concerning the closing of the Canberra Conservation Course was raised and the essential role of conservation in this process.

On training programs, Jeremy elaborated a little and outlined some of the problems, particularly the problem in the Southeast Asian region where there is a broad spectrum of countries that range from those totally disinterested in UCH through to countries that are extremely interested in it. It is interesting to look at and analyse the reasons for this. Most of the Southeast Asian countries come from or are living in a post-colonial period where the approaches from treasure hunters are essentially to come looking for European vessels that were trading in the Asian region. All of this really started with the Hatcher and *Geldermalsen* story. Very briefly, for those people who do not know about it, the *Geldermalsen* was a Dutch East India Company ship that was trading with the Chinese. It picked up a very large cargo of Chinese ceramics and was returning to Batavia to then go on back to the Netherlands, taking this consignment, when it wrecked near the Riau Archipelago which is effectively about 50 km south of Singapore.

Some information became available that this ship was lost in this area and people knew that it carried an important cargo. Michael Hatcher went out searching for this site in Indonesian's Archipelagic territorial area so it was more than 12 nm miles off the Island of Riau which is part of the Archipelago, and he was of the opinion it was International Waters and he could basically do what he liked in that area. He did not initially find the *Geldermalsen*, but another site called the Transitional site and came up with a very large collection of 17th century Chinese porcelain. The *Geldermalsen* was an 18th century site. The artefacts were sold very cleverly through Christie's and made a fortune. For the first time in the International auction market area, a shipwreck made a lot of money out of ceramics. Previously, the auctioned goods had to always be made out of gold and silver and everybody went to the Caribbean in search of ships for gold. Initially, in the early days you did not even boast about ones with silver or because the gold ones were more important. Now, suddenly Chinese ceramics became very popular, and then a few years later he actually found the *Geldermalsen*, and this is the largest sale that Christie's ever made in terms of numbers and money. It was something like £5 million that the entire collection was sold for. There were sets of a thousand-piece dinner service for sale, and a thousand pieces of porcelain sold as a job lot to a hotel. It is just the sort of thing

a hotel would do; have it for special occasions that you could have the dinner service made from this collection. This was a huge fortune which immediately started a great search. Everybody was in Southeast Asia started trying to find shipwrecks that carried porcelain. The market is now flattened off.

There is also the story of the *Tek Sing* which was mentioned earlier. Such countries in many cases are not interested in European shipwrecks and European material, but rather their own cultural heritage. Often they are not particularly concerned about Europeans in their post-colonial times. Vietnam in another example and being a very poor country, it also sees the possibility of making money from this kind of exercise. On the other hand, neither countries like Indonesia and Vietnam have an effective maritime archaeological program. Vietnam does not have one at all and Indonesia has one but it is a very oddly set-up. The Philippines has a very long tradition of archaeological programs and a maritime archaeological departments, but basically, their operation is to become policemen onboard the ships that treasure hunters operate to ensure that the treasure hunters are not putting the stuff that they get from the site into the secret hold somewhere and going off and selling it quietly, while keeping the good bits. They are basically monitoring and maintaining the program, so they are not progressing and they are very frustrated because they feel that they should be doing this work themselves instead of having to depend on treasure hunters. The problem there is that the Ministry (of Finance), which issues permits to treasure hunters is not the same Ministry (of Culture) that looks after the archaeological programs.

Then, there is Sri Lanka, which has a very long archaeological history with their land-based sites. They wrote to UNESCO about having been approached by treasure hunters and asked what they should do. As a result of that and an initiative from UNESCO, WAMM was invited to go to Sri Lanka to set up a training program to train a group of their archaeologists to set up a program to start managing their own UCH. This is an interesting issue because it comes back to funding. During the period when MADWAMM carried this out, it had been given a grant by the Federal Government under the Creative National Program and made the Centre of Excellence for Maritime Archaeology for three years. MADWAMM was very well funded and had the ability to do international, national and state projects under this initiative. Unfortunately, the funding did not continue after the three years, and its program in Sri Lanka stopped. Fortunately it had by that time involved the Dutch in the program because the program is in Galle which is a World Heritage Listed Port. The city itself is a phenomenal place and they were looking to protect the harbour, which has three Dutch East India shipwrecks. There are about 38 sites in all within the harbour although it is a terrible harbour in itself. In fact, P&O in the early part of this century forbade their ships to go to Galle because some of them were getting wrecked. But the Dutch picked up this program and then for another three years it continued. Now, the Dutch funding will stop at the end of this year, and it is hoped that possibly through the UNESCO training program, the program can be continued so that

they can set up a regional training centre for people to train maritime archaeologists in the region. So, there are always attempts to find ways of doing these things but it is not easy and Australia in particular seems very uncomfortable with the idea of international heritage projects. In Britain and Europe there is more opportunity for grants and funding. Here, to actually get funds from the Government to set up this sort of thing is very difficult and unfortunate.

Session 5: International mechanisms of the Convention, meeting of State parties, Scientific Committee (ICUCH); and international and regional collaboration in training

This is an interesting topic because the Convention will only work if there is a flow of information between the various people involved. For example, under **Article 9**, there have to be reports sent from the master of the vessel or a national but there were some questions as to what a National meant because an expedition could be carried out with every member being a different nationality. The general view was that National meant 'The Leader' of the expedition, so whatever the nationality of the leader of the expedition was, he/she was required to report to his/her particular state of nationality. The reports have to be made, and so that is an issue the States will have to resolve - who the report goes to and does it go, for example, to the cultural heritage managers? The master of the vessel may not be very concerned with them. Does it go to the maritime authorities, and if so, what do they do with such a notification. In most instances, maritime authorities of one State will not be dealing with maritime authorities in another State. And nor will UNESCO as well. So it may well have to go to the Ministry of Foreign Affairs and from hence through diplomatic channels.

So States will have to consider the various channels they are going to set up. And the same will apply in the other reporting provisions. UNESCO itself will have to start thinking about this because once the Convention starts approaching the period when it comes into force it will be too late. UNESCO operates on a 2-year funding period, and that is usually 3 years in advance, so we are looking 3-4 years down the track in terms of funding for UNESCO to set up these procedures. It will cost UNESCO extra and this will have to come out of its general funds, or else States will have to make special provision for it and, hence, consider from where is the funding going to come.

It is, therefore, not something that can be resolved overnight. There has to be long-term planning and so far UNESCO has taken no action at all. Presumably on the basis that they think this is going to be a while yet before it comes into force. But as time goes on, you never know how many states will suddenly ratify it, having satisfied the various conditions. So, the States thinking of becoming party, need at this stage, to consider what they are going to do, to whom are reports to be made and how reports will be distributed. UNESCO has to consider

what happens when reports come are sent to them. Do they just put it on a web site, or do they have to actually send out the reports to other States.

One of the bodies that could consider this, and other matters, is the Meeting of States Parties. But, this will not occur until the Convention comes into force. One year after the entry into force, or within one year of entry into force, the Director General has to convene a meeting of the States Parties. This is under **Article 23**. The idea is that the Committee will look at the procedures that should be in place under the Convention and various other matters involved in implementing the Convention effectively. This will be a very important Committee. Many of these International Conventions do not have a Committee to oversee how the Convention operates. In practice, nobody really knows what is being done under the Convention. In the case of the World Heritage Convention, there is a Committee set up under that Convention itself, and it has become an extremely influential body in relation to the implementation of that Convention. So the Committee in this instance has the same potential. The first twenty States that become party to this Convention that ratify it, are going to be very influential in what that Committee decides, being members of it. And so States for example like Australia, which played a very considerable role in the drafting of this Convention, and States like the Argentina which has the same position, should think very seriously of becoming one of those first twenty States because they can then influence the operation and decisions made by this Committee.

