



31

Protecting and Preserving Underwater Cultural Heritage in Southeast Asia

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Introduction

Warship Diplomacy: From the Military to the Museum

Late in the evening of 28 February 1942, HMAS *Perth* and USS *Houston*, both of which had survived the Battle of the Java Sea and were low on fuel, attempted to make their way through the Sunda Strait and away from the Indonesian archipelago. The survival of the two ships, which between them were carrying over 1000 sailors, was nothing short of miraculous. But just as their passage was looking possible, they were ambushed by Japanese naval forces: HMAS *Perth*, hit by torpedoes, sank shortly after midnight, and USS *Houston* succumbed shortly thereafter. The few survivors were made prisoners of war and their stories were not heard until their release years later. The sunken ships lay untouched for decades and their exact location unknown, joining countless other military, merchant and private vessels lost in Southeast Asia's busy waters.

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HMAS *Perth* and USS *Houston* have come to represent some of the complexities and sensitivities associated with sunken vessels in Southeast Asia.¹ Unauthorised disturbance of these wrecks has occurred since at least the 1960s² and peaked in 2013 when reports surfaced of salvage barges removing scrap metal from the sites (Besser et al. 2013; Pearson 2016a; Anonymous 2013). Although Indonesian authorities were not implicated in the salvaging operations, they were criticised for not doing more to protect the wrecks. That same year, a diver removed a trumpet from USS *Houston*, an action that was met with widespread criticism (Ruane 2016). The USS *Houston* Survivors' Association, to whom the diver had attempted to gift the trumpet, rejected it on the grounds that it was illegal to remove property from a US Navy wreck while involved in a dive.³

These are not isolated incidents. In November 2016, an international diving team operating in the Java Sea discovered that at least five Allied shipwrecks had completely vanished from the sea floor, likely stolen by semi-professional salvagers for scrap metal (Pearson 2017). The sheer quantity of scrap metal on a naval ship means that a single wreck can be worth up to AUD 1 million. The bronze propellers alone are worth tens of thousands of dollars each. It is unlikely that these salvage operations were conducted in complete secrecy. The Java Sea wrecks lay close to one of Indonesia's largest naval bases, and suspicious activity—not to mention visible environmental impacts such as oil spills—is unlikely to have gone unnoticed by passing marine craft.

The legal and ethical dimensions of these sunken warships are further complicated by the presence of human remains on the wrecks, as well as the heightened scrutiny brought to bear by living descendants of victims and survivors. The sites are considered war graves by survivors and their descendants, following a long maritime tradition of respecting human remains on shipwrecks. Being less than 100 years old, these wrecks are not defined as 'underwater cultural heritage'⁴ under the provisions of the 2001 United Nations

¹ Southeast Asia is defined for the purposes of this chapter as Vietnam, Laos, Cambodia, Thailand, Singapore, Malaysia, the Philippines, Myanmar, Indonesia, Brunei Darussalam and Timor-Leste.

² Australian David Burchell re-discovered the wrecks in the 1960s and recovered a number of objects from the vessels (see Burchell 1971).

³ The trumpet was eventually passed to the underwater archaeology branch of the US Naval History and Heritage Command for conservation. Executive Director of the Survivors' Association, John Schwarz, noted: 'We have no idea of the untold number of other divers who have pilfered our ship, and were not straight up, and have kept relics retrieved for their own personal use, "stealing" that which truly belong to the lasting memory of the bravery and dedication of the men who served on these warships' (Power 2016).

⁴ 2001 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, Article 1: *For the purposes of this Convention: 1. (a) 'Underwater cultural heritage' means all traces of human*

Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection of the Underwater Cultural Heritage (the 2001 UNESCO Convention).⁵ Efforts to protect the wrecks from the threats of systematic salvaging and opportunistic souveniring have instead sought to build on established multilateral links⁶ and have recently developed into a form of cultural, or heritage, diplomacy. One outcome is the signing of a joint Memorandum of Understanding between the Australian National Maritime Museum and the National Archaeological Centre of Indonesia (*Pusat Penelitian Arkeologi Nasional*) to survey, assess and record the HMAS *Perth* site, with a view to it being listed under Indonesia's domestic heritage legislation (Indonesia 2010). Some advocacy groups fear that it is already too late to protect HMAS *Perth*. However, the slow but steady progress being made to manage and protect these warship wrecks attests to the role that cultural diplomacy and international collaboration can play in contributing to broader efforts to protect these wrecks in an undoubtedly complex legal and ethical context.⁷

Southeast Asia's Underwater Cultural Heritage

This type of 'cultural diplomacy' extends our understanding of the diverse possibilities of managing warship wrecks and other underwater cultural heritage in Southeast Asia. Focusing on examples from the region, this chapter examines the diversity and efficacy of alternative approaches to the manage-

existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character. (b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage. (c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.

⁵ Nor are Indonesia, Australia or America party to the 2001 UNESCO Convention.

⁶ The US government enacted the Sunken Military Craft Act (SMCA) in 2004. Its primary purpose is to preserve and protect from unauthorised disturbance all sunken military craft (including *USS Houston*) that are owned by the US government. Pursuant to this legislation, the US Navy's sunken military craft remain property of the US regardless of their location or the passage of time and may not be disturbed without the permission from the US Navy. *USS Houston* has benefited from an active, funded program and an equally active Survivor's Association; despite these measures, however, *USS Houston* has not been exempt from illegal looting and salvaging (see Anonymous (Naval History and Heritage Command); see also *USS Houston CA-30: The Galloping Ghost of the Java Coast* [Online]. Available: <http://usshouston.org/> [Accessed 2016]).

⁷ Indonesia's Research Institute for Coastal Resources and Vulnerability, housed within the Ministry of Marine Affairs and Fisheries, has also assessed HMAS *Perth* and identified it as vulnerable to the threats of 'the activities of illegal salvagers who loot the ship's iron/metal, sea sandmining operations, waste pollution, and vessel traffic disturbance' (Ridwan et al. 2016).

ment and protection of cultural heritage beyond the stipulations of the 2001 UNESCO Convention, specifically the Convention's preference for in situ preservation as a first option⁸ and the ban it places on commercial exploitation.⁹ Such alternative understandings are critical, because, despite early interest from a number of Southeast Asian countries including Malaysia and the Philippines, Cambodia remains the only Southeast Asian nation to have signed the 2001 UNESCO Convention.¹⁰

The Southeast Asian region is a valuable area of research not only because of the lack of consensus about the utility of the 2001 UNESCO Convention but also because of the archaeological significance of its underwater cultural heritage, much of which is 'being lost on a daily basis' (Flecker 2002b). Australian maritime archaeologist Jeremy Green points to the 'legacy of a colonial system' in creating 'interesting and unusual problems' for underwater cultural heritage in Asia that are quite different from the Americas, the Mediterranean and Europe (Green 2003). But this assessment only goes part of the way. Southeast Asia's other great legacy is not that of empire but of geography, namely its central position along the ancient trading routes of the sea (Kwa 2012). Developing in parallel with the famed Silk Road, the 'Maritime Ceramic Route'—from China, through Southeast Asian waters and onwards to the Indian Ocean—was so-called because boats were better suited to transporting high-volume, heavy cargoes of fragile ceramics than were the camels and caravans travelling overland (Kimura 2015). These vessels and their crew moved huge quantities of tradable goods around the world and were truly transnational in nature.¹¹ When misfortune led to the wrecking of these vessels, the result was a type of accidental time capsule, in which many thousands of (often similar) objects came to rest in one location. Having lain

⁸ 2001 UNESCO Convention, Article 2 (5): 5. *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.*

⁹ 2001 UNESCO Convention, Article 2 (7): *Underwater cultural heritage shall not be commercially exploited.*

¹⁰ In 2003, Malaysia (p. 61) and the Philippines (p. 160) both indicated their intention to sign the Convention (Prott 2003a).

¹¹ As Forrest notes, 'Seafaring, by its very nature, often involves international travel, during which a vessel from one State or nation may pick up cargoes, passengers and even crew from other States during her voyage. The complex remains of a shipwreck may therefore contain artefacts from a number of States or nations, yet the story and archaeological and historical information it can yield is distinctly international. In the case of an ancient vessel, it is often extremely difficult to determine the origin of either the vessel or her cargo... Whilst these vessels may flounder in international waters, they are more often than not wrecked on or off a coast, which might be that of a State with no cultural connection to the vessel at all. Claims by that coastal State will further confuse matters in cases of return or restitution' (Forrest 2010). The transnational nature of ships and shipwrecks is the basis for arguments in support of a shared approach to underwater cultural heritage (see for example Staniforth 2014a).

undisturbed for centuries, the remnants of these inter- and intra-regional maritime journeys are now increasingly vulnerable to a range of threats.¹²

Threats to Underwater Cultural Heritage

Some of these threats, such as the accidental destruction of wrecks caused by deep sea trawlers, are specific to the underwater environment and are particularly common in Southeast Asia with its shallow seabeds and high volume of fishing activity. Trawlers can pull wrecks apart and drag objects for kilometres along the seabed. Off the east coast of the Malay peninsula, for example, the fifteenth-century *Longquan* wreck, which was found in deep water with a mostly intact cargo of Chinese and Thai ceramics, was 'flattened and widely dispersed by Thai trawl nets' (Flecker 2002b) before any further action could be taken.¹³ Deep sea exploration and infrastructure, such as cable-laying, drilling for oil and other resource exploitation are other significant contributors to the destruction of underwater heritage (Papa Sokal 2005).¹⁴ Environmental disasters, such as the 2004 Indian Ocean tsunami, can also pose a threat.

The tantalising possibility of treasure, including gold, silver and ceramics,¹⁵ also presents a significant threat to underwater cultural heritage in Southeast Asia.¹⁶ The lure of treasure, the search for which has been bolstered by advances in underwater exploration equipment, manifests in the unregulated removal of objects from shipwrecks. Such activities can be described as 'looting', 'pillaging', 'salvaging', 'souveniring', 'strip-mining' or 'treasure-hunting'.¹⁷ These illicitly obtained objects are sold illicitly in local or international markets,

¹²Manders identifies four broad categories of threats to underwater archaeological heritage: physical-mechanical, biological, chemical and human (Manders 2012).

¹³The licencing of Thai trawlers to operate in Malaysian waters is 'potentially disastrous for the many, as yet undiscovered, shipwrecks lying off the coast of Malaysia' (see footnote 5 of Flecker 2002b). See also Kwa (2012).

¹⁴In Hong Kong, authorities require the inclusion of a Maritime Archaeological Investigation in Environmental Impact Assessments for offshore development activities (see Jeffrey 2003).

