

The Protection accorded to the *Titanic* by the UNESCO Convention on the Protection of the Underwater Cultural Heritage

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The UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage (hereinafter the '2001 Convention') applies to all traces of human existence having a cultural, historical or archaeological character which have been under water for at least 100 years. The *Titanic* sank at 2.20 am on 15 April 1912. Thus, 15 April 2012 marks the moment when the *Titanic* wreckage will be protected under the UNESCO 2001 Convention.



The current legal protection of the *Titanic*

The *Titanic* lies currently in international waters, i.e. outside of the exclusive national jurisdiction of any State. States have in that area only jurisdiction over the vessels flying their own flag and their own nationals. While it is furthermore accepted by some States that State vessels remain under State jurisdiction even after their sinking, the *Titanic* was not a State owned ship so that no State claims exclusive jurisdiction over her wreck site¹ (see the below simplified scheme of the maritime zones).



While there have been efforts undertaken to legally safeguard the *Titanic*, the 2001 Convention's application is for the moment the only real solution for offering it a comprehensive protection.

In the USA national efforts were undertaken to protect the *Titanic*, as it were US salvors that recovered most of the artefacts from the wreck. The RMS *Titanic* Maritime Memorial Act of 1986 and the National Oceanographic and Atmospheric Administration (NOAA) Guidelines for the Exploration, Research and Salvage of RMS *Titanic* (2001) were adopted. Court Orders prohibited also the further disturbance or harm to the hull and requested that the recovered artefacts be conserved for public benefit. The US authorities negotiated also an international agreement with the UK, Canada, and France to protect the *Titanic*. This International Agreement Concerning the Shipwrecked Vessel *RMS Titanic*, concluded in 2003, is however not yet in force, as it was until now only ratified by the United Kingdom². Its regulations are similar to those of the Annex to the 2001 Convention and drafted using it as example. The *Titanic* agreement will not protect the wreck from an intervention undertaken by a person not coming from the four mentioned States. This concerns for example the Russian *Mir* submersibles that went to the *Titanic*³.

¹ The jurisdiction over the *Titanic* might change, as Canada requested the extension of its Continental Shelf under the United Nations Convention on the Law of the Sea. Canada would then have certain rights of control over that area. This would especially be interesting for the application of the 2001 Convention's protection, as Canada would become the Coordinating State of the *Titanic* wreck, as soon as it ratifies the 2001 Convention.

² The website of NOAA www.gc.noaa.gov/gcil_titanic-intl.html states on this as of 15 April 2012: The "Agreement Concerning the Shipwrecked Vessel R.M.S. *Titanic*" (International Agreement) stems from the recommendation made by the United States Congress in the R.M.S. *Titanic* Maritime Memorial Act of 1986 (1986 Act) to address activities in and around R.M.S. *Titanic* and increase protection of the wreck site. The International Agreement' objectives are to preserve the unique historical significance and symbolic value of the R.M.S. *Titanic* site and calls for keeping intact as a single collection any subsequently retrieved artifacts and the regulation of dives and visits to the site to avoid further damage to it. In particular, the R.M.S. *Titanic* legislation specifies that in situ preservation is the preferred mode of preserving the site. For the International Agreement to take effect, at least two countries must ratify it. The United Kingdom ratified the Agreement on November 6, 2003, implementing it through Order 2003 No. 2496, which comes into force on the date on which the International Agreement enters into force in respect of the United Kingdom. The United States signed the Agreement on June 18, 2004, subject to acceptance following the enactment of implementing legislation.

³ The UNESCO 2001 Convention fully encourages this type of multilateral agreement for the preservation of underwater cultural heritage, as long as it is in full conformity with the provisions of the Convention and does not dilute its universal character.

Internationally the United Nations Convention on the Law of the Sea offers some protection. Under its Article 303⁴ all States Parties have a duty to protect objects of historical nature found at sea and to cooperate for that purpose, i.e. also the *Titanic*. It leaves however salvage and finder rights untouched, so that a commercial exploitation of the *Titanic* remains possible.