After the initial meeting, subsequent meetings will be held every two years unless the Director General, at the request of the majority of the States Parties, calls an extraordinary meeting. So it is a process whereby a State Party can oversee the way in which the Convention is operating and that will hopefully be a very effective on seeing that it goes in desirable directions. It decides its own functions and responsibilities, so it is a very powerful body in that respect. It can adopt its own procedural rules, and in addition establish a scientific and technical advisory body. Once gain, that will have to be composed of experts nominated by the States Parties so there is another role for the States Parties, and it is designed to assist the States Parties in implementing the Convention. For instance, the technical committee could advise on the operation of the rules. These are designed to be put into effect whether or not they are effective. The rules cannot be changed otherwise and in accordance with the procedure for changing the Convention. This is unfortunate because changing a Convention is a very difficult procedure and if changes are made then you end up with a situation where States become party to the changed Convention. Unless you have automatic denunciation of the original Convention at the same time, we will end up with a ‘patchwork’ of obligations, duties and responsibilities. The proposal in the ILA was that the rules, called the Charter, could have been changed by a meeting of State Parties. In Paris, the States were not prepared to accept that proposition, so if a State wanted to change the rules it would have to go through the procedure of changing the Convention.

There will also be questions on interpretation of the rules as well as questions of application and here the Technical Committee can play a significant role in advising the meeting of States Parties. In addition to that, there is the International Committee on Underwater Cultural Heritage (ICUCH), which is a body set up by ICOMOS. ICOMOS operates through the International Council on Monuments and Sites. Graeme Henderson was the first Chairman of that Committee. The International Council runs through a series of scientific committees, one on underwater, and another is with the Legal Financial and Administrative Committee. There are about twenty additional ones, so ICUCH played a very significant role in the drafting of the Convention. However, ICOMOS as a whole is not mentioned in this Convention as opposed to say the World Heritage Convention. Under the World Heritage Convention, there is ICOMOS, IUCN (International Union for Conservation of Nature) which was set up in Switzerland, and ICROM which was set up in Rome. Those three bodies are specifically mentioned and ICOMOS and IUCN advise on whether a site should be nominated to the World Heritage List. And they give advice to the World Heritage Committee which then can accept or reject. But they carry out the preliminary assessment as to whether it is of sufficient standard to go onto the World Heritage List. Here, ICOMOS is not mentioned at all so its role would be outside the Convention. In this case, it could either advise the Technical Committee if requested, or act as a watchdog to see that the rules are being implemented in an acceptable way. So its role will be something for the members and chairman of that committee in the future.

Currently, Panama and Bulgaria joined in 2002 and 2003 respectively (Croatia has since joined in Dec 2004). It is anyone's guess when the first twenty States will be formed. Unless there is a certain amount of public momentum behind these things they tend to take a long time. Furthermore, some countries who refuse to support the Convention are trying to influence others not to support is as well.

Amending a country's legislations is not always necessary because under the Constitutional provisions of some States, when they ratify a Convention that becomes the law and it over-rides anything which is contrary to it. This can make a mess and in some situations it can lend States into problems. For instance, there was a case about two or three years ago in the Netherlands involving the first Protocol to the Hague Convention. That Protocol deals with taking material out of a place where there is conflict and the obligation to seize and return it at the end of the conflict. The Netherlands became party to that Protocol, ratified it a couple of years ago after it came into existence in about 1956. A few years ago the Greek Orthodox Church in Cyprus found four icons in the collection of a Dutch person in the Netherlands, which had been stolen from a church in northern Cyprus during the Turkish invasion, and claimed them. The court stipulated that although the Netherlands is party to the Protocol, it is not in force and there is no provision enforcing it within Dutch internal law. This is something the Dutch had overlooked which was highly embarrassing for them because it is

the Hague Protocol and one of the things of which they are very proud. The new legislation will probably be introduced in the Netherlands towards the end of this year (2004) to actively implement that Convention. There is a similar possibility in Switzerland because they have also become party to that Protocol but there is no legislation behind it and there is a question as to whether there is effective implementation of that Protocol. So, if you do not have legislation and you just rely on the Convention, it becomes a question for your international constitutional provisions, and they may not be effective.

On the point of 'sham ratification', in response to speculation that Panama had apparently hired treasure salvors to carry out work even after ratifying the Convention, there is no way of doing anything about that at the moment as the Convention is not in force. When it comes into force then theoretically there would be the possibility of one of the other States Parties taking action against Panama in the International Court, provided they are both party to the jurisdiction of the International Court. Probably more effective is publicity. A State (UNESCO would not be able to do this politically) could start distributing information about what Panama is doing. But this is not the first case where this has happened. There are some suspects we can never always know the really reasons why some countries choose to ratify the Convention. It is better for States that become party to the Convention to ensure all their legislations and procedures are in order in preparation for when the Convention comes into force or else they will be in a similar embarrassing situation like the Netherlands.

Jeremy pointed out that WA is the only State where its Act is in conflict, in some respects, with the Federal Legislation because most of the other States enacted their State Legislations after the Historic Shipwrecks Act. WA is the only State with underwater heritage legislation. Given than the Historic Shipwrecks Act will have to be amended, WA needs to negotiate with DEH Canberra on these issues. Patrick pointed out that the Western Australian legislation on shipwrecks is probably the earlier specific legislation in the world on this aspect.

Lyndel also argued that perhaps some of the authorities from the different States could talk over some of these issues together. In such a discussion, things that anybody has found difficulty in reaching under their Act could be brought to the surface, with a pool of people present who administer this kind of legislation to provide advice on how to handle certain issues or change certain things.

Cooperation and collaboration: information sharing

Collaboration under **Article 19** is quite extensive: "collaboration in the investigation and excavation, documentation, conservation, study and preservation of such heritage". In other words, the whole process from start to finish. Each State considers to undertake to share information with other State Parties including the discovery and location of heritage. Here, we are run into

some problems because quite often the location of a heritage is a very crucial issue such as whether it should be made public, or whether the information should be shared, particularly if it is going to allow damage to be made to the site. Heritage excavated or recovered contrary to this Convention is of course is an interesting aspect following on from the provisions relating to sanctions. There was a proposal at one stage that information on the dealers and people who excavate the sites unlawfully should be circulated. Here, one may then run up against he question of privacy (privacy legislation) and one can also run up against the possibility of defamation if one distributes information that turns out to be inaccurate – that person will be liable for heavy fines.

Pertinent scientific methodology and technology was a very interesting issue and one very much pursued by the developing countries - and always is. They want the technology although it may be totally inappropriate for their stage of economic development. They may then not be able to do anything with the technology when it is handed over, if it was handed over, and they will run into issues such as copyright. Patents may make it impossible to hand over the technology and the information might be privately held. There has also been very little international exchange of information on legal developments. Most of it takes place within the National context and there are very few lawyers who are actually working in this field worldwide: the United States, some of the European countries and Australia. In Africa, there is virtually nobody and there are very few in South America that do. So finding an expert in the legal area is very difficult in Africa or South America.

