HISTORIC SHIPWRECK LEGISLATION: RESCUING THE TITANIC FROM THE LAW OF THE SEA

INTRODUCTION

On April 15, 1912, the *Titanic*, a supposedly unsinkable passengerliner, struck an iceberg and sank off the coast of Newfoundland.[1] In September 1985, seventy-three years later, a joint mission of French and American scientists finally discovered the ship's hidden underwater location.[2] The ship's discovery came at an inopportune time, because marine archaeology on the high seas is currently plagued with legal uncertainty.[3] None of the national or international laws concerning the seas determine the ownership of historical or archaeological objects found beyond any national jurisdiction.

In the past few decades, amazing advances in underwater technology have opened up a whole new world of exploration. Submarine riches are no longer found only in romantic dreams, the privilege of only a few professional divers.[4] Technological advances facilitate the discovery of archaeological treasures, but also present a variety of legal problems. Two important questions need to be answered. First, who has jurisdiction over various portions of the ocean for purposes of archaeological exploration? Second, who has the right to retrieve archaeological and historical objects,

1. The *Titanic* was the largest, most luxurious ocean liner afloat. She weighed 46,328 gross tons and was 882.5 feet in length. Luxury suites adorned with elegant furnishings and private promenade decks cost $4,350 for an Atlantic crossing.

   The ship was considered unsinkable—it had a double bottom and 16 watertight compartments, up to four which could be punctured before the ship would sink. With an invincible air, the *Titanic* set forth on her maiden voyage on April 10, 1912. Her route began in Southhampton, England. From there she went to Cherbourg, France, then to Queenstown, Ireland, and then she was to head for New York City. The ship carried 2,207 people, but only had lifeboats for 1,178.

   At about 11:40 p.m. the passengers experienced a minor jolt. The ship struck a black iceberg which inflicted a 300 foot gash to the bow of the ship, inundating five of the airtight compartments. At 12:05 a.m., Captain Edward Smith ordered all passengers on deck. By 12:15 the first distress call was sent from the wireless, and at 12:45 the first of the 20 lifeboats was lowered.

   About an hour and a half after the first lifeboat floated away from the ship, the stern of the *Titanic* came up out of the water. At 2:00, the *Titanic* slipped beneath the waves. Friedrich, *When The Great Ship Went Down*, TIME, Sept. 16, 1985, at 70.

2. For 16 days the United States oceanographic research vessel *Knorr* searched the seas some 400 miles south of Newfoundland as scientists viewed the sea-bed on video screens through cameras transmitting images from more than two miles below. At 1:40 a.m. on September 1, 1985, Dr. Robert Ballard made the first sighting. He saw a giant boiler on the ocean floor. It was surrounded by luggage, coal, and cases of wine. Then he could see the ship, mostly intact, and well preserved. Several weeks before this sighting, a French team on the research vessel *Suroit*, had used sonar to locate a massive object on the ocean floor near the place where the liner went down. With this information, the *Knorr* used the computerized submarine *Argo*, with its sonar, strobe lights and video equipment to locate the wreck. *See* Marback, Katz and Pedersen, *The Sea Gives Up a Secret*, NEWSWEEK, Sept. 16, 1985, at 44.

3. *See* Note, *Marine Archaeology and International Law: Background and Some Suggestions*, 9 SAN DIEGO L.REV. 668, 677 (1972).

4. These advances include the Aqua-lung, which Jacques Cousteau developed in the 1940's. Along with this, diving is relatively simple and scuba gear is not very expensive. Altes, *Submarine Antiquities: Legal Labyrinth*, 4 SYRACUSE J. INT'L L. & COMM. 77, 77 (1976).

and to whom do they belong?[5] Careful consideration of these questions in light of historical background sheds some light on problem solving measures that must be taken in the future.

In the past, states' have used various means to determine the ownership of objects found in the seas. Shipwrecks have traditionally been dealt with under the laws of salvage[6] and finds.[7] Using these common law concepts as a foundation, many states enacted specific statutes to alleviate possible litigation arising from matters concerning maritime antiquities. Nevertheless, none of these statutes adequately deal with the conferral of jurisdiction or ownership over archaeological or historic finds.[8]

The seas are divided into four basic zones: the territorial sea, the contiguous zone, the continental shelf, and the high seas.[9] While jurisdictional claims over the former three areas have not been perfected, the high seas remain by far the most problematic. The discovery of the *Titanic* exemplifies the problems arising when a historical object laying on the ocean floor, beyond any nation's jurisdiction, is discovered. While law of salvage provides one answer, the law of finds leads to a different solution.[10] Neither the first discoverer of a ship nor his nation should have the right to discern who has legal property rights over the historically valuable and scientifically significant objects raised. All concerned countries should reach an international agreement regarding property rights before any objects are raised, so that the concerns of all interested parties will be taken into account.

International guidelines for the exploration, research, and salvage of historic and archaeological objects are long overdue. This type of legislation can address the concerns of all peoples and nations, while also protecting the best interest of the wreck.

This note first reviews the historical aspects of shipwreck legislation, international conventions concerning such wrecks, common law solutions, and national laws regarding wrecks. It then describes the various zones of the seas while setting forth examples of shipwrecks found in the various zones and how courts have dealt with these situations. Finally, it considers the plight of the *Titanic*, and comments on a bill proposing international guidelines to protect the wreck.

INTERNATIONAL LAW OF THE SEA

From the 16th century until the middle 1900's the principle of "freedom of the seas" dominated international jurisprudence,[11] whereby the jurisdic-

5. Note, *Archaeological and Historical Objectives: The International Legal Implications of UNCLOS III*, 22. VA. J. INT'L L. 777, 780 (1982).
6. *See infra* notes 38-40 and accompanying text.
7. *See infra* notes 42-47 and accompanying text.
8. *See infra* notes 62-67 and accompanying text.
9. *See infra* notes 79-101 and accompanying text. A fifth zone, the exclusive economic zone, has recently been superimposed. "This is a zone which extends up to 200 miles from the baseline, within which a coastal state enjoys extensive rights in relation to the natural resources and other jurisdictional rights, and third states enjoy the freedom of navigation, overflight . . . and the laying of cables and pipelines." R. CHURCHILL & A. LOWE, THE LAW OF THE SEA 125 (1983). For a further discussion of this zone, see *id.* at 125-38.
10. *See infra* notes 37 and 42.
11. *See* Note, *supra* note 5, at 780. *See generally* P. JESSUP, THE LAW OF TERRITORIAL WATERS

tion of a coastal state only extended to a narrow territorial sea.[12] Following the Second World War, however, many states began to claim sovereignty over greater portions of the sea.[13] In an effort to control these claims, the United Nations created the International Law Commission.[14] This commission prepared articles for discussion at the First United Nations Conference on the Law of the Sea (UNCLOS I).[15] UNCLOS I produced four conventions: the Convention of the Territorial Sea and Contiguous Zone,[16] the Convention on the Continental Shelf,[17] the Convention on the High Seas,[18] and the Convention on Fishing and Conservation of the Living Resources on the High Seas.[19] Together these conventions formally introduced a functional division of maritime jurisdiction, rather than defining areas of national jurisdiction and considering the rest to be free seas.[20] A substantial number of the eighty-six states that attended UNCLOS I ratified the first three of these conventions.[21] This conference, however, could not resolve the problem of the breadth of the territorial sea.[22]

The Second United Nations Conference on the Law of the Sea (UNCLOS II), convened in 1960 to discuss the problem of the breadth of the territorial sea, among other things. This convention failed by only one vote to adopt a compromise formula.[23]

Prior to the Third United Nations Conference on the Law of the Sea (UNCLOS III), the United Nations General Assembly had established the Committee on Peaceful Uses of the Sea-Bed and Ocean beyond the Limits

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AND MARITIME JURISDICTION (1927); Kent, *The Historical Origin of the Three-Mile Limit*, 48 AM. J. INT'L L. 537 (1954).