¹⁵The sale of objects taken from the *Geldermalsen* was one of the first examples of shipwreck ceramics raising a profit at auction: '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...' (Rodrigues et al. 2005).

¹⁶Flecker writes, 'Unlike most terrestrial archaeology, maritime archaeology is enmeshed in politics and in ethics, two seemingly contrary fields. This is because shipwrecks can contain artefacts of considerable commercial value. They can contain treasure' (Flecker 2002b).

¹⁷These are distinct from terms such as 'recovery' or 'excavation' which, as Tjoa-Bonatz points out, suggest a degree of compliance with recognised archaeological standards (Tjoa-Bonatz 2016).

often before authorities are even aware of a wreck's discovery.¹⁸ Because of the high volume of objects usually found at wreck sites, some are simply destroyed, returned to the ocean or buried in sand, so that the market is not diluted with lesser value objects. These unregulated activities also result in the destruction of the archaeological context, such as information about the ship's construction. Such contextual information is critical for researchers and is a non-renewable resource—once lost, it is gone forever.

These activities indicate the regrettable tendency to focus on the romance of sunken vessels and lost treasure. Treasure is a distraction, and often comes at a cost to not only hull remains—Kimura, for example, laments the lack of attention given to the protection of hull remains of shipwreck sites in Southeast Asia (Kimura 2015)—but also other underwater heritage sites such as ancient naval battlefields, submerged coastal landscapes and evidence of past human interaction with the sea that is now hidden by rising ocean levels. Such oversights can pose their own problems when it comes to the prioritisation of already-constrained resources in the region.

Commercial salvage companies are also constituted as a major threat to underwater cultural heritage in Southeast Asia, and they are commonly dismissed as 'treasure hunters'. Unlike the unregulated activities of the looters, however, domestic legislation in a number of Southeast Asian countries allows these companies to *legally* remove objects and to sell them to cover costs and raise profit. These companies can be contracted to work in partnership with local authorities, such as the excavation of the *Binh Thuan* in Vietnam in 2002, or via a permit system, necessitating payment of substantial up-front exploration and licencing fees, as was the case in Indonesia from 1989 to 2010. Private entities 'that support exploration and excavation in exchange for a share of recovered materials' are also legal in the Philippines, working in partnership with the Underwater Archaeology Unit and the National Museum in its capacity as lead agency responsible for shipwreck excavations (Orillana 2012). In so doing, these companies are at the centre of a common refrain in debates about the 'shipwrecked' state of maritime archaeology in Southeast Asia: that, irrespective of the quality of any research conducted, commercial involvement precludes real archaeology (Green 2011). These discussions provoke 'the full gamut of rational intellectual debate and emotional scholarly fury' (Kingsley 2011). In particular, these for-profit operations do not comply

¹⁸ Writing about the *Belitung*, Flecker notes that, during a weather-enforced break in operations, the commercial excavation company returned to the site to find that 'Local divers [had] immediately moved in, sometimes at night, and removed many artefacts. Furthermore, as large jars containing hundreds of Changsha bowls were too heavy for them to lift, they smashed holes in the sides of the jars in order to gain easy access' (Flecker 2002b).

with the 2001 UNESCO Convention's principles relating to the preference for in situ preservation as a first option, and the stipulation that underwater cultural heritage shall not be commercially exploited. But such arguments are complicated by the fact that most Southeast Asian nations are not party to the 2001 UNESCO Convention and are under no obligation to adhere to its principles. Muddying the waters of this debate further is that the domestic legal systems that allow commercial salvage put the onus on the companies themselves to act in accordance with recognised archaeological principles (such as systematic data collection and maintenance, conservation of objects, and publications that focus on the ship and not just the cargo); there are rarely any requirements embedded in the legislation for them to do so.¹⁹ Some companies do this better than others.

Thus, while legal, the involvement of commercial salvage companies in the recovery of objects in Southeast Asian waters can encapsulate a range of archaeological outcomes from the acceptable to the problematic, forcing us to question commonly accepted understandings of what constitutes a threat to underwater cultural heritage in the region. In this chapter, I argue that the threat these commercial salvage companies pose is less about the similarities they share with looters and more a matter of the contested space such companies occupy in debates about the ethics of commercial involvement in shipwreck cargo excavations.²⁰ Furthermore, I contend, comparisons likening the activities of commercial salvage companies to looting and pillaging preclude a more nuanced understanding of the possibilities for the former to contribute to the protection of underwater cultural heritage in Southeast Asia.

Scope

The Southeast Asian region has responded to the threats to its underwater cultural heritage in a diversity of ways.²¹ Section One of this chapter establishes the contextual basis that has given rise to the diversity of these responses

¹⁹Writing about commercial outfits operating in Indonesia, Liebner says that 'Publication indeed is not a prerequisite of a licensed salvage' (Liebner 2014).

²⁰For a longer discussion about ethics, refer to Maarleveld 2011. See also Flecker (2002b).

For a more detailed look at ethics and maritime museums, see Johnston (1993).

²¹Roxanna Brown notes: 'Shipwreck sites have been located and at least partially investigated both in international waters and within the territorial waters of almost all the countries of Southeast Asia. Sites in international waters are investigated by private entrepreneurs who base their salvage rights on international laws of the sea. Sites in territorial waters have been excavated by the relevant national authorities alone or sometimes in conjunction with archaeologists from abroad or together with private companies. Sometimes the work of excavation is wholly contracted out to a private company, and sometimes the country simply issues an excavation permit to salvors for a fee. In Vietnam, the national salvage company

by considering, firstly, the notion of freedom of the seas and the associated admiralty laws of Salvage and Finds. It also looks at some of the earlier Conventions and Recommendations that touched on, but did not comprehensively address, the complexities of underwater cultural heritage; one of these pertains to the illicit trade in cultural property, while another is associated with how the rule of law is governed at sea.

Despite most Southeast Asian countries not being party to the 2001 UNESCO Convention, it is, nevertheless, the primary international instrument addressing underwater cultural heritage, and its principles are the yardstick by which the management of underwater cultural heritage is measured. Section Two examines some of the issues that arose during its development—such as its compatibility with other international Conventions—and considers the arguments and counter-arguments regarding the application of the principles of in situ preservation, and no commercial exploitation, in a Southeast Asian context.

The diversity of approaches to the management of underwater cultural heritage in Southeast Asia is far broader than if the 2001 UNESCO Convention were more widely accepted. Having touched on the cultural diplomacy being used in relation to HMAS *Perth* and USS *Houston*, Section Three presents a further selection of examples that demonstrate this diversity of approaches. These include the oft-cited case of the *Geldermalsen*, which was exploited for financial benefit at the expense of archaeological research; the commercial excavation of the *Belitung*, which was also profit-driven—something I contend has not precluded positive outcomes in terms of scholarly research and public access; the disappointment of a joint venture to salvage and display the *Binh Thuan*; the institutionalisation of maritime archaeology in Thailand and Vietnam, including, in the latter instance, the role of recent capacity-building efforts; the significance of maritime archaeological research that looks beyond ‘just shipwrecks’; and the potential for interpreted public access to submerged cultural resources (‘shipwreck tourism’) as a way of preserving wrecks in situ while also availing them to the public. It also notes the potential for underwater cultural heritage to be used as a political tool in disputes over national sovereignty (Campbell 2015). It is beyond the scope and intention of this chapter to consider approaches to underwater cultural heritage in every Southeast Asian nation, nor do I intend to mention every shipwreck discovered in Southeast Asia²²—rather, these examples have been

is usually involved. In Thailand, the Underwater Archaeology section of the Fine Arts Department directs excavations. There is a wide range of possibilities’ (Brown 2004).

²² For such detail, useful starting points include Prott 2003a; O’Keefe 2002; Flecker 2011, 2002b; Brown 2004; Kwa 2012.

selected for the insights they offer about the development of different management approaches to underwater cultural heritage in Southeast Asia.

The chapter concludes by considering the future for underwater cultural heritage in Southeast Asia. Prott sees the need for regional ratification of the 2001 UNESCO Convention as ‘urgent’ (Prott 2003b), necessitating persistence, persuasion and awareness raising rather than criticism of current efforts in the region. Until there is wider acceptance of the 2001 UNESCO Convention, therefore, it is well worth reviewing the variety of responses to the threats posed to underwater cultural heritage in Southeast Asia. While some of these are clearly problematic, I contend that some of them may in fact offer valid, and practical, alternatives to managing and protecting underwater cultural heritage in the region.

Section One: Traditional Maritime Laws and Other Early Antecedents

Prior to the introduction of an international regulatory framework to protect and preserve underwater cultural heritage, the adjudication of matters relating to shipwrecks and their cargo had generally been governed by traditional maritime laws such as Salvage Law, which relates to vessels in marine peril, and the Law of Finds, which relates to lost and abandoned ships.

Each of these is based on the notion of the freedom of the seas, a principle that was not only widely applied in Asia but is believed to have preceded the development of similar principles pertaining to unhindered navigation and trade in Europe (Tjoa-Bonatz 2016).²³ For example, there is evidence that such practices were codified in parts of the Indonesian archipelago at least as early as the tenth century. Royal edicts from the north coast of Bali, known as the Sembiran inscriptions, codify the right to the exploitation of shipwrecks. Profits were to be apportioned to up to three parties, including the local authority (Hauser-Schäublin and Ardika 2008).

Marine Peril and Salvage Law

Salvage Law arose from a perceived need to encourage rescue at sea. It centred on the notion of fair compensation for the voluntary risks taken by salvors to

²³ See also Anand (1981) and Alexandrowicz (1967).

rescue life or property in marine peril, such as piracy or inclement weather. In its simplest form,

...salvage can be described as a service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so. (Norris 1958)

Honest salvors were thus encouraged by the potential of a generous reward to provide assistance to vessels in marine peril. Critically, the law of salvage did not imply or grant ownership—the over-riding principle was fair compensation for successful salvage work undertaken.²⁴ Salvage law is often used to justify removal of objects from shipwrecks, raising the question of what constitutes ‘peril’. As O’Keefe asks, ‘...are historic wrecks and their cargoes in danger?’ (O’Keefe 1996).