Paragraph 3 goes on further about discovery or location, and points out that it can be kept confidential so long as the disclosure of such information might endanger or otherwise put at risk the preservation of the heritage. These days, this appears to depend very much on the State in question. Many years ago, there were several issues arising out of the use of surveys being done by cable companies, oil exploration companies and the extent to which they kept that information secret. Even when the records they were using and the equipment showed wrecks on the seabed, they kept it secret because of the commercial implications. This not only included the fact they might not be allowed to operate there, but also that it may reveal some of the commercial information they wanted to keep secret. So this is a question of priorities as to what information is going to be made available and what is not.

Finally, under **Paragraph 4** there was a great deal of interest in databases because people seem to think that databases were the answers to a number of difficult issues about UCH excavated or recovered contrary to this Convention. It could come from UNESCO but UNESCO has no procedures for creating such databases so there needs to be an appointed party to do this. There is a difficulty at the moment because in the illicit traffic in International cultural heritage, there is a proposal that there be a database of illicitly traded cultural heritage. There are already a number of such databases - police databases - of

stolen cultural heritage. However, the police do not usually want anybody else accessing their databases. There are a number of private ones as well, but once again it is a question of cost, because if it is a private one, somehow they have to recover the cost of operation. And so, under **Paragraph 4** there needs to be talk about setting up a database of illicitly excavated UCH. Where does the information come from, and who pays for it. Theoretically, UNESCO should be the body doing this, but it probably will not be due to a question of costs and politics.

International mechanisms of the Convention

Patrick O'Keefe discussed the responsibilities under **Article 9,** including reports sent from the master of the vessel or a national, and there was some question there as to what a National meant. In other words, you could have an expedition with every member as a different nationality. There is a need for UNESCO to establish procedures for reporting once the Convention comes into force. Patrick outlined the need for a committee to be established under the Convention and that this committee will probably be made up of the first twenty states that ratify the Convention. The importance of Australia ratifying the Convention was emphasised, particularly as Australia was so influential in the establishment of the Convention. O'Keefe outline the important role of the ICUCH. Questions were raised relating to countries that had ratified the Convention and the fact that they had not amended their legislation before signing. Issues of signing the Convention by a country and then not having internal legislation to support the Convention were discussed. O'Keefe indicated that if the signing of the Convention took place without changing the countries' legislation, that means that its citizens would still have their existing rights, as the Convention cannot over-ride those rights. You can only over-ride those rights by legislation. This issue was discussed in relation to the Australian situation where not only is it necessary to ensure that the Federal legislation is not in conflict with the Convention, but also all the State legislations.

On the topic of international cooperation, Jeremy outlined the involvement of Department of Maritime Archaeology in international cooperative programmes (including training programmes). The reasons why SE Asian countries are often not interested in European underwater cultural heritage were outlined; the issue of the *Geldermalsen* and the sale of Chinese ceramics was raised; the way countries operate with treasure hunters; and the importance of international cooperative programmes to encourage countries to take a responsible approach to their UCH.

Patrick also explained that the CPUCH imposes duties on States for reporting and notification. For example, under **Article 9** the master of a vessel or a national of a State undertaking activities directed at UCH on the continental shelf of a State will be required to report on such activities. However, apart from

stipulating that the State concerned shall declare the manner in which reports will be transmitted, the Convention says nothing about the mechanics of reporting and the distribution of reports. UNESCO also plays a significant role under the Convention and will have to establish the practical procedures for receiving and distribution of reports, summoning of meetings, etc. Much of this will probably be worked out by the Meeting of States Parties provided for by **Article 23**. This meeting could become a highly influential player in the politics of the Convention as has the World Heritage Committee under the Convention concerning the Protection of the World Cultural and Natural Heritage 1972. For this reason, it is important for States such as Australia which played a leading role in the negotiation of the CPUCH to become party as soon as possible so that they can take part in the Meeting which will first be held one year after entry into force of the Convention i.e. three months after deposit of the 20th instrument of ratification, acceptance or approval. One of the tasks of the meeting will be the establishment of a Scientific and Technical Advisory Body, which also has the potential to become a significant force in the development of underwater archaeology.

The 75-year rule

Aleks Seglenieks explained a point Jeremy raised earlier regarding the 75-year rule. Does the age begin from the building of the ship or from the time the ship was wrecked? It seems to be a matter of whether a wreck is a 'historic shipwreck' or whether it's a wreck of a 'historic ship'. The Australian Government solicitor confirms that it applies to the age of the vessel.

The Australian Commonwealth legislation, in some respects, does already have sanctions by way of seizure of goods. DEH administers the *Protection of Moveable Cultural Heritage Act 1986* and this is the *Act* which essentially controls the movement of items of historical and cultural significance into and out of Australia. So if a foreign country makes a request to us to retrieve such items that were illegally exported out of their country, there is a provision in our Act that prohibits import of such items into Australia. This makes it an offence to begin with, and enables us to seize those items and, subject to the review rights of that person, the items can then be forfeited to the Commonwealth and subsequent actions carried out accordingly. Usually, these items will be returned to the country that originally requested for their return. So Australia has some legislative models that could be contemplated for sanctions that might be required.

A customs officer, present at this workshop, made known that she had never heard of the PoMCH Act 1986 and that her colleagues were also not aware of it. Hence, they tend let people through customs if they are carrying what looks like historical or cultural items as they may not recognise it as such and are not aware that there are prohibition laws against the importation and exportation of such item in Australia.

Myra pointed out that it is also illegal to remove any cultural material that is protected under the Commonwealth *Historic Shipwrecks Act 1976* from Australia except with a permit issued under the *Moveable Cultural Heritage Act 1986*.

Lyndel cited the example of Australia having seized several container loads of Chinese porcelain from a wreck that was illegally excavated in Indonesia, the *Tek Sing*. Australia held it and eventually returned it to Indonesia at their request under the PoMCH Act 1986. Aleks pointed out that more recently, the Australian Federal Police have been racing around the country seizing fossil dinosaur eggs because we had a request from the Chinese to do so. The police received some protest from people claiming it was not fair but that really is not the issue at all.

A question from the floor was posed regarding large numbers of artefacts in antique shops and private collections. Lyndel replied that the Convention on which the legislation was based is the 1970 Illicit Traffic convened to UNESCO, so that none of it applies to anything prior to 1970.

Session 6: Discussions, questions and answers

Myra Stanbury invited the audience to comment on the Convention and its applicability, and whether or not Australia should ratify the Convention. The first question asked was: “Supposing Australia did sign the Convention tomorrow, what effect would that have—what would we have to do? Would it have any effect on our foreign policy?”

Patrick raised the example of a Queensland situation where two males illegally retrieved an anchor from a wreck off Frazer Island and placed it on their utility and drove away. The police, who saw this as wreck interference, apprehended them and also had their utility confiscated. Police refused to return the utility because it was associated with the interference of the shipwreck. In response to another audience question about how the public are supposed to know, Patrick informed them that Historic Shipwrecks are listed in the national Shipwreck database. In addition to explaining what information the database provides, Aleks also added that in addition to wrecks being protected, the Minster could also declare the zones as protected up to 200 ha in which certain activities are prohibited.

