

DOI 10.26886/2524-101X.8.3.2022.3

ISSN 2524-101X
eISSN 2617-541X

Underwater Cultural Heritage: Regime and Jurisdiction Challenges

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Tsutskiridze, M., Krasnikova, O., & Pohoretskyi, M. (2022). Underwater Cultural Heritage: Regime and Jurisdiction Challenges. *Lex Portus*, 8(3), 58–81. <https://doi.org/10.26886/2524-101X.8.3.2022.3>

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ABSTRACT

The present paper focuses on international and national aspects of a legal regime of underwater cultural heritage and highlights peculiarities of States’ jurisdiction towards discovered underwater archaeological values. Underwater cultural heritage legal regime correlates with regimes of maritime zones where objects in question are located or found. On these grounds, it is possible to

distinguish the UCH regimes in (i) sovereign and jurisdictional areas and (ii) in the High Seas and the Area. The UCH regime in the first case is trifold, including rights of coastal States, other concern States, and flag states of government ships and aircraft. While on the High Seas or in the Area, such regime is subject to bilateral or multilateral arrangements. The effectiveness of enforcing said regime rules also depend upon possible territorial claims and contested jurisdiction. The issue becomes critical for maritime 'gray zones' or conventional armed conflicts at sea.

***The keywords:** underwater cultural heritage, regional cooperation, UNCLOS'82, 2001 UNESCO Convention, jurisdiction, legal regime, maritime spaces, Black Sea, Sea of Azov, Ukraine.*

Introduction

At the beginning of 2022, the media reported several notable events in the world of underwater archeology at once. In January, the discovery of the ship Griffin wreckage (Pittock, 2022b), which disappeared about 340 years ago, was announced, in February – the James Cook's ship Endeavor wreckage (Wreck of British explorer James Cook's Endeavour found: researchers, 2022), in March – the wreck of Ernest Shackleton's Endurance. In 2021, the 2,200 years old wreckage was found at the bottom of the Mediterranean Sea off the coast of Egypt. Its fragments rested under a 5-meter layer of mud in the city of Thonis-Heracleion, which disappeared underwater (Ciaccia, 2022). Some of the recently discovered shipwrecks and their cargoes are in decent condition, which makes it possible to determine the type and purpose of individual consignments of goods (Randall, 2022) and shed light on the lifestyle and fate of their crews (McLaughlin, 2022; Pittock, 2022a; Dawson, 2022).

As news agencies reported in April, Ukraine considers the cruiser Moskva sunk in a large-scale Russian invasion as part of its underwater cultural heritage (UCH). Nevertheless, this move is considered dubious legal since the required 100-year ship stay is far from over (Jack, 2022). At the same time, the Ukrainian side notes that the ship can be recognized as rare and unique

and directly related to the well-known historical event that led to its sinking (Krechetova, 2022). These circumstances do not require the expiration of a 100-year submerged period to grant it the UCH status. In addition, materials on the results of the study of about 60 ancient ships sunk in the Black Sea will be presented to the public very soon. They belonged to the Roman, Byzantine, and Ottoman eras and were found several years ago as part of the Black Sea MAP project (World's oldest intact shipwreck discovered in Black Sea (Rawlinson, 2018; Muzdakis, 2022; Altuntaş, 2022)). These discoveries demonstrate significant improvements in underwater search technologies, expanding areas, depths, and efficiency of research. However, this, in turn, makes UCH objects more exposed and vulnerable, thus creating new regulative and protection challenges.

The jurisdiction over underwater cultural heritage is highly dependent on the peculiarities of different maritime zones. A state could relatively freely, subject to its international obligations, regulate access to the UCH in its territorial waters, while national courts typically apply international private law to decide on any claims to title to UCH objects, based on the laws of another state (Marciniak, 2020).

At the same time, the UCH story in an exclusive economic zone (EEZ) or continental shelf proves to be much more complex, up to forming a kind of a 'gray area' (Lin, 2019). The extent of a coastal State jurisdiction over regulation activities related to UCH in its offshore waters requires reference to three sources of international law: general principles of international law, the 1982 UN Convention on the Law of the Sea (UNCLOS), and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage (UCH Convention) (Dromgoole, 2020). Besides, said conventions leave broad discretion to coastal states allowing them to set rules and make bilateral arrangements in the field. Hence the actual regime of underwater cultural heritage is

highly dependable upon states' interpretation of international rules. In addition, in each case, UCH legal regime, to a certain extent, depends on the state of UCH origin, nationalities of search mission members, and the flag state of vessels involved. All these questions can become a stumbling block in the path of any given research. Due to Zhen Lin (2019), maritime states are competing to contain the "creeping jurisdiction" of coastal states, while states with abundant underwater cultural heritage in their waters have tended to extend their jurisdiction and strengthen the protection of respective objects.

The latter become even more complicated if we consider contested maritime areas with the different jurisdiction claims. Typically, they use a South China Sea to illustrate a controversial maritime area, with disputes over maritime boundaries between regional states, which does not permit coastal states to rely on UNCLOS and UCH Convention because their protection frameworks are based on a set of rules depending on different maritime areas (Zhong, 2020). However, following the occupation of the Crimean Peninsula by the Russian Federation in February-March 2014, consequent disagreements between Ukraine and Russia arose concerning numerous maritime cooperation issues and coastal state rights execution (Koval, 2021). Contested jurisdiction over coastal waters of the Black Sea and the Sea of Azov has undermined the UCH regime, both at the level of national regulations and international law. Moreover, the illegal Russian invasion on February 24, 2022, transformed the Black and Azov Seas into a war zone, further worsening the situation with the UCH protection.

