Marine Archaeology and International Law: Background and Some Suggestions

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I. INTRODUCTION

Modern technological advances have given man greater access to the seabed than ever before.¹ The growth of marine archaeology as a science in recent years represents an unprecedented opportunity to explore past civilizations by discovering and analyzing historical material found on the ocean floor.²

Because the international law of the sea has failed to keep pace with this new-found ability, there is presently much confusion

¹ These advances include the aqualung, various types of exploratory submarines, and the Alcoa Seaprobe system, which is capable of exploration for, and recovery of sunken vessels at depths of several thousand meters. For a complete description of these and other devices, see J. Gores, MARINE SALVAGE (1971). For a discussion of the nature and possible applications of the Alcoa Seaprobe by its inventor, see Bascom, Deep-Water Archaeology, 174 Scr. 261 (1971).

² For a history of the development of marine archaeology, see J. Gores, MARINE SALVAGE, supra note 1.
within the scientific community as to who has the right to explore for this material, to excavate it upon discovery, and to keep it once excavated. In addition, there is a growing international market for illicitly excavated archaeological artifacts, a development which has concerned states as well as the scientific community.

This paper will analyze the current legal problems confronting marine archaeology and make some recommendations for accommodating the various interests involved.

In its most general form, the problem is two-fold: 1) What are the rights of marine archaeologists to explore for and excavate relevant material on the seabed? and 2) What are the property rights in those finds? The discussion will consider these issues in that order.

II. THE RIGHT TO EXPLORE AND EXCAVATE

The right of marine archaeologists to explore for and excavate archaeological material on the seabed presents a problem of access to the relevant submarine site. The question of who has the jurisdiction to control such access is not easily answered by current law of the sea principles, which have not dealt specifically with marine archaeology.

A. Current Guidelines

On December 5, 1956, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted at its ninth session in New Delhi a Recommendation On International Principles Applicable to Archaeological Excavations. The UNESCO Recommendation deals with problems posed by archaeology in general, i.e., by land and marine archaeology considered as one science. It was the result of feelings that archaeologi-


4. Exact definition of what material is to be considered the subject of marine archaeology has varied. For the purposes of this paper, the term will be given the broadest possible meaning; it will include any remains of past civilization.

5. UNESCO Res. 4.32(c), 9 UNESCO, at 23, U.N. Doc. 9C/PRG/7 (1956).

cal excavation, even when conducted within a state's territorial jurisdiction, is of sufficient importance to the international community to warrant some sort of agreement as to general principles governing various aspects of archaeological endeavor. 7

The Recommendation defines "archaeological excavations" as any research aimed at the discovery of objects of archaeological character, whether such research involves digging of the ground or systematic exploration of its surface or is carried out on the bed or in the subsoil of inland or territorial waters of a Member State. 8

The principles set forth in the Recommendation are thus limited to geographical areas within the Member State's territorial jurisdiction. However, in light of the recent trend toward expansion of coastal state jurisdiction seaward, 9 it is apparent that such a "limitation" could in fact serve as an extension of a coastal state's power to control access to archaeological material in waters off its coast. In addition, the Recommendation allows Member States individually to "define the legal status of the archaeological subsoil .. ." 10 Consequently, a state intent on expanding its coastal jurisdiction seaward could interpret the Recommendation as giving it broad jurisdiction to control archaeological research in areas a great distance from its coast. Such a claim could severely hinder the progress of marine archaeological research, especially if the coastal

7. The preamble to the Recommendation states:

[T]he surest guarantee for the preservation of monuments and works of the past rests in the respect and affection felt for them by the people themselves, and such feelings may be greatly strengthened by adequate measures inspired by the wish of Member States to develop science and international relations,

[T]he feelings aroused by the contemplation and study of works of the past do much to foster mutual understanding between nations, and it is therefore highly desirable to secure international co-operation with regard to them and to further, in every possible way, the fulfilment of their social mission.

[Wh]ile individual states are more directly concerned with the archaeological discoveries made on their territory, the international community as a whole is nevertheless the richer for such discoveries,

[T]he history of man implies the knowledge of all different civilizations; it is therefore necessary, in the general interest, that all archaeological remains be studied and, where possible, preserved and taken into safe keeping.

[I]t is highly desirable that the national authorities responsible for the protection of the archaeological heritage should be guided by certain common principles which have been tested by experience and put into practice by national archaeological services,

[T]hough the regulation of excavations is first and foremost for the domestic jurisdiction of each State, this principle should be brought into harmony with that of a liberally understood and freely accepted international co-operation.

8. UNESCO Recommendation, supra note 6, para. 1.

9. See Santa-Pinter, Latin American Countries Facing the Problem of Territorial Waters, 8 SAN DIEGO L. REV. 606 (1971).

10. UNESCO Recommendation, supra note 6, para. 5(e).
state has restrictive laws governing access to submarine sites. In addition, allowing states to individually determine the extent of their jurisdiction over marine archaeology can only lead to confusion and uncertainty in the scientific community as to what the rights to explore for and excavate archaeological material in various parts of the sea might be. The UNESCO Recommendation fails to consider the problems of the law of the sea which are inherent in marine archaeology.

Within coastal state jurisdiction, however seaward that jurisdiction currently extends, the Recommendation imposes a number of obligations upon Member States relating to the conditions according to which exploration and excavation shall be conducted. Paragraph 5 provides that each Member State should make archaeological explorations and excavations subject to prior authorization by the competent authority. Paragraph 13 provides that Member States on whose territory excavations are to take place should lay down general rules governing the granting of excavation concessions, the conditions to be observed by the excavator, the period of the concession, and various other terms.

The Recommendation provides that the conditions imposed on foreigners be those applicable to nationals of the conceding state. A section on international collaboration provides that Member States should encourage excavations by a liberal policy. They "might" allow qualified individuals or learned bodies of any nationality to apply on an equal footing for the concession to excavate. In addition, they should encourage excavations carried out by joint missions of scientists from their own country and of foreign institutions, or by international missions. Member States lacking resources to organize foreign expeditions should be allowed to send their own archaeologists to sites being worked by other Member States. A Member State whose technical or other resources are insufficient for the carrying out of an excavation should be able to call on the participation of foreign experts.

The Recommendation is strict as to whom shall be given access to archaeological sites:

11. Although the Recommendation is not an international agreement, the regulations it embodies are morally binding on Member States, who are required to bring their domestic regulations into line with them. 9 UNESCO, at 398, para. (26) (1956).
13. Id., paras. 15-18.
Authority to carry out excavations should be granted only to institutions represented by qualified archaeologists or to persons offering such unimpeachable scientific, moral and financial guarantees as to ensure that any excavations will be completed in accordance with the terms of the deed of concession and within the period laid down.\textsuperscript{14}

Member States are encouraged to guarantee foreign archaeologists who are permitted to excavate, sufficient work periods and conditions of security to facilitate their task.\textsuperscript{15}

The European Convention on the Protection of the Archaeological Heritage,\textsuperscript{16} like the UNESCO Recommendation, assumes that each Contracting Party has the jurisdiction to carry out its terms, without defining the extent of the coastal state’s jurisdiction over marine archaeology, resulting in the same uncertainty and confusion caused by the UNESCO Recommendation.