The motivation behind Salvage Law—the perceived need to encourage rescue at sea—places it at odds with terrestrial law. In particular,

The doctrine of granting a money award in favour of the volunteer salvor of distressed property at sea is peculiar to maritime law and utterly at variance with terrene common law. (Norris 1958)

Such variance is an indication of the additional level of complexity that needs to be factored in to our considerations of what constitutes an ethical, and pragmatic, approach to managing shipwrecks and underwater cultural heritage more broadly.²⁵

Finders, Keepers: Abandoned Vessels and the Law of Finds

The Law of Finds differs from Salvage Law in terms of how property rights are assigned. While the latter entitles a salvor to compensation for successful salvage, it does not transfer property rights to the salvor: the title remains with the original owner. The Law of Finds evolved in response to situations where

²⁴ These principles were enshrined in the *Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea* (1910), which was later replaced as the primary multilateral agreement on marine salvage by its incorporation into the International Maritime Organization’s *International Convention on Salvage* (introduced in 1989, came into force in 1996).

²⁵ O’Keefe examines the extent to which salvage law can be applied to historic ships and maritime archaeological sites in O’Keefe 1978, pp. 3–7. He observes the ‘difficulty in applying the concepts of salvage laws to the recovery of objects from the sites of shipwrecks where the cultural and historical value of those objects in their context will outweigh their extrinsic value’.

the original owner could not be identified or was deemed to have abandoned the vessel, thus enabling the finder to acquire the title. The key word here is ‘abandon’, which, as Forrest explains, is implied by ‘the act of leaving or deserting the property without the intention of recovering it’ (Forrest 2010).²⁶

The Law of Finds could be applied in situations where the owners had expressly and publicly abandoned their property, and where items were recovered from an ancient shipwreck and no one came forward to claim them (Schoenbaum 2004). However, the utility of the Law of Finds was complicated by factors such as whether the wreck in question was a private or a State-owned vessel, such as a warship. While many maritime nations hold the view that State-owned vessels ‘can only be abandoned by an *express* [emphasis added] declaration to that effect’ (Forrest 2010), there is also the question of whether abandonment can be *implied* if the original owner, in this case the State, does not take action to recover the vessel. This is despite the fact that for many warships, recovery efforts were impossible at the time of their sinking. To return to our earlier example of HMAS *Perth* and USS *Houston*: not only were their exact locations unknown until the mid-1960s, but the equipment to recover these vessels was limited at that time. The illegal salvage of scrap metal from these sites in 2013 could therefore not be justified on the grounds that the wrecks had been abandoned and were subject to the Law of Finds. Even with recent technological advances, many States have elected to leave their sunken warships in situ rather than attempt to recover them, due to the practical, financial and moral considerations associated with excavating a wreck; such decisions should not be considered as abandonment.

If the wreck in question is an ancient vessel—or more complicated yet, an ancient warship—ownership, and thus abandonment, becomes even more difficult to determine (O’Keefe 1996). This is because a wreck site may be so old ‘that it predates any conception of “the State” in international law, and no existing State can claim to be the flag State’. Additionally,

the original flag State may no longer exist as a separate entity, but has been broken up into smaller nation-States or subsumed within a larger State. It may also be that there is simply no historical evidence available to determine ownership of the vessel. (Forrest 2010)²⁷

²⁶‘While this may occur through a failure to take action to recover the lost vessel and its contents over a period of time, abandonment must be inferred from all the circumstances, including conduct of the owner, the circumstances of the loss of the vessel and its final resting place, as well as the opportunity for recovery’ (Forrest 2010). To this, Wilder adds that the actions of an ‘insurer that asserts ownership through abrogation’ must also be considered (Wilder 2000).

²⁷Forrest also notes that the definition of a warship, per UNCLOS Article 29, is ‘inappropriate as a definition for warships of earlier centuries’ (Forrest 2010).

Because these traditional laws evolved out of antiquity, their primary focus was ‘the adjudication of property rights, not [...] the protection of archaeological context’ (Papa Sokal 2005). Consequently, they proved to be increasingly inadequate to manage the legal and ethical issues arising from advances in underwater exploration.

A Note on Temporality

An important factor in the growing recognition of the inadequacy of these laws was the issue of temporality,²⁸ which connects developments in underwater exploration and the nascent discipline of maritime archaeology, with growing international efforts to protect and preserve underwater cultural heritage.

Around the same time as the sinking of HMAS *Perth* and USS *Houston*, advances in underwater diving technology were heralding significant advancements in humans’ ability to explore under water. While there is archaeological evidence to suggest that humans had been scouring the seabed for millennia,²⁹ it was not until the development of Jacques Cousteau’s aqualung in the 1940s that people were able to operate autonomously for extended periods underwater. Until this time, underwater exploration had been limited to breath-hold diving or unwieldy diving bells. This was the start of an unprecedented period in not only underwater exploration, but also the evolution of underwater, or maritime, archaeology—a discipline that had long been preceded by its terrestrial counterpart and suddenly had hundreds of years of catching up to do.³⁰ But with improved access also came greater vulnerability to the threats

²⁸ Lee notes the issue of temporality in his discussion about the development of the 2001 UNESCO Convention and its compatibility with UNCLOS: ‘It was only in 1960 that underwater archaeology is said to have begun with the excavation of the Cape Gelidonya wreck. From the middle or late 1980s the international community began to be aware of the existence and importance of the underwater cultural heritage’ (Lee 2003).

²⁹ Displaced shells indicate that, as far back as 4500 BC, the search for food motivated the earliest ‘breath-hold’ divers.

³⁰ The beginnings of maritime archaeology are commonly dated to the 1960 excavation of a late Bronze-Age shipwreck off Cape Gelidonya, in the eastern Mediterranean, by archaeologist George Bass. The ship dated to 1200 BC and was the first wreck to be archaeologically excavated in its entirety. Just as significant was that Bass made no concessions to the fact that the archaeological site was underwater. Although the depth of the wreck and the limitations of equipment precluded dives longer than 30 minutes, Bass and his team assessed and surveyed the site in a methodical and measured manner—just as if they were archaeologists working on a terrestrial site. Bass’ approach to excavating the *Gelidonya* incorporated his belief that it was more efficient to teach archaeologists how to dive than it was to teach divers how to be archaeologists. The excavated objects were recorded and conserved, Bass’ findings published, and the objects placed on display in a purpose-built museum. This approach demonstrated an understanding of not only the possibilities of underwater exploration but also the risks and responsibilities it entailed.

posed by both commercial and recreational divers. Furthermore, the extant customary and legal framework was insufficient to mitigate against these threats.

Destruction of Heritage During Conflict: The Hague Convention

Notwithstanding developments in underwater exploration, underwater cultural heritage was very much a secondary consideration in the post-war period. Despite the loss of HMAS *Perth* and USS *Houston*, as well as many other state vessels, the international community was slow to take action to protect or recover them. Heritage protection efforts were instead centred on the military destruction and looting of cultural property that had occurred in Europe during World War II, prompting the development of the 1954 Hague *Convention for the Protection of Cultural Property in the Event of Armed Conflict* and its accompanying Protocols (the Hague Convention).

Stemming Illicit Flows: The 1970 UNESCO Convention

Decolonisation also had a significant impact on heritage protection efforts. The threat posed by looting had been regrettably common at terrestrial heritage sites for centuries and was frequently connected to the complicity of empire. But the changing standards of the post-colonial era meant that looting archaeological sites, and the resultant illicit trade in cultural objects, was increasingly out of favour. In 1956, UNESCO issued a Recommendation on International Principles Applicable to Archaeological Excavations, which sought to address issues such as illicit export of archaeological objects and included both terrestrial and underwater activities in its definition of 'archaeological excavations'. However, it did not regulate which coastal state would control underwater archaeological excavations and left open the question of ownership rights. Furthermore, being a Recommendation, it was by nature advisory and not binding (Nayati 1998).

The international community therefore moved to strengthen measures to combat illicit flows of cultural property³¹ through the introduction of the

³¹The 1970 UNESCO Convention employs the term 'cultural property', which is also used in the 1954 *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, which addresses the destruction and looting of cultural property during times of armed conflict. By 1972, with the introduction of the UNESCO *Convention Concerning the Protection of the World Cultural and Natural Heritage*, UNESCO was using the phrase 'cultural heritage'. However, the UNIDROIT Convention uses the term

1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970 UNESCO Convention). This Convention was an important line in the sand for the international community in terms of regulating and clarifying issues relating to the ownership and provenance of illicitly obtained cultural property. Even though it does not distinguish between objects found on land or under water, general provisions pertaining to the illicit traffic in cultural property can nevertheless be applied to objects of underwater origin. These include a ban on the acquisition, by museums or similar institutions, of illegally exported objects, as well as import bans on cultural property stolen from museums (Clément 2003).

The 1970 UNESCO Convention has been ratified by 131 Member States of UNESCO, including, from Southeast Asia, Cambodia, Laos, Myanmar and Vietnam. Southeast Asian states that have not signed are Brunei Darussalam, Indonesia, Malaysia, Singapore, Thailand, Timor-Leste and the Philippines. The worldwide ratification rate, however, is high, and Prott notes that it has been ratified by a number of the ‘major destinations for illicitly-trafficked cultural property from the Asia-Pacific region’.³² In August 2001, for example, Australian legislation³³ giving effect to the 1970 UNESCO Convention was used to return seven containers, holding some 71,939 pieces of Chinese porcelain, to Indonesia (Australia 2015). The porcelain had been removed from the wreck of the *Tek Sing*—a Chinese junk that sank on Belvedere Reef in Indonesian waters in 1821—and illegally exported to Australia (Clément 2003). However, the seized containers were just a fraction of the total: Australian authorities were powerless to stop the export of a further 40 shipping containers from Australia due to delays in receiving information sufficient for them to act. The contents were later sold at auction in Europe (Forrest 2004).³⁴

UNIDROIT Convention

The principles in the 1970 UNESCO Convention underpin the 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*

‘cultural object’. The 2001 UNESCO Convention uses the term ‘cultural heritage’. In 1992, Prott and O’Keefe proposed that cultural heritage was a more appropriate phrase than cultural property because it did not connote ownership in the legal sense. Furthermore, they argued, ‘property’ does not incorporate concepts of duty to preserve and protect. See Prott and O’Keefe (1992).

³² Prott includes Australia, France, Japan, the UK and Switzerland in this list (Prott 2003b).

³³ *Protection of Movable Cultural Heritage Act 1986* (Cth).

³⁴ See also Tjoa-Bonatz (2016).

(UNIDROIT Convention), which benefits source countries by focusing on recovery, restitution and return of illegally obtained cultural objects. The UNIDROIT Convention was developed to address weaknesses in the 1970 UNESCO Convention relating to undocumented objects and looted cultural objects, which, as Clément notes, includes ‘most of the underwater cultural heritage’ (Clément 2003).