Methodology

The article reviews the critical issues of legal regulation of the UCH regime. The analysis utilizes the classic maritime law classification of maritime zones, developed by UNCLOS that

the UCH Convention uses to deal with jurisdiction over UCH-related activities. The first part of the article focuses on general issues of the UCH legal regime. The following parts describe the peculiarities of said regime depending upon the UCH location in a specific maritime zone and the issues UCH protection regime derived from the ‘gray zone’ situations due to contested jurisdiction and negative impacts of armed conflicts at sea.

1. Underwater Cultural Heritage: International Efforts to Develop a Legal Protection Regime

The depths of the seas and oceans still keep millions of historical artifacts, and the remains of ancient civilizations are still waiting for their discoverers. The ships that have found their last refuge in the deep sea excite the minds of value seekers and hunters of scientific sensations. Underwater cultural heritage includes all traces of human existence having a cultural, historical, or archaeological character that have been partially or totally under water, periodically or continuously, for at least 100 years, such as (i) sites, structures, buildings, artifacts, and human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character (UCH Convention, Art. 1). There are three main reasons why underwater cultural heritage requires international legal protection. First of all, UCH facilities have become more accessible due to new technologies; they can provide unique scientific information (historical, archaeological, ethnographic, technical, etc.); UCH facilities open promising opportunities for educational, social, economic, and tourism programs (Anisimov, 2015, p. 4). The need to protect against threats caused by hostilities and occupation resulting in illegal seizures and damage to historical artifacts can also supplement the said list. For example, the international legal regulation of the

protection and restitution of cultural property was ineffective for protecting cultural property in the occupied territories of Crimea and the areas of armed conflict in the Donetsk and Luhansk regions. Unfortunately, any treaty of international humanitarian law does not support the concept of an internationalized conflict (Cultural heritage under the armed conflict in Ukraine: challenges and responses, 2020).

The international legal regulation of the UCH protection regime combines the provisions of Art. 149, 303 UNCLOS and UCH Convention. At the same time, both instruments are relatively ‘weak’ in terms of control over the historical property turnover, enforcement of established rules, and some jurisdictional issues (Dromgoole, 2020, p. 502). Although, Art. 17 of the UCH Convention established the obligation of each state to impose sanctions for non-compliance and Art. 14 to adopt measures to prevent the illegal trafficking of UCH objects; those rules have not notably improved the situation. However, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, 1970 provides for the mechanism countering such trafficking. The UCH Convention aims to define measures for protecting, studying, and maintaining valuable objects of cultural significance. It regulates the conducting of research and projects for UCH rise to the surface, UCH usage for scientific, educational, and other socially beneficial purposes. The relatively new UCH Convention is a continuation of some earlier agreements in the field. For example, the Annex to UCH Convention incorporated provisions of the 1996 ICOMOS Charter on the protection and management of underwater cultural heritage.

The European system for UCH protection comprises the European Convention on the protection of the archaeological heritage (revised) (1992) and the Parliamentary Assembly of the Council of Europe Recommendation on underwater cultural heritage (1978). In particular, the Recommendation consolidated

several principles of the legal regime of underwater finds that later became classical: the need to eliminate gaps in national legislation on underwater cultural heritage, the remuneration of work to search for values regardless of their commercial value, and the 100 years of their stay underwater (with possible exceptions for more valuable or less valuable objects). The regional Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, especially the Protocol on Integrated Coastal Zone Management in the Mediterranean (Art. 13), complement this system.

National legislations on UCH protections extend only to territorial waters and contiguous zone and typically are far from perfection (Vaangal, 2022; Anisimov, 2013). For example, the Law on the contiguous zone of Ukraine was adopted in 2018. It provided that the research of archaeological and historical objects of cultural heritage in the contiguous zone should follow the government's established procedure. However, said procedure has not yet been adopted. Moreover, Ukrainian laws "On the protection of cultural property" and "On the protection of archaeological heritage" have not been extended into special legislation dedicated to UCH. Of all the types of such heritage, only maritime memorials obtained specific regulation in current Ukrainian legislation. The Law on the Exclusive (Marine) Economic Zone of Ukraine mentions the UCH only twice. Meanwhile, numerous finds confirm the presence of historical artifacts in Ukrainian coastal waters in the Black Sea and the Sea of Azov (Bodnar, 2020; Press conference on the discovery of valuable underwater cultural heritage sites, 2019).

The Ukrainian – Russian conflict that led to bitter hostilities and occupation of the land territories and maritime spaces of Ukraine aggravated the situation. The adverse effects to UCH of the full-fledged Russian invasion of 2022 have been overlooked so far, shaded by heavy fighting and extreme humanitarian situation. Nevertheless, the destructive consequences for cultural heritage

have already been evident (Pereira et al., 2022). At the same time, the inevitable patterns of impact on UCH of the Russian Crimean occupation have already been revealed.

