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Cultural Heritage in the Maritime Environment

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Abstract: *The seas and oceans of the world hide many resources and treasures, and not all of them come from nature. Thousands of wrecks still lie on the bottom of the sea, alongside countless objects of cultural and historical value. Just as it is essential to know how to manage and develop the natural resources of the maritime environment, it is equally important to learn about the legal status of the underwater cultural heritage, more specifically what States are and what they are not allowed to do with regard to the underwater heritage. This article shall try to briefly discuss these matters and whether a satisfying balance may be achieved between protecting the underwater heritage and exploiting the natural resources of the sea, given the most recent developments in science and technology.*

Keywords: *cultural heritage; underwater heritage; law of the sea; UNESCO; maritime zones.*

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1. Introduction

In the summer of 2023, the world was witnessing the implosion of the *Titan* OceanGate submersible, causing the death of all five passengers. The tragedy occurred during an expedition to view one of the world's most famous and recognizable wrecks – that of the *Titanic.*[1]

In truth, thousands of wrecks lie on the bottom of the seas and oceans of the world, together with all the objects, items, and valuables that were lost alongside them. Of extraordinary importance for archaeology, history, and culture, such wrecks may offer valuable information that would otherwise be inaccessible.

This fact has given rise, especially during the last 40-50 years or so, to the development of new concerns in International Law, particularly within the larger bodies of the Law of the Sea and International Cultural Heritage Law, concerning the protection, safeguarding, and recovery of items of cultural significance found underwater, commonly known as underwater cultural heritage.

As mentioned, the field of underwater cultural heritage has not always been of importance to international legal scholars, so very few (if any) rules of Customary International Law exist. Only with the more recent scientific and technological developments concerning the exploration and exploitation of the seas has interest in this matter grown.[2]

That is why the first Conventions on the Law of the Sea, adopted in Geneva in 1958,[3] did not address underwater heritage at all. At the time, States believed they had more pressing concerns to agree upon.

The current Convention on the Law of the Sea was adopted in Montego Bay in 1982,[4] it is a very comprehensive treaty containing more than 300 articles covering all matters concerning the Law of the Sea. The Convention also includes certain provisions tackling underwater heritage, however, they are

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[1] Juan Benn Jr., "Will Titan's loss end dives to Titanic wreck forever?", *BBC News*, https://www.bbc.com/news/world-us-canada-66048273, last visited on 18 October 2023.

[2] Patrick J. O'Keefe, "Underwater Cultural Heritage", in Francesco Francioni & Ana Filipa Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford, 2020, pp. 295-317, p. 295-296.

[3] Convention on the Continental Shelf, 29 April 1958, 499 UNTS 311, entered into force 10 June 1964.

[4] United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 397, entered into force 16 November 1994.

quite brief and somewhat controversial.[5] It was only in 2001 that the international community agreed to adopt a special treaty designed expressly for regulating the protection and preservation of the underwater heritage. As such, the UNESCO Convention on the Protection of the Underwater Cultural Heritage[6] entered into force in 2009 and presently[7] has 73 States Parties, the latest to ratify the convention being Mauritania, in July 2023.[8] Romania has also been a Party to the Convention, since 2007.[9]

As officially stated by UNESCO, nowadays the underwater heritage faces multiple challenges, being exposed to looting, commercial exploitation, industrial trawling, coastal development, and exploitation of natural resources and the seabed, to which environmental damage, such as global warming, water acidification or pollution must be added.[10]

The article will briefly address the provisions included in the 1982 Convention on the Law of the Sea, after which it will turn to the more detailed regulations of the 2001 UNESCO Convention.