As with the 1970 UNESCO Convention, the UNIDROIT Convention does not directly address objects originating underwater; however, this does not preclude relevant provisions being applied to underwater heritage. As has been noted, the omission of specific references to underwater cultural heritage in both the 1970 UNESCO Convention and the UNIDROIT Convention can be largely understood as a consequence of the nascency of maritime archaeology, relative to terrestrial archaeology, at that time.³⁵

UNCLOS: The Constitution for the Oceans

In addition to heritage-focused Conventions, the other critical Convention to consider is the widely accepted and well-established ‘constitution for the oceans’ (Lee 2003): the *United Nations Convention on the Law of the Sea* (UNCLOS), which was adopted in 1982 and came into force in 1994. The primary focus of UNCLOS was public international maritime law, including navigational rights and jurisdiction over coastal waters. To enable this, UNCLOS delineates the maritime domain into zones, over which States have different rights and obligations (O’Keefe 2002).³⁶ Cultural heritage had been

³⁵ See Prott (2003a).

³⁶ These zones are:

- A State’s *internal waters*, such as lakes and rivers. In terms of States’ rights and responsibilities, internal waters are generally treated as if they were land.
- The *territorial zone*, which extends up to 12 nautical miles from the baseline (usually the low-water line) and over which a State is allowed to claim sovereignty; ships of other States have the right of innocent passage through the territorial zone.
- The *contiguous zone*, which continues out a further 12 nautical miles beyond the territorial zone. In this zone, states are allowed to enforce laws relating to customs, taxation, immigration and pollution.
- The *continental shelf*, which is a place where States have sovereign rights over the exploration and exploitation of natural resources (defined by UNCLOS Article 77 (4) as ‘the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil’). O’Keefe notes that ‘The legal definition of the continental shelf in UNCLOS is a complex one which, for political reasons, departs from the physical concept’. UNCLOS provides for States with a physically narrow continental shelf to extend their legal entitlement to a full 200 nautical miles, ‘even though this encroaches on the geological deep seabed’; meanwhile, a complicated formula is used to determine the legal extent of sovereign rights for States with a wide continental shelf (O’Keefe 2002).

a low priority during negotiations, and there are only two Articles that directly address underwater cultural heritage in UNCLOS: Article 303³⁷ (Archaeological and historical objects found at sea), in Part XVI ('General Provisions') and Article 149³⁸ (Archaeological and historical objects), in Part XI ('The Area').

In assessing the compatibility of UNCLOS with the 2001 UNESCO Convention, Lee notes that Article 303 has been criticised for being "clumsy" in terms of logic or systematic coherence' and "counterproductive" in its practical effect on the protection of the underwater cultural heritage' (Lee 2003). Furthermore, certain provisions contain 'an ingenious element of legal fiction' and have caused problems of interpretation (Ibid.). Article 303 was 'a result of a last-minute compromise between a group of seven States' (Ibid.), and for some commentators this fact alone is enough to lead to questions about its normative authority relative to other provisions in UNCLOS. To form consensus, delegates were compelled to set aside some contentious issues, including the issue of how UNCLOS would interface with traditional admiralty laws. Consequently, critics contend that UNCLOS 'aggravat[es] the danger of uncontrolled plunder of the underwater cultural heritage on a "first come, first served" basis'. Recognising this, UNCLOS left open the door for the development of a new Convention specifically addressing archaeological and historical objects found at sea.

Like Article 303, Article 149 has been criticised for its ambiguity and inadequacy. While it addresses the issue of objects found in the high seas (the

• The *Exclusive Economic Zone* (EEZ) extends up to 200 nautical miles from the coastal zones and gives the coastal state sovereign right over the protection and preservation of the marine environment. O'Keefe notes that these rights apply 'in the *waters* above the seabed as opposed to sovereign rights in the *seabed* itself [emphasis added]'.

• The *Area*, or simply the high seas. UNCLOS defines the Area and its resources as 'the common heritage of mankind'. No state has exclusive jurisdiction or sovereign rights over the Area or its resources.

³⁷ UNCLOS Article 303:

1. *States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.*
2. *In order to control traffic in such objects, the coastal State may, in applying article 33 [Contiguous zone], presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.*
3. *Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.*
4. *This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.*

³⁸ UNCLOS 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.

Area), it does not address the question of how to manage objects that lie between the contiguous zone and the Area. Furthermore, this article gives preferential rights to the country of origin, which is difficult, if not impossible, to determine for some ancient shipwrecks.

UNCLOS functions well as an international mechanism for regulating 'trade, fishing rights, commercial exploitation of natural resources in the seabed and environmental protection' (Papa Sokal 2005). But as a mechanism for the protection of underwater cultural heritage, UNCLOS is clearly insufficient. Nevertheless, its development represented another step in the international community's consideration of issues relating to the protection of underwater cultural heritage.

These customary laws and International Recommendations and Conventions address certain aspects of underwater cultural heritage, but none in a comprehensive manner. Hence, consensus began to build towards the development of a Convention that directly addressed the protection and preservation of underwater cultural heritage—a complex effort that would attempt to bring together 'three different spheres of law: the law of the sea, admiralty law (or maritime law) and cultural heritage law' (Forrest 2010).

Section Two: The 2001 UNESCO Convention

By 1997, UNESCO had decided to address underwater cultural heritage at an international level via a Convention.³⁹ The following year, a group of experts met to begin work on a draft Convention of the Protection of the Underwater Cultural Heritage. In their deliberations, the group of experts drew upon a Charter developed by the International Council on Monuments and Sites' (ICOMOS) International Committee on Underwater Cultural Heritage (ICUCH) (Staniforth 2014b). The ICOMOS *International Charter on the Protection and Management of Underwater Cultural Heritage* had been submitted to the ICOMOS General Conference in 1996 and was later modified to become the Annex to the 2001 UNESCO Convention (Henderson and Viduka 2014). The group of experts also drew from a draft Convention developed by the International Law Association (ILA) and passed to UNESCO in 1994. Lee describes the ILA draft as 'very much [...] a cultural heritage instrument', which he attributes to the fact that it only refers to UNCLOS in passing in its Preamble. This description is no doubt also influenced by the

³⁹ For more background information on the move towards the preparation of an international instrument, see O'Keefe (1996).

ILA proposal to establish a cultural heritage zone co-extensive with the continental shelf (Lee 2003), raising concerns amongst several States that it would lead to the creation of a 'cultural heritage' zone additional to those specified in UNCLOS, or seek to over-ride UNCLOS altogether (Strati 1999).

The 2001 UNESCO Convention was drafted with the intention of complementing both UNCLOS (Lee (2003) describes UNCLOS as having a 'looming presence' in the new Convention) and the 1970 UNESCO Convention. The consultation and drafting process was 'lengthy, and at times contentious' and 'marred by numerous problems such as a high turnover of delegates, who were sometimes not fully informed about the issues involved' (Papa Sokal 2005). Despite attempts to align the 2001 UNESCO Convention with other extant international instruments, some of the more powerful maritime states questioned its compatibility with UNCLOS. Their argument was that the inconsistencies arising from the concurrent application of both of these international instruments resulted in the 2001 UNESCO Convention lacking legitimacy. These states ascribed UNCLOS, the so-called constitution of the sea, a normatively higher rank than the 2001 UNESCO Convention and thus, in areas where the two appeared to be in conflict, it was UNCLOS that had supremacy.⁴⁰ Their major concern was that the 2001 UNESCO Convention was arguably in violation of the 'delicate' provisions in UNCLOS pertaining to the exclusive economic zone and the continental shelf, and that the new Convention would lead to 'creeping jurisdiction'.⁴¹ In particular, they feared that 'the extension over the continental shelf and the [EEZ] of coastal States' rights, which bore no relation to natural resources, would promote creeping jurisdiction' (Lee 2003). The issue of Salvage Law and the Law of Finds was also problematic, and delegates were forced to compromise 'between the views of States which wanted the possibility of salvage law and the law of finds to be retained, and those which wanted their total exclusion' (Carducci 2003). The final text thus allows 'differing national interpretations of the article that should allow for a broad ratification of the convention' (Forrest 2006). Despite these concerns, however, it is notable that many of the states that opposed the Convention for the reasons outlined here have subsequently ratified it.

After lengthy negotiations, the 2001 UNESCO Convention was adopted in 2001 by vote—not by consensus, as is usual, which suggests how con-

⁴⁰ Despite UNCLOS Article 311(2), which specifically disavows this view:

This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

⁴¹ See also O'Keefe (1996).

tentious the issue had become.⁴² Because of the ‘20 State’ principle, it did not come into force until 2009.⁴³ This principle had also been used with the 1972 UNESCO *Convention Concerning the Protection of the World Cultural and Natural Heritage*,⁴⁴ which subsequently took three years to come into force (1975). It is an indication of the reservations many States continue to have about the 2001 UNESCO Convention that it took not three but eight years before it had the required numbers to come into force.⁴⁵ In 2017, the number of States to have ratified the Convention stood at 56, including, despite its earlier abstention, France (UNESCO 2016b). In May 2016, the Netherlands, which had also abstained, officially announced its intention to ratify as a matter of urgency (Anonymous 2016). In November 2016, Australia announced the introduction of new underwater cultural heritage legislation that would bring it closer to ratification (Frydenberg 2016).

The 2001 UNESCO Convention consists of a Main Text of 35 Articles and an Annex of 36 ‘Rules concerning Activities Directed at Underwater Cultural Heritage’ (UNESCO 2001). The Convention centres on the principle of a universal approach to cooperation and has four main principles: the obligation to preserve underwater cultural heritage ‘for the benefit of humanity’⁴⁶; in situ preservation as the first option; prohibition of commercial exploitation; and promotion of training and information sharing.⁴⁷

The Rules constitute the most widely recognised standards in maritime archaeology and are widely considered to be a professional code for underwater archaeologists. The Rules are based on the principles developed by the

⁴²There were 15 abstentions, including France, the UK, Brazil, Greece and the Netherlands.

⁴³2001 UNESCO Convention Article 27 had stipulated that it would not come into force until ‘three months after the date of the deposit of the 20th instrument’ (i.e., 3 months after the 20th State had ratified). See O’Keefe (2002).

⁴⁴For more detail on the differences between movable and immovable heritage (sites and objects) as they are understood by UNESCO Conventions, refer to Prott (2003b).