Since the beginning of the illegal occupation of the Autonomous Republic of Crimea and the city of Sevastopol, the Russian Federation has been purposefully implementing a policy aimed at capturing and destroying cultural heritage on the territory of the peninsula (Monitoring of violations of international humanitarian law, 2020).

In fall 2021, UNESCO summarized that the following factors characterized the situation with the UCH protection in the occupied Crimea:

- the total absence of international control over the archaeological activities on the occupied peninsula;
- Russia’s bearing no obligations under the UCH Convention, which makes the situation in this sphere is non-transparent;
- significant concerns about potential Russian looting of the underwater heritage and its illegal trafficking of the goods of the sunken cultural property (Follow-up to decisions and resolutions adopted by the Executive Board and the General Conference at their previous sessions, part I, 2021).

Also, since 2014, Ukrainian archaeological values have become hostages of the political ambitions of the Russian Federation. For example, in 2014, the Kremlin used supposed archeological evidence of proto-Russian kings around Crimea as part of its broader arguments justifying the annexation on historical grounds (Jack, 2022). An unidentified number of underwater historical artifacts were excavated and either destroyed or captured during the construction of the Crimean bridge (Cultural heritage under the armed conflict in Ukraine: challenges and responses, 2020).

The High Seas and the International Seabed Area, under UNCLOS, are removed from national legal regulation. Hence, while discovering cultural values in these maritime spaces, the

most topical issues of the jurisdiction of states and the recognition of property rights arise. Interstate dialogue and regional cooperation in the field of improving the regime for the protection of underwater cultural heritage take place in the International Council on Monuments and Sites (ICOMOS), World Heritage Committee, International Committee on the Underwater Cultural Heritage, International Council of Museums, Baltic Region Heritage Committee, ECOSOC, etc. The system also includes IMO, International Seabed Authority, but the issues of underwater cultural heritage are on the periphery of the interests and functionality of these organizations. In this regard, the maintenance and initiation of new practices for effectively maintaining the regime and protecting underwater cultural heritage is the primary responsibility of states, their regional advisory institutions, and regional branches of international organizations. For example, the UCH Convention obliges member states to inform all cases of discovery of underwater cultural objects and create competent authorities to ensure the operation of registries of underwater cultural property. The respective initiative example, developed from a regional to the international level, was the creation of the International Committee on the Underwater Cultural Heritage. It was founded in 1991 by ICOMOS Australia to promote international cooperation in the protection and management of underwater cultural heritage and to advise the ICOMOS on issues related to underwater cultural heritage around the world (The ICOMOS International Committee on the Underwater Cultural Heritage, 2022).

The UCH Convention provides an extensive system of consultations, meetings, and international cooperation in forming a regime for the protection of underwater cultural heritage. Other institutional capacities supplement it. However, they are often too slow in responding to emerging challenges and threats; also, Ukraine seems to use them not too effectively (Andreyuk et al.,

2019, p. 9–11, 13, 18–20 etc.). One of the recent events was the inclusion of Ukraine in the UNESCO Committee for the Protection of Cultural Heritage in Time of War (Tkachenko, 2021), which appeared to be very relevant to the current situation.

2. Regimes of Maritime Spaces and UCH: Interaction Patterns between States' Jurisdictions

The regime of maritime spaces is one of the critical institutions of modern maritime law. One of its components is the regime of UCH-related activities. This regime varies depending on the maritime zone where historical artifacts are located. In inland waters, archipelagic waters, and the territorial sea, the UCH Convention provided for the exclusive right of the coastal state to regulate and authorize such activities. Domestic legislation clarifies, and details said provisions. At this point, we should note that the term 'exclusive right' is merely consistent with the principle of exercising the sovereignty of the coastal state and the state-archipelago concerning the territorial sea and archipelagic waters (Anisimov, 2014, p. 329). At the same time, such a statement is entirely accurate for inland waters. It is vital to consider that the UCH Convention makes it possible to extend its protection regime to the cultural heritage of non-marine inland waters of States (Art. 28).

Furthermore, modern sea and river ports typically are the places of concentration of sunken historical artifacts, and this is due to their long history, convenience, and intensity of use in trade. Therefore, when Maritime Spatial Planning, planning the construction of new terminals or dredging, it is necessary to carry out archaeological examinations and reasonable organizational efforts to preserve valuable historical objects for future generations, as described in the Central Port Concept in Gdansk (Czermański et al., 2021, p. 10). In addition, Maritime Spatial Planning in environmental protection from pollution and

preservation of ecological biodiversity (Protection zoning) can also include a protection regime for underwater cultural heritage, forming complex regimes as part of marine protected area regimes (Papageorgiou, 2018, p. 200).

Coastal states also may regulate UCH-related activities in the contiguous zone. In doing so, applying the Rules of the Annex to the UCH Convention is mandatory. Part 2 of Art. 303 UNCLOS provides additional rights for coastal states with a contiguous zone to presume, to control traffic of cultural property, that their removal from the seabed without approval would result in an infringement within the State's territory or territorial sea of respective laws and regulations. This confirms both conventions' priority in situ conservation of discovered underwater artifacts.

