

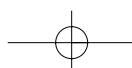
UNESCO  
Protection of Underwater Cultural Heritage  
Protection du Patrimoine Culturel Subaquatique  
Protección del Patrimonio Cultural Subacuático

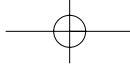
*This information kit was prepared for purposes of promoting the Convention on the Protection of the Underwater Cultural Heritage (adopted on 2 November 2001 by the General Conference of UNESCO at its 31<sup>st</sup> Session) and contributing to the celebration of the 2002 United Nations Year for Cultural Heritage.*

## *Summary*

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- ▶ *The facts:*  
**AN INCREASE IN THE NUMBER OF ILLICIT EXCAVATIONS AND LOOTINGS OF THE UNDERWATER CULTURAL HERITAGE**
- ▶ *The legal framework:*  
**THE LACK OF AN INTERNATIONAL INSTRUMENT SPECIFIC TO THE UNDERWATER CULTURAL HERITAGE**
- ▶ *Response by the international community:*  
**THE UNESCO CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE (2001)**
- ▶ *The antecedents:*  
**CHRONOLOGY OF THE UNESCO DRAFT CONVENTION AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (1982)**
- ▶ *General principles of*  
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*Model instrument of Ratification, Acceptance, Approval or Accession*
- ▶ *Glossary and key definitions*
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## ***The facts:* AN INCREASE IN THE NUMBER OF ILLICIT EXCAVATIONS AND LOOTINGS OF THE UNDERWATER CULTURAL HERITAGE**

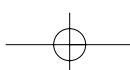
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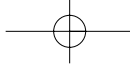
A significant aspect of history and fully a part of humanity's common heritage, the underwater cultural heritage is coming under increasing threat. The progress made in exploration techniques has made the sea bottom accessible to many more people: its exploitation and the trade in the objects found there have become a more common and highly lucrative activity. It is a fact that marine archaeological sites are being heavily looted by treasure hunters and, in many cases, this results in the loss of materials of irreplaceable value for the study of the origins of humanity and the history of its civilizations. Consequently there was a pressing need to adopt a universal legal instrument to preserve the underwater cultural heritage in the interest of humanity as a whole.

### **a) The wealth of the underwater cultural heritage: some examples**

- Over three million undiscovered shipwrecks are estimated to be spread across ocean floors;
- 65,000 are thought to have sunk since 1500 off North American coasts;
- Experts calculate that 850 ships – including 90 Spanish galleons and 40 Portuguese Indiamen – lie in the waters around the Azores;
- The *Dictionary of Disasters at Sea* lists 12,542 sailing and war vessels lost at sea between 1824 and 1962;
- Whole cities have disappeared under the waves, such as Jamaica's Port Royal, victim of a 1692 earthquake;
- Remnants of ancient civilisations now under water include the Alexandria lighthouse in Egypt and numerous Neolithic villages under the Black Sea.

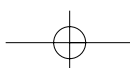
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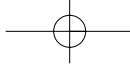




**b) The coexistence of scientific interest, commercial value and the looting of the underwater cultural heritage;**

- The scientific excavation of a 16<sup>th</sup> century Basque Spanish galleon in the waters around Labrador in Canada resulted in 14,000 diving hours and enough information to fill a 4,000-page report;
- Sweden's *Wasa* shipwreck attracts 750,000 visitors per year, contributing some \$300 per tourist per day to the national economy;
- The Western Australian Maritime Museum welcomes 250,000 visitors a year;
- Careful archaeological excavations of the *Pandora*, wrecked off the coast of Australia in 1791, have greatly contributed to understanding the mutiny on the *Bounty* and the tracking of its mutineers;
- Exhaustive archaeological research spanning ten years and covering eight submerged buildings at Jamaica's Port Royal afforded scientists unprecedented opportunities to study 17<sup>th</sup> century urbanism, architecture, technology and daily life;
- In 1985, an American treasure hunter discovered a cargo worth an estimated \$ 400 million in the 1622 wreck of a Spanish galleon off the Florida Keys;
- At least six international treasure hunting companies have set up operations in Portugal to exploit the immensely rich underwater heritage found off its coasts;
- Treasure hunters regularly recruit local fishermen in the Philippines to comb the ocean floor for traces of wrecked Spanish galleons;
- As early as 1974, studies showed that all known wrecks off the Turkish coast had already been pilfered;
- A 1986 Christie's auction of salvaged porcelain and gold from a 1752 Dutch shipwreck in the South China Sea brought in \$16 million;
- Cargo recovered from a wreck off the southern coast of Viet Nam was auctioned for approximately \$7.2 million in 1992;
- Thanks to important underwater excavations, Bodrum has become one of the most popular tourist sites in Turkey and its local population has tripled;
- Over 4 million people have visited Great Britain's *Mary Rose* shipwreck in Portsmouth;
- The *Mary Rose* archaeologists dove 28,000 times between 1979 and 1982, at a cost of \$2.8 million;
- The raising of the 580-ton *Mary Rose* from the ocean floor on 11 October 1982 was broadcast live to some 60 million television viewers;
- In 1999, treasure salvors in the South China Sea located a *junk* so large that it was nicknamed "the Chinese Titanic". Following a call to investors who hoped to profit from the excavation, the wreck yielded over 300,000 pieces of porcelain.





