

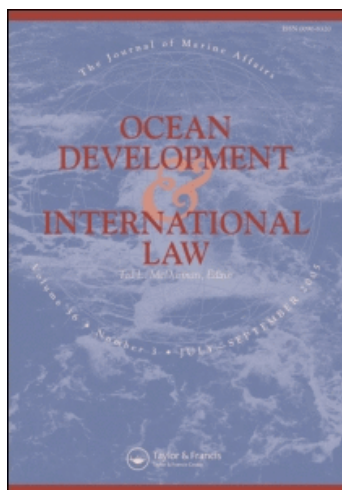
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The 2001 UNESCO Underwater Cultural Heritage Convention and Taiwan's Domestic Legal Regime

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The United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Convention on the Protection of the Underwater Cultural Heritage (the UCH Convention) on November 2, 2001. The Convention created a comprehensive legal framework for the preservation, protection, and management of underwater cultural heritage. This article illustrates that the UCH Convention not only supplements, but also substantively amends, the relevant rules contained in the 1982 United Nations Convention on the Law of the Sea. This article, using the domestic legislation of Taiwan as an example, demonstrates some of the difficulties of implementing the UCH Convention into national law.

Keywords Taiwan, underwater cultural heritage, UNESCO Convention on the Protection of Underwater Cultural Heritage

Introduction

The 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention)¹ is often referred to as the “constitution for the oceans.”² However, the Convention had little to say about the protection of underwater cultural heritage. Among the 320 articles of the 1982 LOS Convention, Article 149 dealing with “archaeological and historical objects” found in the Area and Article 303 concerning “Archaeological and historical objects found at sea” are the only two articles that specifically deal with the protection of “objects of an archaeological and historical nature found at sea” and the obligation of international cooperation for this purpose. No comprehensive preservation, protection, and management rules are established by these provisions; rather, they create certain legal controversies and uncertainties. These

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flaws were somewhat amended by the 2001 Convention on the Protection of the Underwater Cultural Heritage (UCH Convention)³ adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on November 2, 2001, at its Thirty-first Conference by a vote of 87 yeas, 4 nays (Norway, the Russian Federation, Turkey, and Venezuela), and 15 abstentions (Brazil, the Czech Republic, Colombia, France, Germany, Greece, Guinea-Bissau, Iceland, Israel, the Netherlands, Paraguay, Sweden, Switzerland, the United Kingdom, and Uruguay).⁴

Although the coming into force of the UCH Convention has been slow, given the overwhelming majority in favor of its adoption, a strong consensus can be said to exist in the international community with respect to the preservation, protection, and management of underwater cultural heritage (UCH). Nevertheless, an effective regime for the preservation and protection of UCH requires not only international cooperation, but faithful implementation of the UCH Convention within national jurisdictions. Thus, it is necessary to examine relevant national legislation and the issues that arise with respect to national implementation of the UCH Convention.

The Republic of China (ROC), or Taiwan as referred to by most of the international community, was excluded from participating in the drafting, deliberating, and adoption process of the UCH Convention. However, as an island nation situated at the junction of important sea routes and with its long history of colonial power invasion and immigration from mainland China, it should not be a surprise if one finds a great number of shipwreck sites in its surrounding waters. Taiwan must exercise the rights bestowed on it by the rest of the international community and bear the obligations of preserving and protecting the UCH existing within and beyond the ambit of Taiwan's jurisdiction. To accomplish this, Taiwan needs to possess appropriate domestic legislation.

This article first reviews the relevant provisions with respect to archaeological and historical objects found at sea in the 1982 LOS Convention as well as the legal controversies that they create, and then compares the rules provided for by the UCH Convention. This is followed by a survey of the domestic laws and regulations of Taiwan relating to the preservation, protection, and management of UCH to illustrate the complexity of incorporating the UCH Convention into domestic legislation.

The Rules in the 1982 LOS Convention with Respect to Underwater Cultural Heritage

National Maritime Zones

In accordance with the 1982 LOS Convention, states enjoy and exercise different rights in different maritime zones, such as the internal waters, territorial sea, contiguous zone, exclusive economic zone (EEZ), and continental shelf. Within each zone, there exists a different nature and degree of national jurisdiction with respect to the preservation, protection, and management of UCH.