The protection accorded by the UNESCO 2001 Convention

The 2001 Convention on the Protection of the Underwater Cultural Heritage contains:

- basic principles for the protection of that heritage,
- a detailed State cooperation system, and
- widely recognized practical rules for archaeological work on submerged sites.

It focuses on preservation and State cooperation, but does not regulate ownership questions, nor does it redefine maritime zones.

The newly accorded protection for the *Titanic* is triggered by the passage of time, 100 years, not by the inscription on a list. The 2001 Convention does not foresee a list, but offers a blanket protection to all sites. It was recognized that as most underwater sites have not yet been discovered, protection has to be immediate and for the moment an overall regulation on the protection of sunken heritage is needed.

The Convention is the international community's response to the destruction of submerged archaeological sites by commercial treasure-hunters and was drafted in the wake of several major exploitation and pillage cases. It reflects the growing recognition of the need to ensure the same protection to ancient shipwrecks as that already accorded to land-based heritage. It does not only fight the illegal pillage of sites, but also their legal commercial exploitation in making it illegal.

The 2001 Convention has been already ratified by many States⁵. Others, like France, are preparing ratification. A full protection of the *Titanic* wreck can of course only be ensured when more, ideally all States, ratify the Convention.

What does the protection accorded to the *Titanic* actually look like in practice?

Within the Exclusive Economic Zone, the Continental Shelf and the Area, the 2001 Convention establishes an international cooperation scheme based on a common share of information and a cooperative protection effort. It seeks to allow an effective protection of underwater cultural heritage in the frame of the applicable international law of the sea. That means that States Parties use their respective power and jurisdiction to prevent undesired activities and regulate desired ones without that a new jurisdiction is created.

In concrete this scheme stipulates that:

⁴ United Nations Convention on the Law of the Sea Article 303 Archaeological and historical objects found at sea

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

2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.

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

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

⁵ For a list of States Parties see here: www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha

- States Parties request reports of discoveries and intended activities directed at underwater cultural heritage from their nationals and vessels flying their flag (reporting);
- States Parties notify UNESCO, and in the Area also the Secretary-General of the International Seabed Authority, of such discoveries and planned activities (notification);
- notified in turn by UNESCO, States Parties may then declare their interest to be consulted (declaration of interest);
- under the coordination of the Coordinating State the consulting States Parties agree together on the measures to be taken (consultation); and
- the Coordinating State takes the measures agreed upon by all consulting States (taking of measures).

For the *Titanic* that means that any person coming from a State Party to the 2001 Convention and any master of a vessel, which flies a State Party's wreck, has to report an intended activity concerning the wreck or any activity undertaken to the authorities of that State Party. The State authorities will then under the guidance of an elected Coordinating State liaise with the other States Parties interested to be consulted and will agree together on the measures to be taken to protect the *Titanic*. If there is any immediate danger to the wreck and the passage of time would pose a problem, all States Parties may take all practicable measures in conformity with the Convention, and if necessary prior to consultations, to prevent this immediate danger. They can for instance stop a diving or recovery activity or an other undesired undertaking.

In what regards the selection of the Coordinating State and as the *Titanic* lies in the Area, i.e. the seabed outside of any State's national jurisdiction, the Director-General of UNESCO will invite all States Parties which have declared an interest in the wreck to consult on how best to protect the *Titanic*, and to appoint a State Party to coordinate such consultations. UNESCO will also invite the International Seabed Authority to participate in such consultations.

The Coordinating State will then implement all measures of protection and issue all authorizations which have been agreed by the consulting States, unless another State Party is agreed upon to do this. The Coordinating State will also take care of preliminary researches.

In all its actions, like coordinating consultations or taking measures, the Coordinating State will act for the benefit of humanity as a whole and on behalf of all States Parties. Particular regard will be paid to the preferential rights of States of cultural, historical or archaeological origin in respect of the *Titanic*, i.e. States from which the *Titanic* came from or where its passengers were from.

