

Convention on the Protection of Underwater Cultural Heritage*

by Tullio Scovazzi**

Ed. Note: This Convention created an unusual debate during the 56th session of the UN General Assembly (see page 184). The author participated in the negotiations.

1. The 2001 Convention

On 2 November 2001, the UNESCO General Conference adopted the Convention on the Protection of the Underwater Cultural Heritage (hereinafter: the CPUCH).¹ It will apply to "all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years" (Art. 1, para. 1, a).

The CPUCH, which is the outcome of a long-lasting negotiation, was adopted by vote (87 States in favour, 4 against² and 15 abstentions).³ The lack of consensus at the moment of its adoption should not be seen as an irreparable flaw. Not only did the great majority of developing countries vote in favour, but also several the industrialized countries were satisfied with the final outcome of the negotiations.⁴

To explain the merit of the CPUCH, a basic consideration must be made. Every attempt to ensure an effective protection of underwater cultural heritage at sea⁵ has inevitably to face the unexpected obstacle of Art. 303 of the 1982 United Nations Convention on the Law of the Sea (hereinafter: the UNCLOS). This provision is not only incomplete, but also counterproductive. It can be understood in a sense that undermines the very objective of protecting the underwater cultural heritage.

2. The Regime of the United Nations Convention on the Law of the Sea

The critical remarks addressed to Art. 303 of the UNCLOS need some elaboration. The broad outline of the present regime is as follows:

a) First, Art. 303, para. 1, establishes a general obligation of protection and cooperation with regard to archaeological and historical objects, wherever at sea they are found:

"States have the duty to protect objects of an archaeological and historical nature found at sea and shall co-operate for this purpose".

b) Second, para. 2 of Art. 303 specifically relates to archaeological and historical objects located within the 24-mile zone set forth by Art. 33 of UNCLOS (the contiguous zone):⁶

"In order to control traffic in such objects, the coastal State may, in applying Article 33, presume that their removal from the sea-bed 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" [= customs, fiscal, immigration or sanitary laws and regulations].

Art. 303, para. 2 does give rights to the coastal State.

But the content of these rights is far from being clear, as the wording of the provision gets entangled in mysterious complications. If literally understood, para. 2 suggests that the removal of archaeological and historical objects located in the contiguous zone can determine a violation of national provisions relating to, *inter alia*, sanitary matters and immigration. Besides, the coastal State, which is empowered to prevent and sanction the removal of the objects in question, is apparently defenceless if they, instead of being removed, are simply destroyed in the very place where they have been found.⁷ All these textual complications are probably due to the desire to avoid any text that might give rise to the impression of some kind of coastal State jurisdiction beyond the 12-mile limit of the territorial sea (*horror jurisdictionis*). But the spectre of clandestine immigrants and infectious patients does not seem the ideal way to render the idea that the coastal State can establish a 24-mile archaeological zone where it can apply its legislation for the aim of protecting the relevant objects. Indeed, a number of countries have already created such a zone.

c) Third (and worse), there is no clarification in UNCLOS about the rules applying to archaeological and historical objects found on the continental shelf or in the exclusive economic zone, that is the space located between the 12-mile limit (or the 24-mile limit if an archaeological zone has been established) and the beginning of the sea-bed and ocean floor included in the Area.⁸ It is however clear that the rights of the coastal State on the continental shelf are limited to the exploration and exploitation of the relevant "natural resources", as explicitly stated in Art. 77, para. 1, UNCLOS, and cannot be easily extended to man-made objects, such as the underwater cultural heritage.

This legal vacuum greatly threatens the protection of cultural heritage, as it brings into the picture the abstract idea of freedom of the seas. This could easily lead to a "first come, first served" approach. Availing himself of the principle of freedom of the sea, any person on board any ship could explore the continental shelf adjacent to any coastal State, bring the archaeological and historical objects to the surface, become their owner under domestic legislation (in most cases, the flag State legislation),⁹ carry the objects into a specific country and sell them on the private market. If this were the case, there would be no guarantee that the objects would be disposed of for the public benefit rather than for private commercial gain. Neither could a State which has a direct cultural link with the objects prevent the pillage of its historical heritage.

The problem is far from being merely theoretical. Between 1988 and 1997 an organization based in the United

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(See also articles on pages 149 and 184.)