12. Over time, a narrow three mile territorial sea gained recognition by many states. *See* Note, *supra* note 5, at 780, n.10.
13. These claims started with the Truman Proclamation in 1945, which claimed rights to the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coast of the United States, as appertaining to the United States, and subject to its jurisdiction and control. *See infra* note 68. This was soon followed by a host of unilateral claims of other states not claiming sovereignty over superjacent waters, but sovereignty over the water column, often up to 200 miles. *See* Note, *supra* note 5, at 781 n.11.
14. This commission consisted of 25 lawyers from various nations who developed new formulations and codified existing law. *See* F. KIRGOS, INTERNATIONAL ORGANIZATIONS AND THEIR LEGAL SETTING 250 (1977).
15. *See* International L. Comm'n Rep., 11 U.N. GAOR Supp. (No. 9), U.N. Doc. A/3159 (1956), *reprinted in* 57 AM. J. INT'L L. 154 (1957).
16. The territorial sea convention provided for a contiguous zone in which the state only had jurisdiction to "prevent infringement of its customs, fiscal, immigration or sanitary regulations." Within this zone, the state has the right to punish any violations. Convention on the Territorial Sea and the Contiguous Zone done April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter cited as Territorial Sea Convention].
17. This convention gives a coastal state "sovereign rights for the purpose of exploring and exploiting its natural resources." Convention on the Continental Shelf, done April 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5570, 499 U.N.T.S. 311 [hereinafter cited as Shelf Convention].
18. This convention sought to create maximum freedom of the sea beyond areas limited by national jurisdiction. Convention on the High Seas, done April 29, 1958, 13 U.S.T. 2313, T.I.A.S. No. 5200, 450 U.N.T.S. 82 [hereinafter cited as High Seas Convention].
19. Convention on Fishing and Conservation of the Living Resources on the High Seas, done April 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 258 [hereinafter cited as Fishing Convention].
20. *See* Note, *supra* note 5, at 781-82.
21. *See* R. CHURCHILL & A. LOWE, THE LAW OF THE SEA 14 (1983). These conventions were based primarily upon customary international law.
22. *See* Note, *supra* note 5, at 787.
23. The suggested compromise formula provided for a six mile territorial sea, and a six mile fishery zone. *Id.*

of National Jurisdiction (the Sea-Bed Committee). The purpose of this committee was to provide international control over the area of the sea which was beyond the jurisdiction of the states.[24] The Sea-Bed Committee was not initially concerned with the prospect of marine archaeology,[25] and the reports submitted by this committee failed to resolve several of the issues concerning marine archaeology in international waters.[26]

UNCLOS III brought together representatives from 160 countries in an attempt to formulate a comprehensive plan dealing with vital issues regarding international oceans.[27] The conference held its first meeting in 1973, working for several months each year until it finally adopted a convention in 1982.[28]

The convention in 1982 aroused the attention of diverse groups of people.[29] Their diverse interests complicated negotiations.[30] Difficulties in agreement upon the details of the legal regime of the international seas, among other things, delayed the adoption of the final text until 1982. By a vote of 130 to 4, with 17 abstentions, the final draft of the convention was adopted.[31] The portion of the convention dealing with the deep sea-bed was

24. Note, *supra* note 5, at 788. *See also* Study of International Machinery: Report of the Secretary-General, U.N. Doc. A/AC. 138/23 (1970). An international sea-bed authority (the Authority) would be established to support the various forms of resource exploitation.

25. It was not until 1971 when the Greek delegation submitted a working paper to the sub-committee proposing that "archaeological and historic treasures from beyond the limits of national jurisdiction" be included as a topic of discussion, that the committee took note of such concerns. U.N. Doc. A/AC 138/54 (1971), *reprinted in* the Report of the Committee on Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction, 26 U.N. GAOR Supp. (No. 21) at 194, U.N. Doc. A/8421 (1971). Greece and Turkey both later requested that the Authority assume control over archaeological objects. Greece also followed later with a proposal that the Authority have the power to dispose of these objects after considering the preferential rights of the state of origin. Note, *supra* note 5, at 789.

26. *See* Reports of Sub-Committee I, appendix III, Report of the Committee on Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, 28 U.N. GAOR Supp. (No. 21, Vol. 21) at 39, U.N. Doc. A/9021 (1973).

27. These issues included the breadth of the territorial sea, exploitation of the ocean floor, problems of overfishing and marine pollution, and scientific research. Note, *supra* note 5, at 777, n.1.

28. *See generally* Oxman, *The Third United Nations Conference on the Law of the Sea: The 1976 New York Sessions*, 71 AM. J. INT'L L. 247 (1977); Oxman, *The 1977 New York Session*, 72 AM. J. INT'L L. 57 (1978); Oxman, *The Third United Nations Conference on the Law of the Sea: The Ninth Session* (1980), 75 AM. J. INT'L L. 211 (1981).

29. This convention not only affected lawyers and other legal scholars, but it also included the interests of, among others, archaeologists and historians—people whose vital concerns are often neglected when considering this convention's effect. Furthermore, each state represented at this convention had its own interests to defend. Note, *supra* note 5, at 777-78.

30. A number of competing factions soon emerged. Most prominent among these factions was a group more commonly known as the Group of 77. This was a group of developing states which in fact included approximately 120 states. *See* R. CHURCHILL & A. LOWE, *supra* note 21, at 159. Others included landlocked and geographically disadvantaged states, groups of archipelagic and of straits, and groups of "coastal" and "maritime" states.

Because the positions taken by the states at the outset of the convention were too far apart, the presumption of an agreed basis of discussion was not even a practical possibility. There was little point in adopting measures by majority vote because major maritime states, on whose acceptance the efficacy of the convention depended, could easily have been outvoted by other participants. Therefore, the states agreed to proceed by a consensus—searching for areas of maximim agreement. *Id.* at 16.

31. Israel, Turkey, the United States and Venezuela voted against the convention; Belgium, Bulgaria, Byelorussia, Czechoslovakia, the German Democratic Republic, the Federal Republic of Germany, Hungary, Italy, Luxemborg, Mongolia, the Netherlands, Poland, Spain, Thailand, the Ukraine, the USSR and the United Kingdom abstained. *Id.* at 20, n.6.

The consensus approach proceeded from 1975, to the production of a series of "negotiating texts" which contained draft articles on all topics under consideration by the chairman of the

exceptionally and precisely detailed. The unacceptability of some of these details caused some of the negative votes and abstentions.[32]

EARLY DEALINGS WITH HISTORIC SHIPWRECKS

International legislation regarding the law of the sea was not the result of a new problem confronting the United Nations. It evolved from customary international legal problems. Discussion of some of the early methods of dealing with historic shipwrecks may help further an understanding of present day legislation.

An early theory applied to shipwreck recovery was that of abandonment. Abandonment[33] occurs either by deliberate desertion or by relinquishment of a search after an unintentional loss.[34] Whether the object has been abandoned depends upon the owner's intent. If his intent was to abandon and he completes some act or fails to act, which indicates his intention, then the object is declared abandoned and the owner can neither claim nor retain any interest in the object.[35] The well-established common law principle that follows from this is that the finder of lost or abandoned property may exercise complete dominion and control over it if he possesses the property.[36]

Another early method used to deal with historic shipwrecks is the law of salvage.[37] Salvage is "the compensation allowed to persons by whose voluntary assistance a ship or her cargo or both have been saved, in whole or in part, from impending peril, or in recovering such property from actual peril or loss, as in the case of shipwrecks . . . ."[38] In an effort to make the law

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conferences' three main committees. These negotiating texts resulted from the non-acceptance by the United States of some of the conferences' early positions. *Id.* at 16. See *infra* note 32. Early negotiating texts represent the emerging consensus on the part of the delegation. The Informal Single Negotiating Text (ISNT) exemplifies this. Informal Single Negotiating Text, U.N. Doc. A/CONF.62/WP.8 (1975). The first two paragraphs were simply a culmination of the Sea-Bed committees' earlier drafts. However, the ISNT was short lived, and soon followed by the Revised Single Negotiating Text (RSNT). Revised Single Negotiating Text, U.N. Doc. A/CONF.62/WP.8 Rev. 1 (1976). As with other subsequent texts, the RSNT evidenced an increasing level of agreement on the essential issues such as the extent of the territorial sea, legal regimes of the territorial sea, contiguous zone, continental shelf, exclusive economic zone and high seas, and the regulation of scientific research and maritime pollution. R. CHURCHILL & A. LOWE, *supra* note 21, at 16.

32. R. CHURCHILL & A. LOWE, *supra* note 21, at 16. Some of the details causing the problems included the composition and voting procedure within the organs of the Authority, the exploitation process, the system of dispute settlement, preferences to be applied, and the payment of revenues. *See* I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 236 (1979).

33. Abandonment is "the surrender, relinquishment, disclaimer or cession of property or of right." BLACK'S LAW DICTIONARY 2-4 (5th ed. 1979).

34. *See* Note, *Cultural Resources Archaeology: Some Notes on the Current Legal Framework and a Model Underwater Antiquities Statute*, 15 SAN DIEGO L.REV. 623, 628 (1978).

35. *See id.* at 628-29. *See also* 1 AM. JUR. 2d *Abandoned, Lost, Etc., Property* § 1 (1962).

36. *See* Note, *supra* note 34, at 629. "The finder of [an abandoned] wreck, would be entitled to the property as owner, or to its possession as salvor, and would be protected from interference of third persons with his possession." Eads v. Brazelton, 22 Ark. 499, 499 (1861).