Within coastal state jurisdiction, however seaward that jurisdiction might extend, the Convention provides that each Contracting Party shall take measures as may be possible in order to “delimit and protect sites and areas of archaeological interest,” and in order to create “reserve zones for the preservation of material evidence to be excavated by later generations of archaeologists.”\textsuperscript{17} In addition, each Contracting Party undertakes to prohibit and restrain illicit excavations, and to take the necessary measures to ensure that excavations are, by special authorization, entrusted only to qualified persons.\textsuperscript{18}

\textbf{B. Effect of the Law of the Sea On the Right to Explore and Excavate}

Thus far the discussion has been limited to current international principles pertaining to archaeology in general. As indicated, the failure of these instruments to deal specifically with marine archaeology has led to confusion and uncertainty among marine archaeologists as to who has the jurisdiction to control access to marine sites. The extent of coastal state jurisdiction over marine archaeology cannot be determined without referring to the current

\textsuperscript{14} Id., para. 19.
\textsuperscript{15} Id., para. 20.
\textsuperscript{16} Done May 6, 1969, 66 Europ. T.S. —.
\textsuperscript{17} Id., Art. 2. The value of leaving certain marine archaeological finds \textit{in situ} has received increasing attention in recent years, and the principle has been embodied in other instruments. See UNESCO Recommendation, \textit{supra} note 6, paras. 8-9; UNESCO Draft Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, \textit{adopted} November, 1970, 16 UNESCO, U.N. Doc. 16 C/17 (1970).
\textsuperscript{18} European Convention, \textit{supra} note 16, Art. 3(b).
international law of the sea, which deals with the nature and extent of states' claims to jurisdiction over waters and seabed adjacent to their coasts. The following is an examination of that law and its application to the problem of access to marine archaeological sites, reserving for later any discussion of its impact on property rights in the excavated material.

Various types of jurisdiction are exercised by a coastal state over its waters, depending on the legal characterization of the particular region. Inland waters, for example, such as ports and harbors, are subject to absolute state sovereignty; they are treated as part of the state's defined territory. Thus, access to marine archaeological sites in inland waters is subject to complete control by the sovereign, and the discussion of law of the sea principles relevant to marine archaeology will therefore be limited to areas seaward of a state's established coastal baseline, specifically, the territorial sea, the contiguous zone, the continental shelf, and the high seas.

1. The Territorial Sea

The territorial sea of a coastal state is an area of water, seabed, and air extending a defined distance seaward of, and perpendicular to the established coastal baseline. Within this area a state claims sovereignty nearly as complete as that exercised over internal waters. A state, then, may regulate access to archaeological sites within its territorial sea as an exercise of its sovereignty over that area. At present, however, the width of a coastal state's territorial sea varies widely, and this variation has not been satisfactorily resolved by international law. The conditions of access to marine archaeological sites are therefore dependent on each state's individual claim to coastal jurisdiction, resulting in a considerable lack of uniformity and uncertainty as to such rights of access.

19. The one exception is the right of entry in distress.
22. The 1960 United Nations Conference on the Law of the Sea “is notorious for its failure to produce agreement on the breadth of the territorial sea.” Id. at n.2.
The expansion of coastal state jurisdiction seaward precipitated by anticipation of great mineral wealth and by the desire to protect existing resources such as fisheries could well result in an unwarranted restriction of the freedom of scientific research to which marine archaeology is entitled. The nature of this “freedom” will be discussed in detail later.

2. The Contiguous Zone

The purpose of the contiguous zone of water adjacent to the territorial sea of a coastal state is clearly defined by the Geneva Convention of 1958. It pertains only to coastal state jurisdiction over the waters above the seabed, and for the purposes defined, not to the seabed itself where archaeological material is normally found. Such jurisdiction is thus irrelevant to the marine archaeology problem of access to submarine sites, and seabed areas seaward of the territorial sea are therefore subject to principles applicable either to the continental shelf or to the high seas.

3. The Continental Shelf.

Claims of national jurisdiction over the continental shelf began with the Truman Proclamation of 1945. The 1958 Geneva Convention echoed that proclamation. It 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 admits of the exploitation of the natural resources of the said areas.

The defined purpose of the continental shelf doctrine is to give states sovereignty over certain seabed areas for the purpose of ex-
ploring for and exploiting the natural resources of the seabed and subsoil. 28 "Natural resources" are defined as

... the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary spe-
cies... 29

A commentary by the International Law Commission 30 on sov-
eign rights over the continental shelf states that

[I]t is clearly understood that the rights in question do not cover objects such as wrecked ships and their cargoes (including bullion) lying on the seabed or covered by the sand of the subsoil. 31

This pronouncement would seem to indicate the Convention's in-
tent to limit coastal state sovereignty over the continental shelf to matters pertaining only to "natural resources," the understood meaning of that term apparently excluding archaeological material, which can hardly be termed "natural resources."

The ambiguity as to what are the "resources" over which coastal states may exercise their sovereignty is only one of the many problems confronting marine archaeologists desiring to explore for and excavate archaeological material on the continental shelf. Re-
alizing the interest of science in maintaining its freedom to con-
duct scientific research beyond the territorial sea jurisdiction of coastal states, the Convention provides that exploration for and exploitation of natural resources on the continental shelf must not "result in any interference with fundamental oceanographic or other scientific research carried out with the intent of publica-
tion," 32 but that "the consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and under-
taken there." 33

The perplexing problems posed for marine archaeology by these provisions have been discussed elsewhere. 34 It is sufficient for the
purposes of this discussion to conclude that current law dealing with the continental shelf is plagued with ambiguities and general confusion as to what are the rights of marine archaeologists and others to explore for and excavate archaeological material there.

4. The High Seas

The 1958 Geneva Convention on the High Seas\(^5\) provides that "no State may validly purport to subject any part of (the high seas) to its sovereignty."\(^\text{38}^\) The high seas are all parts of the sea that are not included in the territorial jurisdiction or in the internal waters of a state.\(^\text{37}\) Certain freedoms of the high seas are enumerated,\(^\text{38}\) but the language makes it clear that this list is not exhaustive, and that any freedom which is in fact exercised is subject only to the general principle that States should have "reasonable regard" for the interests of other states when exercising such freedom.\(^\text{39}\)

Subject to this one restriction, marine archaeological research should clearly be considered one of the freedoms of the high seas. Exactly what are the rights and duties of marine archaeologists

\(\text{36}\). Id., Art. 2.
\(\text{37}\). Id., Art. 1.
\(\text{38}\). (1) Freedom of navigation; (2) freedom of fishing; (3) freedom to lay submarine cables and pipelines; (4) freedom to fly over the high seas. Id., Art. 2.
\(\text{39}\). Id.
with respect to the one restrictive principle, however, is unclear, since there is no established regime governing the high seas. Thus, marine archaeology is plagued with uncertainty as to legal rights and obligations in the high seas, just as it is in territorial seas and on the continental shelf.

C. Scientific and Coastal State Interests in Marine Archaeology

It is apparent that there is a critical need for states to revise the international law of the sea to provide for greater predictability and uniformity in the laws governing marine archaeological research conducted anywhere seaward of the coastal state baseline, with due consideration for the essential interest in freedom of scientific research as well as various coastal state interests.