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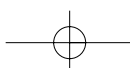
Protection of Underwater Cultural Heritage  
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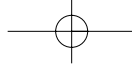
## *The legal framework:* **THE LACK OF AN INTERNATIONAL INSTRUMENT SPECIFIC TO THE UNDERWATER CULTURAL HERITAGE**

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**T**HE underwater cultural heritage is in many cases cultural property with an international dimension, above all as a result of the different origins of vessels and their cargo. Yet the existing law of the sea, principally the **United Nation Convention on the Law of the Sea** (Montego Bay, 1982), does not sufficiently ensure the protection of the underwater cultural heritage. Drafted with a view to offering general provisions for the law of the sea and to regulating the sea's economic resources, it includes only two provisions (Articles 149 and 303) referring specifically to archaeological and historical objects and establishing a *sui generis* obligation to protect them. Furthermore the heterogeneity of content and (geographical) scope of application of national legislations and uncertainties of international customary law made the adoption of a specific convention on the protection of the underwater cultural heritage vital.

UNESCO has been aware of the need to protect this heritage ever since its **1956 Recommendation on International Principles Applicable to Archaeological Excavations**; which also applies to underwater sites. At the request of its Executive Board, experts met several times between 1993 and 2001 and drafted an international legal instrument for general application, adopted by UNESCO's General Conference at its 31st session on 2 November 2001: the **Convention on the Protection of the Underwater Cultural Heritage**. Recognizing the importance of the underwater cultural heritage as an integral part of the cultural heritage of humanity, the Convention is intended to guarantee its preservation through international cooperation.





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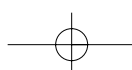
## *The antecedents:* **CHRONOLOGY OF THE UNESCO DRAFT CONVENTION AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (1982)**

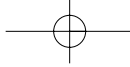
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### ● **The Law of the Sea (general codification)**

- 1956 At its 9<sup>th</sup> session UNESCO's General Conference adopted a *Recommendation on International Principles Applicable to Archaeological Excavations*, which applies also to excavations carried out "on the bed or in the sub-soil of the inland or territorial waters of a Member State" (Article I, par. 1).
- 1958 The 1<sup>st</sup> United Nations Conference on the Law of the Sea (Geneva, 24 February-27 April) adopted four major conventions: the Convention on the Territorial Sea and the Contiguous Zone; the Convention on the High Seas; the Convention on Fishing and Conservation of the Living Resources of the High Seas; and the Convention on the Continental Shelf.
- 1970 Following negotiations within the Seabed Committee, the General Assembly of the United Nations adopted a Declaration of Principles (Resolution 2749 (XXV), 17 December) wherein it was declared that "the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind" (Article 1).
- 1982 Following several sessions (1973-1982), the 3rd United Nations Conference on the Law of the Sea adopted a new Convention on 10 December governing the law of the sea as a whole.