37. Salvage has its roots in the Rhodian maritime code. 3A M. NORRIS, BENEDICT ON ADMIRALITY § 5 (7th. ed. 1980). This law was partially preserved by the Romans. *Id.* § 6. Roman law rewarded volunteers for salvage services under the doctrine of unjust enrichment. *See* Comment, *Treasure Salvage: The Admirality Court "Finds" Old Law*, 28 LOY. L. REV. 1126, 1127 (1982). Under this principle, a person should not be permitted to unjustly enrich himself at the expense of another, but should be required to make restitution for property or benefits received, where it is just or equitable that such restitution be made. BLACK'S LAW DICTIONARY 1377 (5th. ed. 1979).

38. The Sabine, 101 U.S. 384, 384 (1879).

of salvage uniform throughout the states, many nations, including the United States, adopted an international agreement known as the Salvage Convention of 1910.[39] The policy behind the salvage law was twofold. First, it induced individuals to save lives and property at sea. Second, it facilitated the return of salved property to its owner.[40]

Discussion of the frequently applied general maritime law of salvage requires consideration of the relatively undeveloped law of finds. Under this doctrine, title to abandoned property vests in the person who reduces the property to possession.[41] Recently, courts have applied the law of finds more frequently than the law of salvage in historic shipwreck cases. The law of finds includes those circumstances under which a party is said to have acquired "ownerless" property,[42] that is property either without a prior owner or abandoned.[43] Therefore, the finder of things that have never been appropriated, or that have been abandoned by their former occupant, may take them into possession as their own property and be considered the rightful owner against all but the original owner.[44] Thus, the law of finds protects a finder of goods from interference by others, and vests title to the property in the finder who meets all the requisite criteria.[45] In contrast, under salvage law title to the property salved does not pass to the salvor, but remains in the owner.[46]

In *Treasure Salvors, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*,[47] the plaintiff claimed ownership of property salved from a

39. 37 Stat. 1658, T.S. No. 576; 212 Parry's T.S. 187 (1913). This is one of the earliest of the so-called Brussels Conventions. It was taken as essentially codifying American salvage principles. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 8-1 (2d ed. 1975).

40. *See* The "Blaireau," 6 U.S. (2 Cranch) 240, 266-67 (1804). *See also* Treasure Salvors, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 640 F.2d 560, 567 (5th Cir. 1981). One of the policies underlying salvage is that the salvor return the salved property to its rightful owner. Salvage also vests the salvor with exclusive right of possession until his right has been satisfied. *Id.*

41. Treasure Salvors, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 569 F.2d 330, 337 (5th. Cir. 1978) [hereinafter cited as *Treasure Salvors* II].

42. *See* Hener v. United States, 525 F. Supp. 350, 356 (S.D.N.Y. 1981).

43. *See* Comment, *supra* note 37, at 1132-33.

44. Eads v. Brazelton, 22 Ark. 499, 501 (1861). The finder of anything which is actually lost is considered its rightful owner against all but the original owner. *Id.* "In the case of property thus derelict and abandoned, either on the high seas, or anywhere else, it belongs to the first finder who reduces it to possession." *Id.* at 509.

45. These criteria consist of occupancy of the thing and intention to appropriate the property to oneself. *Id.* at 509-11.

46. *See* Comment, *supra* note 37, at 1134. Because the finder must have possession of the property, the law of finds also requires that the property be necessarily located for the law to apply. This is not true of salvage law, which may be applied in absence of the *res*. *Id.*

47. 640 F.2d 560 (5th Cir. 1981) [hereinafter cited as *Treasure Salvors* III]. This case illustrates the application of the law of finds. It involved the finding of a Spanish sailing vessel, the Nuestra Senora De Atocha (the Atocha). This ship was lost during a hurricane off the Florida Keys in 1622. Soon after the wreck, the Spaniards attempted to reach the Atocha, but found her submerged in 55 feet of water with the holds battened down. Since the sailors were unable to reach the treasure, they marked the wreck with a buoy and attempted to salvage another of the eight sunken vessels. Later, in October of 1622, another hurricane broke up the hull of the Atocha, burying it underneath the sand. Finally, in 1623, the Spanish completely abandoned their search for the Atocha. *See* Comment, *supra* note 37, at 1135.

In the mid-1960's, a group of salvors, relying upon Spanish archival reports, began to search for the Atocha. After an intensive search they found an anchor some nine miles off the coast of the Florida Keys. At this time these were thought to be the territorial waters of Florida. Shallcross and Giesecki, *Recent Developments in Litigation Concerning the Recovery of Historic Shipwrecks*, 10 SYRACUSE J. INT'L L. & COMM. 371, 374 (1983). The treasure of the Atocha which was thought to include 160 gold bullion pieces, 900 silver ingots, over 250,000 silver coins, 600 copper

sunken galleon under the general principle of maritime law that "where a vessel had been abandoned [at sea] the finder in possession becomes the owner of the vessel."[48] By undertaking to salvage this vessel, the Treasure Salvors argued that their efforts effectuated possession and that they, therefore, were entitled to ownership.[49] The United States based its claim to ownership on the Antiquities Act,[50] the Abandoned Property Act,[51] the Outer Continental Shelf Lands Act,[52] and the theory of sovereign prerogative.[53]

Applying the law of finds, the court rejected the government's claims of ownership and adjudicated the Treasure Salvors as finders and therefore owners. The court determined that none of the acts relied on by the United States conferred governmental ownership.[54] In response to the govern-

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plates, 350 chests of indigo, and 25 tons of tobacco, had as estimated 1978 value of $250 million. *Treasure Salvors* II, 569 F.2d at 333. The Treasure Salvors recovered about six million dollars in treasure, at a cost of four lives and two million dollars. *Id.* Nevertheless, the salvors found that the battle they fought with the sea was not nearly as oppressive as the legal battles they would encounter in the courts.

48. Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 408 F. Supp. 907, 909 (S.D. Fla. 1976) [hereinafter cited as *Treasure Salvors* I]. The salvors, who believed that the treasure lay upon the submerged lands of Florida, contracted with the State of Florida to grant 25% of the recoveries to the State in return for the right to conduct salvage operations. *See* Comment, *supra* note 37, at 1136. But in 1975, the Supreme Court, in an unrelated case, held the ocean floor upon which the ship lay to be the outer continental shelf and therefore United States territory. United States v. Florida, 420 U.S. 531 (1975), *decree entered* 425 U.S. 791 (1976).

49. *Treasure Salvors* I, 408 F. Supp. at 909.

50. 16 U.S.C. §§ 431-433 (1982). The Antiquities Act authorizes the President to "declare by public proclamation historic landmarks, historic and prehistoric structures and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States as national monuments." *Id.* § 431. Permits for the examination of ruins, excavation of archaeological sites, and gathering of objects of antiquity laying upon lands under their respective jurisdictions are granted by the Secretaries of Interior, Agriculture, and Army. *Id.* § 432. "Any person who appropriates, excavates, injures or destroys any historic ruin or monument situated on lands owned or controlled by the Government of the United States, without permission shall upon conviction be fined or imprisoned." *Id.* § 433.

51. 40 U.S.C. § 310 (1982). The Abandoned Property Act authorizes the Administrator of General Services "to make contracts and provisions as he may deem necessary for the interest of the Government for the preservation, sale, or collection of any property, or the proceeds thereof, which may have been wrecked or abandoned or become derelict, being within the jurisdiction of the United States." *Id.*

52. 43 U.S.C. §§ 1331-1356 (1982). The government maintained that the effect of 43 U.S.C. § 1332 *et seq.* was to bring an abandoned vessel within the jurisdiction of the United States.

53. *See infra* note 55. The rule of sovereign prerogative has its roots in early common law. Any property which was abandoned at sea was categorized as wreck, jetsam, flotsam, or lagan. *See* Note, *supra* note 34, at 630. A wreck is any ship that is lost at sea and its cargo thrown upon land. Jetsam is where goods are cast into the sea, sink, and remain underneath the water. Flotsam is where goods continue to swim on the surface of the water. Lagan (also known as ligan) is where the goods are sunk at sea, and tied to a buoy in order to be found again. *See id.*

According to sovereign prerogative, wrecks that reached the shore belonged to the crown. *See* Note, *supra* note 34, at 631. "For it was held that, by the loss of the ship, all property was gone out of the original owner." 1 W. BLACKSTONE, COMMENTARIES *280. The English rule is that property found abandoned is held for a year and a day. If the owner fails to claim the property within this time, it reverts to the sovereign. *See* Comment, *supra* note 37, at 1142. In 1275, this principle was codified in the Statute of Westminster. 3 Edw. 1, C. 4.

Although the statute only refers to wrecks, it was later expanded by the courts. In 1601, the court in Constable's Case, held that sovereign prerogative extended to flotsam, jetsam and lagan, thereby extending the King's right to this property. Constable's Case, Eng. Rep. 218 (K.B. 1601). Also, in 1798 an admiralty court stated that as a general rule, property found abandoned at sea belonged to the sovereign. The "Aquila," 1 C. Rob. 36, 165 Eng. Rep. 87, 87 (Adm. 1798).