The problem of defining the legal rights and obligations of marine archaeologists to explore and excavate in waters which are subject to coastal state jurisdiction involves the balancing of these interests. Its resolution will depend upon the answer to the question of how, if at all, the freedom to conduct marine archaeological research can conflict with coastal state sovereignty. Such an analysis will require answers to two further questions: 1) what are the purposes of state sovereignty over coastal waters? 2) What is the nature of marine archaeological research? Although much of the following discussion is relevant to the determination of property rights in archaeological finds, the emphasis for the movement will be on the problem of access only (exploration and excavation).

1. Purposes of State Sovereignty Over Coastal Waters.

It is well recognized that a state's sovereignty over its land and inland waters is absolute as a matter of international law. Since a clearly defined territory is one of the essential elements of statehood, sovereignty over land and inland waters is prerequisite to the very existence of a state. A state must, for obvious reasons, maintain such sovereignty in order to function internally without interference from external forces.

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Territorial sovereignty over a coastal state's adjacent waters, however, is not so fundamental to state existence. It is a development of customary international law originated by nations for two historical purposes: 1) to provide security for the state's land and population, and 2) to sustain the state's economy which is supported by resources from the sea. Although coastal states are likely to consider their territorial seas as merely an extension of their land territory, subject to the same absolute sovereignty as the latter, it is clear that territorial waters are at least in part international in character. In the first place, they are subject to two well-known servitudes in the international community: the right of innocent passage, and the right of entry in distress. Secondly, it is apparent that the oceans are continuous bodies of water whose resources and phenomena know no artificial boundaries. This is of great consequence to marine archaeology, since exploration and excavation may well lead the scientists across artificial territorial boundaries in the sea.

Of course, all states value their archaeological heritage and have an interest in exercising their sovereignty to protect it. But it is suggested that, for coastal states, exercise should not take the form of arbitrary restriction of access to marine archaeological sites based solely on an assertion of territorial sovereignty. Such restriction normally serves no legitimate purpose, and would probably operate to delay discovery and preservation of the very archaeological material the coastal state seeks to recover and preserve. How the various coastal state interests interact with the science of marine archaeology will be discussed below.


The purpose of marine archaeology is to "illustrate and discover the course of human civilization." It is obviously a form of scientific research, but what form that research takes is a crucial factor to consider in determining what freedom it is entitled to.

Freedom of research often means freedom of research for the

42. Id. See notes 19 and 20 supra, and related text.

Absolute sovereignty is anachronistic in this age of universal desperation in the quest for meaningful and lasting peace. Response to the needs of this era, like with many before it, is not, I submit with all due respect, based on empty or pressured renunciation of ancient natural rights; it is based on an older truth that it is better to die a little if it means better guarantee of progress and better standards of life in larger freedom. Engo, Current International Issues Relating to the Law of the Sea, 4 NAT. RES. LAW. 622, 623 (1971).
43. Gores, supra note 1, at 563.
rich. This is especially true for marine archaeological exploration and excavation conducted in areas of the seabed requiring the use of sophisticated and expensive equipment. Thus, less developed nations, unable to participate in such research, are less concerned with this freedom, which they may resent as an interference with their sovereignty and as a possible pretext for exploitation. As a result it is becoming increasingly difficult for marine archaeologists to obtain permission to conduct research within coastal state jurisdiction. The picture is perceptively painted by Elisabeth Mann Borgese:

If, indeed, it could be proven that the benefits of research are as universal as its requirements; that these benefits are not passively received alms from the hands of those who carry the “white man’s burden” of science and technology, but the common fruit of labor undertaken in common; if “freedom” is not laissez faire freedom based on “equal opportunity” which in reality does not exist, but a freedom managed, as all other freedoms must be managed, for the benefit of all mankind, taking into special consideration the needs of the weaker members, then the problem of freedom of research in areas under national jurisdiction, whether on the continental shelf or in territorial waters or anywhere else, might take an entirely different aspect. In other words, the problem of freedom of scientific research cannot be solved by endeavoring to maintain national boundaries at the status quo or trying to change them, but by looking at science, at research, and at freedom.

Coastal state restrictions on scientific research conducted in waters subject to national jurisdiction have been justified primarily on three grounds: 1) such research will give special advantages in the exploitation of resources; 2) it will endanger national security; and 3) it will damage the environment, including living resources. While these dangers are ascertainable when considering research involving natural resources, they hardly seem applicable to marine archaeology. The freedom of scientists to conduct research concerning natural resources in the oceans has encountered restriction to a great extent because of the coastal state’s association of the research itself with possible military or commercial applications of that research. Marine archaeological research is thus disting-

45. Senior Fellow, Center for the Study of Democratic Institutions.
47. Id. at 366.
48. Id. at 363. See Ratiner, National Security Interests in Ocean Space, 4 NAT. RES. LAW 582 (1971).
uished in that it has no distinct commercial or military objective. It is "basic research in the public interest and does not infringe the security of other nations nor give an unfair advantage in the exploitation of resources." It is the pursuit of knowledge in its purest form and, as such, should be considered a fundamental right, the restriction of which can only precipitate increased costs and unnecessary delay in the acquisition of knowledge of past civilizations.

Of course, there are those whose involvement in marine archaeology is directed ultimately toward ownership of the finds, and a coastal state may indeed resent such an interest in property rights to material found within its jurisdiction. But it is suggested that this problem need not affect the basic rights of marine archaeologists to explore and excavate; it may be dealt with directly through clearly defined principles governing the property rights themselves.

At the very least, then, it is not unreasonable to conclude that the freedom of marine archaeologists to conduct exploration and excavation of submarine sites within the territorial jurisdiction of coastal states will not ordinarily conflict with the goals inhering to the exercise of national sovereignty over coastal waters, where such "freedom" is properly managed. The nature of such management will be a crucial factor in the inducement of states to accede to uniform principles by international convention. A prime consideration for the coastal state will be the extent to which marine archaeological research will interfere with other, more pressing activity within its jurisdiction, such as fishing and the search for natural resources. Since the needs of each state vary, and will therefore interact with marine archaeological research in as many different ways as there are coastal states, it is not suggested here that coastal states relinquish their control over marine archaeological research conducted in areas otherwise subject to their jurisdiction. What is being urged, however, is that states, by international convention, define the nature and extent of such control so as to uniformly harmonize the potentially conflicting interests of marine archaeology and coastal state sovereignty.

D. Suggestions for International Principles Governing Marine Archaeological Exploration and Excavation

A possible general principle that such an international convention might adopt is that

49. Id. at 368.
A coastal state shall not arbitrarily deny, nor unfairly restrict, by exhorbitant permit fees or other harsh conditions, the right of qualified marine archaeologists to explore for and excavate submarine archaeological sites within coastal waters over which such state has jurisdiction;

A coastal state's denial of such rights shall not be considered arbitrary where such denial is considered necessary by the coastal state for the protection of more pressing interests unrelated to marine archaeology.

As used here, the term "coastal waters over which such state has jurisdiction" shall mean the territorial sea of such coastal state, as defined by international principles.

The principle reaffirms the conviction expressed earlier that coastal state jurisdiction on the continental shelf does not apply to marine archaeology. The provision relating to "exhorbitant permit fees or other harsh conditions" is aimed at existing antiquities; laws which render access to submarine sites difficult, if not impossible, for many qualified marine archaeologists.