2. Premises for Protection of Underwater Cultural Heritage: UNCLOS

Turning first to the Convention on the Law of the Sea, underwater heritage is briefly addressed in two of its articles, namely Articles 149 and 303. At the time, the major maritime powers feared the process of 'creeping jurisdiction' beyond the territorial sea and the reduction of freedom on the high seas, in

[5] Dinah Shelton, "Recent Developments in International Law Relating to Marine Archaeology", *Hague Yearbook of International Law,* vol. 10, 1997, p. 61; Lucius Caflisch, "Submarine Antiquities and the International Law of the Sea", *Netherlands Yearbook of International Law,* vol. 13, no. 3, 1982, p. 14.

[6] Convention on the Protection of the Underwater Cultural Heritage, 2 November 2001, 2562 UNTS 1, entered into force 2 January 2009 (hereinafter '2001 UNESCO Convention').

[7] As of October 2023.

[8] UNESCO, "Convention on the Protection of the Underwater Cultural Heritage", https://www.unesco.org/en/legal-affairs/convention-protection-underwater-cultural-heritage#item-2, last visited on 18 October 2023.

[9] See *Law no. 99/2007 on the acceptance of the Convention on the Protection of the Underwater Cultural Heritage, adopted in Paris on 2 November 2001,* Official Gazette of Romania no. 276 of 25 April 2007.

[10] UNESCO, "Underwater Heritage (Convention 2001)", https://www.unesco.org/en/underwater-heritage?hub=412, last visited on 18 October 2023.

addition to not considering underwater heritage as being of any major importance.[11]

Article 149 deals with archaeological or historical objects that may be discovered in the so-called 'Area', which refers to the seabed and ocean floor beyond national jurisdiction[12]. As such, cultural heritage found in the Area should be either preserved or disposed of for the benefit of the entire mankind, giving particular regard to the preferential rights of the State of origin, the State of cultural origin, or the State of historical or archaeological origin.[13]

It is, in our view, interesting to point out that the text does not further develop on the meaning of 'preservation' or 'disposal'. The former may be interpreted as including preservation *in situ* or even removing the object in question to ensure its protection in a special museum or similar institution[14], while the latter is even more controversial – disposing of the cultural object might mean removing it altogether for exploiting natural resources or, if we move to a private law aspect, selling the object and perhaps using the funds for the benefit of mankind?[15]

Furthermore, the Convention also never explains how to identify this wide variety of States that may be given preferential rights, leaving commentators to appreciate the text as effectively void and vague or even obscure.[16]

On the other hand, article 303 of the Convention refers to archaeological and historical objects found at sea in general, and that is why several scholars have considered Article 149 (concerning objects found in the Area) to be *lex specialis* over Article 303. States, therefore, must cooperate to protect the underwater cultural heritage. Doctrine has shown that this duty encompasses both a positive and a negative obligation, as States must both take active

[11] Patrick J. O'Keefe, "Underwater Cultural Heritage", in Francesco Francioni & Ana Filipa Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law,* Oxford University Press, Oxford, 2020, pp. 295-317, at p. 298.

[12] UNCLOS, Article 1(1)(1).

[13] UNCLOS, Article 149.

[14] Luigi Migliorino, "*In Situ* Protection of the Underwater Cultural Heritage under International Treaties and National Legislation", *International Journal of Marine and Coastal Law*, vol. 10, 1995, p. 486.

[15] Sarah Dromgoole, *Underwater Cultural Heritage and International Law*, Cambridge University Press, 2014, p. 126.

[16] Patrick J. O'Keefe, "Underwater Cultural Heritage", in Francesco Francioni & Ana Filipa Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law,* Oxford University Press, Oxford, 2020, pp. 295-317, at p. 299.

measures to ensure the protection of the underwater heritage, as well as refrain from damaging the heritage themselves.

The second paragraph of the article contains an interesting assumption referring to the legal status of the contiguous zone, as States are allowed to consider that the unauthorized removal of underwater heritage from the seabed of their respective contiguous zones (and we stress that the text only refers to the *removal* of objects, not to the destruction or damaging thereof) infringes the regime of that zone concerning the limited jurisdiction that States have in fiscal, customs, sanitary or immigration matters.