54. The court found that the Antiquities Act did not apply because the ship was not on land owned or controlled by the United States. *Treasure Salvors* I, 408 F. Supp. at 910. For the Antiquities Act to apply, the wreck must lay upon lands owned or controlled by the United States. The Atocha was

ment's claim of sovereign prerogative, the court stated that "Congress has not exercised its sovereign prerogative to the extent necessary to justify a claim for an abandoned vessel located on the outer continental shelf."[55]

As illustrated in *Treasure Salvors*, American courts generally tend to favor the finder of the property, over the claims of a sovereign.[56] Some courts, however, have favored the sovereign over the finder when dealing with historic properties.[57] This usually occurs when the abandoned *res* is something that might be acquired for public use and enjoyment over a long period of time.[58]

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located on the Outer Contintental Shelf. *Id.* Furthermore, the Abandoned Property Act was found only to apply to property abandoned as a consequence of the Civil War. *Id. See also Treasure Salvors* II, 569 F.2d at 342.

The court also found that even though the Atocha lay upon the outer continental shelf, the Outer Continental Shelf Lands Act did not apply because the government enacted this law to assert ownership and jurisdiction over mineral resources, and not to assert ownership of marine antiquities. *Treasure Salvors* I, 408 F. Supp. at 910. *See also Treasure Salvors* II, 569 F.2d at 338. Finally, the court stated that "[t]his court finds that the property of the wreck in this case is neither within the jurisdiction of the United States nor owned or controlled by the government." *Treasure Salvors* I, 408 F. Supp. at 910.

The court further complicated the government's jurisdiction claim when it held that the Geneva Convention on the Continental Shelf would not permit a liberal construction of the terms "natural resources." *Id.* The 1958 Geneva Convention on the Continental Shelf provides that a coastal state may exercise sovereign rights over the continental shelf only for exploring and exploiting natural resources. *See* Shallcross and Giesecki, *supra* note 47, at 377. Since the United States adopted the Shelf Convention after passage of the Outer Continental Shelf Lands Act, the Shelf Convention supercedes any incompatible language that appears in the Outer Continental Shelf Lands Act. *See* United States v. Ray, 423 F.2d 16, 21 (5th Cir. 1970).

55. *Treasure Salvors* I, 408 F. Supp. at 911. Unlike the English rule of sovereign prerogative, the American rule gives title and ownership to the first person to reduce the salvaged property to possession, where such property is not claimed by the original owner. Note, *Property Rights in Recovered Sea Treasure: The Salvor's Perspective*, 3 N.Y.L. SCH. J. INT'L & COMP. L. 271, 287 (1982). The American rule requires the sovereign to exert ownership through a legislative enactment. *Id.*

There are two main justifications for this rule. First, the United States does not apply pure English common law, but rather a modified common law which existed and was adopted by the colonies prior to 1776. Second, although the United States Government may have an inherent power to assert ownership in salvaged property, it has not done so. *Id. See also* Kenny and Hrusoff, *The Ownership of the Treasure of the Sea*, 9 WM. & MARY L. REV. 383, 390 (1967).

In *Treasure Salvors* II, the Fifth Circuit summarily rejected the sovereign prerogative argument because the court accepted "the 'American Rule' as it has been uniformly pronounced in the courts of this nation for over a century." *Treasure Salvors* II, 569 F.2d at 343. The court further stated that neither the Abandoned Property Act nor any other legislation said to incorporate the British rule has done so effectively. *Id.* at 341-42.

56. *See, e.g.*, United States v. Tyndale, 116 F. 820 (1st Cir. 1902); Thompson v. United States, 62 Ct. Cl. 516 (1926). It is not clear that the courts in the United States are bound to follow the American rule. The uniformity of the American court decisions in favor of the finders was broken when the courts were asked to decide the ownership of the property that had cultural and historic value, along with its commercial value. *See* Note, *supra* note 55, at 286-88.

When the original owner is known and reasserts his claim, American courts generally follow the English rule and observe the owner's rights above all others. *See* Kenny and Hrusoff, *supra* note 55, at 393.

57. Three state courts upheld the rule of sovereign prerogative when they found a strong public interest in the property. These cases include State *ex rel.* Ervin v. Massachusetts Co., 95 So.2d 902 (Fla. 1956), *cert. denied*, 355 U.S. 881 (1957); Bruten v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482 (1968); Plataro, Ltd. v. Unidentified Remains of a Vessel, 371 F. Supp. 356 (S.D. Tex. 1973), *rev'd on other grounds* 508 F. 2d 1113 (5th. Cir. 1975).

58. In a recent case, Plataro, Ltd., Inc. v. Unidentified Remains of a Vessel, 371 F. Supp. 3565 (S.D. Tex.), *rev'd on other grounds* 508 F.2d 1113 (5th Cir. 1975), a federal district court awarded ownership of the property recovered from a Spanish galleon to Texas. After tracing the ownership back to the date of the wreck (1554), the court applied Spanish law in effect at that time. This law resembled the British "one year and a day" rule (*see supra* note 53). The court held that the state retained title through successive governments. Note, *supra* note 55, at 289. However, on remand

NATIONAL LAWS GOVERNING WRECKS

The international laws regarding the sea resulted from the common and civil laws of many nations. The laws reflect a culmination of the concerns of many nations protecting their own interests.

Three general principles appear to guide many of the nations. First, that property can be a *res nullius* (a thing which has no owner). This property is either *res derelictae* (truly abandoned), or an object which never had an owner, or *res nullius* by the fact that all *ayant-droit* (interested parties) are known to be dead.[59] Second, there are those objects which are private property. Finally, there are those objects never formally abandoned by their owner and over which the owner may still exercise his rights.[60] Several countries consider a person to have perpetual rights in their property; i.e. the owner does not lose his rights simply by non-use, but has merely lost possession.[61]

Many states adopted specific statutes to alleviate possible litigation on matters of maritime antiquities.[62] France, for example, allows a magistrate (Ministre de la Marchande) to terminate the rights of owners of property sunk in French waters.[63] In 1962, Spain directed that "the State acquires

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to determine the proper salvage award, the district court awarded the entire value to the salvors. Plataro, Ltd., Inc., v. Unidentified Remains of a Vessel, 518 F. Supp. 816 (W.D. Tex 1981).

59. *See* Altes, *supra* note 4, at 84-85.

60. *See id.*

61. *See id.* The story of the wrecks of the Dutch East India Company (VOC) exemplifies this position. The VOC dissolved in 1798, with its rights and liabilities taken over by the Dutch State. In 1966, bullion which was official VOC cargo was recovered from a vessel that was wrecked in the Shetland Islands in 1711. The Dutch State claimed ownership. The British Crown recognized its claim. Altes, *supra* note 4, at 84. In 1969, a contractor's drag line dug up cannons and wine bottles from the *Amsterdam*, another VOC ship beached off Hastings in 1749. Again the Dutch State lodged a claim, this time for the entire vessel, and England recognized its claim. *Id. See generally* Marsden, *The Wreck of the Dutch East Indiaman Amsterdam Near Hastings, 1749: An Interim Report*, 1 INT'L J. NAUTICAL ARCHAEOLOGY & UNDERWATER EXPLORATION 73 (1972).

By the end of 1972, the Dutch reached an agreement with the Australian government concerning the ships in Australian waters. The western Australian coast and the sea-bed adjacent thereto harbor many ships, wrecked in the 17th century, on their way to the East Indies. Lumb, *Australia and the Law of the Sea: Recent Developments*, 29 INT'L & COMP. L.Q. 151, 162 (1980). Under the 1972 agreement, the Dutch, as successor in interest to the VOC assets, transferred their rights and title in the shipwrecks to Australia. Historic Shipwreck Act No. 190 of 1976, Art. 1. In return, the Australian government recognized the continuing interest of the Dutch in the salvaged articles. The Dutch understood this to mean one-third of the recovery. Altes, *supra* note 4, at 286. This agreement fared well until 1970.

A dispute arose over the salvage of one of the vessels off the Australian coast, the "Guilt Dragon." The High Court of Australia determined that the jurisdictional rights of the Commonwealth government (Dutch) were paramount to those of the Western Australian government over the wrecks and salvage. Lumb, *supra* note 61, at 163. *See* Robinson v. the Western Australian Museum, (1977) 51 A.L.J.R. 806.

This court's decision reflected the findings of other courts in different parts of the world. Two similar cases illustrating this concept of perpetual ownership of properties involve German submarines sunk in World War I and World War II. The Norwegian Supreme Court in 1970 and the Singapore High Court in 1974 declared that the mere lapse of time would not divest the German state of its proprietary interest in their submarines. Altes, *supra* note 4, at 86.

62. Antiquities are "the relics or monuments of ancient times." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 96 (1966).