⁴⁵Hence, in the 46 years since its introduction, 4 out of 11 Southeast Asian states (if we include Timor-Leste) have ratified the 1970 UNESCO Convention. In the 15 years since its introduction, 1 out of these same 11 states has ratified the 2001 UNESCO Convention; in a 45-year time period, therefore, we may expect Southeast Asian signatories of the 2001 UNESCO Convention to be about on par with the 1970 UNESCO Convention. I am grateful to Mark Staniforth for this point. Prott notes that ‘Conventions which deal with issues also the subject of other international conventions, or which have complex provisions requiring new legislation or revision of existing legislation, or those which require a change of public attitudes, or more stringent requirements of many nations, or those which reach across a series of different areas of law (such as criminal law, administrative Law, defence issues, contract or property law and so on), usually take much longer to attract a great many ratifications’ (Prott 2014).

⁴⁶2001 UNESCO Convention Article 2 (3).

⁴⁷2001 UNESCO Convention Article 21.

1996 ICOMOS *International Charter on the Protection and Management of Underwater Cultural Heritage* (ICOMOS 1996). They address the qualifications of participants, documentation of underwater excavations, and methodologies for conservation and site management. A UNESCO *Manual for Activities directed at Underwater Cultural Heritage* elaborates on the ethical principles underpinning the Rules and supplies a series of operational guidelines to assist specialists and decision-makers to understand and apply the Rules.⁴⁸ While relatively few countries have ratified the 2001 UNESCO Convention, many have chosen to adopt its Annex.

Criticisms, Complications and Conundrums

Two principles go to the heart of the Convention's aim of protecting and preserving underwater cultural heritage for the benefit of humanity. The first of these is the preference for in situ preservation as a first option.⁴⁹ In framing the following discussion, it is important to emphasise that the 2001 UNESCO Convention positions in situ preservation as the first, but not the only, option. As Manders explains, in situ preservation

forms just one part of management and not – as often interpreted – the only right way forward. Excavation and preservation ex situ remain options for consideration, but must be backed up with strong arguments and a detailed description of planned execution. (Manders 2008)

The preference for in situ preservation as a first option is based on a number of premises. The first relates to authenticity: contextual information—the location of objects on the seabed—is easier to assess and maintain if left undisturbed. Second, underwater sites can be made surprisingly stable if physically protected from wave movements, human interference or other disturbances—moist conditions contribute to the longevity of organic materials, while the lack of oxygen in the water slows down the degradation of materials. Excavating objects and exposing them to oxygen can lead to rapid deterioration. Finally, many maritime archaeologists maintain that excavation and preservation

⁴⁸ See also Maarleveld et al. (2013). Their Manual expands on the ethical principles underpinning the Rules and supplies a series of operational guidelines. It specifies that in situ preservation is a first option because the site of an historic event is authentic; context defines significance; heritage is finite; and many sites cannot be preserved in situ.

⁴⁹ 2001 UNESCO Convention Article 2 (5):

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.

techniques are still in their infancy and that wrecks should be left in situ until such time as more sophisticated equipment and conservation techniques, as well as better research questions, have been developed.⁵⁰

However, as Flecker counters, the preference for in situ preservation as a first option:

[...] is all well and good in countries where the wreck-site can be constantly protected from deliberate or accidental interference, to where civic awareness is sufficiently high to render policing unnecessary. In developing countries, where finding the next meal takes priority over cultural sensibilities, this line of thinking is not only naïve but potentially destructive. (Flecker 2002b)

Flecker is Director of *Maritime Explorations*, a commercial excavation company with extensive operational experience in Southeast Asia and, while his position on in situ preservation should be considered within the context of his salvage work, it is equally important that his perspectives are not dismissed out of hand. Many of those expressing concern about the utility of in situ preservation as a first option, such as Flecker, are motivated by concerns about the threat of looting. Tjoa-Bonatz describes looting in Southeast Asia as ‘rampant’: to protect wrecks from looting, she argues, in situ preservation ‘must be discarded’ (Tjoa-Bonatz 2016).

The second principle stipulates that underwater cultural heritage shall not be commercially exploited.⁵¹ Rule 2 expands on this:

The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods. (UNESCO 2001)

The objection to commercial exploitation is based on an opposition to the sale of the artefacts for profit and the dispersal of the complete collection of excavated objects. By this, the (non-)involvement of commercial excavation companies can be clearly implied. In situ preservation in Southeast Asia all but ensures the dispersal, through illicit sale, of objects, and the destruction of archaeological context. Meanwhile, the involvement of commercial excava-

⁵⁰ For a more detailed discussion of in situ preservation, see Staniforth and Shefi (2010). See also Williams (2015).

⁵¹ 2001 UNESCO Convention Article 2 (7):

Underwater cultural heritage shall not be commercially exploited.

tion companies cannot be said to guarantee ethical outcomes, but it at least makes them possible. For this reason, commercial excavation cannot be discounted.

Although museums and heritage institutions were not intended as the focus for this particular clause, there remains the question of the extent to which a museum profiting from shipwreck exhibition ticket sales can be understood as commercial exploitation under the terms of the Convention. Quoting one of the earliest maritime archaeologists, Peter Throckmorton, Liebner observes that museum catalogues and other ‘publications have to be bought; musea [sic] demand entrance fees (Throckmorton 1998, quoted in Liebner 2014). A frequent argument against commercial salvage is the “long term profit” in tourism revenues generated by “intelligently excavated, conserved, and exhibited shipwrecks” ...’ (Liebner 2014). Do these considerations thus implicate museums displaying excavated underwater objects, even if the objects were excavated without involvement from commercial excavation companies? The significant expense of excavation work must also be noted here, precluding not only previously colonised but also developed countries from conducting underwater excavations.

Of the 2001 UNESCO Convention, Flecker writes:

This is a perfectionist policy for shipwrecks full of unique artefacts lost in the waters of developed countries that are willing to commit public funds to carry out archaeological excavations, inclusive of the time-consuming and costly tasks of conservation and long-term storage of large number of artefacts, documentation, dissemination and display. However [...] the participation of responsible commercial salvors may actually be the best means of saving archaeological information in Southeast Asia, at least in the near term. (Flecker 2002b)

Many countries in Southeast Asia are blessed, and cursed, with abundant underwater cultural heritage. But with limited resources and relatively low levels of public awareness about the need to protect and preserve such heritage, they face a conundrum: leave wrecks in situ and thus at the mercy of looters, or engage commercial outfits to offset the costs of excavation, thus reducing vulnerability to looters at the same time as exposing themselves to criticism and the objects to a potentially unknown fate. The outcomes vary widely: the fate of at least one half of Indonesia’s tenth-century *Cirebon* (Liebner 2014) cargo, excavated in 2004, remains shrouded in secrecy, but in other instances, such as the ninth-century *Belitung* (Tang), the cargo was sold as a largely-intact collection and is now permanently displayed in a national museum in Southeast Asia (Pearson 2016c, pp. 10–11). Flecker’s role as a commercial salvor does not negate the legitimacy of his observations: that the

2001 UNESCO Convention is, for many Southeast Asian states, aspirational and—at least in the short term—the resource burden it places on States precludes its practical application. My argument here is based on the premise that commercial salvage, if conducted in accordance with the internationally recognised archaeological principles in the Rules, can support ethical management of underwater cultural heritage.

Section Three: Beyond the Good and the Bad: Examples from Southeast Asia

Only Cambodia has signed the 2001 UNESCO Convention. Its Underwater Cultural Heritage Unit was established in 2011, with the initial objective of establishing a preliminary cartography of underwater cultural heritage in Cambodia. Maritime archaeology remains in its infancy in Cambodia, and the Unit faces resourcing and capacity limitations as well as challenges enforcing domestic regulations (Kamsan 2011; Nady 2011, 2012). Elsewhere in Southeast Asia, states have elected to manage the issue of underwater cultural heritage domestically rather than through the 2001 UNESCO Convention. This diversity of responses has resulted in inconsistencies with how underwater cultural heritage is managed in the region. Because of this, it is still possible to buy illicitly removed objects not only on the black market but through established institutions—implicating not only looters but also dealers, auction houses and museums.

In his commentary on the 2001 UNESCO Convention, O’Keefe describes the range of outcomes in maritime archaeology as ‘the good, the bad and the court cases’, in which he defines good as ‘extensive research, painstaking excavation, careful conservation, full publication and thoughtful exhibition’, and bad as ‘the destruction of a site, usually in pursuit of a commercial gain, leading to the loss of any knowledge that might have been obtained from it’ (O’Keefe 2002). This section offers selected examples of different approaches to managing underwater cultural heritage in Southeast Asia, in an effort to demonstrate that the situation, at least in Southeast Asia, is more nuanced than definitions of ‘good’ and ‘bad’ may allow.

A Turning Point: The Geldermalsen

The case of the *Geldermalsen* was instrumental in prompting Indonesia to introduce legislation that both asserted State ownership of shipwrecks and their cargo in its territorial waters, and also enabled the involvement of com-

mercial excavation companies in their salvage. It also prompted changes to underwater heritage legislation in China (Tjoa-Bonatz 2016), from where the *Geldermalsen's* cargo had originated.

The *Geldermalsen* was a Dutch East India Trading Company (VOC) vessel, travelling from China to the Netherlands with a full load of tea (which, at the time, was its most precious cargo⁵²), porcelain and gold when it was wrecked in 1752 near Riau, south of Singapore. The wreck lay in Indonesian territorial waters and was salvaged in 1985 by Michael Hatcher. This was not an archaeological excavation: describing the discovery of tiny blue-on-white teacups in a crumbled crate, Miller writes:

The least competent of archaeologists would have recorded which porcelain vessels came from which crates. No attempt was made to save the crates let alone keep track of their contents... [Hatcher] recorded almost nothing about the ship and provided almost no conservation for the artifacts. (Miller 1992)

The *Geldermalsen* exposed uncertainties about the ownership of VOC wrecks in Indonesian territorial waters. While Hatcher had a contract with the Dutch government (which received a percentage of the auction sale) to salvage the wreck, there is no evidence that any such arrangements were made with the coastal state, Indonesia (Nayati 1998). Hatcher himself described his work as a 'race to get what they could before being interrupted by weather, rivals, pirates, or *some government* [my emphasis] (Dyson 1986).