Article 303 also recognizes the rights of the identifiable owners, the law of salvage or other admiralty rules or practices, which are, however, bodies of private law (the compatibility of which with the International Law of the Sea not being developed upon) and which are also specific to common law systems – in other words, difficult to enact or apply in other systems of law[17].

3. The 2001 Underwater Heritage Convention: General Principles

The provisions of the UNCLOS, however controversial and potentially void of any actual applicability, left the doors open for the adoption of a specialized treaty under the auspices of UNESCO in 2001, the Convention on the Protection of the Underwater Cultural Heritage. More recently, the Convention has been appreciated as being fully in line with the objectives and principles of UN Agenda 2030 regarding sustainable development.[18] The Convention is quite brief, having 35 articles, about 20 of which contain substantial provisions.

As such, the 2001 UNESCO Convention applies to heritage that has been underwater either in whole or in part, either continuously or periodically, for at least 100 years[19]. The heritage the Convention talks about is human, as natural resources of potential cultural significance to humans are excluded from its scope of application. We of course can note the 100-year time

[17] Tullio Scovazzi, "Underwater Cultural Heritage", *Max Planck Encyclopedia of Public International Law*, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1232, last visited on 18 October 2023, para. 16.

[18] UNESCO, "Underwater Heritage (Convention 2001)", https://www.unesco.org/en/underwater-heritage?hub=412, last visited on 18 October 2023.

[19] 2001 UNESCO Convention, Article 1(1)(a).

limitation, which has been controversial[20] during the drafting and the adoption of the Convention.[21]

Coastal States have, therefore, full sovereignty over heritage found in their internal waters and territorial seas, while activities related to heritage uncovered in their contiguous zones may be subject to regulations and authorizations under Article 303 UNCLOS, which has been referred to before. In other words, the Convention leaves up for discussion the human heritage found in the EEZ, the continental shelf, and on the deep seabed.

In a general overview, the main principles set forth by the 2001 UNESCO Convention, as identified both by UNESCO itself and by scholars, can be resumed as follows:

(a) **the obligation to preserve the underwater cultural heritage**, as explicitly provided by Article 2.3. as a general principle underlying all conventional provisions. For this purpose, the treaty provides specific state obligations, such as the existence of inventories in the protection of this heritage (Article 22), drafting of management plans for all discovered underwater heritage in a given territory, essential to know, protect, preserve, and study such heritage. It must also be emphasized that Art. 2.9 of the 2001 Convention provides that all human remains dumped in maritime waters be given due respect.

(b) ***In situ* preservation as a preferred option** (Article 2.5). The main principle that the Convention advocates for is the *in situ* protection and preservation of cultural heritage before anything else, which refers to preserving cultural heritage as best and effectively as possible where it is found. State cooperation is heavily emphasized. Of course, there may be circumstances where *in situ* preservation might not be possible or desirable for the best protection of underwater cultural heritage, (for example, if certain objects are made of wood and would be damaged by the water or if the surrounding area has shifting currents or quicksands), in this case, the recovery of the objects shall be possible only under a special authorization regime and only for justified reasons, as mentioned above.

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[20] Markus Rau, "The UNESCO Convention on Underwater Cultural Heritage and the International Law of the Sea", *Max Planck Yearbook of United Nations Law*, vol. 6, 2002, p. 404.

[21] However, the *Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage*, adopted by Resolution 6 / MSP 4 and Resolution 8 /MSP 5 clarified that the Convention contains minimum requirements and that each State Party may choose to develop even higher standards of protection, for example by also protecting on a national level remains submerged less than 100 years.

(c) **The obligation to prevent commercial exploitation, looting, and trafficking of underwater cultural property**. This prohibition is absolute. Any activity regarding underwater heritage shall not fall within the law of salvage or the law of finds unless it is properly authorized, fully in compliance with the 2001 UNESCO Convention, and ensuring the maximum protection of the recovery of said heritage. For example, salvage might seem quite difficult to reconcile with *in situ* conservation of underwater heritage.

