

Law of the Sea & Protecting Titanic & other Deep Water Sites

Extra-territorial Protection of
Heritage in Deep Water
Consistent with International

Ole Varmer, NOAA Attorney
Office of General Counsel for International Law
Ole.Varmer@noaa.gov
(202) 482-1402



International Law & Maritime Heritage

- 1982 Law of the Sea Convention (LOSC) - Framework of Jurisdiction, Authority, Rights and Responsibilities at Sea
- UN Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection of the Underwater Cultural Heritage
- Multilateral & Bilateral Agreements Between US & Other Nations
 - ◆ *RMS Titanic* (Private Craft in High Seas)
 - ◆ *CSS Alabama* (US Sunken State Craft in French Terr Sea)
 - ◆ *La Belle* (French Sunken State Craft in US Terr Sea)
 - ◆ Minisubs (Japanese Sunken State Craft in US Territorial Sea)

Law of the Sea Convention



- Int'l Law Framework for Activities Conducted at Sea
- Maritime Zones
 - ◆ Internal waters (Landward of Baseline – Bays)
 - ◆ Territorial Sea (12 nautical miles from Baseline)
 - ◆ Contiguous Zone (24 nm buffer for Terr. Sea)
 - ◆ Exclusive Economic Zone (200 nm fishing, etc.)
 - ◆ Continental Shelf (200 nm plus natural elongation, oil, etc.)
 - ◆ High Seas
 - ◆ Area (under High Seas and seaward of Continental Shelf)
- Rules & Rights of Navigation, Exploration & Exploitation of Natural Resources, Marine Scientific Research (MSR), etc.
- EEZ/Continental Shelf Natural Resources - not UCH
- No coastal State Jurisdiction over Commercial Salvage of UCH -unless trigger Jurisdiction over Natural Resources
- LOSC Articles 149 & 303 Specifically Address UCH

LOSC 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.”

LOSC Article 303

Article 303 UCH Found at Sea (Not Just High Seas)

- (1) “*Duty to Protect*” UCH found at “sea” and “*shall cooperate for this purpose.*”
- (2) Coastal State Jurisdiction of UCH May Extend out 24 nm to Outer Limit of 24 nm Contiguous Zone
- (3) Savings clause for rights of identifiable owners, the law of salvage, etc.
- (4) No prejudice to other international agreements

UNESCO Convention on the Protection of the Underwater Cultural Heritage

- LOSC contemplated development of international agreements for UCH - Article 303(4)
- Prohibit unwanted salvage & control in EEZ/CS
- Codify Archaeological Principles - Annexed Rules
 - ◆ Based on ICOMOS Charter (Guidelines)

Issues: UNESCO UCH Convention

- “Creeping Jurisdiction” of Nations in EEZ - Continental Shelf
 - ◆ High Seas Freedoms (Navigation, Laying Cables & Pipelines)
 - ◆ Coastal State Control in EEZ/CS Reporting, Regulations, Enforcement vs Foreign Vessels
- Treatment of Foreign Warships in Territorial Sea
 - ◆ UNESCO Consult w/foreign flag > US foreign flag Consent

US UCH Law & Policy -High Seas

- Titanic Maritime Memorial Act of 1986
- NOAA Guidelines on Titanic (2001)
- US Signed International Titanic Agreement with UK in 2004
- Sunken Military Craft Act (2004)

International Agreement to Protect RMS Titanic

- Negotiations Between US, UK, France, Canada
- Rely on Jurisdiction over Nationals, Flagged Ships, Ships in Territory, particularly in Ports
- No assertion of extra-territorial jurisdiction



Laws to Control Salvage & other Activities Directed at UCH

- Agreements and Legislation to control salvage and other activities directed at UCH & related resources consistent with LOSC
 - ◆ Control all activities directed at UCH by flag vessels and nationals regardless of location of UCH
 - ◆ Control foreign vessels and nationals' salvage or recovery of UCH that might involve use of installations and structures under of LOSC Art. 60
 - ◆ Notice of UCH that are also artificial reefs or structures subject to coastal State authority and control under LOSC Art. 60
 - ◆ Notice that “drilling” for any purpose includes excavation associated with salvage or recovery of UCH (LOSC Art. 81)
 - ◆ Protection of Natural Resources (Seabed) Also Indirectly Protects UCH

Jurisdiction Consistent with LOSC

- Coastal State Control over foreign flagged vessels & nationals' activities directed at UCH in territorial and contiguous zone & other UCH through flag and port State jurisdiction
- Coastal State Control of activities directed at UCH by its nationals and flag vessels wherever they are conducted
- This is the Approach Adopted by the US, UK, France and Canada to protect the *RMS Titanic*

Conclusion

US Laws Protecting Maritime Heritage
are consistent with international law

Titanic Agreement, SMCA & NMSA
& certain provisions of UCH Convention
provide elements for model agreements
& implementation