63. *See* Altes, *supra* note 4, at 87. The Decret contained a whole chapter on wrecks of archaeological interest which belonged to the state. The Administrateur de l'Inspection Maritime may leave a wreck to a salvor, or he may request incorporation into a public collection. If incorporated, the French Government would reward the salvor. When dealing with the salvage process itself, the state may issue a license to a private enterprise, or it may conduct operations itself. *See id.* at 88.

ownership of all sunken ships and cargo three years after the event."[64] Prior to the passage of the British Protection of Wrecks Act in 1973,[65] Britain experienced shortcomings in their laws governing historic shipwrecks. The Protection of Wrecks Act, however, allowed the Secretary of State to restrict an area if it was proven that there might be a vessel of historical importance on the sea-bed.[66] However, this Act did not address the question of ownership, and lacked provisions for funds or personnel to service the measures.[67]

UNITED STATES LEGISLATION DEALING WITH HISTORICAL SHIPWRECKS

The United States has both federal and state laws dealing with marine antiquities. The Truman Proclamation of 1945 marked the beginning of the United States' quest to assert federal jurisdiction over its submerged lands and resources.[68] Later federal enactments included: the Submerged Lands Act,[69] which gave the resources of the submerged lands in the territorial sea to the coastal states; the Outer Continental Shelf Lands Act,[70] which retains control over the continental shelf for the United States;[71] and the Natural Historic Preservation Act of 1966,[72] which advances a policy of preservation of historic sites and objects of antiquity.[73] Even though these acts appear clear on their faces, it is not clear whether any of them confer jurisdiction over archaeological resources as well as natural ones.

In response to what they perceived to be inadequate federal legislation, coastal states enacted their own laws to deal with the salvage problems. Florida, for example, passed its first regulatory legislation in 1965, following the salvage of a Spanish Flota Plata.[74] Florida has since passed the

64. *See id.* at 87 (citing Estatuto No. 60/62 of Dec.24, 962. (1962) Boletin Official del Estado, No. 310, at 18, 169 *et seq.* (Spain)).
65. Protection of Wrecks Act, 1973, ch.33.
66. In a restricted area, no diving or other work can be done without a license granted by the Secretary of State. Only competent salvors can acquire a license, which is subject to conditions and restrictions. An advisory board of experts, along with an independent chairman, considers application for designation and licenses. *See id.*
67. *Id.*
68. *See* Note, *supra* note 34, at 641. This proclamation stated that "the Government of the United States regards the natural resources of the subsoil and the seabed of the continental shelf of the High Seas but contiguous to the coast of the United States as appertaining to the United States. . . ." Proclamation No. 2667, 3 C.F.R. 167 (1945), *reprinted in* 13 DEP'T ST. BULL. 485 (1945). *See also* Antiquities Act of 1906, (*supra* note 50) and Historic Sites, Buildings, and Antiquities Act of 1935, 16 U.S.C. §§ 461-467 (1982).
69. 43 U.S.C. §§ 1301-1315 (1982). Under the Submerged Lands Act, the State possesses ownership rights to the submerged lands which extend three miles into the ocean. *Id.* § 1311. *See* Note, *State Ownership of the Marginal Sea Around the Channel Islands National Monument*, 18 URB. L. ANN. 313, 313 (1980).
70. 43 U.S.C. §§ 1331-1356 (1982).
71. In *Treasure Salvors* I, however the court determined that the United States did not have jurisdiction over the continental shelf when dealing with marine antiquities. The court found that the property of the wreck was neither within the jurisdiction of the United States nor owned or controlled by the government. *Treasure Salvors* I, 408 F. Supp. at 910.
72. 16 U.S.C. §§ 470-470w-6 (1982).
73. This statute is the most definitive of the national policies regarding preservation of historic sites and objects of antiquity.
74. Antiquities Act of Aug. 4, 1965, 1965 Fla. Laws ch. 65-300 §§ 1-8 (repealed in 1967). This Spanish ship sank off the coast of Cape Canaveral in 1715, and was valued at approximately two million dollars. *See* Altes, *supra* note 4, at 90.

Archives and History Act[75] which protects all sunken antiquities within three miles of the Florida baseline. North Carolina enacted legislation after a lawsuit in 1968 between the state and a diving organization regarding the salvage of five Confederate blockade runners and a Spanish privateer.[76]

JURISDICTION OVER THE SEAS

The most important aspect of the law of the sea concerns the question of who has jurisdiction over which parts of the seas. A state usually declares jurisdiction over a particular part of the sea as a result of its sovereign rights over that territory.[77] The purpose of sovereignty over territorial waters is twofold: first, a clearly defined territory is an essential element of statehood; second, a state needs to maintain sovereignty in order to function internally without interference from external forces.[78] An in-depth look at the various bases of jurisdiction claimed over particular portions of the sea provides a meaningful example of the validity of a claim of territorial sovereignty over historic shipwrecks in the sea.

Territorial Sea

Coastal states exercise various types of jurisdiction over their waters depending on the legal characterization of the particular region.[79] Inland waters are treated as part of a state's defined territory.[80] Therefore, access to marine archaeological sites in inland waters is subject to the complete control of the sovereign.[81] The territorial sea is an area of water, including its sea-bed and air extending a defined distance[82] from the established baseline of a coastal state out into the sea.[83] Within this area, a state exercises sovereignty which almost equals that allowed over internal waters. Since the coastal states exercise sovereignty over the territorial sea and the underlying sea-bed, they have jurisdiction over all objects found in those areas. As

75. FLA. STAT. ANN. §§ 267.011-267.153 (West 1975 & Supp. 1985).
76. Salvage of Abandoned Shipwrecks and Other Underwater Archaeology Sites, N.C. GEN. STAT. §§ 121.1-121.42 (1979); State v. Flying "W" Enterprises, 273 N.C. 399, 160 S.E. 2d 482 (1968). Here the court stated that inasmuch as North Carolina in its sovereign capacity had a possessory right or title to sunken vessels which lay unattended and abandoned for more than 100 years within the territorial limits of the state, the defendants, in removing objects therefrom, were trespassing. *Id.* at 482-83. Through this legislation, the State purported recognition of ownership under the age-old rule of English Royal Wreck Prerogative. Other state legislation concerning salvage includes: Control of Certain Salvage Operations (S.C. CODE ANN. §§ 54.710-54.760 (Law. Co-op 1976)); Protection, Preservation and Investigation of Archaeological Sites, Antiquities and Artifacts on State Properties (GA. CODE ANN. § 40-813a to -814a (1975 & Supp. 1985)); Antiquities Code (TEX. REV. CIV. STAT. ANN. art. 6145-9 (Vernon 1970)).
77. This is usually the part of the sea that lies contiguous to its coastline.
78. Sovereignty over a state's territorial waters is not fundamental to a coastal state's existence. Territorial sovereignty over a coastal state's adjacent waters originated to provide security for the state's land and population, and to sustain an economy supported by sea resources. Note, *supra* note 3, at 678. *See* C. COLUMBOS, THE INTERNATIONAL LAW OF THE SEA 70 (1954).
79. *See* Note, *supra* note 3, at 673.
80. *See id.*
81. *See id.*
82. At present, the width of a state's territorial sea varies from 3 to 200 miles, and this variation has not been solved by international law.
83. *See* Note, *supra* note 3, at 673. The Territorial Sea Convention provides that "the sovereignty of a state extends beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea." Territorial Sea Convention, *supra* note 16, art. (1).

with internal waters, the laws of the coastal states pertaining to archaeological excavations and exploitation apply in the territorial sea of the coastal state.[84]

Access to marine archaeological sites in a territorial sea is dependent upon each state's individual claim to coastal jurisdiction. This results in a lack of uniformity and uncertainty as to rights of access. Although many states consider their territorial sea to be an extension of their land, this area possesses an international character.[85] These principles, however, have not prevented litigation over rights to shipwrecks laying in these waters.

The *Cobb Coin*[86] case illustrates some of the problems encountered by a state attempting to assert jurisdiction over its territorial waters. In *Cobb Coin*, the wreck of a Spanish treasure galleon[87] was found within the three-mile limit over which Florida asserted control. The state contended that the Florida Archives and History Act,[88] which includes salvage of underwater antiquities, applied to this wreck.[89] The salvors filed an action in federal court asking to be declared owner of the vessel or, in the alternative, to be awarded compensation for their services.[90] In finding the state statute unconstitutional, the court concluded that a state's regulation of a historic shipwreck interferred with federal principles of admirality and maritime law,[91] thus violating the supremacy clause of the Constitution.[92]

84. Note, *supra* note 5, at 783. See H. MILLER, INTERNATIONAL LAW OF MARINE ARCHAEOLOGY 17 (1973).

85. These waters are subject to the right of innocent passage and right of entry in distress. *See* Note, *supra* note 3, at 678. It is also understood that the ocean is a continuous body whose resources and phenomena cannot be bound by any artificial means. *See id. See generally* Owen, *Some Legal Troubles with Treasure: Jurisdiction and Salvage*, 16 J. MAR. L. & COMM. 139 (1985).