Important is to note also that according to the 2001 Convention States Parties will furthermore take measures to prevent the entry into their territory, the dealing in, or the possession of, any underwater cultural heritage illicitly exported and/or recovered. They will therefore prevent the entry into their territory of any artifacts that will in future be taken against the 2001 Convention's provisions from the *Titanic*.

States Parties will also take measures to prohibit the use of their territory, including their maritime ports in support of any activity directed at the *Titanic* which is not in conformity with the Convention. Any commercial enterprise potentially undertaking commercial salvage on the wreck will therefore not be able to land its vessel in ports of States Parties.

States Parties will also prevent their own nationals and vessels flying their flag from engaging in any activity directed at the *Titanic* in a manner not in conformity with the Convention. They will impose sanctions for violations of measures they have taken to implement the Convention and cooperate to ensure the enforcement of the sanctions imposed.

Each State Party will also take measures providing for the seizure of any artefact from the *Titanic* in its territory that has been recovered in a manner not in conformity with this Convention. It will ensure that its disposition be for the public benefit, taking into account the need for conservation and research; the need for reassembly of a dispersed collection; the need for public access, exhibition and education; and the interests of any State with a verifiable link, especially a cultural, historical or archaeological link.

Any activity controlled by a State Party or the Coordinating State and directed at the *Titanic* will furthermore have in future to be in line with the Rules annexed to the 2001 Convention. These regulate activities directed at underwater cultural heritage in setting practical guidelines for scientific work and site supervision. They stipulate for instance that activities must use nondestructive techniques and survey methods in preference to the recovery of objects. The unnecessary disturbance of human remains has to be avoided. Activities shall furthermore only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologist with scientific competence appropriate to the project. These rules are widely recognized as being the State of the art of underwater archaeology and their application will therefore greatly benefit the *Titanic* wreck.

THE INTERNATIONAL COOPERATION SCHEME

In the *Exclusive Economic Zone*, on the *Continental Shelf* and in the *Area* States have only a very limited jurisdiction and sovereignty. In the "*Area*" (i.e. the sea bed outside national jurisdiction) they even have no other State jurisdiction than that over their own vessels and nationals. Respecting this, the 2001 Convention establishes therefore clear provisions for an international reporting and cooperation scheme in order to render protection effective in all maritime zones. Depending on the location of underwater cultural heritage, the following shall be applicable:

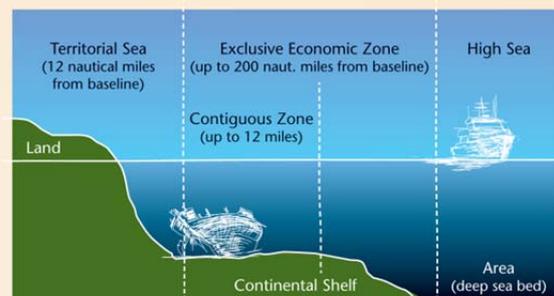
INTERNAL AND ARCHIPELAGIC WATERS AND TERRITORIAL SEA

Respecting the basic principles of the 2001 Convention States Parties have the exclusive right to regulate activities in their *Internal and Archipelagic Waters* and their *Territorial Sea* (2001 Convention, Article 7).

EXCLUSIVE ECONOMIC ZONE, THE CONTINENTAL SHELF AND THE AREA*

Articles 9 to 11 of the 2001 Convention establish a specific international cooperation regime encompassing reporting, consultations and coordination in the implementation of protective measures for heritage found within the *Exclusive Economic Zone*, the *Continental Shelf* and the *Area*. Nevertheless, the Convention does not prejudice the rights, jurisdiction and duties of States under international law, nor other international agreements and rules of international law.

OVERVIEW OF THE VARIOUS MARITIME ZONES**



* No obligatory and detailed reporting or coordination scheme is foreseen for the Zone of a Territorial Sea, as those waters fall within exclusive State jurisdiction. States Parties shall however cooperate with each other according to Article 2.2 of the Convention.

** This diagram shows the maritime zones as regulated in UNCLOS, for States not party to UNCLOS other limitations of these zones may apply. The 2001 Convention does not change the limitations of maritime zones (the existing ones apply *mutatis mutandis* as regulated by international law).