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States undertook four expeditions to locate shipwrecks and retrieve artifacts in an area on the Mediterranean continental shelf beyond the limit of the territorial seas of the coastal States.¹⁰ In this area several archaeological discoveries of objects pertaining to the Phoenician, Greek and Roman civilizations have been made.

It seems that no previous official information about the expeditions was given to any of the Mediterranean coastal States. As it appears from an article published by

the director of the project, Mr. Robert Ballard,¹¹ the expedition utilized a support ship, a nuclear-powered research submarine of the United States Navy, and a remotely operated vehicle. Mr. Ballard reported removing more than 150 artifacts (amphorae, glassware and anchors) from the sea-bed. When asked about the concern that his expeditions had raised, Mr. Ballard relied on the principle of freedom of the sea:

"I do not like being wrongly accused. (...) I was well outside the 12-mile limit."¹²

d) Fourth (and much worse), the danger of uncontrolled activities is aggravated by Art. 303, para. 3, UNCLOS, which goes as far as to subject the general obligation of protection of archaeological and historical objects to a completely different kind of rules:

"Nothing in this article affects the rights of identifiable owners, the law of salvage and other rules of admiralty, or laws and practices with respect to cultural exchanges."

There is no clarification in UNCLOS about what the expression "the law of salvage and other rules of admiralty" means. But some cases decided by domestic courts give an idea of the result that the application of this kind of rule is likely to determine. For example, the United States Court of Appeals for the 4th Circuit in a decision rendered on 24 March 1999 (case *R.M.S. Titanic, Inc. v. Haver*) stated that the law of salvage and finds is a "venerable law of the sea". It was said to have arisen from the custom among "seafaring men" and to have "been preserved from ancient Rhodes (900 B.C.E.), Rome (Justinian's *Corpus Juris Civilis*) (533 C.E.), City of Trani (Italy) (1063), England (the Law of Oleron) (1189), the Hanseatic League (1597), and France (1681), all articulating similar principles."¹³

Coming to the practical result of such a display of legal erudition, the law of finds seems to mean that "a person who discovers a shipwreck in navigable waters that has been long lost and abandoned and who reduces the property to actual or constructive possession becomes the property's owner." The application of the law of salvage, which appears to be something different from the law of finds, is also hardly satisfactory, as it gives the salvor a lien (or right *in rem*) over the object. In a well-known case, an injunction by a United States Court established a "wreck site", which was a 168-square-mile rectangular zone around a wreck located in the bed of the high seas in the North Atlantic (at about 400 n.m. from the coast), to be set aside to preserve the rights of the sole private salvor. Activities by anybody else within that "wreck site" were prohibited.¹⁴

Be that as it may, the fact remains that the bodies of "the law of salvage and other rules of admiralty", despite their immemorial tradition, are today typical of a few common law systems but are complete strangers to other domestic legal systems.¹⁵ For instance, no Italian lawyer (with the laudable exception of a few scholars) would today know what the "law of salvage and finds" is, despite the fact that the cities of Rome and Trani, which are said to have contributed to this body of "venerable law of the sea", are located somewhere in the Italian territory.¹⁶ ➤



Courtesy: Financial Times

This worsens the already sad picture of Art. 303 of UNCLOS. Does this provision, while apparently protecting the underwater cultural heritage, instead strengthen a regime which results in the destination of much of this heritage for commercial purposes? Does Art. 303 give an overarching status to a "venerable" body of rules that, as it was developed in times when nobody cared about the underwater cultural heritage, cannot today provide a sensible tool for the protection of the heritage in question? The doubt is far from being trivial.

e) Fifth (and better), prospects of finding some remedies to such an unsatisfactory regime can be drawn from para. 4 of Art. 303 of UNCLOS. It provides that Art. 303 does not prejudice "other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature." UNCLOS itself encourages the filling of the gaps that it has left and allows for the drafting of more specific treaty regimes which can ensure a better protection of the underwater cultural heritage. There is no reason why agreements subsequently adopted, such as CPOCH, should not be covered by this provision.

3. A Defensive Strategy

The CPOCH can be seen as a defensive strategy to bring some remedy to the risks arising from Art. 303 of the UNCLOS. The basic elements of the strategy are three, namely: the elimination of the undesirable effects of the law of salvage and finds; the exclusion of a "first come, first served" approach for the heritage found on the continental shelf; the strengthening of regional cooperation.