For effective compliance with this obligation of prevention, the 2001 Convention enumerates a number of subsequent obligations, such as (i) the prevention of the entry into their territory, trade or possession of an underwater cultural heritage object, if it has been exported and/or acquired illicitly, when its recovery has been carried out under conditions contrary to the Convention; (ii) the prohibition of the use of their territory by looters; (iii) the control nationals and vessels and imposing adequate sanctions; (iv) the seizure of underwater cultural heritage in their territory when it has been recovered in a manner not in conformity with the Convention.

However, many scholars believe that the convention still has not managed to provide an adequate and fair balance between the protection of heritage and its potential commercial exploitation.[22]

(d) **Training** (Article 21) **and information sharing** (Article 19): as set forth by the convention, the state parties should promote information sharing, training in underwater archaeology and related disciplines, technology transfer, and raising awareness concerning the significance of underwater cultural heritage (Article 20). In the same spirit, States must cooperate in the dissemination of the provisions of the Convention and its implementation, in training national and international bodies and experts in the field, and in raising public awareness of the value and importance of underwater cultural heritage.

(e) **International cooperation:** international cooperation is seen as a cornerstone of the 2001 UNESCO Convention, imposing to the State Parties to cooperate and assist each other in the protection and management of underwater cultural heritage, particularly when it concerns exploration, excavation, documentation, conservation, and presentation.

[22] Patrick J. O'Keefe, "Underwater Cultural Heritage", in Francesco Francioni & Ana Filipa Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford, 2020, pp. 295-317, at p. 303.

Similarly, under a general provision, Article 2.2 of the Convention encourages States Parties to cooperate in the protection of underwater cultural heritage.

4. The 2001 Underwater Heritage Convention: Measures to be Adopted by States and Relevant Stakeholders

The 2001 UNESCO Convention enacts certain measures designed to ensure the proper protection and preservation of the heritage. As detailed above, the 2001 UNESCO Convention does not affect the jurisdiction of the State or its territorial sea areas: States have the exclusive right to regulate and authorize activities directed at underwater cultural heritage present in their internal waters, archipelagic waters, and territorial seas. However, Article 2.4 encourages States Parties to cooperate to take all necessary measures to protect underwater heritage, irrespective of its location (including the territorial waters).

For the Exclusive Economic Zone,[23] the continental shelf, and the Area, Articles 9 and 11 of the 2001 UNESCO Convention establish a specific regime of international cooperation encompassing ***coordination***, ***cooperation, and a declaration system*** for implementing the measures for the protection of the heritage discovered in these areas.

(a) ***Coordination between States***:

In territorial waters, there is no mandatory reporting and coordination mechanism, as these waters fall under the exclusive jurisdiction of the State concerned. However, States Parties may cooperate under Article 2.2 of the Convention.

In the case of the EEZ, Continental Shelf, and the Area, the 2001 UNESCO Convention sets forth a more complex system, with specific obligations incumbent on the state parties and specific actions of the international actors with competencies in the field:

✓ Each State Party to the Convention shall take the necessary measures (including enacting proper legislation) to ensure that its nationals and vessels flying its flag do not engage in any activity directed at underwater cultural heritage in a manner inconsistent with the provisions of the 2001 Convention;

✓ Each State Party to the Convention shall request that its nationals and vessels ***report discoveries and activities concerning underwater cultural***

[23] Hereinafter "EEZ", as defined by Article 55 of UNCLOS.

heritage located in the EEZ, on the Continental Shelf, and in the Area and inform the other States Parties thereof;

✓ A "***Coordinating State***" shall be designated to coordinate actions and consultation between States Parties and shall issue authorizations, acting on behalf of all States Parties concerned and *not in its interest.*[24] This is an extremely interesting legal figure, where a State shall act in the name of an "international public interest" and a specific form of an incipient "international public order" in the field of the law of the sea, similar to what is already existing under more developed self-contained legal regimes, such as the international human rights law and the international criminal law. It shows the interest of the international community towards peace and, accordingly, the increasing importance of this area of international law;

✓ States Parties shall take measures to prevent illicit trafficking in illegally exported and/or recovered underwater cultural objects and to seize them if found on their territory.