With the legality of the actual salvage in question, the case of the *Geldermalsen* also implicates auction houses in the exploitation of Southeast Asia's underwater cultural heritage. Miller describes Christie's as the 'agent provocateur that made the scavenging possible and profitable' (Miller 1992). In 1986, the gold ingots and over 150,000 pieces of porcelain were auctioned at Christie's in Amsterdam. Marketed as 'The Nanking Cargo', Christie's actively solicited interest beyond the usual suspects of museums and private collectors, to 'an expanded elite clientele' that included hotels, embassies, department stores, restaurants and interior designers (Miller 1992; Austin 1986). The auction raised more than £10 million, and many pieces were sold for 10–15 times the catalogue estimate. Observers expressed concerns about the effect of these high prices on other shipwrecks, which amounted to 'a large bounty on any shipwrecks containing Chinese porcelain which will lead to a wholesale destruction of such wrecks' (Miller 1992). Others criticised the

⁵² The salvage process has been likened to swimming 'in a gigantic teapot' because, despite the presence of gold and porcelain, the *Geldermalsen's* most precious cargo, at least at the time of its sinking, was in fact tea (Habermehl n.d., see also Pearson (2016b, p. 125).

‘cynical’ profit-raising enjoyed by Hatcher and the Dutch Ministry of Finance at the same time as museums ‘have to bid on the auction market with their own budget’ (Green 1988; see also Rodrigues et al. 2005).

The *Geldermalsen* case revealed the vacuum that existed in relation to the ownership and management of underwater cultural heritage in Indonesia (Nayati 1998). As Tjoa-Bonatz notes,

[...] traditional Indonesian maritime laws, including salvage laws as well as laws of finds, encouraged the sale or marketing of the rescued material and were designed not to protect the entire structure of an history wreck nor the archaeological information it contained. (Tjoa-Bonatz 2016)

Consequently, Indonesia introduced legislation that asserted State ownership of all wrecks in its territorial waters in 1989.⁵³ This legislation also established the National Committee on the Salvage and Utilisation of Valuable Cargo Raised from Sunken Ships (*Panitia Nasional Pengangkatan dan Pemanfaatan Benda Berharga Asal Muatan Kapal yang Tenggelam*, or PanNas BMKT), which was responsible for issuing licences to commercial excavation companies. This system was used in Indonesia, in some form or another, to issue commercial excavation permits until a temporary moratorium was introduced in 2010. This moratorium was effectively made permanent in 2016.⁵⁴

A Means to an Ethical End? The Belitung (Tang) Wreck

It was under such legislation that the *Belitung (Tang)*⁵⁵ shipwreck was excavated in 1998–1999. The *Belitung* case is important for our consideration of what constitutes an ethical—or, to use O’Keefe’s terminology, a ‘good’ or ‘bad’—approach to the management of underwater cultural heritage in Southeast Asia. Even though the excavation and sale of the ship and its cargo

⁵³ Presidential Decree Number 43 of 1989 on the National Committee and Utilisation of Valuable Cargo from Sunken ships (*Keputusan Presiden Republik Indonesia No 43 Tahun 1989 tentang Panitia Nasional Pengangkatan dan Pemanfaatan Benda Berharga Asal Muatan Kapal yang Tenggelam*), proclaimed 14 August 1989.

⁵⁴ The permit system for excavating shipwrecks and their cargo in Indonesia effectively came to an end in May 2016 with the introduction of Presidential Regulation Number 44 of 2016 concerning the List of Closed Business Fields and Open Business Fields With Conditions to Investment (*Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2016 Tentang Daftar Bidang Usaha Yang Tertutup Dan Bidang Usaha Yang Terbuka Dengan Persyaratan Di Bidang Penanaman Modal*). The Regulation prohibits investment in specified business fields, including, at Appendix One, the excavation of shipwrecks.

⁵⁵ The shipwreck is sometimes also known as the *Batu Hitam* (Black Rock) or *Tang* shipwreck. In this chapter, the term *Belitung* is used. For more on the political aspects of naming this shipwreck, see Pearson (2016c, pp. 10–11).

did not strictly comply with recognised principles of maritime archaeology, the final outcome has many positive elements, not least of which is the availability of the assemblage at the Asian Civilisations Museum in Singapore to both the general public and to scholars.

Discovered by *tre pang* divers off the coast of Belitung Island, near Sumatra, the wreck was that of a ninth-century Arabian-style dhow (Flecker 2008). The wreck is 'one of the most significant ever found in Asian waters' because both the cargo, which included the biggest collection of Tang dynasty ceramics discovered in a single location, and a major portion of the hull, were largely intact (Ibid.). It is believed to be the earliest archaeological evidence of maritime trade between the Tang Dynasty (618–907) and the Abbasid Caliphate (750–1258) (Krahl et al. 2010; Flecker 2001b).

The wreck was excavated by a German maritime exploration company, *Seabed Explorations*, under a licence issued by PanNas BMKT. The excavation undoubtedly violated certain principles of maritime archaeology, including the preference for in situ preservation. The involvement of *Seabed Explorations* also ran contrary to the principle opposing the commercial exploitation of underwater cultural heritage, because the objects were indeed sold to cover costs and raise profit. However, the 2001 UNESCO Convention was not introduced until three years after the Belitung was discovered,⁵⁶ and under Indonesian legislation the excavation was legal.

The excavation was conducted over two seasons, with a monsoon-enforced break. *Seabed Explorations* has not made available information about the extent and quality of the archaeological supervision and recording that took place during the first season; however, other arrangements were made for the second season, with Flecker employed to oversee the excavation.⁵⁷ Overall, around 60,000 objects were excavated from the site, including approximately 57,500 Changsha bowls, other types of ceramics, and some exquisite pieces of gold, silver and bronze (Flecker 2000). Flecker has subsequently published his findings in recognised journals (Flecker 2012, 2011; Burger et al. 2010; Flecker 2008, 2002b, 2001b, 2000). One major criticism of the excavation was that the same attention was not afforded to the hull as to the objects. Nevertheless, evidence gleaned from the hull was used in conjunction with 'historical texts, iconography, and ethnographic information' to build a rep-

⁵⁶ Furthermore, neither Indonesia nor America, from where much of the criticism originated, is party to the 2001 UNESCO Convention.

⁵⁷ At the time of the *Belitung* salvage, Flecker based his qualifications on an early UK ruling that recognised a maritime archaeologist as anyone with at least 10 years' field experience, relevant publications and a Bachelors degree of any kind (Flecker 2015). He has subsequently completed a PhD on the tenth-century *Intan* shipwreck—see Flecker (2001a).

lica ship from scratch, using traditional materials and techniques (Vosmer 2010). The *Jewel of Muscat* sailed from Oman to Singapore in 2010 and is now suspended from the ceiling of Singapore's Maritime Experiential Museum on Sentosa Island.⁵⁸

Indonesia's permit system did not require excavated collections to be kept intact and in fact encouraged their dispersal by giving the Indonesian government first choice of a selection of objects, as well as 50 per cent of the sale price.⁵⁹ In a case that preceded the *Belitung*, the requirement to return selected objects to the Indonesian government resulted in the dispersal of the *Java Sea* wreck. This 13th wreck was salvaged by *Pacific Sea Resources* in 1996 and, although the site had already been looted and later partially salvaged by another company, *Pacific Sea Resources* was able to recover 12,000 pieces of celadon and other ceramics (Mathers and Flecker 1997). Despite initial efforts to sell the objects as a single collection, a buyer for the entire collection of objects could not be found, and the cargo was subsequently split as per the original licence requirement. Rather than sell its share of the cargo, *Pacific Sea Resources* donated it to Chicago's Field Museum of Natural History; Indonesia, meanwhile, sold and dispersed the share that had been returned to them under the terms of the licencing agreement (Flecker 2011; Niziolek 2014).

In the case of the *Belitung*, however, Indonesia chose to forego its share of objects and half of the sale price, in exchange for a one-off payment of US\$2.5 million plus the entire cargo of the *Intan* (Caixia 2011),⁶⁰ which had been salvaged by *Seabed Explorations* in 1997. This unusual arrangement enabled *Seabed Explorations* to sell the *Belitung* cargo as a largely-intact collection, which they did in 2005, to Singapore's Sentosa Leisure Group.⁶¹ While *Seabed*

⁵⁸The interest in building full-scale replicas dates to the early 1980s and is used to better understand the dynamics of shipbuilding while also providing a point of comparison with the original ship (Green 2001). The construction of the *Jewel of Muscat* was also an opportunity for Oman to position itself in the modern-day story of the *Belitung*—see Pearson (2016c).

⁵⁹This clearly violates the 2001 UNESCO Convention's requirement that objects not be irretrievably dispersed; however, as noted, the first iteration of Indonesia's legislation relating to underwater cultural heritage had preceded the Convention and the ICOMOS *International Charter on the Protection and Management of Underwater Cultural Heritage*, on which the 2001 UNESCO Convention's Rules are based, by a number of years.

⁶⁰The *Intan* was a tenth-century lashed-lug vessel and the oldest Southeast Asian wreck to be found with a complete cargo. Seabed Explorations obtained the permit to excavate the wreck, and the excavation was directed by Flecker in 1997. Objects excavated from the *Intan* are now on display at the Museum of Fine Arts and Ceramics (*Museum Seni Rupa dan Keramik*) in Jakarta. See T'joa-Bonatz (2016). Flecker later wrote his PhD on the *Intan*: see Flecker 2002a.

⁶¹The Sentosa Leisure Group was a wholly owned subsidiary of the Sentosa Development Corporation, which in turn was an entity established by the Singaporean Government (Lambert 2012). The objects were transferred to the Singapore Tourism Board and later to the National Heritage Board. The *Belitung* cargo is now known as the Tang Shipwreck Collection and is on permanent display in the Khoo Teck Puat

Explorations' decision to sell the collection intact could be interpreted as an example of a commercial excavation company acting ethically, it is also worth noting that their motivations in keeping the collection intact may not have been completely altruistic; releasing 57,500 near-identical Changhsa bowls onto the market would have devalued them, and there was likely far more profit to be made from selling them as one collection.

Singapore intended that the collection would form the basis of an international travelling exhibition, *Shipwrecked: Tang Treasures and Monsoon Winds*, opening at Singapore's ArtScience Museum in 2011 and then moving to the Smithsonian Institution's Arthur M. Sackler Gallery in 2012. However, the Smithsonian cancelled its involvement just months ahead of the scheduled opening in Washington. The primary concern, as voiced by Elizabeth Bartman, president of the Archaeological Institute of America, was that the excavation amounted to little more than a treasure hunt:

The Belitung shipwreck was salvaged unscientifically by commercially-motivated treasure hunters. Although the excavation and disposition of these materials may be technically "legal", it is the AIA's position that involvement by the Smithsonian Institution in the exhibition of these artifacts will serve to blur the distinction between bona fide nautical archaeology and treasure hunting. (Bartman 2011)

The controversy dashed hopes that the *Belitung* would become an international blockbuster and led to delays in its permanent display in Singapore. Eventually, in late 2015, it was permanently installed as the *Tang Shipwreck Collection* in a dedicated gallery at Singapore's Asian Civilisations Museum.