The regime of UCH found in EEZs, on the continental shelves, and in the High Seas received much greater attention in the UCH Convention. However, this is a classic trend. It is also characteristic of UNCLOS when determining the regime of these spaces. It is related to the fact that, as the distance from the coast, the sovereign rights and jurisdiction of the coastal State are significantly limited and narrowly specialized, and legal regulation 'uploaded' to the international level. At the same time, while in the EEZ and on the continental shelf, coastal states retain a certain, albeit clearly defined by UNCLOS scope of rights and jurisdiction (coordination of search missions, the status of a 'coordinating state,' taking measures to protect their sovereign rights and jurisdiction, prevent a direct threat to UCH), they are absent in the High Seas. Article 149 UNCLOS establishes the most general conservation standard and pays attention to the preferential rights of the State or country of origin, the State of cultural origin, or the State of historical and archaeological origin. The protection regime in the International Seabed Area is practically identical to the regime in EEZs and on the continental shelf, except that not only the coastal State but any of states,

interested in establishing such a regime in the International Seabed Area, can act as a coordinating state here. At the same time, ‘no State shall undertake or authorize activities directed at State vessels and aircraft in the Area without the consent of the flag State.’

Thus, the legal basis for the UCH regime combines the general standards of international agreements and more specific rules of national legislation. The maritime spaces regime and the UCH regime are strongly linked and interact. Domestic legislation aims to maintain the UCH regime in water areas under the State’s jurisdiction or concerning entities or objects strongly associated with them. Literature suggests that any given State can sovereignly regulate the issues of rising sunken ships concerning: 1) its ships sunk on the high seas; 2) its ships sunk in the foreign territorial sea; 3) foreign ships sunk in its internal waters and territorial sea (Boguslavskij, 2018, p. 20). The main issue, in this case, is the proof of connection with sunken objects. Concerning EEZs and the continental shelf, states have the right to prohibit or permit any UCH-related activity to prevent infringement of their sovereign rights or jurisdiction under international law, including UNCLOS.

It is possible to draw up a dependency of the UCH regime upon the type of maritime zone.

In the case of sovereign and jurisdictional areas (inland waters, archipelagic waters, and the territorial sea, adjacent and EEZ, continental shelf), such a dependency is trifold:

(i) the competence to permit any UCH-related activities belonging to coastal states;

(ii) other concerned states, i.e., countries of UCH origin or ownership, if those facts are evident or confirmed, can be involved;

(iii) no activity towards a government ship or aircraft (in the EEZ or on the continental shelf) may be carried out without the flag State’s consent and the coordinating State’s cooperation.

On the High Seas or in the Area, several States may be involved in searches based on an agreement, which may also determine the appropriate search organization – national or international.

Thus, the jurisdiction provided by the UCH Convention is based on the principles of nationality and the flag, not on expanding the zone of jurisdiction of coastal states. Because coastal states do not have exclusive sovereignty over these zones, the rights of the flag state in these zones take precedence over those of the coastal State (Mihajlec, 2017, p. 175). The UCH Convention does not create grounds for claiming or contesting national sovereignty or jurisdiction, but only provides due respect for the remains of civilizations located in sea waters (Anisimov, 2013, p. 131). However, the rules of the UCH Convention, combined with UNCLOS, may justify more active actions of states in regulating activities in EEZs and on the continental shelves. The fact is that UCH is strongly associated with the place of its location and directly impacts the exercise of the sovereign rights of states in these spaces. Hence, the need for UCH primary preservation in situ should be considered in projects and plans for future work, for example, in the development of oil fields, etc. Due to Dromgoole (2020, p. 503), the so-called constructive ambiguities in the text were to form the basis for a compromise; instead, a possible interpretation as giving coastal States greater rights on the continental shelf than they have under the UNCLOS is one of the features of the UCH Convention that has led to the maritime powers' reluctance in its ratification.

The UNCLOS classification and regimes of maritime spaces are known as a 'golden' legal standard for applying States' jurisdiction. However, due to delimitation issues or territorial disputes, specific maritime spaces may become 'gray zones.' This leads to regional instability, creating obstacles to the exercise of jurisdiction, 'manual' regulation of challenging situations, and, as a result, to the violation of the sovereign rights of states in maritime spaces,

including UCH-related ones. With such jurisdictional clashes, the issues of underwater archeology become one of the levers for ‘pushing through’ territorial claims on land territories and coastal waters. In addition, UCH objects located in the contested areas are often viewed through the patriotism and ethnocentrism lens (Rybina, 2021), which politicizes the issue. Such facts took place in maritime spaces in the previously mentioned cases in the Black Sea, the Sea of Azov, and the South China Sea. In addition, the rules of the UCH Convention itself often create situations in which UCH objects become the subject of international disputes. Propositions to develop a dedicated resolution procedure arise from time to time (Anisimov, 2013, p. 131–132). However, it is necessary to consider that UCH-related disputes typically arise and are subject to settlement in the system of other controversial aspects of maritime spaces usage. Consequently, their resolution’s institutional and procedural system is a part of more general issues. At the same time, it will be necessary to involve specialists from international and national organizations focusing on protecting and preserving underwater cultural heritage.

3. Military Threats and Challenges Dimensions of the UCH Protection

The relationship between cultural heritage and armed conflicts is typically described as double-sided. The loss of cultural heritage during armed conflict can become a uniting force, intensified by the feeling of worldwide solidarity and, simultaneously, a source of conflict that sometimes results in violent clashes (Spitz, 2021). Furthermore, given the cases of intentional destruction of cultural heritage objects in Syria and Afghanistan, there are suggestions that contemporary international efforts has constructed cultural heritage as an object of global security in a feedback loop: elevating the value of cultural heritage to a security issue increases the political effect of attacking cultural heritage and, thus, the likelihood that

it will be attacked, thus further raising security interest in the object (Rosén, 2020, p. 509).