1. International Marine Archaeological Commission

An International Marine Archaeological Commission could be established by international convention to serve various functions, the nature of which would depend on whether the exploration and excavation is to be conducted within or beyond coastal state jurisdiction as defined in the proposed principle. For the moment we are concerned only with its functions within such jurisdiction. The primary function of the Commission there would be to serve as an international source of information concerning marine archaeological research.

50. See note 34 supra.

51. For example, under the regulations of the Florida Board of Antiquities, a $5000 performance bond is currently required of the exploration contractor as "evidence of sufficient financial ability to carry on exploration..." The requirement for a subsequent salvage contract is $15,000. In addition, cash fees are also required of any parties contracting with the board. The fee is $600 for exploration, and $1200 for salvage. FLA. ADMIN. CODE §§33-1.01 to .11 (1966). See Note, Abandoned Property: Title to Treasure Recovered in Florida's Territorial Waters, 21 FLA. L. REV. 360 (1969).

52. The facilitation of the acquisition of knowledge concerning marine archaeology will require "the development of effective international cooperation in research and the effective transfer of scientific and technological information among all those concerned with the ocean. An essential consequence may be the transformation of relevant institutions, one of several reasons why scientists must participate in the elaboration of future ocean regimes." Proceedings, supra note 44, at 373.
vate submarine sites would be required to register a "Certificate of Intent" with the Commission, describing in detail the purpose of the research, how it is to be conducted, the area expected to be covered, the qualifications of the participants, and any other information necessary to accomplish three goals: 1) give the coastal state an official record of all aspects of the research to be conducted, so that it can accurately determine whether such research will conflict with other coastal state interests; 2) provide notice to other states and the scientific community that such research is intended; and 3) protect the interests of marine archaeology and coastal states in assuring a high standard of exploration and excavation.

The Certificate thus filed could be utilized by the concerned coastal state as its sole information source, or it could be used in conjunction with the state's own application procedures. After the Certificate is filed with the Commission, and the marine archaeologists have applied for a deed of concession from the coastal state in whose waters they intend to conduct the research, the coastal state would have a specified period of time to determine if it would be necessary to deny the scientists access to the intended submarine area. If it does object to such access, the coastal state would clearly state its reasons, which would be registered with the Commission. Of course, whether or not such denial is justified in the opinion of others may be open to question, but it is apparent that the coastal state, by virtue of its jurisdiction over the proposed submarine site, would have the final say. Continual arbitrary denial of access, however, could lead to informal sanctions by other states and individuals who could, for example, deny technical assistance to, or participation by, the objecting state in foreign expeditions.

If, on the other hand, the marine archaeologists are allowed access to the area specified in the Certificate, they would be subject to certain obligations and entitled to various rights, all of which should be enumerated by international convention so as to provide a high degree of predictability for future marine archaeological research.

The obligations would include: 1) continuous reporting of prog-

53. Reasonable factors which a coastal state might consider before acquiescing to such exploration and excavation would include the expertise of the applicants, the length of time needed to conduct the excavations, and the size of the area involved. See the UNESCO Recommendation, id., which provides that [W]hen authority to carry out excavations is granted to foreign archaeologists, it should guarantee them a period of work long enough, and conditions of security sufficient to facilitate their task and protect them from unjustified cancellation of the concession. . . . Id., para. 20.
ress and finds to the Commission and to the coastal state in whose jurisdiction the research is being conducted; 54 2) allowing participation of scientists and other qualified nationals of the coastal state; and 3) allowing the coastal state to inspect the equipment being used by the expedition. 56

Rights would include: 1) protection of the submarine site during excavation; and 2) scientific rights in the finds. 56 The protection of the site during excavation is an interest which deserves serious consideration, since such protection is critical to the proper completion of the undertaking. The site, once located and reported to the Commission and the coastal state, could be protected by establishing an “Archaeological Sea Boundary” around it, including the seabed and the column of water above it to the surface. The existence of the Sea Boundary would be recorded with the Commission by the coastal state granting it. The area within the Sea Boundary would be closed to any party except as permitted by the coastal

54. See H. Frost, Under the Mediterranean (1963), where the authoress warns that

Excavation, however well executed, without adequate publication is wanton destruction.

Reports on underwater excavation, if they are to carry conviction, will have to devote considerable space to technicalities: an analysis of the site, a statement of the total diving times on the bottom, a description of the machinery used and the reasons for its choice, the gross and net weights of the objects lifted (especially when these constituted the cargo of a ship) and so on. If such facts are omitted the report becomes suspect. This is a very real danger, for whereas land excavation methods are open to inspection, it is difficult to check the efficiency of underwater work, or to judge whether it could have been done better. Moreover, it is only by a comparison of techniques that a fairly standardized and efficient method can be evolved. Id. at 256.

55. Neither this list nor the following list of rights is intended to be exhaustive; they are merely some of the more important considerations which deserve attention.

56. The UNESCO Recommendation, supra note 6, provides:

The conceding State should guarantee to the excavator scientific rights in his finds for a reasonable period.

The conceding State should require the excavator to publish the results of his work within the period stipulated in the deed, or, failing such stipulations, within a reasonable period. This period should not exceed two years for the preliminary report. For a period of five years following the discovery, the competent archaeological authorities should undertake not to release the complete collection of finds, nor the relative scientific documentation, for detailed study, without the written authority of the excavator. Subject to the same conditions, these authorities should also prevent photographic or other reproduction of archaeological material still unpublished. . . . Id., para. 24.
state, which might want to allow access for its own observers or foreign scientists, especially those of neighboring states with insufficient resources to conduct their own research, with due regard for the scientific rights of the excavators. All such participants would be registered with the Commission.

Under the foregoing plan, the coastal state would not be relinquishing its authority to grant deeds of concession to marine archaeologists; it would merely be agreeing to grant them according to uniform international principles of which the foregoing suggestions are examples. Similarly, there would be no subversion of the general principle that “archaeological explorations and excavations shall be subject to prior authorization by the competent authority”; the “competent authority” would still be the concerned coastal state, but the conditions of such authorization would now be subject to certain international principles. The International Commission would not acquire any powers which might conflict with coastal state jurisdiction over marine archaeology; it would merely serve as an accessible information source providing notice of intended research, a record of coastal state attitudes and conduct, and general research material for the scientific community.

The Commission, as we shall see, could have other powers when dealing with marine archaeological research conducted beyond coastal state jurisdiction.

2. Special Consideration for Certain Organizations

Recent developments in the science of marine archaeology provide encouraging evidence that attempts are being made to foster a better understanding of the great value of our archaeological heritage, and to protect that heritage. Professional archaeologists are coming to realize that dedicated amateurs, working under expert supervision, can make an important contribution to the acquisition and protection of information concerning past civilizations. It could well be in the best interests of both marine archaeology and coastal states to make special provisions in the law governing the granting of exploration and excavation deeds for certain types of organizations encouraging such activity.

CEDAM International was formed in 1966 under the supervi-

57. Id., para. 5(a).
58. See Peterson, Amateurs Dig Archaeology, The National Observer, January 22, 1972, at 1, headline story, especially the description of the Arkansas amateur archaeology program, at 10 (box). “The professionals behind the lay-archaeology movement see the dedicated amateur as an indispensable ally in their rescue effort.” Id. at 1.
59. Conservation, Exploration, Diving, Archaeology, and Museums.
sion of its parent organization, CEDAM of Mexico, formed in 1958 by Mexican nationals. It consists of members from many countries, and with diversified callings, but all with an interest in marine archaeology. Under CEDAM's program, amateurs are trained in techniques of diving, exploration, excavation, and preparation and treatment of artifacts for proper preservation, all under the guidance of professionals from the various disciplines involved. As a result, "CEDAM International is developing a worldwide network of competent amateur archaeologists who are working either independently or under the direction of museums and institutions to discover and preserve historical evidence and sites."

