The Centenary of the Titanic and the treaty giving legal protection

Ole Varmer
Summary

- Overview of Titanic and laws that currently apply
  - Customary International Law
  - Law of the Sea
  - Court orders issued by US Court consistent with International Agreement, NOAA Guidelines, and proposed legislation

- April 15, 2012 will be the 100th Anniversary of the Sinking of Titanic and come within the protection of the 2001 UNESCO Convention

- Overview of some legal implications on Parties to 2001 UNESCO Convention as Titanic will become subject to its provisions
Impact on Law and Culture

- Investigations in UK/US of sinking led to international law
  - Safety of Life at Sea Convention (SOLAS)
  - Establishment of the International Maritime Organization (IMO)

- Books, Movies, Documentaries – after 99 years *Titanic* is still the best known wreck in the world

Culture

History

Archaeology
RMS Titanic - Discovered

- French - US Expedition (1985)
- Dr. Bob Ballard and Woods Hole Oceanographic Institution
- IFREMER (Institut français de recherche pour l'exploitation de la mer (Jean Louis Michel))
RMS Titanic Maritime Memorial Act of 1986
(16 U.S. §§ 450rr – 450rr-6)

- Designate Site as Maritime Memorial – and Control Site Consistent with International Law
- International Guidelines (NOAA & DOS)
- International Agreement (DOS & NOAA)
- Disclaimer of Extraterritorial Sovereignty
International Agreement & NOAA Guidelines on *Titanic*

- NOAA Guidelines (April 2001)
- UK signed Agreement 2003
- United States signed Agreement 2004 subject to enactment of legislation
- Agreement has not yet Entered-into-Force

10/29/11
Major Elements of Agreement & Legislation

- Designate as Maritime Memorial
- Regulate research, recovery and visits to the wreck site
- Prohibit disturbance, removal, sale, import, or possession of Titanic property without a permit
- Rules for scientific research, recovery & conservation
NOAA Guidelines for the Exploration, Research and Salvage of RMS *Titanic*

66 Federal Register 18905 (April 12, 2001)

- Based on Existing Int’l Archaeological Standards
  - Rules Annexed to *Titanic* Agreement
  - Rules Annexed to UNESCO UCH Convention
  - ICOMOS Charter
- *In situ* Preservation (At Site of Discovery)
- Non-Intrusive Research – Remote Sensing
- Document Recovery of Artifacts
- Keep Collection Together (Docs. & Artifacts) for Public Use such as Research
Activities To Be Controlled Under Agreement

- Entry into the hull and other activities directed at Titanic to be controlled through permits

- Permits consistent with Rules similar to Rules annexed to 2001 UNESCO Convention
Need for more Parties to Protect Titanic

- What about expeditions by persons and vessels from nations that are not Parties to Agreement?

- How does proposed legislation address that issue?
  - Authority to enforce prohibition against trafficking within United States territory even against foreign persons

- 100th anniversary will result in at least 36 more nations being obligated to protect *Titanic* under the 2001 UNESCO Convention
Existing Protection under International Law and Maritime Law of Salvage

- Under Law of the Sea Article 303(1) all nations have duty to protect objects of historical nature found at sea and to cooperate for that purpose.

- While not legally binding, the Titanic Agreement including Rules continues to guide the Executive Branch and Court sitting in Admiralty while we await U.S. implementing legislation to provide authority for permit system other than RMST Inc. and enforcement against looters and salvors.

- Court Orders prohibiting disturbance or harm to hull – Conserve & Curate for public benefit – NOAA Guidelines.
Impact of 100th Anniversary of Sinking: Additional Protection under US & International Law

- “Archaeological Resource” under ARPA – trafficking provision applicable to Titanic artifacts

- Titanic will be covered by the “Blanket Protection” for all cultural heritage underwater for 100 years afforded under the 2001 UNESCO Convention

- 2001 UNESCO Convention applies to all wrecks that have been underwater for at least one hundred years under the definition of UCH
The legal protection of the Titanic under the 2001 UNESCO Convention: Future challenges

Ole Varmer
Mariano J. Aznar
Archaeological object with historical, social and legal implications

100 years on 15 April 2012

UNESCO Convention
Titanic Agreement
Domestic laws

LOSCE Maritime Law

Protection

Applicable Law

Time elapsed

Location

Area or CS

Object
Summary

May the UNESCO Convention be applicable to the Titanic?