86. Cobb Coin Co. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 525 F. Supp. 186 (S.D. Fla. 1981) [hereinafter cited as *Cobb Coin* I]; Cobb Coin Co. v. Unidentified Wrecked and Abandoned Sailing Vessel, 549 F. Supp. 540 (S.D. Fla. 1982) [hereinafter cited *Cobb Coin* II].

87. This ship was from the Plate Fleet, which reportedly sank off the coast of Florida in 1715. *Cobb Coin* I, 525 F. Supp. at 190.

88. Archives and History Act, FLA. STAT. ANN. § 267.011-267.153 (West 1975 & Supp. 1985). Section 267.061(B) states that "[i]t is further declared to be the public policy of the state that all Treasure Trove, artifacts and such objects having intrinsic or historic and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall belong to the State." *Id.*

89. *Cobb Coin* I, 525 F. Supp. at 190.

90. A battle soon began with Florida asserting its claim under the laws of the state, and the salvors seeking protection in the courts. The court issued an injunction enjoining the state from interferring with the salvor's ongoing operations. *Id.*

91. *Id.* 525 F. Supp. at 200. The court found the Florida statutory framework for the exploration, recovery, and disposition of sunken historic artifacts inconsistent with federal maritime principles in at least three material aspects: 1) Florida law required a state license for exploration in navigable waters for abandoned or derelict property, which contradicted the maritime principle that potential salvors are free to search and explore the open waters for salvageable sites (*Id.*); 2) Florida law permited a licensee exclusive right to salvage an area, regardless of diligence or success, whereas maritime salvage law only protects a salvor's right when he exercises due diligence and is reasonably succussful (*Id.*); and 3) Florida's system of fixed compensation to a salvor conflicted with maritime law's flexible method of renumeration based on risk and merit (*Id.*).

92. "Th[e] Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and Judges in every State shall be bound thereby." U.S. CONST. Art. 6, cl. 2.

Congress largely left the responsibility for fashioning the rules of admiralty to the courts. Because of this, the principles governing most admiralty actions are derived from rules developed in the American admiralty courts. *Cobb Coin* II, 549 F. Supp. at 549.

"After *Cobb Coin*, when a state's underwater antiquities legislation conflicts with the federal

The Contiguous Zone

Adjacent to the territorial sea lies the contiguous zone.[93] The Territorial Sea Convention[94] limits the contiguous zone to twelve miles from the baseline from which the territorial sea is measured.[95] The 1958 Convention on the Law of the Sea pertained only to a coastal state's jurisdiction *above* the sea-bed of the contiguous zone.[96] It only allowed a coastal state to assert its sovereignty over the contiguous zone to regulate research which would constitute an "infringement of customs, fiscal, immigration or sanitary regulations within its territory or territorial sea."[97]

The Continental Shelf

The 1958 Geneva Convention[98] defines the continental shelf as "[t]he seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superadjacent waters permits the exploration of natural resources of said areas."[99] This doctrine awarded states sovereignty over certain areas for the purpose of exploration and exploitation of natural resources. However, the convention and its preparatory papers lacked affirmative regulation of underwater antiquities.[100]

Article Five of the convention provides that the consent of a coastal state shall be obtained with respect to any research concerning the continental shelf and undertaken there.[101] The coastal state shall not withhold its consent if a qualified institution submits a request for purely scientific research into the physical or biological characteristics of the continental shelf.[102] The coastal state has a duty to consent to research conducted ex-

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admiralty and maritime laws, the statute law will be in all likelihood, held invalid." Shallcross and Giesecki, *supra* note 47, at 400.

Most antiquities laws were patterned after the Florida Archives and History Act, asserting state ownership of all underwater cultural resources. Because of this, it seems unlikely that, if challenged, they could withstand constitutional scrutiny. *Id.*

93. "The contiguous zone is a zone of the sea contiguous to and beyond the territorial sea in which states have limited powers for the enforcement of customs, fiscal, sanitary and immigration laws." R. CHURCHILL & A. LOWE, *supra* note 21, at 101.
94. Territorial Sea Convention, *supra* note 16, Art. 24(2).
95. *Id.* None of the conventions mentioned considered the status of a historic shipwreck or object of marine antiquity that might lay in the contiguous zone, nor have the courts considered this situation. Thus, the jurisdictional rights over a shipwreck in this area remains undetermined.
96. *Id.*
97. Territorial Sea Convention, *supra* note 16, Art. 24(1)(a).
98. Shelf Convention, *supra* note 17, Art. 2(4).
99. *Id.*
100. The convention eminates vagueness regarding marine archaeology. The provisions address only the right of a sovereign to explore and exploit natural resources. Shelf Convention, *supra* note 17, at Art. 2(1). The provisions do not establish whether archaeological resources constitute exploitable natural resources. Note, *supra* note 5, at 784. Article Two of the convention defines natural resources as "the mineral and other non-living resources of the sea-bed and subsoil together with the living organisms belonging to the sedentary species . . . ." Shelf Convention, *supra* note 17, Art. 5(8). The International Law Commission's commentary on the draft articles of the convention indicated a clear understanding that the exploration rights to the continental shelf did not cover wrecked ships and their cargo that lay on the sea-bed. Report of the International Law Commission to the General Assembly, 11 GAOR Supp. (N0. 9) at 42, U.N. Doc. A/3159 (1956), *reprinted in* [1956] 2 Y.B. Int'l L. Comm'n 253, 298, U.N. Doc. A/CN.4/SER.A/1956.
101. Shelf Convention, *supra* note 17, Art. 5(8).
102. *Id.*

clusively for peaceful purposes that will enhance scientific knowledge of the marine environment.[103] This consent, however, does not apply to historic shipwrecks.[104]

The High Seas

The high seas is also an important area of concern when discussing the issue of jurisdiction over marine antiquities. The High Seas Convention addresses many aspects and freedoms granted in the sea. However, it too failed to address the issue of marine archaeology.[105] Article Two of the High Seas Convention provides that "the high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty."[106] The convention established four freedoms applicable to all states: freedom of navigation,[107] freedom of fishing,[108] freedom to lay submarine cables and pipelines,[109] and freedom to fly over the high seas.[110] The High Seas Convention grants these rights as long as states exercise "reasonable regard [for] the interests of other states in their exercise of freedom on the high seas."[111] The International Law Commission did not intend this list of freedoms to be exclusive. The Commission explained that while the Convention only specified four freedoms, it recognized others.[112] This includes the right to undertake scientific research on the high seas.[113]

The problem of questionable jurisdiction and the determination of ownership of an object found on the high seas arises in the finding of the *Titanic*. Although the seventy-three year battle to find the *Titanic* proved to

103. *See* Yusuf, *Toward a New Legal Framework for Marine Research: Coastal State Consent and International Coordination*, 19 VA. J. INT'L L. 410, 417 (1979). The duty to grant such consent arises under the Informal Composite Negotiating Text art. 247(3). 8 Official Records of the Third United Nation's Conference on the Law of the Sea, U.N. Doc. A/CONF.62/WP.10 and Add. 1(1978). *See generally* Note, *The Impact of the Law of the Sea Conference on the International Law of Freedom of Marine Scientific Research*, 10 LAW. OF THE AM. 932 (1978).

104. In the case of the Treasure Salvors (*see supra* notes 48-55), the salvors found the Atocha nine miles off the coast of Florida, hence, on the continental shelf. Although the United States exerted control over these waters, the extent of their control did not reach shipwrecks laying thereon. Since the international legislation on the continental shelf does not specifically address marine antiquities, courts have generally awarded ownership to the salvors.

105. High Seas Convention, *supra* note 18, Art. 2

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *See* Report of the International Law Commission to the General Assembly 11 GAOR Supp. (No. 9) at 24, U.N. Doc. A/3159 (1956), *reprinted in* [1956] 2. Y.B. Int'l L. Comm'n 253, 278, U.N. Doc. A/CN.4/SER.A/1956.

112. *Id.* Precisely because states cannot control the high seas, users remain at liberty to do as they please, apart from a few restrictive rules. Also, because new technology is constantly changing, an exhaustive list of the freedoms of the high seas cannot be compiled. R. CHURCHILL & A. LOWE, *supra* note 21, at 146.

113. *Id.* Subject to the restricting principle that states' exercise reasonable regard to the interests of other states, marine archaeological research should clearly be considered one of the freedoms of the high seas. *See* Note, *supra* note 3, at 676.

The rights and duties of marine archaeology with respect to this restricting principle of refraining from acts which might effect the use of the high seas by other states is unclear. Because of this, marine archaeology on the high seas is plagued with uncertainty as to the legal rights and obligations on the high seas. *Id.*

be a long and arduous task, the legal battles which will follow recovery of the *Titanic's* property may try the perseverance of the salvors even more.