Obviously, armed conflicts can cause significant damage to any type of cultural heritage. However, the damage is often apparent for historical monuments located on land, but the impact on UCH is not immediately detected, given the difficulty of identification and recording. Armed conflicts, extremist and terrorist threats risk losing the integrity and safety of cultural heritage sites. Underwater means of warfare can directly destroy cultural monuments at the bottom of the seas and oceans, violating the boundaries of established protected areas. Cultural property destruction, regardless of motives or reasons, is regarded as a crime against the interests of all humanity (Shestova, 2015, p. 125). This principle is the cornerstone of the modern system of the legal protection of cultural property during armed conflicts. Said system combines: the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 (Hague Convention), two Protocols to the Hague Convention of 1954, Protocols Additional to the Geneva Conventions of 12 August 1949, Rome Statute of the International Criminal Court 1998 and San Remo Manual on International Law Applicable to Armed Conflicts at Sea. Cultural property is under the special protection of international humanitarian law. UNESCO was created with the motto: ‘Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed’ (The UNESCO Courier: a window open on the world, 1966, p. 6). Both the 1954 Hague Convention and the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations recognized the need to preserve underwater cultural heritage (Papageorgiou, 2018, 197). At the same time, the UCH Convention and UNCLOS do not contain rules on the regime for the protection of underwater cultural heritage during hostilities. The Art. 13 UCH Convention only provides the desirability of ‘as far as is reasonable and

practical' notification by warships of the discovery of underwater cultural heritage.

The protection of cultural property during armed conflicts has developed in two ways. Firstly, because of the typically civilian nature of the cultural heritage, the general provisions of humanitarian law protecting civilian property apply. Secondly, specific protection recognizing the cultural heritage of every people is enshrined in the 1954 Hague Convention for the protection of cultural property during armed conflict, complemented by the 1977 Additional Protocols, which has become part of customary international law (Protection of cultural property in the event of armed conflict, 2010). Naval operations are obligated not to cause unnecessary environmental damage to land or sea or gratuitously deprive civilian populations of their means of survival. IHL also protects cultural objects from naval attacks (Air and naval warfare, 2010). Also, the decision of the International Criminal Tribunal for the former Yugoslavia on the destruction of Stari Most in Mostar brought another element of the issue – connection with human rights protection by seeing cultural objects not as mere property anymore but something related to cultural rights and human dignity (Ryška, 2021, p. 208).

Given the extreme danger of armed conflicts, the inevitability of their end, and the need to build a new dialogue between the belligerent parties, as well as the 'spirit and letter' of international agreements in the field of the protection of surface and underwater cultural heritage, the principles of good faith cooperation and the search for the best solution for developing a regime for the protection of cultural property should become mainstream in any post-war settlement. The UCH Convention encourages cooperation between states and the adoption of interstate agreements so that such agreements may become increasingly common (Dromgoole, 2003, p. 90). However, when developing an after-conflict treaty framework, it is necessary to consider several problems related to:

- (i) the possible presence of ‘gray zones’ on the territory of the conflict, the determination of their status, and the jurisdiction of the contracting parties;
- (ii) the need to delimit maritime spaces that were not previously subject to it;
- (iii) issues of demining and elimination of all other types of threats from military equipment and munitions;
- (iv) establishing post-war regional cooperation on UCH protection.

It seems that these issues can become the basis for developing a future regional agreement on settlement in the Black Sea and the Sea of Azov. In addition to representatives of the belligerent parties, universal and regional organizations in the field of cultural values protection and regulation of maritime activities, NGOs can be involved in the settlement.

Conclusions

The issues of underwater archaeology and the UCH protection regime development have steadily increased their relevance since the middle of the 20th century. Hence, the vital task is to develop effective international and national mechanisms for coordinating efforts in the field. Integrating UCH protection into maritime spatial planning for coastal development and activities on the continental shelf and in EEZs can be an effective instrument. The critical issue is to enhance UCH protection in the contested maritime areas and during the armed conflicts. Reaching agreements on creating regional regimes for the UCH protection based on mutual consent and common values seems to be the only correct solution to jurisdictional disputes.

REFERENCES

Air and naval warfare. (2010, October 29). *International Committee of the Red Cross*. <https://www.icrc.org/en/document/air-naval-warfare>