(b) ***Cooperation system and declaration***

The cooperation and reporting system applies only in the EEZ, the Continental Shelf, and the Area and it requires several specific steps to be followed by the State Parties:

✓ ***Reporting***: States Parties are required to request reports on underwater cultural heritage discoveries and activities by their nationals and vessels flying their flag;[25]

✓ ***Notification***: States Parties shall notify UNESCO of such discoveries and planned activities. With regard to discoveries and activities in the Area, States Parties shall notify such reports to UNESCO and the Secretary-General of the International Seabed Authority;

✓ ***Declaration of interest***: The Director-General of UNESCO notifies the States Parties of this information, and they may declare their interest in being consulted;

✓ ***Consultation***: the notified States Parties agree on the measures to be taken under the coordination of a Coordinating State under Article 10 of the Convention. In deciding upon the most effective protection of cultural property, States must consult between themselves, with particular attention to

[24] *Emphasis ours.*

[25] An alternative obligation is imposed by Article 9(1)(ii) of the 2001 Convention, which allows States Parties to require the national or the master of the vessel to report the discovery or the activity.

the directly interested ones (those which may have a link of a historical or cultural nature with the object in question).

✓ ***Taking action***: the Coordinating State takes action as agreed by all consulted States Parties. States are also authorized to take urgent measures, even before notifying or consulting with other States, to put an end to actions capable of damaging or deteriorating the underwater heritage (including imminent natural disasters).

If States come across underwater heritage that has been recovered contrary to the provisions of the Convention, they must take all necessary measures to seize the heritage in question, record, protect, and stabilize it. As noted by scholars, the 2001 UNESCO Convention was drafted specifically to provide States Parties with an obligation of means (that of taking all measures necessary) instead of an obligation of result (that of actually seizing the heritage, which may prove difficult in practice).[26]

In practice, States often conclude bilateral or regional agreements for the protection of specific wrecks, which is allowed, and we might say even encouraged by the Convention.[27] We believe this to be a very welcome provision, as better protection is often achieved through cooperation amongst a lower number of States. For example, Australia and the Netherlands concluded a treaty concerning the so-called *Old Dutch Shipwrecks*,[28] and the UK and Canada concluded a treaty concerning the wrecks of the *Erebus* and the *Terror*, lost in 1845 (interestingly enough, the latter treaty was concluded even before the discovery of the respective shipwrecks).[29]

Similarly, a well-known case of an efficient application of this system was the one of *Skerki Banks* (or the *Esquerquis Bank*), located in an area of high sea in the central Mediterranean, north of the Strait of Sicily, between Sicily and Tunisia. The cultural importance of the site has been notified to UNESCO by Italy in 2018. Subsequently, eight States Parties to the 2001 Convention, namely Algeria, Croatia, Egypt, France, Morocco, Spain, and Tunisia, together with Italy, expressed their interest in being consulted on ways to ensure the effective protection of the site and, in accordance to article 10 of

[26] Craig Forrest, *International Law and the Protection of Cultural Heritage*, Routledge, London and New York, 2010, p. 352.

[27] 2001 UNESCO Convention, Article 6.

[28] Agreement between the Netherlands and Australia concerning old Dutch shipwrecks, done at The Hague on 6 November 1972.

[29] Memorandum of Understanding between the Governments of Great Britain and Canada pertaining to the Shipwrecks *HMS Erebus* and *HMS Terror*, done on 5 and 8 August 1997.

the Convention, Tunisia was designated as coordinating State insofar as the submerged archaeological features are located on its continental shelf.[30] Even if, at this very moment, such examples are not extremely numerous, they come to demonstrate the fact that States become increasingly interested in both their underwater heritage and the relevant international law provisions applicable to its protection and valorization for the benefit of the entire human mankind.