A) The Rejection of the Law of Salvage and Finds

While most countries participating in the negotiations concurred in the rejection of the application of the law of salvage and finds to underwater cultural heritage, a minority of States were not prepared to accept an absolute ban. To achieve a reasonable compromise, Art. 4 (*Relationship to law of salvage and law of finds*) of CPOCH provides as follows:

- «Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or law of finds, unless it:
- (a) is authorized by the competent authorities, and
 - (b) is in full conformity with this Convention, and
 - (c) ensures that any recovery of the underwater cultural heritage achieves its maximum protection».

This provision is to be understood in connection with Art. 2, para. 7 of CPOCH ("underwater cultural heritage shall not be commercially exploited") and with all the rules contained in the annex, which form an integral part of the CPOCH. In particular, under Rule 2 of the Annex,

"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."

The CPOCH regime practically results in the prevention of all the undesirable effects of the application of the law of salvage and finds. Freedom of fishing for archaeological and historical objects is banned. This was consid-

ered as generally acceptable by all the States participating in the negotiation.

B) The Exclusion of a "First Come, First Served" Approach for the Heritage Found on the Continental Shelf

The majority of countries participating in the negotiation were ready to extend the jurisdiction of the coastal State to the underwater cultural heritage found on the continental shelf or in the exclusive economic zone.¹⁷ However, a minority of States assumed that the extension of the jurisdiction of coastal States would have altered the delicate balance embodied in UNCLOS with respect to the rights and obligations of the coastal State and the other States beyond the limit of the territorial sea. Such a difference of positions proved to be a thorny question.

During the negotiations, some attempts were made to find a way out of the deadlock through compromise proposals based on a procedural mechanism different from a mere extension of the rights of the coastal State. These proposals led to the present Arts. 9 and 10 of CPOCH. It is regrettable that, despite all the efforts made to reach a reasonable compromise, a consensus could not be achieved.

It would be a difficult task to dwell upon all the nuances of provisions, such as Arts. 9 and 10, resulting from a stratification of proposals, counter-proposals, last-minute changes and "constructive ambiguities" which do not lead to an easily readable text. The essence of the regime is the three-step procedure (reporting, consultations, urgent measures) it sets forth.¹⁸

As regards reporting, CPOCH bans secret activities or discoveries.¹⁹ States Parties require their nationals or vessels flying their flag to report activities or discoveries to them. If the activity or discovery is located in the exclusive economic zone (EEZ) or on the continental shelf of another State Party, the CPOCH sets forth two alternative solutions:

- "(i) States Parties shall require the national or the master of the vessel to report such discovery or activity to them and to that other State Party;
- (ii) alternatively, a State Party shall require the national or master of the vessel to report such discovery or activity to it and shall ensure the rapid and effective transmission of such report to all other States Parties" (Art. 9, para. 1, b).²⁰

While the wording leaves a certain margin of ambiguity, the "State Party" mentioned in sub-para. (ii) is the State to which the "national" belongs or the State of which the "vessel" flies the flag.²¹ This interpretation is to be preferred, as it conforms more with the preparatory works of CPOCH.²² Information is also notified to the Director-General of UNESCO who shall promptly make it available to all States Parties (Art. 9, paras 4 and 5).

As regards consultations, the coastal State²³ shall consult all States Parties which have declared their interest in being consulted on how to ensure the effective protection of the underwater cultural heritage in question (Art. 10, para. 3, a, and Art. 9, para. 5). The coastal State shall coordinate the consultations, unless it expressly declares that it does not wish to do so, in which case the States Parties

that have declared an interest in being consulted shall appoint another coordinating State (Art. 10, para. 3, b). The coordinating State shall implement the measures of protection which have been agreed by the consulting States and may conduct any necessary preliminary research on the underwater cultural heritage (Art. 10, para. 5).

As regards urgent measures, Art. 10, para. 4, CPUCH provides as follows:

“Without prejudice to the right of all States Parties to protect underwater cultural heritage by way of all practicable measures taken in accordance with international law to prevent immediate danger to the underwater cultural heritage, including looting, the Coordinating State may take all practicable measures, and/or issue any necessary authorizations in conformity with this Convention and, if necessary prior to consultations, to prevent any immediate danger to the underwater cultural heritage, whether arising from human activities or any other cause, including looting. In taking such measures assistance may be requested from other States Parties.”