- Altuntaş, L. (2022, February 15). In the Black Sea, there is a “Ship Graveyard” with 2,500 years of wrecked ships. *Arkeonews.net*. <https://arkeonews.net/in-the-black-sea-there-is-a-ship-graveyard-with-2500-years-of-wrecked-ships/>
- Andreyuk, E.S., Busol, K.I., & Koval, D.O. (2019). International mechanisms for the protection of cultural property in the occupied territories (review). *Mission of the President of Ukraine in the Autonomous Republic of Crimea*. <http://www.ppu.gov.ua/wp-content/uploads/2020/03/Mizhnarodni-mehanizmy-zahystu-KTS-e-doc-1.pdf> [in Ukrainian].
- Anisimov, I.O. (2015, April 15). *International legal protection of objects of underwater cultural heritage* [Doctoral dissertation, National Research University “High School of Economics”]. http://www.igpran.ru/prepare/a.persons/Anisimov/Anisimov_diss.pdf [in Russian].
- Anisimov, I.O. (2013). International law issues of protecting underwater cultural heritage. *Law in modern world*, 4, 128-136. [in Russian].
- Anisimov, I. (2014). The regime of the maritime spaces in accordance with the 1982 UN Convention and the 2001 UNESCO Convention. *Historical and socio-educational thought*, 4, 329-332. [in Russian].
- Bodnar, N. (2020, October 9). Lenin, the Foros Byzantine and the Black Prince: what the waters of the Ukrainian seas hide. *Omore*. <https://omore.city/articles104493/zatonuli-korabli-u-chornomu-i-azovskomu-moryah> [in Ukrainian].
- Boguslavskij, M.M. (2018). Legal issues of underwater archeology. *Issues of underwater archeology*. <http://www.mpac-book.ru/files/vpa-2017.pdf> [in Russian].
- Charter on the protection and management of underwater cultural heritage, 1996*. https://www.icomos.org/charters/underwater_e.pdf
- Ciaccia, Ch. (2021, July 26). Archaeologists find ancient Egyptian shipwreck that sank 2,200 years ago when it was hit by falling blocks as temple of Amun was destroyed by a massive earthquake. *Mail Online*. <https://www.dailymail.co.uk/sciencetech/article-9826579/Archaeologists-2-200-year-old-shipwreck-underwater-city-Egypt.html>
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954*. https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf
- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 2019*. https://wedocs.unep.org/bitstream/handle/20.500.11822/31970/bcp2019_web_eng.pdf

- Convention on the Law of the Sea, 1982.* https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970.* <https://en.unesco.org/about-us/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and>
- Convention on the Protection of the Underwater Cultural Heritage, 2001.* UNESDOC. Digital Library. <https://unesdoc.unesco.org/ark:/48223/pf0000126065?posInSet=2&queryId=90f7b69a-2237-4b44-a683-bb0799a80ec5>
- Cultural heritage under the armed conflict in Ukraine: challenges and responses. (2020, May 19). *Public space.* <https://www.prostir.ua/?news=kulturna-spadschyna-pid-vplyvom-zbrojnoho-konfliktu-v-ukrajini-vyklyky-ta-vidpovidy> [in Ukrainian].
- Czermański, E., Oniszczyk-Jastrząbek, A., Zaucha, J., Pawłowska, B., Matczak, M., & Szydłowski, Ł. (2021). Preconditions of new container terminal location in the Maritime Spatial Planning framework. A case study for the Central Port Concept in Gdańsk. *Marine Policy, 130*, 104585. <https://doi.org/https://doi.org/10.1016/j.marpol.2021.104585>
- Dawson, B. (2022, April 17). Dead rats found on an ancient shipwreck provide clues to its voyages 1,400 years ago, says archaeologist. *Insider.* <https://www.businessinsider.com/dead-rats-scientists-clues-journey-made-2000-year-old-ship-2022-4?IR=T>
- Dromgoole, S. (2003). 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage. *The international journal of marine and coastal law, 18*(1), 59-108. <http://orcp.hustoj.com/wp-content/uploads/2016/01/2003-2001-UNESCO-Convention-on-the-Protection-of-the-Underwater-Cultural-Heritage.pdf>
- Dromgoole, S. (2020). Continental Shelf Archaeology and International Law. In G. Bailey, N. Galanidou, H. Peeters, H. Jöns, & M. Mennenga (Eds.) *The Archaeology of Europe's Drowned Landscapes. Coastal Research Library, 35.* Springer, Cham. https://doi.org/10.1007/978-3-030-37367-2_25
- European Convention on the protection of the archaeological heritage (revised), 1992.* <https://treaties.un.org/doc/Publication/UNTS/Volume%201966/volume-1966-A-33612-English.pdf>
- Jack, V. (2022, April 22). Trolling Russia, Ukraine registers Moskva shipwreck as 'underwater cultural heritage'. *Politico.* <https://www.politico.eu/article/trolling-russia-ukraine-registers-moskva-shipwreck-underwater-cultural-heritage/>