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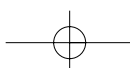


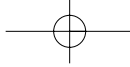
● **Towards an instrument specific to underwater cultural heritage:  
the UNESCO Convention of 2001**

- 1976 The Culture and Education Commission of the Council of Europe undertook a study of the subject. However, despite several years of work, no text was adopted.
- 1994 Adoption of the draft Convention on the Protection of the Underwater Cultural Heritage by the plenary session of the International Law Association (ILA) at Buenos Aires and transmission to UNESCO, recognized as the appropriate body responsible for this matter.
- 1996 The General Assembly of the International Council of Monuments and Sites (ICOMOS) met in Sofia, Bulgaria (5-9 October) where it adopted the International Charter on the Protection and Management of the Underwater Cultural Heritage.
- 1997 At its 29<sup>th</sup> session the UNESCO General Conference decided that the protection of the underwater cultural heritage should be regulated at the international level by an international convention. It invited the Director-General to convene a group of governmental experts for this purpose (Doc. 29C/Resolution 21).

*Open-ended Meetings of Governmental Experts on the Draft Convention on the Protection of the Underwater Cultural Heritage*

- 1998 The first meeting at UNESCO Headquarters from 29 June to 2 July (Report Doc. CLT-98/CONF. 202/7).
- 1999 The second meeting at UNESCO Headquarters from 19 to 24 April (Report Doc. CLT-99/CONF. 204). General agreement was reached to incorporate in an Annex, as an integral part of the draft convention, the Principles set forth in the 1996 ICOMOS Charter (Rules of the Annex).
- 2000 The third meeting at UNESCO Headquarters from 3 to 7 July (Report Doc. CLT-2000/CONF. 201/7) to study the revised draft (Doc. CLT-96/CONF. 202/5 Rev. 2). Despite much progress, the Convention text was not finalized.
- 2001 The first session of the fourth meeting at UNESCO Headquarters from 26 March to 6 April. The Director-General proposed an extension to allow for further consultations regarding certain matters still under discussion.
- 2001 The second session of the fourth meeting at UNESCO Headquarters from 2 to 7 July. The draft text was approved by 49 votes in favour, 4 against and 8 abstentions.
- 2001 The UNESCO Convention on the Protection of the Underwater Cultural Heritage was adopted on 2 November by the Plenary Session of the 31<sup>st</sup> General Conference (Doc. 31C/24) by 87 votes in favour, 4 against and 15 abstentions. Commission IV (Culture) of the General Conference had previously recommended (94 votes in favour, 5 against and 19 abstentions) the adoption of the draft Convention (Doc. 31C/Resolutions, XV, par. D). It became UNESCO's fourth cultural heritage convention.





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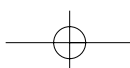
## *General principles of* **THE UNESCO CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE**

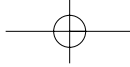
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For the purposes of the Convention on the Protection of the Underwater Cultural Heritage “*underwater cultural heritage*” means *all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years* (Article 1).

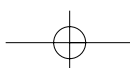
- The preservation *in situ* of underwater cultural heritage shall be considered as the first option before allowing or engaging in any activities directed at this heritage (Article 2, par. 5; Rule 1 of the Annex);
- Activities directed at underwater cultural heritage must use non-destructive techniques and survey methods in preference to recovery of objects (Rule 4 of the Annex);
- Underwater cultural heritage shall not be commercially exploited (Article 2, par. 7; Rule 2 of the Annex);
- Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or law of finds, unless it: is authorized by the competent authorities, is in full conformity with the Convention, and ensures that any recovery of the underwater cultural heritage achieves its maximum protection (Article 4);
- Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites (Rule 5 of the Annex; Article 2, par. 9);

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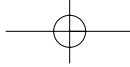




- Responsible non-intrusive access to observe or document *in situ* underwater cultural heritage and international cooperation shall be encouraged (Article 2, par. 10; Rules 7 and 8 of the Annex);
- Any discovery of or activity directed at underwater cultural heritage located in the exclusive economic zone, on the continental shelf of the coastal State or in the Area shall be subject to a specific system of reporting, notification and authorization. Special treatment is reserved for warships and other government ships or military aircraft with sovereign immunity (Articles 9-13);
- Prior to any activity, a project design for the activity shall be developed and approved by the competent authorities (Rules 9-16 of the Annex);
- Training in underwater archaeology, the transfer of technologies and information sharing shall be promoted and public awareness shall be raised in the value and significance of the underwater cultural heritage (Articles 19-21).