The right of the coordinating State to adopt urgent measures is the cornerstone of the CPUCH regime. It would have been illusory to subordinate this right to the conclusion of consultations that are inevitably expected to last for some time. It would also have been illusory to grant this right to the flag State, considering the risk of activities carried out by vessels flying the flag of non-Parties or a flag of convenience.²⁴ By definition, in a case of urgency a determined State must be entitled to take immediate measures without losing time in any procedural requirements.²⁵

CPUCH clearly sets forth that in coordinating consultations, taking measures, conducting preliminary research and issuing authorizations, the coordinating State acts “on behalf of the States Parties as a whole and not in its own interest” (Art. 10, para. 6). Any such action shall not in itself constitute a basis for the assertion of any preferential or jurisdictional rights not provided for in international law, including UNCLOS.

In any case, “a State Party in whose exclusive economic zone 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 United Nations Convention on the Law of the Sea” (Art. 10, para. 2, CPUCH). This could mean that the coastal State can exercise broader rights if a wreck is embedded in the sand or is encrusted with oysters, molluscs or other sedentary living resources over which it already exercises sovereign rights under UNCLOS provisions on the continental shelf. However, the majority of countries participating in the negotiation rejected the assumption that the only way for the coastal State to protect the underwater cultural heritage was based on its right to prevent interference with its sovereign rights or jurisdiction as provided for by international law. This

assumption is in principle unacceptable, as it implies that oysters and other equally respectable living resources are more important than the cultural heritage. It is also dangerous, as it can be interpreted in the sense that the salvor can retain the wreck after having given all the oysters to the coastal State!

C) The Strengthening of Regional Cooperation

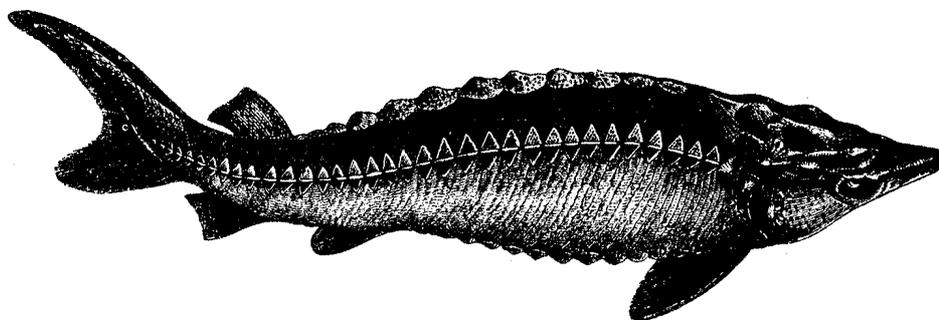
CPUCH devotes one of its provisions (Art. 6) to bilateral, regional or other multilateral agreements:

“1. States Parties are encouraged to enter into bilateral, regional or other multilateral agreements or develop existing agreements, for the preservation of underwater cultural heritage. All such agreements shall be in full conformity with the provisions of this Convention and shall not dilute its universal character. States may, in such agreements, adopt rules and regulations which would ensure better protection of underwater cultural heritage than those adopted in this Convention.

2. The Parties to such bilateral, regional or other multilateral agreements may invite States with a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned to join such agreements.”²⁶

Article 6 opens the way to a multiple-level protection of underwater cultural heritage. This corresponds to what has already happened in the international field of protection of the natural environment where treaties are often followed by treaties concluded at the regional and sub-regional level. The key to coordination between treaties applicable at different levels is the criterium of the better protection, in the sense that regional and sub-regional treaties are concluded to ensure better protection than those adopted at a higher level.

The possibility to conclude regional agreements should be carefully considered by the States bordering enclosed



Courtesy: IUCN/NC

or semi-enclosed seas which are characterized by a particular kind of underwater cultural heritage, such as the Mediterranean, the Baltic, the Caribbean. For instance, in a declaration adopted in Siracusa, Italy, on 10 March 2001, the participants to an academic conference²⁷ stressed that “the Mediterranean basin is characterized by the traces of ancient civilizations which flourished along its shores and, having developed the first seafaring techniques, established close relationships with each other” and that “the Mediterranean cultural heritage is unique in that it embodies the common historical and cultural roots of many civilizations.” They consequently invited Mediterranean coun-

tries to "study the possibility of adopting a regional convention that enhances cooperation in the investigation and protection of the Mediterranean submarine cultural heritage and sets forth the relevant rights and obligations."

