

## **UNIVERSITY OF OXFORD**

### **FACULTY OF LAW 2003-2004**

#### **LAW OF THE SEA: (9) UNDERWATER CULTURAL HERITAGE**

##### **Outline:**

The following is an outline of possible questions for enquiry and discussion:

- I. Sources
- II. 'Archaeological and historical objects'
- III. Jurisdiction with regard to archaeological and historical objects found at sea under the United Nations Convention on the Law of the Sea
  1. Jurisdiction of the coastal State
    - a. Sea areas under the sovereignty of the coastal State
    - b. Contiguous zone
    - c. Exclusive economic zone
    - d. Continental shelf
    - e. Area
  2. Jurisdiction of the flag State
    - a. Flag State of the sunken vessel
    - b. Flag State of the salvaging vessel
  3. Jurisdiction of the State whose nationals salvage the vessel
- IV. The development of the international regime
- V. The protection regime under the UNESCO Convention
  1. The definition of 'underwater cultural heritage' (Art. 1)
  2. Objectives and general principles (Art. 2)
  3. The jurisdictional regime (Art. 7-12)
  4. Special questions
    - a. Relationship between the Convention and UNCLOS
    - b. Relationship to law of salvage and find
    - c. Immunity of warships and other State vessels
    - d. Implementation and enforcement
    - e. Settlement of disputes

##### **Basic Reading:**

###### **(a) Treaties and Other Documents**

- United Nations Convention on the Law of the Sea, 1982: Arts. 33, 145, 303
- International Convention on Salvage, 1989  
(<http://www.austlii.edu.au/au/other/dfat/treaties/1998/2.html>)
- UNESCO Convention on Underwater Cultural Heritage, 2001 (UNESCO Doc. 31C/24, 3 August 2001; <http://www.unesco.org/culture/legalprotection/water/images/engconv.doc>)

**(b) Cases**

- Sea Hunt Inc. v. Unidentified Shipwrecked Vessel, 221 F.3d 634 (CA 4<sup>th</sup> Cir. 2000)
- R.M.S. Titanic, Inc. v. Haver, 171 F.3d 943 (CA 4<sup>th</sup> Cir. 1999), ILM 38 (1999), 796
- R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel, 9 F.Supp 2d 624 (E.D. Va. 1998)

**Specialist Material**

- Carducci, Guido, New Developments in the Law of the Sea: The UNESCO Convention on the Protection of Underwater Cultural Heritage, *American Journal of International Law* 96 (2002), 419-434
- Murphy, Sean D., Contemporary Practice of the United States Relating to International Law: Law of the Sea: US Concerns Regarding UNESCO Convention on Underwater Heritage, *American Journal of International Law* 96 (2002), 468-470
- Forrest, Craig, A New International Regime for the Protection of Underwater Cultural Heritage, *International and Comparative Law Quarterly* 51 (2002), 511-554
- Forrest, Craig, An International Perspective on Sunken State Vessels as Underwater Cultural Heritage, *Ocean Development and International Law* 34 (2003), 41-57
- Markus, Rau, The UNESCO Convention on Underwater Cultural Heritage and the International Law of the Sea, *Max Planck Yearbook of United Nations Law* 6 (2002), 387-472

**Further Reading**

- Bederman, David J., The UNESCO Draft Convention on Underwater Cultural Heritage: A Critique and Counter-Proposal, *Journal of Maritime Law and Commerce* 30 (1999), 331-354
- Beukes, Margaret, Underwater Cultural Heritage: Archaeological Preservation or Salvage?, *South African Yearbook of International Law* 26 (2001), 62-86
- Blatt, Lauren W., SOS (Save our Ship)! Can the UNESCO 1999 Draft Convention on the Treatment of Underwater Cultural Heritage Do Any Better?, *Emory International Law Review* 14 (2000), 1581-1638
- Boesten, Eke, *Archaeological and/or Historic Valuable Shipwrecks in International Waters: Public International Law and What it Offers* (The Hague: TMC Asser Press, 2002)
- Garabello, Toberta/Scovazzi, Tullio (eds.), *The Protection of the Underwater Cultural Heritage Before and After the 2001 UNESCO Convention* (The Hague: Nijhoff, 2003)
- Graf Vitzthum, Wolfgang/Talmon, Stefan, *Alles fließt: Kulturgüterschutz und innere Gewässer im Neuen Seerecht* (Baden-Baden: Nomos, 1998)
- O'Keefe, Patrick J., *Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage* (Leicester: Institute of Art and Law, 2002)
- Scovazzi, Tullio, The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, *The Italian Yearbook of International Law* 11 (2001), 9-24
- Strati, Anastasia, *The Protection of Underwater Cultural Heritage: An Emerging Objective of the Contemporary Law of the Sea* (The Hague: Nijhoff, 1995)
- UNESCO, *Background Materials on the Protection of the Underwater Cultural Heritage*, 2

vols. (Paris: UNESCO, 1999-2000)

**Questions for Discussion:**

1. Is the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage incompatible with UNCLOS?
2. Are sunken warships and other government ships underwater cultural heritage governed by the 2001 UNESCO Convention or do special rules apply to these ships?
3. Protection over salvage? – Can Art. 303 (2) UNCLOS and Art. 4 UNESCO Convention be reconciled?
4. Do the decisions of the US courts in *R.M.S. Titanic, Inc. v. Haver*, 171 F3d 943 (4<sup>th</sup> Cir. 1999) and *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 9 F Supp 2d 624 (E.D. Va. 1998) violate international law?