Although it remains unlikely that the *Belitung* cargo will ever be displayed at the Smithsonian, there are signs that the collection may yet become the travelling exhibition organisers had anticipated. In 2014–2015, select objects were displayed at Toronto's Aga Khan Museum as *The Lost Dhow: A Discovery from the Maritime Silk Route*, and 19 select objects were incorporated in the 2016–2017 *Ocean Explorers: From Sindbad to Marco Polo (Aventuriers des Mers: De Sindbad à Marco Polo)* exhibition in France.⁶² Significantly, the objects have now also been made available to American audiences, with the opening in March 2017 of *Secrets of the Sea: A Tang Shipwreck and Early Trade in Asia* at the Asia Society Museum, New York. A small number of objects are

Gallery at the Asian Civilisations Museum, Singapore. Many objects are kept in an offsite storage facility, accessible via appointment.

⁶² At the *Institut du Monde Arabe* (Institute of the Arab World) in Paris and the *Musée des Civilisations de l'Europe et de la Méditerranée* (Museum of European and Mediterranean Civilisations) in Marseilles.



Fig. 31.1 *Belitung (Tang)*, Indonesia. Changsha bowls post-salvage. Source: Dr. Michael Flecker

also on permanent display at the recently opened Marine Heritage Gallery in Jakarta, Indonesia. More international exhibitions cannot be ruled out (Figs. 31.1, 31.2 and 31.3).⁶³

Almost two decades since its discovery, the *Belitung* continues to confound binary understandings of what constitute ‘good’ or ‘bad’ approaches to the management of underwater cultural heritage in Southeast Asia, because it challenges the extent to which the problematic ‘means’ of its excavation compromise its ethical ‘end’. As we have seen, the cargo was commercially excavated and sold for profit—but it was sold as a largely-intact collection and is now on permanent display in a world-class museum. Complicating this narrative is that *Seabed Exploration’s* decision to sell it as a single collection may not have been entirely due to scholarly or ethical imperatives, but partly motivated by a desire to maximise profit. The excavation, criticised for not being scientific enough, nevertheless resulted in the publication of scholarly articles and contributed to the construction of a replica ship that was seaworthy enough to sail from Oman to Singapore.

The problematic aspects of Indonesia’s model, which necessitated commercial involvement and all but ensured collections would be split up, should be understood within the context of a perceived need to assert State ownership of wrecks in the first instance. While this model has, in this case, resulted in

⁶³ Museums that are members of the Council of American Maritime Museums (CAMM), the International Council of Museums (ICOM) or the International Congress of Maritime Museums (ICMM) are unlikely to exhibit this collection; to do so would contravene their standards and codes of ethics.



Fig. 31.2 *Belitung (Tang)*, Indonesia. Some of the 57,500 Changhsa bowls (each with an approximate diameter of 16 centimetres) recovered from the *Belitung (Tang)* are displayed in a ceramic storage jar at Singapore's Asian Civilisations Museum. Ingenious packing techniques meant that each large storage jar held about 130 bowls, which were coiled and padded with organic material, probably straw, for protection. Source: Natali Pearson (author) (Asian Civilisations Museum)

positive scholarly and museological outcomes, the absence of archaeological imperatives embedded in the legislation has meant that the model has favoured financial, rather than cultural or historical, values.

Joint Ventures, Broken Promises: The Binh Thuan

The *Binh Thuan* wreck, found in Vietnamese waters in 2001, promised a better example of the potential for joint salvaging ventures between commercial excavation companies and national governments. This was a Chinese vessel dating from the early 1600s,⁶⁴ and its cargo included Zhangzhou porcelain and cast-iron pans.⁶⁵ The wreck was discovered after nets belonging to local fishermen became tangled in its wreckage. Rather than reporting the find to local authorities, the fishermen began removing objects from the wreck and selling them to local and international antique dealers. When authorities

⁶⁴ Archival research suggests the 'tantalising possibility' that the wreck was that of the unlucky Chinese merchant I Sin Ho, who was travelling from China to Johore in 1608 when his vessel, carrying silk and ceramics, sank off the coast of south Vietnam. Flecker, M. 2004. *The Binh Thuan Shipwreck*: Archaeological Report. Melbourne: Christie's.

⁶⁵ For more information on the trade in Chinese iron in maritime Southeast Asia, see Kwa (2012). See also Flecker (2004).



Fig. 31.3 A small number of objects from the *Belitung* are on display at the new Marine Heritage Gallery in Jakarta. An initiative of the Indonesia Government and housed in the Ministry of Marine Affairs and Fisheries, the gallery aims to raise awareness about the historical and archaeological value of Indonesia's underwater cultural heritage. It is home to about 1200 objects from three known shipwreck sites (*Belitung*, *Cirebon* and *Pulau Buaya*), as well as a number of unidentified sites. Source: Marine Heritage Gallery, Ministry of Marine Affairs and Fisheries

caught up with them, the fishermen were arrested and the national salvage company, Visal, deployed to assess the site.

The excavation was delayed by up to a year while Vietnam deliberated how to excavate the wreck: by State-owned Visal, opening the excavation up to tender, or inviting foreign involvement (Flecker 2002b). As the delays continued, and despite a marine police boat being stationed near the wreck, the site was again looted. By 2002, authorities had agreed on a joint-venture excavation model involving the Vietnamese Ministry of Culture, the provincial government and Visal. A commercial excavation company was engaged to assist with documenting structural remains and provide 'financial support, archaeological consultancy, and project management services for the excavation' (Flecker 2004) (Fig. 31.4).

The excavation yielded many thousands of artefacts, of which the Government retained all unique objects as well as four representative sets. These were to be housed in a purpose-built museum in Binh Thuan province. This approach addresses one of the major challenges of shipwreck cargo excavations, namely the high volume of similar objects that such excavations yield.



Fig. 31.4 *Binh Thuan*, Vietnam. The wooden structure is the base of the foremast, stepped between tabernacle partners. It is surrounded by stacks of blue-and-white and overglaze enamel Zhangzhou ware. Chinese junk of c.1608. Source: Dr. Michael Flecker

Tens of thousands of objects are costly to conserve and difficult for museums to display and store. Although splitting collections breaches the 2001 UNESCO Convention's Rule 2 that underwater cultural heritage shall not be irretrievably dispersed, some practitioners consider the sale of multi-duplicates to be a valid and practical option—provided that a thorough archaeological analysis of the objects has been conducted, all data retained, fully representative samples kept for long-term study, and, with profits raised, being directed back towards local capacity building and the like (Flecker 2002b). The multi-duplicate ceramics were therefore auctioned by Christie's in Melbourne, Australia in 2004, with most of the proceeds earmarked for the new museum. There was considerable interest in the auction from major institutions—including the National Museum of Australia, which holds at least one piece—and it raised AUD 2 million. Regrettably, however, this provincial museum in Binh Thuan remains unbuilt—an outcome that left those involved exposed and confirmed many of the concerns held by sceptics of commercial excavation (Staniforth 2012).

Institutionalising Maritime Archaeology

Some Southeast Asian countries have a well-established maritime archaeology program, in which commercial salvage has no role. In Thailand, for example,

maritime archaeology dates to the mid-1970s (Vatcharangkul 2012) and has now matured into perhaps the best example of what can be achieved through a sustained investment of funding and personnel. Thailand has provided training to not only its own maritime archaeologists but also those from throughout the region. The government's Underwater Archaeology Division in the Fine Arts Department operates independently and has access to a range of sophisticated—and expensive—diving equipment. Archaeologists are based at the National Maritime Museum in Chanthaburi, established in 1994, which displays results of previous projects (Kimura 2015). Many of the Division's research projects arise from lucky—but, often, already-looted—discoveries.⁶⁶ One current project is the ninth-century *Phanom Surin* shipwreck, located 8 kilometres inland in swampy surrounds (the result of changing sea levels) and believed to be a contemporary of the *Belitung*. The wreck was discovered in 2013 by a local farmer, who reported the find to authorities. The Division has focused on a combination of in situ preservation and chemical conservation methods, but Kimura notes that 'neither technique has been conducted at the highest standard in the region' (Ibid.). Excavation and conservation work are ongoing and have yielded an almost complete wooden ship structure, ceramics and organic artefacts such as ropes, rice grains, betel nuts and coconuts (Figs. 31.5, 31.6 and 31.7).

Since the *Binh Thuan*, Vietnam has taken steps to institutionalise maritime archaeology through the establishment of the Underwater Archaeology Department in 2013 (Ibid.). In 2016, the government upgraded the department to a Centre of Underwater Archaeology and committed to investment in new equipment. One of the key contributors to the development of maritime archaeology in Vietnam has been the involvement of the Vietnam Maritime Archaeology Project (VMAP), an international, multi-disciplinary team of researchers who have been working in various iterations since 2008 to build capacity and raise awareness.⁶⁷ The Centre, which has minimal staffing and limited funding, has a mandate that includes surveying and excavating underwater and maritime cultural heritage, an ambitious undertaking given Vietnam's coastline stretches for almost 3500 kilometres. Additionally, it is responsible for researching and publishing on Vietnam's maritime history and

⁶⁶This is what Flecker defines as a reactive approach, revolving 'around fishermen or sports divers stumbling upon shipwrecks, then either reporting them or more likely getting arrested looting them, before the government decides what to do with the new discovery'. Meanwhile, a proactive regime is one in which 'a government institution would actively search for shipwrecks to excavate – or protect through archival research (generally for European wrecks), electronic survey (wreck specific or blanket), fisherman interviews (for artefact finds in nets) and the like' (Flecker 2011).

⁶⁷Between 2008 and 2016, Vietnam Maritime Archaeology Project (VMAP) conducted 11 seasons of research and fieldwork in Vietnam, including on-site training of local personnel. They have also provided Nautical Archaeology Society training, which does not require diving, to local students, archaeologists and museum and government staff.