4. The Question of State Vessels and Aircraft

Another reason why consensus was not achieved at the moment of the adoption of CPUCH is the sensitive question of the regime of sunken State vessels and aircraft. They are defined in CPUCH as "warships and other vessels or aircraft that were owned or operated by a State and used, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage" (Art. 1, para. 8). CPUCH does not contain a general provision on State vessels and aircraft. They are subject to different regimes, depending on where they are located.

In the Area, no State Party shall undertake or authorize activities directed at State vessels and aircraft without the consent of the flag State (Art. 12, para. 7). In the exclusive economic zone or on the continental shelf, no activity directed at State vessels and aircraft shall be conducted without the agreement of the flag State and the collaboration of the coordinating State (Art. 10, para. 7). This provision is however subject to paras 2 and 4 of the same Art. 10, relating respectively to the right of the coastal State to prevent interferences with its sovereign rights or jurisdiction and to the right of the coordinating State to adopt measures to prevent immediate danger. Finally,

"Within their archipelagic waters and territorial sea, in the exercise of their sovereignty and in recognition of general practice among States, States Parties, with a view to cooperating on the best methods of protecting State vessels and aircraft, should inform the flag State Party to this Convention and, if applicable, other States with a verifiable link, especially a cultural, historical or archaeological link, with respect to the discovery of such identifiable State vessels and aircraft" (Art. 7, para. 3).²⁸

The language of this provision ("should inform") was not acceptable to those States which believe that the flag State retains title indefinitely to its sunken State craft unless title has been expressly abandoned or transferred by it.²⁹ For instance, according to the position taken by the United States, "title to a United States or foreign sunken State craft, wherever located, is not extinguished by passage of time, regardless of when such sunken State craft was lost at sea."³⁰

5. Conclusive remarks

For its innovative and pragmatic character, CPUCH is a major step forward in the development of international law. It has been repeatedly criticized for the reason that, irrespective of Art. 3,³¹ it departs from the regime embodied in UNCLOS.³² Perhaps partially this is the case. But it must also be stressed that the UNCLOS regime is so insufficient that it was impossible to protect the underwater cultural heritage without departing from it.

Variations from the UNCLOS regime are not a novelty. After the adoption of UNCLOS, two multilateral treaties have been concluded which apparently "implement" UNCLOS, namely the 1994 Agreement Relating to the

Implementation of Part XI of UNCLOS and the 1995 Agreement for the Implementation of the Provisions of UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. In fact, as both agreements depart from UNCLOS, the politically prudent label of an "implementing agreement" can be considered as a euphemism for the word "amendment" which would have been more correct from a substantial point of view. The reality is that, as it is itself a product of time, UNCLOS cannot stop the passing of time. It is therefore subject to a process of evolution in the light of subsequent international practice.

The establishment of an effective protection regime for the underwater cultural heritage cannot be seen as an encroachment on the principle of the freedom of the sea; nor is it the creation of other jurisdictional zones. It is difficult to see how rules and entitlements on the underwater cultural heritage found on the continental shelf could affect navigation in adjacent waters. The concept of freedom of the sea is today to be understood not in an abstract way, but in the context of the present range of marine activities and in relation to the other potentially conflicting uses and interests. Also the idea that the coastal State can exercise rights on the oil found in its continental shelf corresponded, when it was initially proposed,³³ to an encroachment on the freedom of the high seas. Evident encroachments on the freedom of fishing on the high seas can be easily found in the above-mentioned 1995 Straddling and Highly Migratory Fish Stocks Agreement, which introduces the innovative idea that States which persistently undermine the measures agreed upon by the others can be excluded from an activity taking place on the high seas. In this case, a new regime was considered a necessary tool to promote the conservation and sound management of living marine resources and, as such, was found reasonable by the great majority of States. Today, the protection of the underwater cultural heritage is endangered by an increasing number of unreported and unregulated activities which are the consequence of the improvement of underwater instruments and technologies. But why should there remain a freedom-of-fishing-type regime for objects of an archaeological and historical nature? Do they need less protection than fish? This is the core of CPUCH: a "first come, first served" regime is definitely to be banned.³⁴

Notes:

1 The CPUCH is composed of 35 articles and a 36-rule Annex. For the text see UNESCO, General Conference, 31st Session, doc. 31 C/64 of 31 October 2001. The text coincides with the draft voted and adopted on 7 July 2001 by a Group of Governmental Experts which held four meetings between 1998 and 2001. A number of provisions of the CPUCH are based on the Draft Convention on the protection of the underwater cultural heritage submitted in 1994 by the International Law Association (ILA) to UNESCO for consideration (text in *Marine Policy*, 1996, p. 304).