Myra summed up by clarifying to the audience that each of the States and Territories in Australia are party to the Commonwealth legislation. Each maintains its own database but these are now downloaded into a main national database which is run by the Commonwealth. At the moment, we are at Stage 2 in the development where each State will be able to activate the database to make corrections and updates. There will also be mechanisms that will enable a

wreck, as soon as it reaches its 75th birthday, to automatically be protected under the Act and listed in the database as such.

Going back to the point about property changing hands and ownership, the Commonwealth and State Acts have provisions requiring anybody who finds remains of a ship or relics that they believe are associated with a wreck to report the finds to the Minister or his delegate. Even if the remains do not come under the State or Federal Act, they are still required to report them because they would have to be reported to the Receiver of Wreck under Navigation. So there are official reporting mechanisms that have to be followed.

Under **Section 13** of the Historic Shipwrecks Act, people cannot undertake to do any activities on any of the shipwreck sites or associated relics without a permit. It started with the Dutch shipwrecks which triggered the **Museum Act (1964)** to protect the Dutch vessels. From there came the **Maritime Archaeology Act (1973)**, which is the present **State Act**. Then in 1976, the Commonwealth Act was proclaimed in this State which protected all the materials from wrecks in Commonwealth waters. At various stages when the legislation was introduced, there were amnesties which required people in possession, custody or control of any artefacts from those shipwrecks to declare them. Upon declaration to the museum, people were issued with registration certificates. When the Commonwealth Act was introduced, these people were then required to notify their finds to the Minster. At the same time, there was another Amnesty so that people who had not previously declared their items could do so now. Private persons with the certificates could still keep possession, or have custody or control of the items but they were not the ‘owner’ of those items and this is made clear in the certificates. The Minister could recall any item if there was indication of mishandling on the part of the custodian. If forfeiture occurs, the minister may pay compensation. Another Amnesty was declared in 1993-1994 for people still holding undeclared relics. Most were in other States and not so much in WA. Following the Amnesty, there should now not be anyone holding on to undeclared items. If people are legally in possession of items, they will have a certificate. If they have the appropriate permit, they will be allowed to transfer possession or custody. Our Museum has a database to keep track of these custodians and any transfer of possession of relics. However, there are sometimes gaps created by, say, the ‘seller’ declaring they have transferred control of the relic to someone else, but that ‘receiver’ or ‘purchaser’ has not informed the Museum of having acquired the item. So we do have to fill in gaps that arise.

Some States, however, refuse to issue permits to enable the transfer of materials and this has been a matter of considerable debate for a while. Coin dealers in particular are expected to know the legislations that affect their business and trade practice and some do not provide notifications of their sales at their auctions. Incidents of any such malpractice attract a very high penalty. The basis for not issuing a permit is said to be due to a lack of resource and staff to

maintain and monitor these movements. In addition, some do not agree that after custodians have been given permission to retain and keep an item on behalf of the community should then be allowed to change their minds and profit from it later on by auction or sale. So there are both practical and philosophical reasons in play here.

In response to an audience question, Myra explained that even if the Museum had an abundance of coins, it is not allowed to sell them if they are protected under legislation. Furthermore, they cannot be transferred to another museum, as the museum does not own the materials, the Commonwealth does. The museum is simply the delegate that keeps, cares and conserves the materials. However, we can and do lend materials to other museums (or institutions) for display, education or research. In response to another question, Myra explained that custodians who have relics that need treatment and if they do not have the knowledge to carry this out themselves, they may be issued with a notice from the Minister requiring them to declare the object to the museum for conservation treatment.

If a custodian dies, there is an obvious problem. They might have had an attachment to the item and the next generation might appreciate its importance but not necessarily care for it and then the third generation might not even see any value in the item and might possibly dispose of it as rubbish. We are not sure if this is the rationale behind some states only wanting a custodian to have possession throughout their lifetime and not be able to transfer the relic to someone else. WA was the first state to have legislation and other states came into the scene later and introduced their legislations then. They feel it is not fair to reward people for complying with the Act even though the legislation states in detail what the rewards are.

Allied to moving the Convention forward more quickly, a question from the floor included what sorts of expanded tactics and strategies would be necessary to increase the level of public awareness. Members of the MAAWA outlined their current relationship with the Museum, indicating that many members would like to feel more involved with Museum projects — financial and other constraints willing. In terms of the Convention, the activities of groups such as MAAWA were considered ‘a good way to educate people and…help build that culture’.

Myra then asked the audience for suggestions as to the best way to get the main objectives and principles of the Convention across to the diving population at large, to expand the awareness of people and get feedback. The responses emphasized dissemination of information, in various forms and to various groups, to get the message across; and, better liaison between government departments and statutory authorities.

With regard to the requirements in the Convention in respect to conservation of UCH material, Vicki Richards emphasized the concern that there was no longer

any institution in Australia running courses to train people in conservation, primarily due to lack of funding. Australia was the only place in the Southern Hemisphere offering an academic course in general conservation, and regularly attracted foreign students. Hence, there are implications at national and regional level for the continued tertiary education of suitably qualified conservators.

Issues of funding and the economic and cultural benefits of preserving the UCH were broadly discussed, leading to some final comments regarding the importance of Australia's timely ratification of the Convention to enable it to become a member State and consequently one of the first 20 nations to become a signatory to the Convention.

Vicki commented on how encouraging it was to realise that the CPUCH had made many provisions in the **Articles (2, 18, 19, 21, 22) and the Rules (1, 3, 4, 8, 10, 13, 14, 15, 17, 19, 20, 21, 24, 25, 31)** for the *in-situ* preservation of UCH sites and the conservation of recovered archaeological materials. One of the main problems that can be foreseen in the future is the distinct lack of formal university training for conservators since the Bachelor of Science majoring in Conservation undergraduate degree at the University of Canberra was abolished at the end of 2001. However, there is another course being developed at the moment involving the Ian Potter Foundation in collaboration with Melbourne University but its status is not known at this point in time. Despite this encouraging development for the Conservation profession after the enormous disappointment of the destruction of the Canberra course, there was not in the past and there will not be in the future, any provision for training conservators in the preservation of UCH as part of an undergraduate degree. This is not a very positive outlook for the future of maritime archaeological conservation in Australia in view of the Convention as very few institutions actually carry out these procedures let alone have the expertise to train conservators in the same. The Department of Materials Conservation of the WAM is one of the very few if not the only institute in Australia where conservators can gain some training in a very specialised field of conservation. Hence, it is important that if this Convention is ratified by Australia, some level of formal training for conservators in maritime archaeological conservation needs to be introduced in parallel.

Aleks raised the point of who, under **Article 22**, should be appointed, established or reinforced as 'competent' authorities for effecting the protection, conservation, presentation and management of UCH. Who or what in Australia is going to be responsible for effecting compliance once it becomes domestic law? Aleks noted that it should be remembered that the Convention does not have the force of law in Australia at this time. For that to occur, the Convention must first be ratified by Australia, and domestic legislation passed implementing the Convention. Ratification and legislation would ideally be virtually contemporaneous.

The Commonwealth derives its power to make legislation from the Constitution which contains various "heads of power" including the external affairs power (eg.

obligations arising from international treaties). The current legislation, the Historic Shipwrecks Act 1976, does not rely on the external affairs power and, therefore, has limited operation, and required the agreement of the States in order that it might apply to certain waters.

