

Legal Regime of Underwater Cultural Heritage and Marine Scientific Research

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CIL

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Protecting Underwater Cultural Heritage in the EEZ and on the CS

– Could the MSR Regime Play a Role?

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Outline

- 1. Research Question**
- 2. Obligation to Protect the UCH in the EEZ and on the Continental Shelf**
- 3. Treasure Hunting Activities**
- 4. Marine Archaeology in the EEZ and on the Continental Shelf**
- 5. Conclusions**

1. Research Question

Can certain activities directed at underwater cultural heritage be regulated by the marine scientific research regime under the law of the sea?

Acknowledging that marine archaeology as a science discipline traditionally does not constitute MSR under

UNCLOS

2. Obligation to Protect UCH in the EEZ and on the CS

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.

2001 UNESCO Convention Article 9(1)

- All States Parties have a **responsibility to protect** underwater cultural heritage in the EEZ and on the continental shelf in conformity with this Convention.

2.1 Rights and Jurisdiction of the States in the EEZ

Coastal States	All States
<p>Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, and other activities for the economic exploitation and exploration of the zone;</p> <p>Jurisdiction with regard to:</p> <ul style="list-style-type: none">(i) the artificial islands, installations and structures;(ii) marine scientific research;(iii) the protection and preservation of the marine environment;	<p>All States enjoy the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms.</p>

2.2 Rights and Jurisdiction of the States on the CS

Coastal States	All States
<p>The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.</p>	<p>All States enjoy the freedom of the laying of submarine cables and pipelines.</p>

2.3 Protection of the UCH under the 2001 Convention

Article 9 – Reporting and Notification in the EEZ / on the CS

A State Party shall require that when its national, or a vessel flying its flag, discovers or intends to engage in activities directed at underwater cultural heritage:

- 1) located in its EEZ or on its CS, the national or the master of the vessel shall **report** such discovery or activity to it;
- 2) in the EEZ or on the CS of another State Party, the national or the master of the vessel shall **report** such discovery or activity to it and to that other State Party;

2.3 Protection of the UCH under the 2001 Convention

Article 10 – Protection of underwater cultural heritage in the EEZ and on the CS

2. A State Party in whose EEZ or on whose continental shelf underwater cultural heritage is located has the right to **prohibit or authorize** any activity directed at such heritage to **prevent interference with its sovereign rights or jurisdiction** as provided for by international law including the UNCLOS.

2.4 Implication of the 2001 Convention

- Recognition of the role of the flag / nationality State;
- Recognition of the coastal States' sovereign rights and jurisdiction in the EEZ and on the CS;
- Limited application – binding on the 60 State Parties to the 2001 Convention;
- Under which regulatory regime could the coastal States provide protection to the UCH in the EEZ / on the CS?
- Could the coastal State regulate certain activities directed at the UCH within the UNCLOS legal framework?

3. Treasure Hunting Activities

- Detective work to search for a site for commercial exploration
- Pre-disturbance survey, excavation
- Vessel on site
- Surveying techniques: echo sounders, sonars, 2D, 3D, profiling, levelling and sub-surface survey
- Devices: magnetometers, SCUBA equipment, photographic or video systems, remote operating vehicles, manned / unmanned submarines

3.1 Categorization of Treasure Hunting

- Is treasure hunting different from an marine archaeological project?
 - Same techniques / equipment
 - Different purposes / procedure
- Treasure Hunting = Survey / Scientific Research?
- Could treasure hunting activities be subject to the marine scientific research regime?

3.2 Practical Consideration

- Lack of clarification of the scope of MSR, particularly survey activities in the EEZ / on the CS;
- Treasure hunting activities might interfere with (incidentally affecting) the exercise of sovereign rights and jurisdiction by the coastal State;
- Unregulated treasure hunting may lead to looting or damage to the UCH;
- Regulating treasure hunting activities does not affect the operation of an marine archaeological project, or the ownership of the discovered objects;

3.3 Potential Regulatory Regime

Should treasure hunting activities subject to the MSR regime in the EEZ / on the CS:

- Coastal States have the right to regulate, authorize and conduct treasure hunting activities;
- Coastal States shall, in normal circumstances, grant their consent, but may withhold their consent if that project interferes with their sovereign rights or jurisdiction;
- Coastal States may establish conditions, request information, suspend or terminate a project;

4. Marine Archaeology in the EEZ and on the CS

- *Travaux préparatoires* of UNCLOS indicates that MSR is confined to the investigation of the marine environment;
- Marine archaeology aims to recover and interpret human traces and cultural materials of the past from underwater;
- Marine archaeology is a scientific discipline;
- Historically, marine archaeology does not constitute MSR under UNCLOS;

4.1 Categorization of Marine Archaeology

- New uses of the oceans?
- Recognized as being more than traditional salvage operations;
- A discipline involves a broad range of activities, from survey of submerged sites, sampling, documentation, *in situ* protection, excavation and recovery, conservation, restoration and publication/display;

4.2 Jurisdiction over Marine Archaeology

Article 59 Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the EEZ

- In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the EEZ, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the **basis of equity** and in the light of **all the relevant circumstances**, taking into account **the respective importance of the interests involved** to the **parties** as well as to the **international community** as a whole.

4.3 Regulation of Marine Archaeology

States that have declared their interest in the UCH

- Declaration based on a verifiable link, especially a cultural, historical or archaeological link to the UCH

Flag / Nationality State

- Jurisdiction over its national, or a vessel flying its flag

Coastal States

- To ensure the marine archaeological project does not interfere with its sovereign rights and jurisdiction

International Community?

- All States should comply with generally accepted international archaeological standards?

4.4 Due Regard Obligation

While carrying out the marine archaeological project in the EEZ / on the CS:

- Article 56(2) the coastal State shall have due regard to the rights and duties of other States;
- Article 58(3) States shall have due regard to the rights and duties of the coastal State;
- Article 87(2) States shall have due regard for the interests of other States in their exercise of the freedom of the high seas;

5. Conclusions

- All States have a general duty to protect objects of an archaeological and historical nature found at sea, but they lack of legal means to fulfil such duty;
- Treasure hunting activities could be subject to the MSR regime under UNCLOS;
- Marine archaeology is a new use of the ocean, and must be conducted with due regard to the rights and interests of other States;

THANK YOU

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