2 Namely the Russian Federation, Norway, Turkey and Venezuela. The observer delegate of the United States, who was not entitled to vote (the United States not being a member of UNESCO), regretted that his delegation could not accept the CPUCH because of objections to several key provisions relating to jurisdiction, the reporting scheme, warships and the relationship of the convention to UNCLOS. The negative votes of Turkey and Venezuela were based on critical remarks on CPUCH provisions on peaceful settlement of disputes (Art. 25) and reservations (Art. 30).

3 Namely, Brazil, Czech Republic, Colombia, France, Germany, Greece, Iceland, Israel, Guinea-Bissau, Netherlands, Paraguay, Sweden, Switzerland, the United Kingdom and Uruguay. The abstentions were based on different, and sometimes opposite, reasons. For instance, the Greek delegate stated *inter alia* that “despite the fact that throughout the negotiations at UNESCO the majority of governmental experts were in favour of extending coastal rights over underwater cultural heritage on the continental shelf, the Draft Convention does not even mention the term ‘coastal State’”. According to the French delegate, “la France est en désaccord avec le projet sur deux points précis: le statut des navires d’Etat et les droits de juridiction, dont nous considérons qu’ils sont incompatibles avec les dispositions de la Convention sur le droit de la mer.”

4 For example, Australia, Canada, China, Japan, New Zealand and the Republic of Korea voted in favour. Among the member States of the European Community, Austria, Belgium, Denmark, Finland, Ireland, Italy, Luxembourg, Portugal and Spain voted in favour, while France, Germany, Greece, the Netherlands, Sweden and the United Kingdom abstained.

5 The relevance of CPUCH is not limited to maritime waters. Any State Party may declare that the Rules annexed to the CPUCH “shall apply to inland waters not of a maritime character” (Art. 28).

6 In this zone, which is located between the external limit of the territorial sea (12 n.m., in most cases) and 24 n.m., the coastal State may exercise control for customs, fiscal, immigration or sanitary purposes.

7 Destroyed by a company holding a licence for oil exploitation, for instance.

8 Art. 149 of UNCLOS sets forth a special regime for the objects found on the sea-bed and ocean floor beyond the limits of national jurisdiction (the Area).

9 The problems posed by the practice of flags of convenience should also be taken into consideration.

10 The project was supported in part by the United States National Geographic Society, the Office of Naval Research and the J.M. Kaplan Fund.

11 BALLARD, *High-Tech Search for Roman Shipwrecks*, in *National Geographic*, No. 4, 1998, p. 32.

12 *The Times*, 6 August 1997.

13 *International Legal Materials*, 1999, p. 807.

14 Decision rendered by the District Court in the Eastern District of Virginia on 23 June 1998 in the case *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, (“*Titanic II*”). The decision to prohibit certain activities within a wreck-site zone on the high seas was reversed by the already mentioned decision rendered on 24 March 1999 by the United States’ Court of Appeals (*supra*, note 13). Indeed, it seems difficult to reconcile the establishment of such a “wreck-site” with the principle of freedom of the high seas (unless it were to be assumed that the high seas are free until a salvor comes in!).

15 The already mentioned decision of 24 March 1999 (*supra*, note 13) by the United States’ Court of Appeals erroneously attributes the nature of customary international law to a body of rules which only is part of the domestic law of a number of countries.



16 Yet, because of the lack of the corresponding concepts, the very words “salvage” and “admiralty” cannot be properly translated into languages other than English. In the French official text of the UNCLOS they are rendered with expressions (“droit de récupérer des épaves et (...) autres règles du droit maritime”) which have a broader and different meaning.

17 Such an approach had already been proposed by some countries during the negotiations for UNCLOS (see the informal proposal by Cape Verde, Greece, Italy, Malta, Portugal, Tunisia and Yugoslavia (UN doc. A/CONF.62/C.2/Informal Meeting/43/Rev. 3 of 27 March 1980)). Its rejection led to the drafting of the present Art. 303 of UNCLOS.