Legislation implementing the Convention (if ratified) could conceivably be made under the external affairs power. This raises the issue as to the form that such legislation might take. The Convention requires that States Parties "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". The question arises as to the model that Australia might adopt (and this will depend also on whether the external affairs power is used) and whether this will be based on the current arrangements whereby powers are delegated to State authorities, such as the WA Maritime Museum, or whether a centralised system will be put in place. Such issues must inevitably be considered, with others, in determining Australia's position regarding ratification of the Convention.

In relation to the activities of the WAMM, Graeme Henderson pointed out that it monitors wrecks underwater from time to time and any materials rased are always in the management of curatorial and management staff. The nature of Australia's history has also changed because we now know about the early European contact that arrived near our coast. The east coast used to think that Cook arrived there first and of course that had to be disputed when we discovered the *Batavia*. Education, under Mike Lefroy and Mike Brevenholt was set up and is doing very well. However, the A-Shed children's activity centre could do with a little more advancement. So the approach that has been taken here is not to just look at shipwrecks but also to turn that into a more general context of maritime heritage.

Aleks raised another point, for those who were not aware, that the Minister has delegated his powers under the Commonwealth Act to other people such as the Director of the WAMM so that his functions are carried out by the State authority. In many ways, this makes a lot of sense because there such people have the expertise and resource to do so, and so the Commonwealth funds the States to carry out this responsibility in helping to administer the Historic Shipwrecks Act. And this occurs around Australia. So we do not have a situation whereby someone in Canberra is the only one with authority on everything that happens in a State. Rather, there is someone within the State who can more immediately exercise the Minister's powers.

Jeremy Green discussed the topic of appropriate qualifications and supervision of permitted excavations. The issue in Australia is largely that the Convention is looking to countries in many cases that do not have any legislation at all or do not

have a competent authority. In WA's case, it is quite different. In general, Western Australia, Northern Territory and Queensland, have delegated authorities from the Commonwealth going to a Museum organization. Consequently, archaeology then tends to become an integral part of Museum operations and often there are departments that can operate in that area. The WAMM had a department of maritime archaeology in the 60s. To some extent, it is the only the competent authority. The delegate does not normally give permission to anybody other than its own institution to carry out excavation work here in Western Australia. In some of the other States in Australia, it is a slightly different situation. Some of the heritage management organizations that have delegated authority, do not have the facilities or the structure to do archaeological projects themselves, so they contract the work to contract archaeologists. In such a case, they then have to decide who is competent and who is not, and then invite contract archaeologists to tender for the job.

The United Kingdom is a good example to look at. It is rather surprising that in the United Kingdom, under the **Protection of Wreck Act**, which is basically a similar piece of legislation to the Historic Shipwrecks Act, there are currently about 50 wreck sites protected under their legislation. In Australia, we have 160 wreck sites protected in WA alone. In the whole of Australia, there are approximately 300 to 400 sites in total. So, different countries approach the management of their heritage in different ways. A country like Vietnam, for instance, which regularly makes arrangements with treasure hunting organizations for them to recover material from historic shipwrecks, or shipwrecks, then take that material to auction, sell it, with the proceeds shared between the treasure hunter(s) and the country. Currently each country has its own sovereign right to decide what they want to do with their UCH. So there is a whole spectrum and it is quite interesting to be at this end of the spectrum where we are looking back at various situations that exist in the world. Clearly, the Convention is going to bring more countries together in making them more aware of the fact that there are responsibilities in ratifying the Convention and that they will have to come to some decision. Quite obviously, a particular type of operator could employ a young graduate maritime archaeologist with a degree, pay that person a reasonable amount of money and have that person be the nominally appropriate supervisor of the operation. That person can then be quietly told there are certain things they may or may not do, but they are not to be discussed with the public, and this is essentially a laundering process for getting archaeological respectability for a project. The Convention, when ratified, will have all sorts of issues in dealing with these various types of situations.

Fortunately, in Australia, there is no real problem as such. We also run the AIMA/NAS Course, which is the Nautical Archaeology Society Course, for people who are interested in maritime archaeology and who want to gain an accreditation so that those people can then come to an organization like WAMM or any other delegated authority/organization and offer their services as volunteers with some sense of training and some sense of idea of what they are

about. They also form a very effective lobby group. Furthermore, next year WA will start to run, from time to time, a Graduate Diploma in Maritime Archaeology. It was run initially at Curtin University and then a couple of years ago, with Flinders and James Cook Universities. In 2005, a new program will start to be run with the University of Western Australia, which will be a postgraduate diploma or masters in applied Maritime Archaeology. So again, we are creating a pool of trained archaeologists who can either go into management or go overseas and help set up programs in other countries.

A question from the floor raised the issue of what happens to small island countries that have wrecks? If they do take this on, they then have to have the relevant qualified people to dive on wrecks to examine them. That mainly creates employment opportunities for their own people who do not have UWA's training to support the excavation and surveying of the site. Does that sort of thing then make it exclusive only to wealthy western countries to take over? If so, that would take away any sustainability from within the island or any other similar poor countries.

In answer to the above query, Graeme Henderson referred to the Norfolk Island example where a team from Western Australia went over there and made absolutely sure that the local people got heavily involved in the work on the site and the work on the conservation of the collection. Subsequently, when the team left, the collection remained on the island. For the benefit of the Norfolk Island resident, it was made clear that the material was not leave the island. It was essential to have trained the locals to carry on with the management and conservation work. As a result of the excavation work, a Museum was later established, the *Sirius* Museum, and there is now a local person who is a director of that Museum. So it has created employment and training for local people and assisted in the tourist industry as well in more broadly appreciating the elements of their history.

Jeremy added that WAMM has been involved in training programs, usually joint-cooperative programs, in China, the Philippines, Thailand, and one currently in Sri Lanka. The object of the exercise is usually to try and train archaeologists who are in the existing archaeology departments within the Government of the country in maritime archaeological techniques, and assist them in establishing a small inspectorate which would then allow them, slowly, to develop their own program. Basically, the same sort of exercise has been developed in Turkey with Prof George Bass' set up. Initially, it was very much a case of the Americans going in and leaving with the information raised from the site. Consequently, Turkey did not gain very much except for the artefacts going into the Museum. That has now changed with at least half the staff now being Turkish, and there is a very heavy Turkish involvement in the whole operation. The objective now is to genuinely help the local people. They are the only people who are really going to look after their UCH in their own country so that is the main objectives these days.

Maritime archaeological conservation training

Vicki Richards made known the fact that the closing of the conservation course in Canberra means that we are not going to get any conservators trained at the moment. Furthermore, even where there are trained as conservators, they don't get maritime archaeological conservation training. At the moment, what is happening is that through the Maritime Archaeology Graduate Diploma Courses, we are teaching, at a very basic level, maritime archaeological conservation. However, we are not expecting them to actually do the conservation. It is more of an exposure and awareness exercise. The problem is that we are getting less conservators, and those conservators are paper conservators and metal conservators, with no provision for any of them to come over and learn maritime archaeological conservation. At present in Australia, it is basically their choice to pay their way to come to the Materials Conservation Department to learn maritime archaeological conservation. But there is no provision to actually train any conservators in Australia in maritime archaeological conservation. Conservation is very hands-on and to actually do that in courses is very expensive and this is why the course was dropped. It was very expensive and simply not making enough money.

In response to this concern, there are current attempts to try and set up another course in conjunction with the Ian Potter Foundation in Melbourne University, which will hopefully have another course up and running. The actual structure or administration is not yet known. The problem is international as well so there are not many opportunities for training in maritime archaeological conservation, even internationally.