Because of the increasing popularity of sport diving, much of which is destructive of archaeological material due, if for no other reason, to the ignorance of the divers as to the historical value of their finds, such an organization performs an invaluable service by educating divers and amateur archaeologists in the basics of marine archaeology, instilling in them an appreciation for the value of their subject matter. CEDAM invites sport divers to participate in archaeological expeditions under the control and supervision of professionals. As a result, "the diver's hobby becomes more exciting and rewarding and he becomes a self-appointed policeman helping to preserve valuable historical objects for everyone's benefit."

CEDAM also encourages leaving finds in situ and is planning to develop an underwater museum.

A similar recent organization is the Committee for Nautical Archaeology, formed in London in 1964 to coordinate divers and archaeologists. Since then the Committee has developed a program for the protection of archaeological sites.

Organizations such as these, which openly declare their public interest, and display their sincerity through their conduct, meet

60. Club de Exploraciones y Deportes Acuaticos de Mexico.
62. [O]ne false move by a well-intentioned amateur can destroy, in the fraction of a second, some delicate find preserved for centuries in marine conditions. On land the same effect could be produced only by hard work implying deliberate destruction, gross negligence, or grosser ignorance. Frost, Under the Mediterranean, supra note 53, at xiv.
64. CEDAM members have recovered and preserved countless artifacts
with frustration when confronted with restrictive coastal state laws which render access to marine archaeological sites difficult. Since the expertise of the applicant for the deed of concession to explore and excavate is a prime factor to be considered before a coastal state grants such a deed, it would seem unnecessary for that state to conduct prolonged investigation into its credentials where the applicant is an organization whose expertise is guaranteed by past performance. Permission to conduct marine archaeological research in such a case should be nearly automatic, except where, as previously discussed, the coastal state has some superior economic, security, or environmental interest to protect.

An international convention, then, might adopt a principle declaring that

Certain organizations shall, after extensive investigation of their motives and activities in regard to marine archaeology, be given international recognition for their expertise and sincerity in achieving the objectives of marine archaeology, and shall therefore be given special consideration in the granting of deeds of concession for exploration and excavation conducted within coastal state jurisdiction.66

Such a principle would encourage participation in such organizational activity by facilitating access to submarine sites within coastal state jurisdiction. The recognition of organizations could be handled by the Commission.

3. Beyond Coastal State Jurisdiction

Although there is presently no international regime governing marine archaeological exploration and excavation beyond the limits of coastal state jurisdiction, there is clearly a need to protect archaeological material located there. The International Commission plan could be expanded to include such activity beyond national jurisdiction. Since no one state could control that activity, the Commission could be vested with powers over marine archaeological exploration and excavation conducted there similar to the powers which coastal states would have over such activity conducted within their jurisdiction. Thus, the Commission, rather than a coastal state, would now be the “competent authority” to authorize marine archaeological activity; it would also be responsi-

65. See note 51 supra.
66. See UNESCO Recommendation, para. 19, supra note 14, and related text.
ble for issuing the deed of concession to a party filing a Certificate of Intent. The various conditions, rights, and obligations would be similar to those required within coastal state jurisdiction, except that marine archaeologists would no longer have an obligation to report information to any one state; only to the Commission itself.

Similarly, the Sea Boundary concept of protection would be carried over. Although such an International Sea Boundary would, in all likelihood, encounter the problems of enforcement inherent in international law, nonetheless, the unauthorized penetration of such a boundary could constitute a violation of international law by the state of nationality of the violator.

Where the research is to be conducted in areas in which a coastal state has no jurisdiction over marine archaeology, but does have some other type of jurisdiction, e.g., to exploit mineral resources on the continental shelf, the Commission could allow that state to inspect the equipment of the expedition to insure that its sole objective is archaeological research.

4. Regional Commissions

The concept of an International Marine Archaeological Commission might best be effectuated by establishing Regional Commissions located in, and staffed by people from particular regions of the world. Such “local” international control over marine archaeology would encourage regional participation in various aspects of the science. Since the Regional Commission would represent all states of a region, rich and poor, the participation by weaker members in the decision-making process would help decrease the chances for a restriction of marine archaeological research within their own coastal waters. That such participation is the key to freedom of scientific research has been recognized by a great many representatives of both the scientific and political communities.\(^68\) This regional concept has been discussed in depth elsewhere in a context far more suitable than that which is permitted by the scope of this paper.\(^69\) The foregoing brief discussion has been in-

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68. See Proceedings, supra note 44, at 357.
cluded merely to suggest its consideration in the establishment of an international regime.

I shall now turn to the second general problem confronting marine archaeology.

III. Property Rights in Marine Archaeological Finds

If finds are made within coastal state jurisdiction, the excavator will normally be required to submit them to that state or to one of its institutions in accordance with municipal law. Beyond coastal state jurisdiction, as we shall see, the finder normally will acquire property rights in his finds.

A great deal of marine archaeological exploration and excavation is financed by individuals or organizations whose ultimate objective is to acquire ownership of the finds. Within coastal state jurisdiction this presents the problem of a potential conflict between the interests of the coastal state and those of the finders of marine archaeological material. There are interests on both sides which deserve and will receive further consideration.

Another problem relating to property rights in archaeological finds is the development of an international market for illicitly excavated archaeological material. How these problems interrelate, and what can be done to alleviate them will be the subject of the following discussion, which will begin with an examination of the current guidelines.

A. Current Guidelines

The UNESCO Recommendation discussed earlier deals with property rights in archaeological finds by allowing Member States to "define the principles which hold good on its territory in regard to the disposal of finds from excavations." The Recommendation also provides that

> [F]inds should be used, in the first place, for building up, in the museums of the country in which excavations are carried out, complete collections fully representative of that country's civilization, history, art, and architecture. . . . the conceding authority, after scientific publication, might consider allocating to the excavator a number of finds from his excavation. . . .

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71. Supra note 6.
72. Id., para. 23(a).
73. Id., paras. 23(b) and (c).
Various problems arise from this language. Two which concern marine archaeology are 1) the meaning of "that country's civilization, history, art and architecture;" and 2) the meaning of "its territory." The first problem will become apparent in later discussion. The second problem is that of jurisdiction, previously discussed in regard to marine archaeological exploration and excavation rights. Based on that discussion, it would seem that under current international law of the sea principles a coastal state lacks jurisdiction to directly assert or control property rights in marine archaeological material found seaward of its territorial seabed, regardless of what other jurisdiction that state may possess there. As already mentioned, however, a coastal state may indirectly exercise such control in the contiguous zone by application of its customs laws. But these conclusions are far from certain, and there is little in the way of international law to guide us here.

In any event, wherever coastal state jurisdiction over marine archaeology ends, it seems clear that the property rights to archaeological material found beyond that jurisdiction would currently vest in the marine archaeologist reducing it to possession, based on a characterization of the finds as abandoned property. While such rights are warranted in view of the investment of time and money by the finders, there is also a definite interest in protecting such property and the information about past civilizations it represents from eluding public and scientific interest. The more complex problem at present, however, is that of determining property rights to marine archaeological finds within coastal state jurisdiction; attention will now be turned to that problem.