Although the oceanographers who found the *Titanic* did not retrieve any property from her, technological advances will soon facilitate that opportunity.[114] It appears inevitable that recovery of property from the passenger liner will bring forth claims[115] of some nature. Four separate sources will assert the most valid claims: (1) the governments of the states of origin of the finders,[116] and even that state which claims that the ship lay on her continental shelf;[117] (2) the passengers and crew;[118] (3) the insurance underwriter who paid off the loss claims[119]; and (4) the finders (and potential salvors)[120].

The governmental claims prove the easiest to analyze. The ship's location in international waters (500 miles off of any coast) precludes any governmental claim of jurisdiction based upon territoriality. The nationality principle, generally recognized as a basis for jurisdiction over extra-territorial acts,[121] may afford a valid claim to Great Britain because the *Titanic* was a British ship. The French and United States governmental claim as the nations of the finders are weak. The French have no legislation dealing with finds of this nature. The United States, whose claim would most likely assert the sovereign prerogative rule in American law,[122] would fail for lack of legislation based upon such a rule.[123] Lastly, Newfoundland's claim that the ship lay on her continental shelf, even if true, would not receive support from the Shelf Convention because this convention does not include such finds.[124] Within this factual setting the only seemingly valid claim comes from the British, based upon the nationality of the ship.

The passengers and crew who lost property could claim a right to title based on original ownership under the present law of salvage.[125] However, if these owners received insurance proceeds for their losses, they have no

114. "It is state-of-the-art, technically feasible to salvage [the] *Titanic*, most likely in sections. There is no doubt, that, technically speaking, artifacts and other features of the ship could be raised. It is only a matter of how much time it takes and the cost." *The Titanic Maritime Memorial Act of 1985: Hearings on H.R. 3272 Before the Committee on Merchant Marine and Fisheries*, 99th Cong., 1st Sess. (1985) (statement of W.F. Searle, Jr., Chairman Searle Consultants, Ltd.).

115. *See* Note, *Property Rights in Recovered Sea Treasure: The Salvor's Perspective*, 3 N.Y.L. SCH. J. INT'L & COMP. L. 217, 299-301 (1982). The discussion in this article of the factual application of modern salvage law to the finding of the *Andrea Doria* provides a useful outline for the same type of analysis in the finding of the *Titanic*.

116. The states of origin of the finders of the *Titanic* are France and the United States. *See supra* note 1.

117. Newfoundand may claim that the ship lay on her continental shelf.

118. At this time, only a few of the actual passengers are still living. However, claims may arise from relatives of those who died on the ship.

119. Commercial Union Associates is the insurance underwriter of the *Titanic*. The ship was only insured for $420,000.

120. Note, *supra* note 115, at 299-300. The *Titanic's* owner, White Star Lines, merged with Cunard Lines in 1934, who claims no interest in the wreck.

121. Brownlie, *supra* note 32, at 303.

122. *See* Note, *supra* note 115, at 300.

123. The United States recently disclaimed any "sovereign or exclusive rights or jurisdiction over the ownership of any marine areas or the R.M.S. Titanic." H.R. 3272, 99th Cong., 1st Sess. (1985).

124. This convention only gives a coastal state rights in exploring and exploiting the shelf's natural resources. Shelf Convention, *supra* note 17, Art. 2(1). *See supra* notes 98-104.

125. *See* Note, *supra* note 115, at 300. Because the owner lacked the necessary intent and actions, they did not abandon their property.

claim to the salvaged property.[126] Those who did not receive anything for their losses could file suit to recover either particular pieces of property or a percentage of the total salvage.[127]

The claim of the insurance underwriters poses a more difficult question. The question remains whether to apply salvage law or the law of finds. Salvage law prescribes the return of salved property to its owner, thereby allowing the underwriters to base its claim upon payments made to the original owners.[128] Even if the ship were found to be abandoned, application of salvage law would support the underwriters' claim because they are considered the original owners. The claim would be for the value of the property salvaged, awarding a reasonable amount of the property to the salvors.[129]

The salvors of any property raised would base their claim upon the law of finds.[130] Under this doctrine, which covers ownerless or abandoned property, title vests in the first person who reduces the property to possession. The salvors of the Titanic would be the first to take possession of the property through their salvage efforts. Considering the amount of time, skill, and money that would be expended on such an operation, a strong claim exists for any salvor in such a position. However, the law of finds only vests title in the finder against all but the original owner. A court would have to determine the efficacy of the finder's claim against the insurance underwriter.

Another conflict is presented in determining which court has jurisdiction over cases arising from salvage. Since the *Titanic* lay on the sea-bed of the high seas, it is beyond the national jurisdiction of any state. Only by an agreement of the parties involved in a dispute that arises from any property recovered can jurisdiction validly be recognized. This conflict resolution will prove problematic not only because of the above stated concerns, but also because of the other, more humanitarian aspects of the raising of the *Titanic*. Many relatives still remain of the people who died on the ship, and their interests should receive the same prudence as those of the salvors and other claimants. Technology today affords the opportunity to conduct salvage expeditions unheard of thirty years ago. Unfortunately, technology cannot provide answers to the many legal questions sure to arise, and which most likely will result in litigation.

THE TITANIC MARITIME MEMORIAL ACT OF 1985

Following the discovery of the wreck of the *Titanic* in September,

126. *See id.*

127. *See id.*

128. *See id.*

129. *See* Note, *supra* note 115, at 301. Under the law of salvage, the finder does not acquire title to the property — title remains in the owner.

130. *See id.*

1985,[131] the Committee on Merchant Marine and Fisheries introduced the Titanic Maritime Memorial Act of 1985 (the Titanic Bill) into Congress.[132] This bill attempts to establish the shipwreck as an international maritime memorial to those who died.[133] It also seeks to encourage all nations to act in accordance with the guidelines set forth and to direct negotiations between interested nations to establish an international agreement to protect the shipwreck.[134]

Under the Titanic Bill, an administrator would develop guidelines governing the research, exploration, and salvage of the wreck.[135] The Secretary of State would enter into negotiations for the development of the international agreement on the site.[136] During the pendency of these actions, Congress woud urge that no person of any nation take any actions that may violate the purposes of the bill.[137] Finally, the United States would disclaim any sovereignty, jurisdiction over or ownership of the site where the ship lay, or jurisdiction over the wreck itself.[138] Customary international law consistently supports cooperation among states to protect archaeological and historical objects found at sea. The Titanic Bill can facilitate that end.

Although the Titanic Bill seeks to protect the wreck site, site restrictions

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131. The finding of the *Titanic* raises several outstanding issues. Most prominent among these are:
1. What is the status of international law with respect to research, exploration, and salvaging of the shipwreck?
2. How much of a contribution did the United States Government make to the international expedition that discovered the *Titanic*?
3. What further research on the *Titanic* would be useful?
4. Should salvaging of artifacts be authorized and, if so, under what circumstances?
5. What is the proper institution to develop an international agreement on the *Titanic* and enforce its provisions?
The Titanic Maritime Memorial Act of 1985: Hearings on H.R. 3272 Before the Committee on Merchant Marine and Fisheries, 99th Cong., 1st Sess. (1985) [hereinafter cited as *Titanic Hearings*].

132. H.R. 3272, 99th Cong., 1st Sess. (1985).

133. *Id.*

134. *Id.* § 2(3).

135. *Id.* § 5. Under the bill, the Administrator of the National Oceanic and Atmospheric Administration (NOAA) would establish these guidelines. The bill provides:
(a) The Administrator shall develop guidelines to govern research, exploration, and, if appropriate, salvage of the shipwreck Titanic, which: (1) are consistent with its historical and cultural significance, as well as the purposes and policies of this Act; (2) promote the safety of individuals involved in such operations; and (3) recognize the sanctity of the shipwreck Titanic as a maritime memorial.
(b) In developing these guidelines, Administrator shall consult with other interested Federal agencies, academic and research institutions, and members of the public.

136. *Id.* § 6.
(a) The Secretary is directed to enter into negotiations to develop an international agreement which provides for international research, exploration, and if appropriate, salvage of the shipwreck Titanic consistent with guidelines developed pursuant to section 5 and the purposes and policies of this Act.
(b) The Secretary shall consult with the Administrator when fulfilling section 6(a) above. The Administrator shall provide reseach and technical assistance to the Secretary.
(c) Upon adoption of an international agreement under section 6, the Secretary shall provide notification of the agreement to the Committee of Merchant Marine and Fisheries in the House of Representatives and to the appropriate committee in the Senate, including recommendations for legislation to implement the agreement.

137. *Id.* § 7. "It is the sense of Congress that pending adoption of an international agreement under section 6, no nations should undertake any activities in regard to the shipwreck Titanic which are not in compliance with the guidelines developed under section 5."