In case of any disputes arising, the Underwater Heritage Convention provides States with no less than four means of dispute settlement: the International Tribunal for the Law of the Sea, the International Court of Justice, regular arbitral tribunals, or special arbitration under the UNCLOS.

5. The 2001 Underwater Heritage Convention: Limits

Despite the importance of its objective – the underwater cultural heritage -, its ambitious purpose – the preservation of such heritage for the benefit of the entire humankind – and the interesting normative solutions included in its provisions – State cooperation in the "free"-zones, the designation of a coordinating State, acting for the protection of public interest -, the convention has several limits, which we shall briefly point below:

(a) a limited participation of relevant States

The UNESCO Convention was adopted in 2001 and it entered into force on January 2, 2009. However, 22 years after its adoption and 14 years after it entered into force, only 72 States are parties to the Convention, missing some of the most important actors in the field, regarded both from the point of view of the length of their coastal lines and their recognition as maritime powers, currently or from a historical perspective, such as Australia, Brazil, Canada, Chile, China, Denmark, Japan, Norway, United Kingdom of Great Britain and Northern Ireland, Sweden, USA etc.[31] Despite the efforts made by the bodies implementing the provisions of the convention and UNESCO, the fact that these important actors are not part of the conventional mechanism weakens

[30] "Underwater archaeological mission for UNESCO and 8 Member States in the Mediterranean", available at https://www.unesco.org/en/skerki-bank-mission, last visited on 19 October 2023.

[31] List of State Parties to the 2001 UNESCO Convention, https://www.unesco.org/en/legal-affairs/convention-protection-underwater-cultural-heritage#item-2, last visited on 19 October 2023

the international efforts to respond to the challenges faced by the underwater cultural heritage.

(b) no regulation in case of international armed conflict

While it is a well-known fact that international armed conflicts may harm the underwater cultural heritage the same as they harm the cultural heritage on the ground, the UNESCO 2001 Convention does not address this hypothesis. Nor does it provide for any other form of legal articulation between its provisions and the relevant International Humanitarian Law provisions concerning the protection of cultural objects in times of armed conflicts. If, in the 50s and 60s, when the main international treaties regarding the protection of cultural property during armed conflicts have been drafted[32], such omission can be explained, for a treaty drafted in the 2000s, such a lack is regrettable. Certainly, the general principles of International Humanitarian Law may be applied and there is room for judicial interpretation but, at least for reasons of symbolism and clarity, an explicit statement of a rule prohibiting the attack, destruction, and deterioration of underwater cultural heritage would have been advisable. Even if we leave the matter to the general principles of international law - and international humanitarian law, still, the underwater cultural heritage found in the high seas remains unprotected, as the legal regime of protection of cultural heritage during armed conflict remains linked to the exercise of State jurisdiction.

(c) deep-sea exploitation

From the perspective of the international law practitioner, the summer of 2023 was made even hotter by two somehow conflicting topics on the law of the sea: on one side, the adoption of *the Agreement under the United Nations Convention on the law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction,*[33] and, on the other, the fact that starting July 9, 2023, the International Seabed Authority (ISA), will allow companies to file permit applications for commercial deep seabed mining, even if provisionally. The possibility was opened by the Pacific Island State of Nauru in July 2021, when it triggered

[32] The 1954 Hague Convention for the Protection of Cultural Property, the 1954 Protocol to the Hague Convention for the Protection of Cultural Property and the 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property.

[33] Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, adopted in New York on 19 June 2023, https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXI/XXI-10.en.pdf, last visited on 19 October 2023.

