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THE 2001
CONVENTION'S
RELATION WITH
UNCLOS

A formal approach

Two consecutive treaties

UNCLOS

Article 311(2)

This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

A formal approach

Two consecutive treaties

UNCLOS

Article 311(5)

This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.

A formal approach

Two consecutive treaties

UNCLOS

Article 303(4)

This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

A formal approach

Two consecutive treaties

UNESCO Convention

Article 3

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.

A material approach

UCH definition and General principles

Beyond UNCLOS ?

Apparent contradictions ?

A material approach

UCH definition and General principles

UNCLOS

2001 CONVENTION

UCH definition

No definition of
Archaeological and
historical objects

All traces of human
existence having a
cultural, historical or
archaeological character
which have been
partially or totally under
water, for at least 100
years

A material approach

UCH definition and General principles

UNCLOS

2001 CONVENTION

Duty to protect and cooperate

Art. 301(1)

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

[+149 for the Area]

Art. 2(2)-(4)

"States Parties shall cooperate in the protection of underwater cultural heritage"

"States Parties shall, individually or jointly as appropriate, take all appropriate measures in conformity with this Convention and with international law that are necessary to protect underwater cultural heritage, using for this purpose the best practicable means at their disposal and in accordance with their capabilities"

A material approach

UCH definition and General principles

UNCLOS

2001 CONVENTION

Respect of sovereign rights

Art. 2(1) [TS]

“The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea”

Art. 7(1) [TS]

“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”

A material approach

UCH definition and General principles

UNCLOS

2001 CONVENTION

Respect of sovereign rights

Art. 2(1) [TS]

“The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea”

Art. 10(1) [EEZ/CS]

“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”

A material approach

Beyond UNCLOS ?

UNCLOS

2001 CONVENTION

Mankind / Humanity

Art. 149 [Area]

“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”

Art. 2(3) [all zones]

“States Parties shall preserve underwater cultural heritage for the **benefit of humanity** in conformity with the provisions of this Convention”

Art. 11(4)

Declaration of **interest** based on a **verifiable link**, particular regard being paid to the preferential rights

A material approach

Beyond UNCLOS ?

UNCLOS

2001 CONVENTION

Contiguous Zone

Art. 303(2)

“In order **to control traffic** in such objects, the coastal State may, in applying article 33, presume that their **removal** from the seabed 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 ”

Art. 8

“Without prejudice to and in addition to Articles 9 and 10, and in accordance with Article 303, paragraph 2, of the United Nations Convention on the Law of the Sea, States Parties **may regulate and authorize** activities directed at underwater cultural heritage within their contiguous zone. In so doing, they shall require that the Rules be applied”

A material approach

Beyond UNCLOS ?

UNCLOS

2001 CONVENTION

Law of salvage and commercial exploitation

Art. 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”

A material approach

Beyond UNCLOS ?

UNCLOS

2001 CONVENTION

Law of salvage and commercial exploitation

Art. 303(3)

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

Art. 4

“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

A material approach

Beyond UNCLOS ?

UNCLOS

2001 CONVENTION

Law of salvage and commercial exploitation

Art. 303(3)

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

Art. 2(7)

“Underwater cultural heritage shall not be commercially exploited”

Rule 2

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”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Legal status of sunken State vessels

Nothing is said

Art. 32 (TS) and Arts. 95-96 (HS)

Immunity of warships and other
government ships operated for non-
commercial purposes

Not a single word on wrecks

Art. 2(8)

“Consistent with State practice and international law, including the United Nations Convention on the Law of the Sea, nothing in this Convention shall be interpreted as modifying the rules of international law and State practice pertaining to sovereign immunities, nor any State’s rights with respect to its State vessels and aircraft”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Legal status of sunken State vessels

Nothing is said

Art. 32 (TS) and Arts. 95-96 (HS)

Immunity of warships and other government ships operated for non-commercial purposes

Not a single word on wrecks

Art. 7(3)

“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”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Legal status of sunken State vessels

Nothing is said

Art. 32 (TS) and Arts. 95-96 (HS)

Immunity of warships and other government ships operated for non-commercial purposes

Not a single word on wrecks

Art. 10(7)

“Subject to the provisions of paragraphs 2 and 4 of this Article, 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. 12(7)

“No State Party shall undertake or authorize activities directed at State vessels and aircraft in the Area **without the consent** of the flag State”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Exclusive Economic Zone / Continental Shelf

Arts. 58(2)

“In the **exclusive economic zone**, all States [...] enjoy, subject to the relevant provisions of this Convention, 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, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Exclusive Economic Zone / Continental Shelf

Art. 78(2)

“The exercise of the rights of the coastal State over the **continental shelf** must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention ”

Art. 16(6)

“In coordinating consultations, taking measures, conducting preliminary research and/or issuing authorizations pursuant to this Article, **the Coordinating State shall act on behalf of the States Parties** as a whole and not in its own interest. 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 the United Nations Convention on the Law of the Sea”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Exclusive Economic Zone / Continental Shelf

Art. 78(2)

“The exercise of the rights of the coastal State over the **continental shelf** must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention ”

Coastal State protecting its own's EEZ/CS

Art. 10(2)

Non-interference of UCH activities with its sovereign rights on exploration and exploitation

Art. 10 (4)

Urgent measures to prevent any danger to UCH

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Exclusive Economic Zone / Continental Shelf

Art. 78(2)

“The exercise of the rights of the coastal State over the **continental shelf** must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention ”

Art. 2(11)

“No act or activity undertaken on the basis of this Convention shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction”

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Exclusive Economic Zone / Continental Shelf

Art. 9(1)(b)(ii)

Reporting system

“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 reports to all other States Parties”

(Algeria, Argentina, Italy, Portugal, Saudi Arabia and Ukraine)

A material approach

Apparent contradictions ?

UNCLOS

2001 CONVENTION

Exclusive Economic Zone / Continental Shelf

Art. 92(1)

“Ships shall sail under the flag of one State only and [...] shall be subject to its exclusive jurisdiction on the high seas [...]”

Art. 94(1)

“Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”

Art. 9(1)(b)(ii)

Reporting system

“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 reports to all other States Parties”

(Algeria, Argentina, Italy, Portugal, Saudi Arabia and Ukraine)

Some **concluding** remarks

Two complementary treaties

Drafted in different environment

Codifying and progressively developing the law

Late arrivals in 1982 vs
constructive ambiguities in 2001

Art. 34 VCLT: *effet relative* of treaties

Closing the gaps of UNCLOS

UNCLOS can be changed by subsequent practice

The UNESCO Convention as a point of departure

Thank you

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25 International Journal of Marine and Coastal Law (2010)

“The Titanic as underwater cultural heritage: Challenges to its legal international protection” (with Ole Varmer)
44 (1) Ocean Development and International Law (2013)

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“Exporting Environmental Standards to Protect Underwater Cultural Heritage in the Area”
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