Graeme Henderson suggested that there might be opportunities for collaborations with TAFE and Notre Dame, given that UWA has just singed a contract to run the Graduate Diploma in Maritime Archaeology course with the Museum.

Further issues and questions from the floor

Question from floor: Just speaking from the very general end of the public, supposing Australia did sign the Convention tomorrow, what effect would that have on our foreign policy?

Lyndel advised that one of the important things would be to see which sections of the Convention and legislation needed adjustment. The Convention might have to be compared with the Commonwealth Legislation, which will take a little bit of time. Again, how long it takes will depend on where it is among the Government's priorities in its various programs and how much importance the States give to it as well. States are responsive to people who are concerned about heritage because that is an important political issue at the moment. So if

there is sufficient drive from the public from professional bodies at State level that is going to feed into the process which then makes the Governments take it more seriously and then they will want to inform the Commonwealth how important an issue this is for them and that they want it pushed ahead. Again, it all really starts from the ground roots.

Having just found the *Correio da Azia* might prove significant. It may well be an issue of what the Portuguese Government might think about this new shipwreck.

Lyndel commented there is also an important foreign relations aspect to all this. Salvors and treasure hunters from developed countries, unfortunately, have done a significant amount of damage around the Asia Pacific Region and the sort of projects like MADWAMM's in Sri Lanka is a very good counter-balance to show that we have the expertise amongst the Museum people as well as amongst the salvors/treasure hunters. So another way of doing that, which does not cost the government money is to become party to the Convention, so we are in the forefront of efforts to try and protect this right around the world, even though we are particularly concerned with this region.

According to Lyndel, with UNESCO, one well-placed person who is really committed in getting the legislation through can make a huge difference. For instance, when the **Removable Cultural Heritage Legislation** at Commonwealth level was being worked on in the early 1980s, Gough Whitlam was no longer in office but he was still very influential. The Labour Party was in office and Whitlam was very interested in UNESCO and he had believed, even as a Parliamentarian before he took office as Prime Minister, that Australia was not doing enough to adopt the UNESCO Convention. He was very committed to the subject. When the project jammed, as it did from time to time, either being held up in a Ministry or Cabinet or it fell of a Parliamentary program, a quick phone call to Gough and somehow things would start moving again. If you have someone like that who, instead of just leaving it to sort itself out on the general list of priorities, is prepared to remind people how important this is and that it has to keep moving up the list, things will get done a lot faster.

Patrick explained that the Council of Europe tried to do a Convention as such for Europe and they had a good text but there was a disagreement between Turkey and Greece over the islands between the two of them - totally unrelated to underwater archaeology. At that stage they needed unanimous agreement and Turkey refused to agree. In the end, the whole thing collapsed after about 10 years of work. Lyndel explained that Turkey was always supportive of the principles but it would not accept the broadened jurisdiction and that is the Law of the Sea.

Jeremy argued that if Australia signed the Convention tomorrow, it probably would not materially affect operations in Australia very much. This is because Australia already has a National Legislation, which is more rigorous than the

Convention. What the Convention clearly does is point out someone who might be doing the wrong thing according to an International Convention which does not endorse this and so it gives us a reference point - to use as a sort of moral principle. It is very difficult to argue with treasure hunters in a kind of ad hoc way as to what the morality is on what is right and wrong. Now we have this document that we can refer to that clearly states what you can and cannot do. In some cases it is going to be a little bit obscure, but in most cases it is quite clear.

A question from the floor was asked about how we ensure that divers and recreational divers, if they make a discovery, do actually report it. Jeremy responded that running courses like the AIMA/NAS ones is one methods of educating some members of the public. There is a small group of people who probably come from an earlier generation of people who believe that anything in the sea belongs to them – a finders-keepers sort of belief. It cannot be a case of finders-keepers because anything in the sea must belong to somebody. However, that attitude has changed, but there is a reward system within both State and Federal Legislation.

Lyndel explained that it has not been called up for a very good reason, and that is because a lot of States have doubts about its effectiveness. They were worried it created an incentive for people to go and dig up the UCH. On the other hand, some of them have had quite good results from recognition. When people are educated to see the importance of this resource they tend to see it the same way. It is often a question of showing them that other people think this is, which is that it is just as important and interesting as they do. In Canada, there was a person who was a real problem to the underwater archaeologists. He was a very efficient diver and was busy going around and diving on a large number of wrecks. He then completed an NAS course and, subsequently, he found a very important shipwreck. He notified them during the Christmas holidays, they rushed out and had a look, and found that it indeed was a very important find - an old French ship. He has now become one of their most important allies. He dived on the wreck with them and became a colleague. They eventually placed a little plaque near the site stating that the wreck was discovered by this person on such a date.

Jeremy gave the example of the recent *Correio da Azia* find. There were various people interested in finding the site, one of who worked quite closely with MADWAMM, and she was very close to finding it herself. However, MAD had the magnetometer information, and invited her up to join in the expedition and take part. She was not the finder and MAD could have gone ahead without inviting her, but this sort of initiatives are really important: to involve the public wherever we can try to stem out the 'them and us' segregation. There are also members from MAAWA who do an enormous amount of work for and on behalf of MADWAMM. These have included research on shipwrecks and various other things. Public involvement has occurred in this and most States in Australia. People have realised that in order to be supported by the Government we have

to have a public base to our operations, and the public's support. If the public does not support what we are doing, then the Government will not give us any money to do the work that we do.

A comment from a member of the audience was made he/she a relative who discovered a ship which ended up inland from the south coast. However, they encountered at that stage an unhelpful attitude from the Museum and the Museum would not help them in a small remunerative way, so that now the location of that wreck is lost. It was a three-masted barquentine wrecked inland amongst scrub and this information was handed down by family folklore.

Lyndel explained that some museums are also still learning. Things have improved significantly in this respect over recent years. From a lawyer's point of view, the law itself will never be sufficient to protect these wrecks unless there are local people who help out in various ways. They are the best possible guardians of any heritage resource because they know the area, they are usually on the lookout for people doing unacceptable things, and they are very good guardians. The reality if this is that no administrative or legal system can provide the kind of 'sets of eyes' that they do.

From the point of view of MAAWA, a MAAWA member (Joel Gilman) explained that the Association tends to be a more substantial operation in some years and not so much in others. Because it is a volunteer group, people who hold a full-time job do it as a hobby or a social gathering but to the extent that members can get themselves organised to go on trips. For example, MAAWA has been working on the Hamelin Bay project for the last 3-4 years carrying out surveys of what remains of the jetty. There are also quite a few shipwrecks in the area. There is information on file at the Museum, but MAAWA members are trying to add to that with site plans and more detailed photography. Members also make it a point to monitor the rate of decay on the different wrecks. The group has recorded the *Katinka*, which is close to the beach and accessible to snorkellers, so MAAWA members tend to keep an eye on this. MAAWA has also just finished a survey of some jetty sites in a river for the Town of Claremont. They identified more jetties but they are doing an inventory and needed more information on what remains underwater so MAAWA members have spent five dives in the last six months just looking for what is left of the piling remains.