18 Under Arts. 11 and 12 of CPUCH a similar (although not identical) three-step procedure applies to the underwater cultural heritage found in the Area.

19 For obvious reasons, the principle of transparency of information is limited to the competent authorities of States Parties: “Information shared between States Parties, or between UNESCO and States Parties, regarding the discovery or location of underwater cultural heritage shall, to the extent compatible with their national legislation, be kept confidential and reserved to competent authorities of States Parties as long as the disclosure of such information might endanger or

otherwise put at risk the preservation of such underwater cultural heritage” (Art. 19, para. 3).

20 On depositing its instrument of ratification, acceptance, approval or accession, a State Party shall declare the manner in which reports will be transmitted (Art. 9, para. 2).

21 The ambiguity lies in the fact that the “State Party” in question could be understood as the coastal State.

22 A draft resolution submitted by the Russian Federation and the United Kingdom and endorsed by the United States tried to clarify the point by proposing the following wording: “When the discovery or activity is located in the exclusive economic zone or on the continental shelf of another State Party: (i) a State Party shall require its national or the master of a vessel flying its flag to report such discovery or activity to it and to that other State Party; (ii) alternatively, a State Party shall require its national or the master of a vessel flying its flag to report such discovery or activity to it and shall ensure the rapid and effective transmission of such reports to all other States Parties” (UNESCO doc. 31 C/COM.IV/DR.5 of 26 October 2001). The draft resolution was not adopted.

23 Here and everywhere else, CPUCH avoids the words “coastal State” (because of the already mentioned *horror jurisdictionis*) and chooses other expressions, such as the “State Party in whose exclusive economic zone or on whose continental shelf” the activity or discovery is located.

24 The present experience of the regulation of fisheries proves the dangers posed by vessels flying flags of convenience and engaging in IUU (illegal, unreported and unregulated) fishing.

25 On the contrary, the draft resolution submitted by the Russian Federation and the United Kingdom and endorsed by the United States (quoted *supra*, note 22) subordinated the right to adopt measures to prevent immediate danger to a specific condition: “(...) but in any event prompt assistance shall be requested from the State Party that is the flag State of the vessel engaged in such activities”.

26 Under Art. 6, para. 3, the CPUCH “shall not alter the rights and obligations of State Parties regarding the protection of sunken vessels, arising from other bilateral, regional or other multilateral agreements concluded before its adoption, and, in particular, those that are in conformity with the purposes of” CPUCH.

27 The proceedings of the International Conference “Means for the Protection and Touristic Promotion of the Marine Cultural Heritage in the Mediterranean”, held in Palermo and Siracusa, Italy, on 8–10 March 2001, are presently in press.

28 Article 7, para. 3, does not mention State vessels and aircraft found in maritime internal waters. They are consequently subject to the general regime of Art. 7, para. 1: “States Parties, in the exercise of their sovereignty, have the exclusive right to regulate and authorize activities directed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.”

29 The already mentioned (*supra*, note 22) draft resolution submitted by the Russian Federation and the United Kingdom and endorsed by the United States proposed the following provision: “Within their internal waters, archipelagic waters and territorial sea, in the exercise of their sovereignty and in recognition of general practice among States, States Parties, with a view to cooperating on the best methods of protecting State vessels and aircraft, shall consult the flag State Party to this Convention and, if applicable, other States with a verifiable link, especially a cultural, historical or archaeological link, with respect to the discovery of such identifiable State vessels and aircraft. Such State vessels and aircraft shall not be recovered without the collaboration of the flag State, unless the vessels and aircraft have been expressly abandoned in accordance with the laws of that State.”

30 See the statement made by the President of the United States on *Sunken Warships* (The White House, Office of the Press Secretary, January 19, 2001).

31 “Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.”

32 See, for example, the intervention made on 28 November 2001 by the delegate of the Russian Federation, Mr Tarabrin, at the United Nations General Assembly.

33 See the Presidential Proclamation concerning the policy of the United States with respect to the natural resources of the subsoil and sea-bed of the continental shelf, adopted on 28 September 1945 (the so-called Truman Proclamation).

34 CPUCH should, it is hoped, become applicable within a short time, given the low threshold of 20 ratifications or accessions required for its entry into force (Art. 27).