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## *Recent examples of successful excavations*

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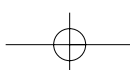
### ● *ELIZABETH AND MARY (Phips's Fleet), Baie-Tinité, Canada*

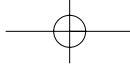
Discovered in 1994 in less than three metres of water, the oldest shipwreck ever found in Quebec is the *Elizabeth and Mary*, one of the finest 17<sup>th</sup> century archaeological collections ever brought to light. The Parks Canada underwater archaeology service proceeded to survey, protect and excavate the wreck over three summers. Having divided the site into grid squares to facilitate numbering and recording the objects found in their contexts, the underwater digs required over 1,835 hours of diving time by 40 professionals and conservation volunteers, whose observations were recorded in a log. Guarded round-the-clock against potential storm damage and treasure hunters, this constant presence also allowed for the rapid recovery of artefacts which had floated to the surface. What remained of the ship's hull was traced, recorded, dismantled and reburied in a nearby lake. The site yielded about 400 concretions containing an astounding wealth of objects requiring up to 10 years for full examination.

### ● *HMS PANDORA, Queensland, Australia*

Among the most significant shipwrecks in the Southern Hemisphere, the *Pandora* was the frigate sent in search of the famous *Bounty* mutineers in 1790. The first of nine excavations led by the Queensland Museum began in 1983, providing a unique window on late 18<sup>th</sup> century European culture and naval life at sea. The ship sank and remained virtually intact as it was quickly covered by a layer of sand, producing what archaeologists term the "Pompeii effect" – a perfect preservation medium. Marine archaeologists worked within a matrix of grids erected over the sand at depths of 30-34 metres, concentrating on areas where the officers and crew lived and worked to reveal daily life and social customs on board.

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### ● RED BAY PROJECT, Labrador, Canada

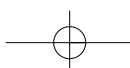
One of the most comprehensive marine archaeological projects ever undertaken in Canada covers some 20 whaling stations found at Red Bay Harbour, where scientists undertook excavations of three Basque whaling galleons and four small whaling crafts in 1978. Important finds include the world's best-preserved example of a 16<sup>th</sup> century vessel used by Europeans to colonise the new world, and a 400 plus-year old whaling *chalupa*, critical to understanding the sophisticated Basque whaling industry of Labrador. The vessel was excavated and its components meticulously numbered, recorded and located in relationship to one another prior to its complete disassembly and recovery. The *chalupa* presented the rare opportunity, following careful conservation, to be reassembled using its original timbers before going on permanent display at the Red Bay National Historic Site Visitor Centre.

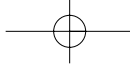
### ● BRONZE AGE SHIPWRECK, Bodrum, Turkey

Housed in the pioneering “living museum” environment of the Bodrum Museum of Underwater Archaeology is the spectacular Uluburun wreck, the oldest known ship ever excavated. Scientific investigation of the wreck, led by Bodrum Museum director Oguz Alpözen and Texas A&M University's George Bass, began in 1982 and was to last for 11 years, yielding 20 tons of artefacts. Archaeologists found organic matter like fruits and nuts aboard the ship, as well as pottery, gold and silver jewellery and bronze tools and arms. The ship joins other objects in a renowned collection recovered during the trail-blazing underwater excavations which have drawn world-wide attention to the Bodrum Museum.

### ● ALEXANDRIA LIGHTHOUSE, Alexandria, Egypt

Driven into the sea by a series of earthquakes up through the 14<sup>th</sup> century, what remains of Pharos of Alexandria, the seventh wonder of the ancient world, today lies six to eight meters deep in the waters off the coast of Alexandria, Egypt. An archaeological mission to save the ruins, begun in 1994 under the aegis of the Alexandria Study Centre, has so far classified over 3,000 objects (statuary, sphinxes, columns and blocks) superposed from different periods – Pharaonic, Ptolemaic and Roman. The location and condition of the heavier granite blocks have convinced the scientific team that they are the remnants of the famed Alexandria Lighthouse. Several pieces have been raised and restored for public display in an Alexandria open-air theatre, but archaeologists have plans to leave the others where they are and create an underwater archaeological park to preserve the relics *in situ*.