Majority of members who are registered are now participating, particularly for the Town of Claremont project although that might have been due to the shorter distance to be travelled compared to other fieldwork proposals. People were eager to participate in the Town of Claremont project. It was interesting to see that there was a little history still sticking out the seabed. A couple of MAAWA members have been working with Vicki Richards (Materials Conservation, WAM) on a project to develop an *in situ* preservation technology using the big plastic crash barriers they use on the highways (road Lego), fill them with sand, then sink them to the sea-bed which provides a sort of coffer-dam. Vicki carried out a

significant number of samplings to determine that when you put half-a-metre of sediment on top of a wreck site you pretty well shut down most of the biological process which leads to decay. Trevor Winton (another MAWAA member) spent a long time trying to find a solution as to how half-a-metre of sand can be 'kept' in one place on the seabed given storms, etc, and he came up with this . Now, there is a test site near the *Omeo* that is being monitored. All those projects have been dealt with in the last 6 months along with other tasks, so it also depends on people's time availability and their eagerness. The crucial issue seems to be that people are interested in doing these things and they feel they are doing something useful. They are not out searching for chests of gold or anything, but rather, they are happy to do it because it is interesting and fulfilling, plus it provides intellectual stimulation on the academic perspective.

Currently, the total paid membership in MAAWA is about 20. The NAS course is usually successful in inviting people to join MAAWA so members come in with new enthusiasm. This is the 30th year of MAAWA, which was founded in October 1974. At the moment it is a very successful group, which provides a lot of labour for the Museum on projects. It also helps to invite people who would otherwise be out diving as souvenir hunters so that within the MAAWA group, they are in an environment where there is peer group pressure not to do such things but to be more respectable UCH.

In response to an audience query about who can volunteer for the museum on dive project, Jeremy explained that MADWAMM can work with volunteers who do not have commercial diving certificates. Government employees require it but volunteers need only have a diving qualification, must pass their medical and sign their Worker's Compensation Form. Quite often, MADWAMM gets involved in field operations, which are very intensive and which could be made more efficient with more people helping in the operation.

Joel Gilman added that there is a good relationship between MAAWA and WAMM and that it has been good for both parties. The Museum also does a lot for MAAWA such as providing it with a meeting place and equipment. The Convention is a good way to educate people and help build a culture amongst divers and dive shop owners that MAAWA as a group does volunteer work with WAMM and on its own. It does seem to create a presence in the community where people are aware that there is an alternative to going out and scavenging UCH materials. It lets them know that there are other people who do things differently so a document like the Convention is useful to have.
A member of the audience pointed out that there are quite a few other social dive clubs in Perth and around Australia who are always looking for guest speakers on a monthly basis. Quite often somebody from the Maritime Museum gives a talk. Some divers are more interested in only diving with marine life rather than wreck searching while others have boats and can get to more specific sites. Then again there are those who are commercial dive operators who tend not to dive on

wrecks as much. Dive shops do not seem to have much information on wrecks unless they dive on a specific one regularly.

It seems to also be a case whereby dive instructors are effective if they tell their divers that there are laws, which prohibit them to disturb protected sites. They have to respect those local laws and should report anything that they know is a breach of State Laws. Lyndel also added that the situation has improved in recent years since educating 'the last free merchant' in that if they do not take care of this finite resource, their children and subsequent generations are never going to be able to see and appreciate it for themselves.

A comment from the audience was made that more information needs to be disseminated to diving clubs and societies, and the community in general. There has not been sufficient advertising of events like National Archaeology Week. There appears to be a bigger push for marine conservation and marine life and not enough for archaeology or shipwrecks. Joel pointed out that in the basic dive course there is a one evening's lecture on respecting marine life, but nothing about respecting shipwrecks. There should be a push to include the latter into the standard text as well.

Lyndel suggested that perhaps talking about a World Heritage Convention might be a good idea since almost everyone has heard about that and just about everyone knows a World Heritage site. Then explain to them that this is equivalent to the underwater heritage. This is the first time it has had a specific Convention, thereby showing just how important it is and that everyone needs to share the responsibility to make sure its respected.

A member of the audience from the customs office commented that there should be an agreement between departments with the Customs Central Office about disseminating relevant information to those who need to be aware of policies and laws. This seems to not have reached customs officers in the lower levels, plus the department has a policy of rotating every two years so that any one person cannot stay in the job for more than two years. This audience member has worked in the imports department at customs and has never heard of this legislation (Moveable Cultural heritage). Unless someone specifically tells them they need to look at the piece of legislation, they tend to spend more time searching the Internet for other legislations to do with quarantine such elephant tusks, or under Environment Australia for wildlife things.

Myra suggested that relevant legislations for different groups such as customs officers could be done in the form of posters about illicit imports and exports that includes cultural property. There are usually some things in place but it does not always get through to the people who are out there (e.g. customs officers) searching the containers and X-raying bags and boxes, so quite often things will go through and officers will not even think twice that a permit might be needed to carry an object through customs unless they have been specifically told. Similar

trade marks, people are sometimes told that if they find anything like Nike, Reebok or Pokemon, they require permits to be taken through customs. So officers will look out for them and confiscate them if no permits are presented. Lyndel advised that she was involved in drawing up the legislation while she was working at Cultural Heritage. She pointed out that at the time, her group had numerous discussions with Customs who made known their concern about their officers working at the Customs desk level. They wondered how they were going to get such important information across even though there were training sessions held for these officers. This was back in the late 1980s and as this officer has just pointed out, says here, they rotate jobs every two years.

A member of the audience argued that there are many areas that are under Customs control but run by industry, and you see quarantine posters there all the time officers are told that if they see such items they must call the quarantine. Perhaps doing similar posters might be an answer, not only for Customs staff but also the whole import/export industry.

Graeme advised that another idea could be to invite a good speaker from the Customs Department to give one of WAMM's Friday night *Batavia* lectures here on the relevance of Customs to the maritime environment. We generally almost get a full house with these lectures so it would give Customs a good audience. The Customs Officer informed that who this speaker is depends on WAMM's objective because it is simply a very broad department. There are those that deal with illegal fishing boats, those that deal with illegal immigrants, those dealing with quarantine matters; it is a very broad range, and that is also probably why some information tends to get lost.

Aleks suggested that the Commonwealth probably has some liaison with Customs but that the Officer has just identified what may be a lack of communication between Customs Head Office and the Regions. According to Lyndel, the Commonwealth should, therefore, be able to identify the person who should be invited over to give such a talk. This might be a way to overcome the problem. And perhaps each department within Customs needs to make the effort to deal with the different, relevant departments as well. The regional authority or relevant authority should also have the contact name, number of Customs Manager in their Region. The Federal Police could also be involved if something has been stolen, is still within the country and not stopped at the Customs yet. Graeme offered to communicate with the regional manager of Customs as soon as the Officer present could give the details or point him in the right direction. Myra continued the session by asking if anyone present was from an Academic Institution in order to hear views similar to those raised by Vicki Richards such as that we do not have an institution in Australia that is running any courses in conservation and yet not only in the maritime sphere, but also the heritage councils that are trying to preserve historic buildings. How can we get people in the academic institutes to lobby on our behalf as well?

