

Protection of UCH consistent with international law

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Overview

- International law regarding UCH as set forth in the Law of the Sea Convention
- US problems with UNESCO UCH Convention
 - ◆ Creeping jurisdiction on Cont. Shelf and EEZ
 - ◆ Treatment of Sunken Warships
- US protection of UCH on continental shelf/EEZ consistent with the Law of the Sea Convention
 - ◆ US flag state jurisdiction
 - ◆ Integration of UCH and natural resources into management allows use of natural resource jurisdiction under the Law of the Sea Convention

International Law & UCH

- Law of the Sea Convention-LOSC (1982)
- United Nations Educational Scientific Cultural Organization Convention on the Protection of Underwater Cultural Heritage (2001)
- US Multi-lateral, Bi-lateral International Agreements
 - ◆ *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)*
 - ◆ *Japanese Minisubs (in US Territorial Sea)*

Law of the Sea Convention

- International Legal Framework for matters at sea
- Maritime Zones, Rules & Rights of Navigation, Exploration & Exploitation of Natural Resources, Marine Scientific Research (MSR), etc.
- MSR does not include research of UCH
- Continental Shelf Resources do not include UCH
- EEZ economic activities – except commercial salvage of UCH
- Two Articles specifically address UCH

LOSC Articles on UCH

- Article 149 UCH Found in the Area
 - ◆ Preserve or dispose of UCH for the benefit of mankind as a whole
 - ◆ Particular Regard to Preferential Rights of State or country of origin, cultural origin, or historical and archaeological origin
- Article 303 UCH Found at Sea
 - ◆ Duty to Protect UCH found at Sea
 - ◆ Limit on Coastal State Jurisdiction of UCH out to Contiguous Zone (24 NM)
 - ◆ Savings clause for rights of identifiable owners, the law of salvage, etc.
 - ◆ No prejudice to other international agreements

UNESCO Convention on the Protection of the Underwater Cultural Heritage

- UNCLOS contemplated development of an international agreement for objects of an archaeological and historical nature found at sea [LOSC 303(4)]
- Prohibit unwanted salvage
- Codify Archaeological Principles - Annexed Rules
- Require Consistency with LOSC

- Two Important Issues that preventing the US, UK and some other Maritime Nations from signing the UNESCO Convention

Issues re: UNESCO UCH Convention

- “Creeping Jurisdiction” in EEZ/CS
 - ◆ High Seas Freedoms (Navigation)
 - ◆ Coastal State control in EEZ/CS Reporting, Regulations, Enforcement vs Foreign Vessels
- Treatment of Foreign Warships/Sunken State Craft in Territorial Sea – (UNESCO Consult w/foreign flag > US foreign flag Consent)

US Law & Policy on Warships and other Sunken State Craft

- President's Statement on Sunken State Craft-1999
 - ◆ Notice that U.S. maintains ownership of its sunken State craft unless expressly abandoned
 - ◆ No salvage unless express consent of US
 - ◆ Use existing law to protect all sunken State craft
- Sunken Military Craft Act – 2004
 - ◆ Protects US craft wherever located
 - ◆ Protects foreign craft over which US has jurisdiction
 - ◆ Encourages development of international agreements to protect sunken State craft

US UCH Law & Policy -High Seas

- Titanic Maritime Memorial Act of 1986
- NOAA Guidelines on Titanic 2001
- Agreement with UK on Titanic 2004

- Sunken Military Craft Act 2004

International Agreement to Protect RMS Titanic

- US, UK, France, Canada Multilateral Agreement
- Flag and Port State jurisdiction and control of ships and nationals
- Not extra-territorial jurisdiction or coastal State jurisdiction

Protecting UCH on Continental Shelf and in the 200 nm EEZ

- National Marine Sanctuaries Act (NMSA)
- Sunken Military Craft Act 2004

National Marine Sanctuary Regulations: UCH

- Prohibit Removal or Injury of UCH without permit
- Prohibit Alteration of the Seabed Also Used to Penalize the Digging into Seabed by “Looters”
- Enforcement of Regulations Upheld in Admiralty Court superceding any right to salvage as well as assertions under the Law of Finds

Presidential Proclamation of US 24 nautical mile Contiguous Zone

- “The [CZ of US] is a zone contiguous to territorial sea . . . in which the [US] may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws”
- “Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 [nm] of the baseline”

USS Monitor National Marine Sanctuary

- 17 nm offshore
- Regs prohibit removal, injury and even stopping in sanctuary w/o permit
- Proclamation of Contiguous Zone notice that US UCH laws will be enforced against foreign vessels and nationals

US 24 nm Contiguous Zone

- NMSA - NOAA National Marine Sanctuaries – USS Monitor
- Sunken Military Craft Act – President’s Statement on Warships & other Sunken State Craft
- Antiquities Act (UCH on Cont. Shelf)
- National Historic Preservation Act
- National Environmental Policy Act
- 1999 Proclamation of 24 nm Contiguous Zone

US UCH Laws in Territorial Sea

- States of US own and control abandoned shipwrecks w/in 3 nm
- UCH in Federal Marine Protected Areas protected regardless whether abandoned
- Sunken warships are protected - Respect ownership rights and interests of foreign sovereign over sunken warships (LaBelle, Spanish Galleons, UK Fowey, U-Boats, minisubs)

US UCH Statutes & Policies Protecting UCH in all of the US Maritime Zones

- Territorial Sea – AA, ASA & SMCA NMSA
- Contiguous Zone- NMSA, SMCA & Proclamation
- EEZ/CS – NMSA and AA may be used to protect UCH against foreign vessels and persons if coastal State jurisdiction is triggered by drilling or digging on the continental shelf; also can protect US sunken state craft wherever it is located
- High Seas – SMCA & Titanic Agreement - consistent w/int'l law

A WAY FORWARD

- ★ Need Congress to pass legislation implementing the Titanic Agreement and protecting abandoned UCH that is outside of state submerged lands and sanctuaries

Legislation to Control Salvage & other Activities Directed at UCH

- Legislation controlling salvage and other activities directed at UCH & related resources consistent w/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 installations and structures w/in meaning Art 60
- Clarify that foreign recovery of UCH that might involve “drilling” within the meaning of UNCLOS Article 81.

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
- Control the activities directed at UCH by your 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 UCH Laws are consistent with international law
- Titanic Agreement, NMSA and SMCA along with Certain Provisions of UNESCO UCH provide elements for model international agreements and implementation to protect UCH outside of territorial sea and contiguous zone, including the continental shelf, EEZ and High Seas