138. *Id.* § 8. "By enactment of this Act, the United States does not assert sovereignty or jurisdiction over, or the ownership of, any marine areas, the vessel or any of its cargo, unless otherwise subject to its jurisdiction."

placed upon the wreck of the *Titanic* should not preclude serious scientific, archaeologic, and historic research and preservation efforts.[139] The site of the *Titanic* and any future sites should be thoroughly researched and well-documented. However, "all efforts should be made to prevent any commercial rape of the Titanic and future wrecks as they are discovered by today's and future technology."[140]

SUGGESTED AMENDMENTS TO THE TITANIC BILL

In its current form, the Titanic Bill creates the basic structure necessary to protect the interests of all those involved with the *Titanic*. Although it provides an adequate foundation to protect the wreck site, this bill requires a few amendments to fully protect all parties involved.

First, section 2(a) of the bill should include a statement recognizing the contributions made by French scientists and engineers in finding the *Titanic*.[141] It should be acknowledged that the French research team located the massive object on the ocean floor, several weeks before the Americans finally sighted the *Titanic*. With the information from the French team, the

139. One of the survivors of the *Titanic* testified at a hearing for the Titanic Bill. She stated that "if research and salvage of the Titanic will benefit all people then such activities should be encouraged. *Titanic Hearings*, *supra* note 131 (statement of Louise Pope, survivor of the Titanic).

140. *Id.* (statement of Charles Ira Sachs, President of the Oceanic Navigation Research Society, Inc.).

> What lies beyond our reach today, will be readily accessible tomorrow. The Oceanic Navigation Research Society appeals to the Committee to make sure that histories are brought to the rest of the world intact, so that we may learn from, enjoy and preserve them. This bill should prevent the greed of modern pirates who will destroy for profit what is brought from our historic past.

Id. A member of the Titanic Historical Society commented:

> "Any commercial salvage of the *Titanic* or her equipment would be in very bad taste, and should be protected and explored under controlled conditions . . . If you had a relative who perished in this tragedy, could you in good conscience allow someone to desecrate that site? If so, perhaps your next step is to raise the battleship *Arizona* for souveniers."

Id.

This, however, is not the view of those from the private sector. "It is the opinion of the 'Titanic Investors' (those who funded private exploration) that the inspection and documentation of the wreckage belongs to the private sector which is equipped to negotiate with prior claims of title, property and compensation through the instruction of the courts, national and international." (statement of William B.F. Ryan, Lamont-Doherty Geological Observatory).

Private investors feel that regulation of this wreck would have international repercussions. According to their view, this precedent could impair freedom of scientific research as well as future oil, gas, and mining activity. *Id.* They feel that this precedent creates a threat to national security by recognizing other non-friendly nations who make claims upon the oceans outside their territory. *Id.*

According to Mr. Ryan, regulation of investigation of the *Titanic* wreck discriminates against United States citizens and corporations since these laws would not necessarily be upheld by other countries. Enactment of this bill could signal private enterprises to move investments outside the United States where activity would be secret and exclusive. Lastly, critics argue that this bill speaks against the Reagan administration's philosophy by favoring programs sponsored and regulated by the federal government against programs of private enterprises where there has been no action to warrant such regulation. *Id.*

The copy of the cargo manifest of the *Titanic*, clearly shows that this was a passenger liner and not a treasure ship laden with gold and jewels. It has been well documented that some passengers retrieved their jewels, and the remaining valuables were put into postal bags to be loaded onto a lifeboat. These bags were lost overboard and therefore are not with the wreck. *Id.* (statement of Jon Hollis).

141. *Id.* (statement of Dr. Robert Ballard, Woods Hole Institute). This section could read: "The recent discovery of the shipwreck *Titanic* by American and French scientists and engineers, lying more than twelve thousand feet below the ocean surface, demonstrates the practical application of ocean science and engineering."

Americans were able to zero in on the wreck.[142] Second, to promote a cooperative atmosphere among the nations serving as the foundation of any international agreement to protect the *Titanic*, section 2(b) should encourage the establishment of an international maritime memorial. This section should also encourage the establishment of *inter*national guidelines.[143] By attempting to *establish* a memorial and *national* guidelines on its own, the United States appears to alienate those with whom it purports to enter into an agreement.

Third, section five should be entitled "International Guidelines." As noted above, the United States should not alienate any nations by emanating a *national* purpose behind this bill, and any agreement that may arise herefrom. By emphasizing the international aspect of this act, the United States will receive more support from other nations. Also, subsection (b) of section five should include language requiring consultation with interested foreign governments who are involved in drafting guidelines.[144] This reflects the idea of including foreign governments in all aspects of dealings with the *Titanic*. The United States will receive more support in trying to protect the wreck by involving other nations in establishing guidelines. Section 6(a) should include a statement of the purpose of the bill, the creation of an international maritime memorial.[145] Such a statement emphasizes the purpose of this bill, and any international agreement that will arise therefrom.

Fourth, since the wreck is in international waters, many feel that the United States cannot protect it.[146] This bill should include a prohibition on the import of any materials received from the wreck of the *Titanic*. Such a prohibition would only allow duly licensed and controlled expeditions to return artifacts,[147] thereby preventing a "commercial rape" of the ship. In international negotiations the United States should encourage foreign governments to enact similar legislation to prohibit importation of artifacts to any other countries.

Finally, Congress should recognize the International Maritime Organization (IMO) as the most appropriate forum for international negotiations

142. *See supra* note 2.

143. *Titanic Hearing*, *supra* note 131, (statement of Brian J. Hoyle, Director of the Office of Ocean Law and Policy).

144. *Id.* This subsection should state: "In developing these guidelines, the Administrator shall consult with interested foreign governments (or agents thereof), Federal agencies, academic and research institutions, and members of the public."

145. *Id.* Section 6(a) should include the following: "The Secretary is directed to enter into negotiations to establish the shipwreck *Titanic* as an international maritime memorial, and to develop an international agreement which provides for international research, exploration, and, if appropriate, salvage of the shipwreck *Titanic* as an international maritime memorial, and to develop an international agreement which provides for international research, exploration, and, if appropriate, salvage of the shipwreck *Titanic* consistent with the guidelines developed pursuant to § 5 and the purposes and policies of this Act."

146. "Any law we might try to pass only restricts the citizens of the United States. There are several other countries that have submersibles that can go to 12,500 feet. If we are lucky and funds are available, and we do dive, we might be lucky enough to recover some of the debris on the ocean floor. What possible harm can that do to this mass of twisted steel?" *Titanic Hearing*, *supra* note 131 (statement of Jack F. Grimm, Grimm Oil Company).

147. *See id.* (statement of Jon Hollis).

in connection with the provisions of the Titanic Bill.[148] Many international organizations do have interests in the *Titanic*,[149] but the IMO appears the most competent international organization for purposes related to the *Titanic*. Since the principal activity of the IMO is examining and debating maritime questions, this forum, with a view to formulating an international convention governing the research, exploration, and protection of the wreck (as well as the possible ultimate salvage), seems the proper place to examine the matter of the *Titanic*.[150]

CONCLUSION

The finding of the *Titanic* marks yet another advance in man's control over the ocean. The progressing technology in relation to the seas warrants action on an international scale concerning the jurisdiction and ownership of objects found in the seas. The international agreements pertaining to the seas fail to adequately deal with marine antiquities, both in waters claimed under a state's jurisdiction and those beyond any national jurisdiction. As the world grows smaller, our obligation extends not only to our own nation, but to all other nations to create orderly and just disposal of objects found in the seas, historically and presently traveled by many countries. Recognition of these facts will hopefully direct international bodies in their discussion and agreement upon measures pertaining to the *Titanic* and other historic shipwrecks.

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148. The purposes of the International Maritime Organization as set forth in Article one of the IMO Convention are, in part:

> (a) To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from ships; and to deal with legal matters related to the purposes set out in this Article. *Id.*
>
> In order to achieve these purposes, the Organization is empowered in Article three to consider and make recommendations upon matters arising under article 1(a) that may be remitted to it by Members, as well as to
>
> (b) Provide for the drafting of conventions, agreements, or other suitable instruments, and recommend these to Governments and to inter-governmental organizations, and convene such conferences as may be necessary;
>
> (c) Provide machinery for consultation among Members and the exchange of information among Governments;
>
> (d) Perform functions arising in connection with paragraphs . . . (b) and (c) of this Article, in particular those assigned to it under international instruments relating to maritime matters.

Id. (statement of Dr. Frank L. Wiswall, Jr.).

149. The International Hydrographic Organization may be interested in the sea-bed characteristics in the area of the wreck; the World Meteorological Organization and the International Ice Patrol may be interested in what can be learned of the nature of the icebergs from the damage to the hull; and the United Nations Educational, Scientific and Cultural Organization may be interested in the marine archaeological aspects of the wreck. *Id.*

150. *Id.*

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