Vicki advised that the Ian Potter Foundation in collaboration with Melbourne University is all to do with money. It is a very expensive part of cultural heritage. They can only put through about 12 students, it is very hands-on, and there are lots of stores. 12 students' HECS fees do not account for the amount of monetary outlay for teaching someone for 3 years to get a Bachelor of Science and that is why they took the opportunity to close Canberra when the Director of that particular school, the School of Conservation, decided to retire. So now all the academic institutions are very careful about putting their hands up and committing that they will run such a program, because of the funding cuts to the Universities and the push to be making money as such. The other problem is that Australia was the only place where you could learn conservation in general in the Southern Hemisphere so we had a number of foreign students, but then of course they were full-fee paying students, and they still had to have enough Australian students. Hence, it is not simple just to say start another course.

The Australian Institute of Conservation and Cultural Material, which is our professional body for conservation, has been lobbying from Canberra but it has been very difficult to get a result. Vicki suggested that perhaps AIMA (Australasian Institute for Maritime Archaeology) could probably assist with this as well. There are many conservation bodies out there that would lobby for it, but it just does not seem to be going anywhere, the last students that graduated did so probably at the end of last year.

Myra proposed that there was surely a biased representation with the audience present at this workshop because they would not have participated if they were not interested in preserving cultural heritage. Members of the public tend to realise the importance of preserving cultural heritage the politicians tend to allocate money to hospitals, education and other avenues which are far more important. To some extent, we are all well aware of that aspect and that perhaps we are being funded to do something which is, to some extent, regarded as a bit of a luxury in our lives, rather than an essential.

A member in the audience commented that it is not a matter of what is more important at all, but of not losing sight of day-to-day issues like health, and also not losing sight of on-going programs across a range of periods of human endeavour, and it is a matter of pushing that message all the time.

Jeremy commented that there are ways to do that such as make a measure of how much the preservation of the UCH has in terms of impact on industry and commercialism and brings income to the community. Whilst we are funded to do certain things, these things are also generating infrastructure in diving communities and tourism and if that is exploited, then there is a greater argument. There was a Canadian example of a fishing industry that died out entirely and then they found a wreck there. They did a very intelligent exploitation of the situation and almost the whole community is economically tied to the tourism value, whilst also preserving the artefact.

According to Lyndel, there was a study done years ago on the economic returns that maritime museums brought into local communities, and one was looking at the Vasa in Sweden which has been enormously successful. This was the Peter Throckmorton study. However, it showed this had become the No. 1 tourist attraction in Stockholm and that brought in an enormous amount of foreign visitors and funds and got them to stay extra days and so on. Bodrum in Turkey, used to be a very run-down and isolated place, and fairly arid with very little going for it. No, however, it is the No. 1 stop for all the yachts on the Mediterranean route and it is a growing community with an increasing number of people choosing to settle there. Fremantle has had the same experience with the Museum as well. So, there is an argument that people who are not terribly susceptible to culture can surely understand that even though they may not be interested in culture, a significant number of other people are and they will make the effort to travel and spend their money to see these things. This is also an argument that a one-off payment is not the answer. Funding must continue for creative projects to keep the dynamics going. It is not a simple matter of simply building a Museum and expecting visitors to show up for the next 25 years.

An audience member added that the classic of the *Duyfken* project had focused purely on achieving that voyage, without thought to the ongoing challenges that were going to be a fact. It was a multi-faceted, non-return strategy that has to be looked at because it was not considered properly before.

Another comment from the floor suggested that the answer seems to be tourism, because most tourists are into culture. Furthermore, questions of national identity and public landscape are crucial questions to any community. However, we seem to also have a community that is only interested in hospital beds and the like. Another audience member suggested advertising via talk back radio. In response to that, Graeme commented that it can be quite a challenge going down that avenue. For instance, if someone like Liam Bartlett talked about maritime archaeology, the likelihood is that the Government would be put off almost immediately. The questions of how we would ever sort out a reasonable relationship with the Government would be very difficult. If we had the right hook, then it could be very useful. Aleks suggested that it might be worth asking the media personalities themselves for advice on what would sell, since they would be in a position to know better than us.

Within UNESCO, when they were battling to have the Illicit Traffic Convention signed by the important countries, Lyndel advised that after a bit of work, they discovered that a couple of reporters or journalists were very sensitive to the issue. These individuals subsequently wrote good articles and found some very interesting pictures to accompany the articles as well. Moreover, every two or three months, they would publish another serious article in an important paper. Eventually, the impact of this effort could be seen. Needless to say, there were people writing from the opposite perspective, but the committee knew that if there

was a good story, they could speak to these journalists or reporters about it and they also knew that they could enhance their journalistic reputation based on that. So, it is very useful if we could tame reporter who will put the serious side of it forward in an entertaining way that the people can relate to.

Aleks commented that it is also worth being aware that one should not simply concentrate or limit themselves on lobbying the present government because there is a possible future Government as well. For instance, the Shadow Environment Spokesman for Labour is Kelvin Thompson whose interest is primarily in environment as opposed to heritage. It may be an idea to lobby him to support the Convention by telling him that others have started to sign it.

Joel, Gilman, a member of the audience, asked if, besides the two nations who have ratified the Convention, there were other nations that have ratification in the pipeline.

Lyndel responded that China is working hard on it at the moment and that there is a good chance that Japan might follow suit because the current Director General of UNESCO is Japanese. Sri Lanka is another possibility. Patrick added that another problem could see that the major maritime powers are probably not going to ratify for at least another twenty years.

A member of the audience commented that the US appears to be a strong opposition to the ratification of the Convention. Patrick responded that the US has still not even ratified the Law of the Sea Convention and the Kyoto Protocol. Lyndel added that the US cannot be counted on to ratify such Conventions because they seem to oppose becoming party to new international Conventions.

Joel Gilman asked if the US did actually get round to recharting UNESCO. Patrick advised that they did, but in a peculiar way. Lyndel added that they were persuaded to do so based on the Underwater Convention. This is because they were not a member of the organization so they could only speak after all the other States had spoken. Furthermore, they had to be invited to be able to speak as all. The chairperson would have had to ask the other member States if they were willing to hear the US application because they wanted to get in first and make their statement before others did. A member of the audience commented that that it is an interesting tactic, getting them on by exclusion.

Lyndel advised that it is standard practice in UNESCO that all the member States have the right to speak first and non-member States may be invited to speak if the other members agree. That also implies to NGOs, so ICUCH is always one of the last few to speak as well. Aleks commented that it seems odd to join an organization just so that one could refuse to ratify!

Recommendations

For future similar workshops, it found to be a good idea to also invite those units or departments who are at the 'grass roots' level and are the most important of groups who need to be aware of various information, legislations and Conventions. These should include the following agencies or groups:

1. Coastguard petrol crew
2. Navy petrol officers
3. Customs officers
4. Port/Maritime Authorities
5. Sport divers
6. Heritage Management/archaeology staff/students
7. AIMA/NAS participants
8. National Trust staff and volunteers
9. Museum staff & volunteers
10. CALM (Conservation and Land Management officers)
11. Water Police
12. Local volunteer maritime archaeology groups (e.g. MAAWA)
13. History Societies

Feedback was also given by some interstate AIMA members that more ample notice should have been publicised well before the workshop so that they could arrange to attend on behalf of their agencies or institution. An attempt was made to set up a telecommunication link for the benefit of those who could not attend but this proved to be too costly. Perhaps similar workshops could, in the future, be held in conjunction with another event such as an AIMA conference or another similar seminar. The present was held in conjunction with an Inspectors Training Course (see report by Myra Stanbury) that was held over two days following this UNESCO workshop so that some of the inspectors could attend.