Section 1(15) of the UNCLOS Implementation Agreement, a provision that establishes a two-year window for the finalization of a set of rules, regulations, and procedures to govern seabed exploitation.[34] If, within 2 years, such Mining Code was not finalized, Section 1(15) provides that ISA is required to begin considering and provisionally approving deep-sea mining contracts without overarching regulations.[35] The State of Nauru has concluded a contract with The Metals Company for the exploitation of Clarion-Clipperton Zone, a vast abyssal plain in the Pacific Ocean that is of particular interest to miners, as it is a plein of polymetallic nodules.[36]

The main concern raised by the possibility of deep-sea exploitation is related to the environmental consequences of such activities and, under a similar reasoning, to the consequences affecting underwater cultural heritage. The topic of the environmental consequences of deep-sea mining has been intensively debated over the years. While certain consequences will exist, it is not clear how profound will they be and if such economic exploitation shall severely threaten the maritime environment.[37] The same reasoning applies in the case of underwater cultural heritage. While the technology of extracting the polymetallic nodules is largely experimental, it is unclear in what measure it will affect the underwater cultural heritage. Moreover, in the case of underwater cultural heritage, a special feature of risk attached to the economic

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[34] Daniel Rosenberg, "The Legal Fight Over Deep-Sea Resources Enters a New and Uncertain Phase", *EJIL Talk!*, 22 August 2023, https://www.ejiltalk.org/the-legal-fight-over-deep-sea-resources-enters-a-new-and-uncertain-phase/, last visited on 19 October 2023.

[35] The ISA previously adopted regulations for prospecting and exploration of the Area, but despite years of trying, has never finalized a Code for seabed exploitation.

[36] *Ibid.*

[37] Daniel Rosenberg, "The Legal Fight Over Deep-Sea Resources Enters a New and Uncertain Phase", *cited above.* In this article, the author made an excellent synthesis of the potential risks over the maritime environment, in the following terms: "*Though the technology is still experimental, the commonly proposed method of deep-sea extraction essentially involves dragging an undersea farming combine, which would unearth nodules from the seabed. Surface vessels then use hydraulic pumps to dredge up the unearthed nodules from the depths. This process, while effective at extraction, creates problems for the populations of flora and fauna that reside just below the sediment surface, known as the substratum. The primary issue is the creation of sediment plumes, or large clouds of dust and debris kicked up by the mining process. These plumes have high levels of metals and other toxic materials that can devastate surrounding ecology. Furthermore, because of the density of these plumes, the debris is often conveyed some distance by ocean currents and does not settle in the spot that it originated. The science surrounding sediment plume effects is still unclear, but analysis from two test sites suggests that the ecological damage done by sediment plumes is diffuse and long-lasting*". The same kind of risks shall affect, similarly, the underwater cultural heritage.

exploitation stays in the fact that most of this heritage is, yet, undiscovered and uncharted and it could be damaged by the mere fact of not knowing about its existence (even if impact studies and pre-exploitation studies shall certainly be required, a potential risk will always exist). Finally, as it has been shown about the environmental impact, the true cost of deep-sea mining may not become apparent until the damage is irreversible.[38]

6. Conclusion

Without a doubt, the current economic development and demographic growth lead to an increased interest of States in discovering and exploiting new resources, and this could not have been avoided in the underwater area in general and the deep sea in particular. Equally, the advanced technical possibilities have shown that underwater areas are hiding the most extensive and the most important museum of mankind, by hosting, in addition to the amazing biodiversity that constitutes the essential premise for the survival of mankind, a cultural and spiritual heritage which we have the legal and moral duty of preserving, for the benefit of future generations. Both the general provisions of UNCLOS, as well as the provisions of the 2001 UNESCO Convention, have set this ambitious goal, but the limits of these regulations – many of them deriving from the specific nature of the areas where the underwater cultural heritage is located – are clear. In these circumstances, the reaction of the States – both in embracing the relevant norms of International Law and concerning the effective practices developed in the exploitation of maritime resources – shall prove essential for the correct management of these unique and priceless treasures.

[38] *Ibid.*

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