- Koval, D. (2021). The Award Concerning Jurisdiction in the Coastal State Rights Dispute Between Ukraine and Russia: What Has Been Decided and What to Expect Next. *Lex Portus*, 7(1), 7–30. <https://doi.org/10.26886/2524-101X.7.1.2021.1>
- Krechetova, D. (2022, April 22). No. 2064. The cruiser “Moscow” was entered in the register of underwater cultural heritage of Ukraine. *Ukrainian Truth*. <https://life.pravda.com.ua/culture/2022/04/22/248355/> [in Ukrainian].
- Law of Ukraine on Contiguous zone of Ukraine, 2018*. (No. 2641-VIII). *Official Bulletin of Ukraine*, 2019, 4, 105. [in Ukrainian].
- Law of Ukraine on exclusive (maritime) economic zone of Ukraine, 1995*. (No. 162/95-VR). *Statements of the Verkhovna Rada of Ukraine*, 21, 152. [in Ukrainian].
- Law of Ukraine on protection of archaeological heritage, 2004*. (No. 1626-IV). *Official Bulletin of Ukraine*, 15, 1027. [in Ukrainian].
- Law of Ukraine on protection of cultural property, 2000* (No. 1805-III). *Official Bulletin of Ukraine*, 27, 1112. [in Ukrainian].
- Lin, Z. (2019). Jurisdiction Over Underwater Cultural Heritage in the EEZ and on the Continental Shelf: A Perspective From the Practice of States Bordering the South China Sea. *Ocean Development & International Law*, 50(2–3), 170–189. <https://doi.org/10.1080/00908320.2019.1582601>
- Marciniak, K. (2020). The Development of the International Law Concerning the Protection of Underwater Cultural Heritage: Remarks on the Occasion of the Accession of Poland to the 2001 UNESCO Convention. *Polish Yearbook of International Law*, 40, 109–127. <https://doi.org/10.24425/pyil.2021.138432>
- McLaughlin, Ch. (2022, March 23). Wreck of whaling ship from Massachusetts which sank nearly 190 years ago discovered in Gulf of Mexico, may offer clues about the history of its diverse crew. *Mass Live*. <https://www.masslive.com/news/2022/03/wreck-of-whaling-ship-from-massachusetts-which-sank-nearly-190-years-ago-discovered-in-gulf-of-mexico-may-offer-clues-about-the-history-of-its-diverse-crew.html>
- Mihajlec, M.A. (2017). *Protection of cultural heritage at the international level*. BGU. [in Russian].
- Monitoring of violations of international humanitarian law regarding the preservation of cultural heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol (2020, July 10). *Voice of Crimea – Culture*. <https://culture.voicecrimea.com.ua/>

en/monitoring-of-violations-of-international-humanitarian-law-regarding-the-preservation-of-cultural-heritage-in-the-temporarily-occupied-territory-of-the-autonomous-republic-of-crimea-and-the-city-of-se/

- Muzdakakis, M. (2022, February 13). There's a "Ship Graveyard" in the Black Sea With 2,500 Years of Wrecked Vessels. *My Modern Met*. <https://mymodernmet.com/black-sea-map-shipwrecks/>
- Papageorgiou, M. (2018). Underwater cultural heritage facing maritime spatial planning: Legislative and technical issues. *Ocean & Coastal Management*, 165, 195–202. <https://doi.org/https://doi.org/10.1016/j.ocecoaman.2018.08.032>
- Pereira, P., Bašić, F., Bogunovic, I., & Barcelo, D. (2022). Russian-Ukrainian War Impacts the Total Environment. *Science of the Total Environment*, 837, 155865. <https://doi.org/10.1016/j.scitotenv.2022.155865>
- Pittock, Ch. (2022a, March, 29). Archaeologists amazed at preservation of English shipwreck: 'Can picture sailors on it'. *Express*. <https://www.express.co.uk/news/science/1587724/archaeology-news-shipwreck-hms-invincible-royal-navy-portsmouth-spt>
- Pittock, Ch. (2022b, January 6). Archaeology breakthrough as 'cursed' shipwreck discovered after 350 years. *Express*. <https://www.express.co.uk/news/science/1545270/archaeology-breakthrough-griffin-shipwreck-lake-michigan-poverty-island-spt>
- Press conference on the discovery of valuable underwater cultural heritage sites. (2019, May 17). *National War History Museum of Ukraine*. http://nvimu.com.ua/novyny/view_fondu/296 [in Ukrainian].
- Protection of cultural property in the event of armed conflict. 29-10-2010 Overview. *International Committee of the Red Cross*. <https://www.icrc.org/en/doc/war-and-law/conduct-hostilities/cultural-property/overview-cultural-property.htm>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977*. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977*. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument>
- Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 1954*. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/410?OpenDocument>

- Randall, I. (2022, March 10). Archaeologists recover ‘exceptional’ treasures from 1,700-year-old Roman shipwreck. *Express*. <https://www.express.co.uk/news/science/1578666/archaeology-news-majorca-treasures-roman-shipwreck-found>
- Rawlinson, K. (2018, October 23). World’s oldest intact shipwreck discovered in Black Sea. *The Guardian*. <https://www.theguardian.com/science/2018/oct/23/oldest-intact-shipwreck-thought-to-be-ancient-greek-discovered-at-bottom-of-black-sea>
- Recommendation of the Parliamentary Assembly of the Council of Europe on Underwater cultural heritage*. (1978, October 4, No. 848). <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=14882&lang=en>
- Recommendation on International Principles Applicable to Archaeological Excavations, 1956*. http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html
- Rome Statute of the International Criminal Court, 1998*. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
- Rosén, F. (2020). The dark side of cultural heritage protection. *International Journal of Cultural Property*, 27(4), 495-510. <https://doi.org/10.1017/S0940739121000023>
- Rybina, L. (2021). The impact of ethnocentrism and its antecedents on cultural heritage tourism along the Silk Road. *Problems and Perspectives in Management*, 19(1), 364-371. [http://dx.doi.org/10.21511/ppm.19\(1\).2021.31](http://dx.doi.org/10.21511/ppm.19(1).2021.31)
- Ryška, I. (2021). Military Necessity and Cultural Heritage Protection in Laws of War: Historical Overview. *International and Comparative Law Review*, 21(2), 187–211. <https://doi.org/10.2478/iclr-2021-0018>
- San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 1994*. <https://ihl.org/wp-content/uploads/2019/07/SAN-REMO-MANUAL-on-INTERNATIONAL-LAW-APPLICABLE-TO-ARMED-CONFLICTS-AT-SEA-2.pdf>
- Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999*. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/590>
- Shestova, S.M. (2015). Principles for the Protection of the World Cultural Heritage and Global Challenges. *Bulletin of the Moscow State University of Culture and Arts*, 6(68), 122–127. [in Russian].
- ‘Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed’: Constitution of the United Nations Educational,