Within the territorial jurisdiction of coastal states, property rights in marine archaeological material presently accrue according to national law. In both common law and civil law states such material is considered abandoned or derelict property, i.e., there is no legal issue as to the property rights of the original owner, only as to the rights of the finder and the coastal state sovereign.

74. Note 34 supra.
75. Note 24 supra.
76. See note 30 supra, and the related text.
77. See the preamble to the UNESCO Recommendation, supra note 7.
78. UNESCO Recommendation, supra note 6, para. 23(a).
79. Abandonment is generally considered to be a question of fact as to the act and intent to abandon. Annot., 63 A.L.R.2d 1368, 1372 (1959).
Whether or not such rights vest in the finder or in the state depends on whether there is existing state law claiming such rights. If there is, then the state prevails; if not, the rights vest in the finder first reducing the material to possession. Many states have exercised their sovereignty over marine archaeological material through their antiquities laws; others have not. This area of the law has suffered through a long and confusing history, one that need not be retold here thanks to an abundance of other sources. The point to be made is that the nature of property rights to marine archaeological material found within the territorial jurisdiction of a coastal state varies widely from jurisdiction to jurisdiction, resulting in considerable confusion and frequent discouragement of potential backers of marine archaeological exploration and excavation, who often give financial support to such undertakings in the expectation of acquiring property rights in the finds. This uncertainty in the law, when considered with the additional problem created by antiquities laws which assert automatic sovereignty over all property found in coastal state waters, can have a devastating effect on the progress of marine archaeological research.

While property rights in such finds should be subject to some sort of control, it would be unwise for a coastal state to automatically assert ownership of marine archaeological material based solely on that material's presence within territorial jurisdiction. Many such states lack the resources for conducting their own exploration and excavation. Private backing, then, can and does play an important role in the discovery of our archaeological heritage. In addition, it is a fact of life that most private backers who acquire ownership of such material care for it as well as, or better than many museums can. Private collectors of marine archaeological artifacts also take great pride—for whatever reasons—in lending their collections to museums for occasional showings. Since the ultimate goal of marine archaeology is to "illustrate and discover the course of human civilization," and since privately backed ex-

81. See, e.g., Fla. Stat. § 267.061(1)(b) (1967), which declares that all "treasure trove, artifacts and such objects having intrinsic or historical" value which have been abandoned on state-owned submerged lands shall belong to the State of Florida.
82. Note 60 supra.
83. Id.
84. Gores, supra note 1, at 363.
ploration and excavation can be of great assistance in attaining this goal, any property laws which would discourage such backing should be frowned upon, with the one exception for finds which a coastal state considers necessary to build up collections "fully representative of that country's civilization, history, art and architecture." 85

There are two further considerations in determining property rights to marine archaeological material found within a state's territorial jurisdiction. The first of these is the coastal state interest in ownership. In addition to the interest in acquiring its own archaeological heritage, mentioned above, there are the additional coastal state interests of tourism, promoted by the presence of valuable historical material in museums and on site at excavations, and in the ability to conduct cultural exchanges with other states by acquiring material which will be recognized by them as valuable.

The second further consideration is two-fold: the interest in promoting a legitimate international market for marine archaeological artifacts and, conversely, the interest in preventing trade in illicitly excavated material. A legitimate trade in artifacts could go a long way to help circulate knowledge of, and promote public interest in past civilizations. Trade in illicitly excavated material, on the other hand, is by nature clandestine, preventing acquisition of important information and thus defeating the objectives of marine archaeology and science in general. Much of this illicit trade, however, is encouraged by strict antiquities laws which operate harshly by declaring automatic sovereign ownership of all finds made within coastal state jurisdiction based solely on its presence there. 86

One solution to the problem of illicit trade is to maintain control over access to marine archaeological sites. This control has been discussed. A second solution is to establish uniform international principles awarding property rights in certain finds, with due consideration for the aforementioned interests of marine archaeology and coastal states. This solution will be discussed later. A third solution is to control the trade itself. There are existing international guidelines for such control and these will be examined now.

85. UNESCO Recommendation, *supra* note 6, para. 23(b).
86. See note 71 *supra*. The effect of the Florida law has been "to drive souvenir hunters underground and create a black market in artifacts, a situation which did not exist before the law was passed." Barada, *CEDAM International, Oceans*, 1970, Vol. 3, No. 4, at 17.
B. Control of Illicit Trade

The European Convention on the Protection of the Archaeological Heritage was the result of the realization that the European archaeological heritage "is seriously threatened with destruction." Although much of the Convention deals with means of facilitating exchanges of information concerning possible illicit material, it also includes provisions which deal directly with the disposition of such property. Article 6 provides:

Each Contracting Party undertakes specifically: (a) as regards museums and other similar institutions whose acquisition policy is under state control, to take necessary measures to avoid their acquiring archaeological objects suspected, for a specific reason, of having originated from clandestine excavations or of coming lawfully from official excavations;

. . . .

(c) to restrict, as far as possible, by education, information, vigilance, and cooperation, the movement of archaeological objects suspected, of a specific reason, for having been obtained from illicit excavations or unlawfully from official excavations.

Article 8 insures that "the measures provided for in this Convention can not restrict lawful trade in or ownership of archaeological objects, nor affect the legal rules governing the transfer of such objects." However, the Convention is silent as to what constitutes lawful ownership of archaeological objects, apparently leaving that question to the laws of the individual states who are parties.

The UNESCO Draft Convention on the Illicit Movement of Art Treasures deals comprehensively with many different forms of "cultural property." Article 2 expresses the philosophy behind the Convention:

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international cooperation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing

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87. Supra note 16.
88. Article 4 provides for national inventories of publicly and privately owned archaeological objects; Article 5 provides for exchanges of information on archaeological objects, and on authorized and illicit excavations, as well as for education of the public as to the value of archaeological finds. Id.
89. Id.
90. Id.
92. See Id., Art. 1.
Article 5 provides that states shall establish national services to carry on certain functions, including assistance in the formation of laws and regulations governing the import, export, and transfer of ownership of important cultural property; maintaining national inventories of such property; and providing that certain property be left "in situ." 

Under the Draft, states agree to prevent museums and similar institutions from acquiring property illegally exported from other states, and to undertake, "consistent with the laws of each state," to prevent, "by all appropriate means," transfers of ownership of property "likely to promote the illicit import or export of such property."

The UNESCO Draft Convention, like the European Convention, leaves the determination of property rights in cultural material to individual party states. While international agreements such as these may go a long way to encourage cooperation in preventing trade in illicitly excavated marine archaeological material, with the objective of discouraging the plunder of such material, they do not deal directly with a prime motivation for such plunder: the lack of reasonable laws giving the excavator property rights in certain of his finds. In fact, there is at least some connection between the illicit trade of marine archaeological property and the lack of reasonable principles governing property rights in finds:

The laws of the art thief's country are apt to be so restrictive that immediate disposal of the object to the highest bidder is his only realistic course of action. The dealer who buys the thief's objects and smuggles them out of the country, often believes that his role has been a constructive one, in that he is bringing the object to the light, so to speak, where it can be admired.