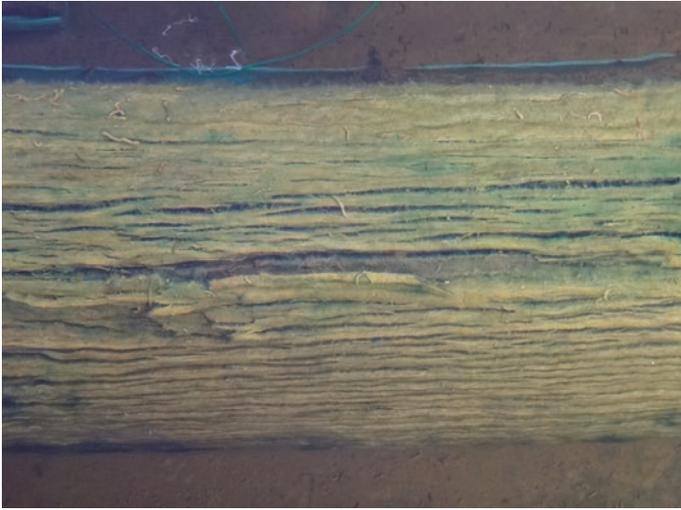


Fig. 31.5 Kelson of the *Phanom Surin*, Thailand. This ninth-century Arabian-style sewn ship was discovered 8 kilometres inland by a local shrimp farmer, and it is now undergoing conservation and research by Thailand's Underwater Archaeology Division. The 17-metre keelson (the wooden beam that runs along the bottom of the boat to reinforce the keel) is shown here, submerged in water for preservation. Source: Natali Pearson (author)



Fig. 31.6 Desalination, *Phanom Surin*, Thailand. Ceramic objects from this ninth-century vessel undergo on-site desalination. Source: Natali Pearson (author)

seaborne trade connections. Vietnam is not a signatory of the 2001 UNESCO Convention, but the establishment of this Centre and its prioritisation of training, cooperation and capacity building activities are in keeping with the



Fig. 31.7 Organic objects, *Phanom Surin*, Thailand. Objects found at the site of this ninth-century wreck include organic artefacts such as ropes, rice grains, betel nuts and coconuts. Source: Natali Pearson (author)

Convention's principles. The inaugural Vietnam Underwater Archaeology Training in 2015, which aimed to develop capacity amongst maritime archaeologists in Southeast Asia, indicated a turn towards a more regionally collaborative approach.⁶⁸

Nevertheless, Vietnam continues to face many of the same challenges that existed at the time of the *Binh Thuan* excavation: minimal funding, inadequate training and a general lack of resources and equipment. As such, the new Centre remains limited in its capacity to conduct maritime archaeology projects without the direct involvement of the VMAP. Despite these challenges, the Centre and the ongoing work of the VMAP are slowly transforming maritime archaeology in Vietnam into a more strategic and professional undertaking.

Beyond Shipwrecks: Ancient Naval Battlefields

Efforts to protect underwater cultural heritage are often focused on shipwrecks, which are associated with treasure and thus highly vulnerable to the threat of looting. However, maritime archaeology is much broader than just shipwrecks, as demonstrated by research conducted by VMAP members on an ancient naval battlefield at the Bạch Đằng River area in northern Vietnam

⁶⁸Regional collaboration remains under-explored in Southeast Asian maritime archaeology. See Staniforth (2014a, c).

(Staniforth et al. 2014; Lê Thi. et al. 2011). This was the site of a thirteenth-century naval battle in which the local Đại Việt used hundreds of sharpened wooden stakes to defeat Emperor Kublai Khan's invading Mongol fleet. The fleet was trapped by these stakes, which had been 'driven into the river-bed at low tide... These stakes were probably covered by water at high tide and uncovered at low tide' (Kimura et al. 2014). Similar archaeological traces have also been discovered in Japan. The Bạch Đằng project developed into a formal partnership with Vietnam and later expanded to incorporate a related naval battle at the port of Van Don. Part of the project's success can be attributed to the interdisciplinary skills of its members, such as a memory studies specialist who has used oral histories to trace the legacy of these ancient naval battles in contemporary Vietnamese communities (O'Toole 2014). With implications for archaeological research well beyond Southeast Asia, this project is an important reminder of what can eventuate when research efforts are focused beyond shipwrecks and their cargo.

Shipwreck Heritage Trails and Marine Eco-tourism

Many of the different management approaches presented thus far have focused on the removal of objects from underwater locations. These final examples focus instead on the provision of interpreted public access to underwater cultural heritage, an approach which complements in situ preservation.⁶⁹ Interpretation methods include underwater slates or plinths, land-based interpretive signs and pamphlets, use of replica objects, and virtual resources such as websites (Spirek and Scott-Ireton 2003). In Australia, the first 'shipwreck trail' was developed as early as 1981 (Souter 2001), providing opportunities for the public to access and interpret submerged cultural resources. However, the use of in situ shipwrecks for educational and recreational purposes is relatively untested in Southeast Asia (e.g., see Flecker 2011).

In Vietnam, one of the financial backers of the 2002 *Binh Thuan* operation was permitted to dive the wreck during its salvage, transforming his support into an 'entry ticket' for an early type of shipwreck tourism. There is now increasing recognition that 'the historical value of a wreck is immeasurably higher than what a dealer will pay' and, at least in Vietnam, that potential tourist revenue raised through the development of a formal 'shipwreck heritage trail' is more sustainable than looting objects (Dissanayake 2014). Such

⁶⁹Manders details some of the implications for museums of in situ preservation and outlines some creative responses by museums to interpreting such material for the public. See Manders, M. 2008. In Situ Preservation: The Preferred Option. *Museum International*, 31–41.

money could go towards training and research and could also fund dedicated museums to display unique artefacts. The challenge remains education and enforcement; while divers are an important target group, 'the support of an informed wide community is vital to protect maritime heritage sites' (Anderson et al. 2006).

In Natuna Islands, one of Indonesia's most northerly locales, coral reef and marine life have grown on and around at least one nineteenth-century shipwreck. Indonesia's Ministry of Marine Affairs and Fisheries is developing a multi-disciplinary model that seeks to protect Natuna's underwater cultural heritage through in situ preservation, as well as its marine biodiversity. The proposed 'marine eco-archaeological park' would also incorporate coastal cultural heritage through a heritage trail (Troa et al. 2016). This model is particularly noteworthy because of Natuna's strategic location within the South China Sea.⁷⁰ While Natuna Islands do not themselves fall within the bounds of China's 'nine-dash line' territorial claims, the seas around Natuna are perilously close to the contested territory. By establishing a marine eco-archaeological park in these waters, Indonesia is asserting its sovereignty based on historical and cultural, as well as ecological, factors. This is a new model for the region, in which underwater archaeological remnants, which are rarely contained by national boundaries, are used for political purposes. It is likely that underwater heritage will continue being put to such use as territorial disputes simmer between China, the Philippines, Brunei, Malaysia and Vietnam.

Concluding Remarks

The examples presented in this chapter offer not only an indication of the varying approaches to underwater cultural heritage in Southeast Asia but, more significantly, changes to the way such heritage has been managed over time. These changes include a moratorium on commercial involvement in underwater excavations in Indonesia and the institutionalisation of maritime archaeology in Vietnam. There are also increasing efforts being made towards the development of a collaborative regional approach, with Kimura noting interest in data-sharing and the establishment of 'trans-national instruments

⁷⁰Tjoa-Bonatz notes that 'since 1999, tension has arisen about territorial demarcations in the South China Sea due to China's intensifying campaign to assert ownership over natural resources and archaeological sites, leading to violence against Philippine archaeologists. This area is traditionally claimed by China, but overlaps with claims of the Philippines, Brunei, Malaysia, Indonesia and Vietnam' (Tjoa-Bonatz 2016). See also Page (2013) and Campbell (2015).

and alliances to manage and protect the region's shipwreck resources' (Kimura 2015). Such developments would appear to support a recent observation that 'the era of "treasure hunters" despoiling archaeological sites is over' (Richardson quoted in Kimura 2015).

Such an assessment would be welcomed, if it were accurate. But the threat faced by underwater cultural heritage in Southeast Asia is now more urgent than ever. There is no doubt that an end to looting, which results in the destruction of wreck sites and an irrevocable loss of archaeological context, would lead to better outcomes for the protection and preservation of underwater cultural heritage in Southeast Asia. Paradoxically, however, the urgency of protecting wreck sites is as great as it has ever been, and in Indonesia, the threat may have actually increased as a result of the moratorium on commercial excavation. This is because the work of commercial salvors—as distinct from looters—is being increasingly limited by some of the very changes to the management of underwater cultural heritage that were intended to better protect it. These changes may be a signal that regional attitudes are shifting, but caution is advised: while those urging ratification of the 2001 UNESCO Convention have welcomed Indonesia's ban on commercial excavation, there are also legitimate and unanswered questions about the renewed exposure of Indonesia's underwater cultural heritage to looting. One company which had previously worked with authorities to map shipwreck sites is now directing its research efforts towards an assessment of changes to wreck sites in Indonesian waters since 2011, to determine whether, as hearsay suggests, there has been an increase in looting activity since commercial involvement was banned. Until there is a clearly articulated plan of action to protect and preserve underwater cultural heritage in Indonesia, concerns about a return to the *Geldermalsen* days may not be unwarranted. The recent disappearance of a number of World War II shipwrecks in the Java Sea appears to support such concerns (Pearson 2017).

Commercial involvement in shipwreck excavation does not necessarily preclude O'Keefe's criteria of a 'good' outcome—extensive research, painstaking excavation, careful conservation, full publication and thoughtful exhibition—being met. Nevertheless, there is room for improvement. Flecker, for example, has called for increased action from regional governments in order to share responsibility for ethical excavations beyond that of the commercial salvage companies:

It is up to governments to formulate policy that ensures that commercial groups carry out excavation work to acceptable archaeological standards, that they disseminate their results, and that fully representative samples are kept for public

display. Governments certainly can benefit financially from the sale of artefacts, but their standing and credibility would be enhanced considerably if such funds were channelled back into museums and training so that, eventually, they would be in a position to undertake maritime archaeological projects themselves, independent of commercial companies. (Flecker 2002b)

Flecker's suggestions are entirely valid, but the responsibility does not belong to governments, or indeed any one sector, alone. Limiting our considerations of what is meant by 'protection' to the stipulations of the 2001 UNESCO Convention, namely in situ preservation as a first option and a ban on commercial exploitation, precludes the development of an adequate response to this time-critical challenge. There is no doubt that the model proposed by the 2001 UNESCO Convention is an appropriate and effective solution in some parts of the world. But in previously colonised countries, where resources are limited, in situ preservation is not only impractical but may even guarantee the destruction of wreck sites. Ratification of the 2001 UNESCO Convention, which Prott sees as urgent, should not be seen as the end in and of itself. Rather, the primary goal must be understood as the protection and preservation of underwater cultural heritage. The urgency lies not in ratification per se, but in the need for a broader understanding of the diverse ways in which protection and preservation can be achieved.

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