- Scientific and Cultural Organization. *The UNESCO Courier: a window open on the world*, 1966, XIX, 7/8, 6–7, illus. <https://unesdoc.unesco.org/ark:/48223/pf0000033223>
- Spitz, K. (2021). Target and Trigger. A Reflection on the Relation Between Cultural Heritage and Peace and Security. In G. Jacobs, I. Suojanen, K. Horton, P. Bayerl (Eds.) *International Security Management. Advanced Sciences and Technologies for Security Applications*. Springer, Cham. https://doi.org/10.1007/978-3-030-42523-4_13
- Tkachenko, O. (2021, December 1). Ukraine joined the UNESCO Committee for the Protection of Cultural Heritage during the War. *Espresso*. <https://espresso.tv/ukraina-uviyshla-do-komitetu-yunesko-z-zakhistukulturnoi-spadshchini-pid-chas-viyni> [in Ukrainian].
- The ICOMOS International Committee on the Underwater Cultural Heritage (ICUCH)* (2022). International Council on Monuments and Sites. <https://icuch.icomos.org>
- UNESCO. *Executive Board, 212th*, 2021. Follow-up to decisions and resolutions adopted by the Executive Board and the General Conference at their previous sessions, part I: Programme issues, E. Follow-up of the situation in the Autonomous Republic of Crimea (Ukraine). 212 EX/5.I.E. <https://unesdoc.unesco.org/ark:/48223/pf0000378910>
- Vaangal, K. (2022). Reexamining the UNCLOS: a Lack of Compliance and Enforceability. *Lex Portus*, 8(1), 7–27. <https://doi.org/10.26886/2524-101X.8.1.2022.1>
- Wreck of British explorer James Cook's Endeavour found: researchers (2022, February 3). *Phys*. <https://phys.org/news/2022-02-british-explorer-james-cook-endeavour.html>
- Zhong, H. (2020). The Protection of Underwater Cultural Heritage in Disputed Maritime Areas: A Case Study of the South China Sea. *Asian Perspective*, 44(4), 651-675. <https://doi.org/10.1353/apr.2020.0028>

Цуцкірідзе М., Краснікова О., Погорецький М. Підводна культурна спадщина: проблеми режиму та юрисдикції. – Стаття.

У статті розглядаються міжнародні і національні аспекти правового режиму підводної культурної спадщини та окреслюються особливості юрисдикції держав щодо виявлених підводних археологічних цінностей. Правовий режим об'єктів підводної культурної спадщини корелює з режимами морських просторів, у яких перебувають чи виявляються зазначені об'єкти. На цій

підставі можна розрізняти режими підводної культурної спадщини у (i) підсуверенних і підюрисдикційних районах та (ii) у відкритому морі і Районі. Режим підводної культурної спадщини у першому випадку є потрійним, що поєднує права прибережних держав, інших зацікавлених держав та держав прапора урядових кораблів та літаків. У відкритому морі чи Районі такий режим регулюється двосторонніми або багатосторонніми домовленостями. Ефективність застосування зазначених режимних норм також залежить від можливих територіальних претензій та оспорюваної юрисдикції. Проблема стає критичною для морських “сірих зон” або збройних конфліктів на морі.

Ключові слова: підводна культурна спадщина, регіональна співпраця, UNCLOS’82, Конвенція ЮНЕСКО 2001 р., юрисдикція, правовий режим, морські простори, Чорне море, Азовське море, Україна.

Цуцкиридзе М., Красникова А., Погорецкий Н. Подводное культурное наследие: проблемы режима и юрисдикции. – Стаття.

В статье рассматриваются международные и национальные аспекты правового режима подводного культурного наследия, очерчиваются особенности юрисдикции государств в отношении обнаруженных подводных археологических ценностей. Правовой режим объектов подводного культурного наследия коррелирует с режимами морских пространств, в которых находятся или обнаруживаются указанные объекты. На этом основании можно различать режимы подводного культурного наследия в (i) подсуверенных и подюрисдикционных районах и (ii) в открытом море и Районе. Режим подводного культурного наследия в первом случае является тройственным, включающим права прибрежных государств, других заинтересованных государств и государств флага кораблей и самолетов, пребывающих на правительственной службе. В открытом море или в Районе такой режим регулируется двусторонними или многосторонними договоренностями. Эффективность применения указанных режимных норм также зависит от возможных территориальных претензий и оспариваемой юрисдикции. Проблема становится критической для морских “серых зон” или вооруженных конфликтов на море.

Ключевые слова: подводное культурное наследие, региональное сотрудничество, UNCLOS’82, Конвенция ЮНЕСКО 2001 г., юрисдикция, правовой режим, морские пространства, Черное море, Азовское море, Украина.