94. Id. See note 17 supra, and related text.
95. Id., Art. 13(a).
As a result, wealthy industrialized states who often end up acquiring such artifacts are hesitant to restrict their import, resulting in a lucrative international market for illicitly excavated artifacts. The failure of art-importing states to deter the import of illicit material encourages continued illicit excavation and places and increased burden of protecting marine and archaeological finds upon the states of origin. Since these states are often too poor economically to protect their archaeological sites, the pillage continues. What may be needed is some incentive for the would-be plunderers of marine archaeological material to report their finds; this incentive could be created by affording them certain property rights in the finds, provided they comply with the various obligations related to exploration and excavation suggested earlier. The following recommendations consider these problems.

C. Suggestions For International Principles Governing Property Rights In Marine Archaeological Material Found Within Coastal State Jurisdiction

Marine archaeological finds vary in their physical characteristics. There are submerged buildings and caves, wrecked ships, and various artifacts associated with these. It is obviously more difficult to steal a submerged building than to plunder the cargo of a ship, at least in water accessible to divers. Nonetheless, a coastal state should, wherever possible, consider awarding some sort of property rights to those who have legitimately obtained permission to explore and excavate marine archaeological sites, in order to encourage future legitimate marine archaeological research. The rights granted will vary according to the nature of the finds and the value placed on them by the coastal state.

Thus, although an excavator or his backer can not display an entire building in his living room, or trade it, the coastal state could award him a percentage of the income derived from conducting tours of the site, or some other similar benefit. This would be a possible approach also for objects which are movable but which the coastal state wishes to remain “in situ,” such as sunken ships or their cargo. Such sites could be established as national marine archaeological preserves, attracting tourists, natives, scholars, and

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97. Another major category which concerns marine archaeology is the cenote, or ancient sacrificial well. *Cenotes* are a fascinating study, and often contain thousands of archaeological artifacts, but they are located on land territory and thus do not fall within the scope of a law of the sea approach to marine archaeology. For more information about *cenotes*, see *Gores*, supra note 1, at 405-409.
the general public, and producing revenue which the state would not have realized but for the efforts of the excavators.

The artifacts of prime interest to many financial backers of expeditions, however, are those which are removed from the subma-
rine site, since they may be reduced to personal possession and dis-
played or traded. Naturally, the coastal state in whose waters the artifacts are found will determine the final disposition of the prop-
erty, but such a determination should be made according to general principles which accommodate the interests of both the coastal state and the excavators, keeping in mind that such material is not help-
ing anyone by remaining unknown and unexamined on the sea-
bed.

The primary interest of antiquities laws which assert state own-
ernesship of marine archaeological material is to protect that state's archaeological heritage. The assertion of ownership is the means

98. Interview with Willard Bascom, supra note 60.
99. The following account illustrates what can happen:
   In the fall of 1968, a Welsh businessman, Sidney Wignall, spon-
sored an attempt by fifteen divers, led by Commander John Gra-
tan of the Royal Navy, to locate the Santa Maria [a ship of the
Spanish Armada claimed to have been carrying treasure of enor-
mous value] . . . . In the area between three barren islands in
Blasket Sound, swept by heavy seas and powerful currents, Grat-
tan led his divers over a total of thirty thousand acres of sea
floor in a grid search.
   They discovered a long heab of ballast stones on a northwest-
southeast axis. Delving beneath and around it, they found three
sizes of cannon balls and some terra-cotta pottery.
   In 1969, Wignall found his £11,000 investment in the site en-
dangered by the appearance of a second set of salvors in the Grey
dove, a former Dutch mine sweeper, let by adventurer Ronald
Potter.
   "Quite frankly," said Potter, "we are after the money—and why
not?"
   Wignall countered with an injunction, from the Dublin High
Court, forbidding the new, ten-man group of divers from "inter-
fering" with the Santa Maria.
   "This ship is of tremendous archaeological and historical inter-
est," said Wignall. "It is of the greatest importance to protect it
from people intent on plundering it for personal gain."
   Since Wignall is backed by the Irish Tourist Board and five
English and Irish universities—and holds sole salvage rights on
the vessel from the Spanish and Irish governments—it seems
likely he will be able to keep Potter's group off the site.
   Meanwhile the treasure, if there is any, has eluded everyone.
   Gore, supra note 1, at 429.
100. For an illustration of such intent within the United States, see
by which the state can insure that it will retain material relating to its history. Where such a determination is made in favor of the state, there is not much that can be said for the property interests of the excavator, regardless of his investment in the undertaking.101 But such a determination should not be made arbitrarily, based solely on the presence of the material within coastal state jurisdiction, since much illicit excavation is encouraged by antiquities laws which make such an automatic assertion. Where possible, the state should award a portion of the finds to the excavator. In fact, this may be the only way for an economically poor state to compensate the excavator.

It is apparent that it will not be easy, nor always desirable, to establish uniform international principles governing property rights to marine archaeological material found within coastal state jurisdiction. It may be possible to improve the current situation, however, by adopting through international convention a principle which at least recognizes that awarding to excavators property rights in certain marine archaeological material can serve as a beneficial force in discovering the past and can stimulate scientific and economic activity not otherwise possible. Admittedly, such a principle could prove unworkable on land, where nearly all archaeological material is likely to be directly related to a state's culture. But the oceans are different; the presence of a great deal of marine archaeological material in coastal state waters is often fortuitous: ships blown off-course, and cargoes of artifacts having no direct relation to the coastal state's culture are examples.102 It is this very characteristic of marine archaeology which allows for a more flexible approach to property rights in finds, and such flexibility could well lead to solutions not possible in land archaeology.

A possible international principle might declare that

Coastal states shall give serious consideration to awarding property rights in marine archaeological material found within their coastal jurisdiction to the excavators thereof, in order to encourage and stimulate the legitimate exploration for and excavation of evidence of past civilizations contained in the sea.

which declares that

It is hereby the public policy and in the public interest of the State of Texas to locate, protect, and preserve all sites, objects, buildings, pre-twentieth century shipwrecks, and locations of historical, archaeological, educational, or scientific interest. . . .

101. He will still be entitled to scientific rights in his finds, however. See note 55 supra.

102. Since the countries and kingdoms that once owned these ships are long gone, it may not be easy to say who owns them, and it may not even be possible to determine what flag the ship sailed under. Bascom, Deep-Water Archaeology, supra note 1, at 268 (referring to ancient trade ships on the Mediterranean floor).
Thus, a deed of concession granted by a coastal state to marine archaeologists for exploration for and excavation of sites within the state's jurisdiction would declare that a certain portion of the finds would become the property of the excavators or, if the coastal state desires to retain the artifacts in specie or leave them in situ, then reasonable compensation shall be awarded. The provisions of the deed would be contractual in nature; they and the final disposition of the property would be recorded with the International Commission proposed earlier. Marine archaeologists would then have an accessible source of information concerning the past attitudes and conduct of coastal states in awarding property rights.