Consequences derived from its application

*Ratione materiæ & temporis*

The Titanic falls under the definition of UCH given in the Convention

*Ratione loci*

The location of the Titanic may imply different responsibilities under the Convention

*Ratione personæae*

Respective obligations change depending on the applicable law
The application of the Convention ratione materiæ & temporis

Article 1(1)(a)

“all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: [...] vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context”

On 15 April 2012, 100 years will have elapsed
The application of the Convention ratione loci

Canada’s Oceans Act 1996

- 200 nm Continental Shelf

- Extended Continental Shelf

Titanic Agreement

Titanic “was first located on the Canadian continental shelf”

Coordinates in the High Sea

The Titanic lies now in the Area

And tomorrow?
### The application of the Convention *ratione loci*

<table>
<thead>
<tr>
<th>Titanic in the Area</th>
<th>Titanic in the CS</th>
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<tr>
<td><strong>Arts. 11-12</strong></td>
<td><strong>Arts. 9-10</strong></td>
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<td>General obligation under art. 149 LOSC</td>
<td>General obligation of protection</td>
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<td>Cooperation among interested States [11(4)]</td>
<td>Cooperation among interested States [9(5)]</td>
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<td>Selection of the “Coordinating State”</td>
<td>Priority to be “Coordinating State” [10(3)(b)]</td>
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<td>No interference with the High Seas liberties</td>
<td>No interference with sovereign rights [10(2)]</td>
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**Art. 10 (2)**
A State Party in whose exclusive economic zone or on whose continental shelf underwater cultural heritage is located has the right to prohibit or authorize any activity directed at such heritage to prevent interference with its sovereign rights or jurisdiction as provided for by international law including the United Nations Convention on the Law of the Sea.

**Art. 10 (6)**
In coordinating consultations, taking measures, conducting preliminary research and/or issuing authorizations pursuant to this Article, the Coordinating State shall act on behalf of the States Parties as a whole and not in its own interest. Any such action shall not in itself constitute a basis for the assertion of any preferential or jurisdictional rights not provided for in international law, including the United Nations Convention on the Law of the Sea.
The application of the Convention *ratione personæ*

The UNESCO Convention *is* a treaty ... 

... as *is* the *Titanic Agreement*

1969 Vienna Convention on the Law of Treaties

as expression of customary international law (ICJ/US)

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<thead>
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<th>2001 UNESCO Convention</th>
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<td>Canada</td>
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<td>United Kingdom</td>
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<td>United States</td>
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The application of the Convention *ratione personæ*

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<th>2001 UNESCO Convention</th>
<th>Art. 6</th>
<th>Titanic Agreement</th>
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<tr>
<td>Neutral with regard title and jurisdiction (LOSC)</td>
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<tr>
<td>Non intrusive research and <em>in situ</em> protection preferred</td>
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<tr>
<td>Limits salvage and finds</td>
<td>Adapts and closes salvage</td>
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<td>Protection and curation of collections (non commerce)</td>
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<td>Full respect and non disturbance of human remains</td>
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<td>Flag State and port State controls</td>
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<td>Consultations and cooperation in benefit of Mankind</td>
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<td>Common pattern scientific guidelines (+ UK &amp; US Dom Leg)</td>
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How parties to the UNESCO Convention may protect the *Titanic*?

**Art. 2**
General Principles

**Art. 4**
Salvage & Finds

**Art. 5**
Incidental activities

**Art. 6**
Bilateral & Multilateral Agreements

**Art. 14**
Controls

**Art. 15**
Non use of Areas

**Art. 17**
Sanctions

**Art. 16**
Flag vessels

**Art. 18**
Seizure

**Art. 19**
Cooperation & Information Sharing

**Administrative & Criminal matters**

**Jurisdictional matters**

**Multilevel collaboration**
Challenges ahead...

- Implementation of the international obligations (States parties to the UNESCO Convention (40) obliged to cooperate in the protection of Titanic)
- Canada as “coordinating State” if it becomes a party?
- States parties to LOSC are also generally obliged to protect UCH (arts. 149 and 303)
- The Titanic as an “objective regime”?
- 2012 and Titanic as catalysts for education avoiding false or misleading approaches to UCH
Thank you very much

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