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## *The advantages of ratification*

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### **I. Why ratify the UNESCO Convention on the Protection of the Underwater Cultural Heritage?**

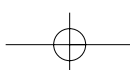
The Convention on the Protection of the Underwater Cultural Heritage is an international legal instrument, of general application, drafted with a view to ensuring a high level of protection of the underwater cultural heritage. By ratifying the Convention, the States Parties shall adopt (and benefit from similar measures taken by other States Parties) the necessary measures to preserve the underwater cultural heritage in the interest of humanity, employing to that end the most appropriate means at their disposal and in accordance with their respective capacities. In particular, in the framework of the provisions of the Convention:

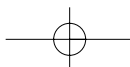
1. The States Parties shall cooperate with and assist each other in order to protect and manage the underwater cultural heritage;
2. As far as possible they shall share information at their disposal on the underwater cultural heritage;
3. They shall take all the appropriate measures to raise public awareness of the value and interest of the underwater cultural heritage;
4. They shall cooperate to offer training in underwater archaeology and the techniques of preserving the underwater cultural heritage;
5. They shall take part in UNESCO activities relating to the implementation of the Convention, such as Conferences of States Parties or technical and consultative meetings; and
6. They shall benefit from UNESCO's technical assistance, within the limits of the Organization's budget, for drafting national legislation relating to application of the Convention.

### **II. How does a State ratify the Convention?**

For UNESCO Member States, there are three ways of expressing consent to be bound by the Convention: *ratification* (the *instrument* tends to be a *letter of ratification*), *acceptance* or

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*approval*. States that are not Members of UNESCO wishing to become Parties to the Convention may still *accede* to it.

### III. When will the Convention enter into force?

The Convention will enter into force three months after the deposit of the 20th instrument of ratification, acceptance, approval or accession with the Director-General of UNESCO.

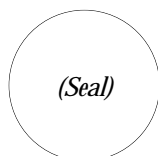
## *Model instrument of Ratification/A cceptance/A pproval/A ccession*

Whereas the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001) is open to (*ratification/acceptance/approval/accession*) by (*name of country*) under the terms of its Article 26,

Now therefore the Government of (*name of country*) having considered the aforesaid Convention hereby (*ratifies/accepts/approves/accedes to*) the Convention and undertakes faithfully to carry out the stipulations therein contained.

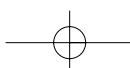
IN WITNESS THEREOF, I have signed and sealed this instrument.

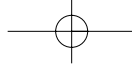
Done at ....., this ..... day of .....



(Signature)

\_\_\_\_\_  
Head of State  
or Prime Minister  
or Minister of Foreign Affairs





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## *Glossary and key definitions*

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### *1. Basic definitions of the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001)*

#### **Underwater Cultural Heritage**

“Underwater cultural heritage” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years (Article 1, par. 1).

#### **State vessels and aircraft**

“State vessels and aircraft” means warships, and other vessels or aircraft that were owned or operated by a State and used, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage (Article 1, par. 8).

### *2. Definitions of different maritime areas according to the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982)*

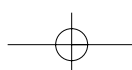
#### **Baseline**

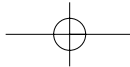
The normal baseline is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State (Article 5).

#### **Internal waters**

Internal waters are located on the landward side of the baseline of the territorial sea (Article 8, par. 1).

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### **Territorial sea**

The territorial sea is the area of sea adjacent to a coastal State over which its sovereignty is exercised subject to letting foreign ships pass (rule of innocent passage). Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines (Article 3).

### **Contiguous zone**

The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. The coastal State may exercise the control in the contiguous zone necessary to prevent infringement of its customs, fiscal, immigration or sanitary rules and regulations (Article 33). According to Article 303, par. 2, the coastal State may presume that the removal of objects of an archaeological and historical nature from the seabed in the zone without its approval would result in an infringement within its territory or territorial sea of its laws and regulations.

### **Exclusive Economic Zone (EEZ)**

The exclusive economic zone is an area beyond and adjacent to the territorial sea and shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. (Articles 55 and 57).

### **Continental shelf**

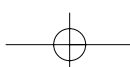
The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (Article 76, par. 1).

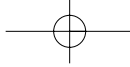
### **High seas**

The high seas comprise all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State (Article 86).

### **Area**

“Area” means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (Article 1, par. 1). The Area and all solid, liquid or gaseous mineral resources *in situ* in the Area or beneath the seabed, including polymetallic nodules, are “common heritage of mankind” (Article 136). Furthermore, according to Article 149, all objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.





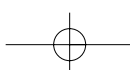
UNESCO

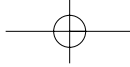
Protection of Underwater Cultural Heritage  
 Protection du Patrimoine Culturel Subaquatique  
 Protección del Patrimonio Cultural Subacuático

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