D. Suggestions For International Principles Governing Property Rights In Marine Archaeological Material Found Beyond Coastal State Jurisdiction

As indicated, property rights in marine archaeological material found beyond coastal state jurisdiction vest in the finder reducing such material to possession. Under the proposed arrangement, such rights would normally vest in the party first obtaining a deed of concession from the Commission, since he would be the party entitled to the establishment of a Sea Boundary around the site, with all the protective rights which would thereby accrue to him.103

The excavator would incur the obligations inhering to the deed of concession, including complete reporting of information related to the finds, with due regard for his scientific rights in them. The Commission would have the power to declare that certain finds be left in situ, and to establish international marine archaeological preserves, with due consideration for the interests of states who may be affected by such decisions, e.g., the resulting restriction of access to the particular area of the seabed, which may contain various natural resources. Here again is seen the utility of Regional Commissions run by the people of the region, who are well aware of regional priorities.

V. CONCLUSION

The modern anthropologist Mircea Eliade has concluded that

[A]rchaic man continues to influence us more profoundly than we

103. See discussion supra.
care to believe, and the way back to clarity and health lies in under-
standing our unrecognized ties to remote antiquity.104

As archaeological research progresses, modern man continues to be
awed by the profound achievements of "primitive" civilizations.105

In spite of the scientific and social value of such discoveries, not to
mention their romantic appeal, the interests of marine archaeology
have failed to attain the international recognition which they de-
serve. The reasons are no secret: First, the marine archaeological
community is fragmented; there are few political spokesmen for its
interests, and there is no unified international voice to represent
it. Secondly, the world is in political and social turmoil, and many
states are too concerned with obtaining food for their people and
with controlling internal unrest to devote substantial time to the
seemingly lesser interests of marine archaeology. This is under-
standable. But marine archaeology is of more than just peripheral
interest to states. Its ultimate objective is to acquire information
which can help modern man develop and advance his culture. Thus
considered, archaeology can play a fundamental role in shaping the
future.

The time is ripe for the interests of marine archaeology to assert
themselves. On December 17, 1970, the United Nations General
Assembly adopted a resolution106 calling for a Third United Na-

104. Sykes, New York As Axis Mundi, Center Report, December 1971
(published by the Center for the Study of Democratic Institutions).
105. In November of 1900, numerous artifacts were discovered in 150 feet
of water off the Greek island of Antikythera, near Crete, dating as far
back as the Periclean Age (4th or 5th century B.C.). Among those artifacts
was an astrolabe sixteen centuries older than what was previously thought
to have been the first astrolabe. Goates, supra note 1, at 365-366.

On October 22, 1970, a meeting of respected scientists was conducted at
the Musee de l'Homme of Paris University to analyze the nature of certain
structures discovered in 20 feet of water off Northwest Bimini in the Great
Bahama Bank. The meeting concluded that

1. The Bahama's formations are definitely manmade;
2. They are between 6000 and 12000 years old;
3. They are not related to the later Olmec and Maya cultures;
4. They appear related to the worldwide (British Islands, France,
Spain, North Africa, Mediterranean, India, Korea) civilization
of Megaliths—of which over 100,000 gigantic monuments are
known. This is now proven to be a civilization of sailors, as
most Megalithic monuments are located on islands or in areas
accessible from the sea.

These major discoveries lend new credence to the old "myths" of
the Atlantic and the Quetzalcoatl, sailors and civilizations bringing,
among other things, agriculture, astronomy, mathematics, cyclo-
pean stone buildings, a sun worship on pyramid tombs, and a
highly refined way of life. D. Rebikoff, Mystery of the Cyclopean
Constructions in the Bahamas, 1970 (typed paper obtained from
Willard Bascom, supra note 60).

Recent discoveries on the Yucatan Peninsula in Mexico have revealed
the remarkable sophistication of the Mayan civilization.

The Mayans raised huge, intricate structures on artificial plat-
tions Conference on the Law of the Sea to be held sometime during 1973 unless postponed by the twenty-seventh session of the General Assembly in 1972 on grounds of insufficient progress of preparatory work.\textsuperscript{107} Although the conference resolution did not specifically mention marine archaeology as a potential agenda item,\textsuperscript{108} the Greek representative at a 1971 meeting\textsuperscript{109} reminded the Sub-Committee that his delegation had submitted a proposal for the inclusion of the item "Archaeological and Historical Treasures of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction," without which the list of subjects and issues relating to the law of the sea would be incomplete. Mankind should be given the opportunity of enjoying the rich archaeological and historical treasures of the sea-bed, which it should be one of the functions of the international machinery to protect.\textsuperscript{110}

Although such interest is encouraging, the proposed item provides no indication that there will be discussion of marine archaeological interests within coastal state jurisdiction. This would be unfortunate in view of the many current problems confronting marine archaeological research conducted there.

Because of the long periods of time which have been required for entry into force of past conventions,\textsuperscript{111} there is reason to believe

\begin{quote}
forms and built roads, canals, aqueducts and reservoirs that imply an advanced social system and deliberate town planning for a numerous population. They accomplished all of this in a region with no soil (the soil is porous coral), no water (water seeps through the coral and flows underground) and a hot, humid climate. Some scholars insist the Mayan calendar, based on the moon and the stars, is more accurate than our modern calendar. Barada, \textit{CEDAM International}, supra note 76, at 11. Newly developed techniques of deep water salvage, see note 1, supra, have opened up the possibility of recovering ancient ships which sank to great depths in the Mediterranean and elsewhere. The historical value of such ships is immense:

\begin{quote}
Every ship is a small sample of the life and times during which it sails. Bascom, \textit{Deep-Water Archaeology}, supra note 1, at 262. Who can say what a Roman Trireme, or a Phoenician trader, or a Cyprian pirate ship is worth in terms of a better understanding of history? Id., at 269.
\end{quote}

107. Id.
108. It lists "scientific research" as a potential agenda item. Id., operative para. 2.
110. Id.
111. \textit{See Knight}, supra note 21, at 535.
\end{quote}
that this Convention, if adopted in mid-1973, would not enter into force until 1980.\textsuperscript{112} Hopefully, this will not be the case, but in view of the possibilities, the marine archaeological community has little time to spare.

Various other aspects of the problems which concern marine archaeology are beyond the scope of this discussion, but deserve future attention: the means for financing an international regime,\textsuperscript{118} methods of educating the public and rendering museums accessible to everyone,\textsuperscript{114} the problem of accommodating municipal law with principles adopted by international convention,\textsuperscript{115} and participation of land-locked states\textsuperscript{116} are but a few. Hopefully, this paper will, at the very least, impress upon both the marine archaeological community and coastal states the need for immediate participation by them in the international law-making process if man is to enjoy and utilize the accomplishments of his ancestors.

\textbf{HOWARD H. SHORE}

\begin{itemize}
  \item \textsuperscript{112} Id.
  \item \textsuperscript{113} \textit{See Proceedings, supra} note 44, especially at 203-346.
  \item \textsuperscript{114} \textit{See UNESCO Recommendation, supra} note 6, para. 12; Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone, \textit{adopted} December 14, 1960, 11 UNESCO, at 125 (1960); UNESCO Draft Convention, \textit{supra} note 17, Art. 5(f).
  \item \textsuperscript{115} For some background to this problem in the United States, \textit{see} material cited in note 70 \textit{supra}; Wulf, \textit{Freezing the Boundary Dividing Federal and State Interests in Offshore Submerged Lands}, 8 San Diego L. Rev. 584 (1971).
  \item \textsuperscript{116} \textit{See Note, The Interests of Land-Locked States in Law of the Seas,} 9 San Diego L. Rev. (1972) (immediately following).
\end{itemize}