Internal Waters. Article 8 of the 1982 LOS Convention provides that "... waters on the landward side of the baseline of the territorial sea form part of the internal waters of the States." Thus, internal waters include rivers, gulfs, harbors, and the seas enclosed by the baseline of the territorial sea. In its internal waters, a coastal state enjoys exclusive territorial sovereignty that also extends to the airspace. As a consequence, a coastal state possesses exclusive national sovereignty over UCH within its internal waters, including all activities related to UCH (e.g., survey, investigation, removal, and disposal).

Territorial Sea. Article 2(1) of the 1982 LOS Convention provides: “The sovereignty of a coastal State extends, beyond its land territory and internal waters . . . to an adjacent belt of sea, described as the territorial sea.” Although the sovereignty of a coastal state extends to the territorial sea, this sovereignty is not absolute as that which exists on land territory and internal waters because, pursuant to Article 2(3), “[t]he sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.” The principal limitation that exists is the right of innocent passage enjoyed by foreign ships.⁵ Because foreign ship passage is not innocent if the ships carry out research or survey activities,⁶ foreign ships cannot conduct research or survey activities directed at UCH located within the territorial sea. Coastal states thus have a stronger legal claim to ownership of UCH located or found within their territorial seas. However, the provisions contained in Part II, “Territorial Sea and Contiguous Zone” in general, and Article 2, “Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil” in particular, are silent on the legal status of UCH found or located within the territorial sea of coastal states.

Contiguous Zone. In accordance with Article 33 of the 1982 LOS Convention, the contiguous zone is a maritime zone adjacent to the territorial sea of a coastal state and may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. Article 303(2) specifically refers to the UCH on the seabed of the contiguous zone by providing:

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.

As a consequence of Article 303(2), coastal states enjoy a right of approval for the removal of UCH from the seabed of their contiguous zone and, presumably, thus control the excavation, transport, and trading of such UCH.

Exclusive Economic Zone. The EEZ is “an area beyond and adjacent to the territorial sea” and “shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”⁷ The EEZ includes the water column, seabed, and subsoil subjacent to the water column and the superjacent airspace. Article 56(1)(a) states:

1. In the exclusive economic zone, the coastal State has:
(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, *of the waters superjacent to the seabed and of the seabed and its subsoil*, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and *winds*. (emphasis added)

Other than the above-mentioned sovereign rights for the purpose of exploring and exploiting, conserving, and managing the natural resources (whether living or nonliving), the coastal state also possesses jurisdiction, as provided for in the relevant provisions of the LOS Convention, over “the establishment and use of artificial islands, installations and structures,” “marine scientific research,” and “the protection and preservation of the marine environment” as well as “other rights and duties provided for in this Convention.”⁸

However, the LOS Convention contains no express rule providing to coastal states any sovereign rights or jurisdiction over UCH found or located within their EEZ, nor with respect to any activities directed at UCH, except that specified in the contiguous zone which falls within the ambit of the EEZ.

Coastal states have the right to regulate, authorize, and conduct marine scientific research in their EEZ and on their continental shelf.⁹ Marine scientific research in these areas by foreigners is to be undertaken only with the consent of the coastal state.¹⁰ The LOS Convention directs that the required consent is, in normal circumstances, to be granted by the coastal states, unless the research project "is of direct significance for the exploration and exploitation of natural resources, whether living or non-living" or may have environmental consequences.¹¹ Because the activities of surveying and scientific research directed at UCH are usually of peaceful purposes, to increase scientific knowledge of the marine environment, and for the benefit of all humankind and have nothing to do with natural resources that are subject to coastal states' sovereign rights nor involve destructive measures, coastal states may not have the right to withhold their consent to the conduct of marine scientific research projects with respect to UCH.

There is room for dispute whether, in accordance with Article 246, the exercise of the right of a coastal state "to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf" and to "grant their consent or in their discretion withhold their consent" limits research or excavation activities undertaken by foreign states directed at UCH found or located in the EEZ of coastal states.

The LOS Convention does not expressly allocate the rights over the disposal, exploration, and removal of UCH found in the EEZ to either coastal states or other states. Accordingly, consistent with Article 59, a dispute over the disposal of, exploration for, or archaeological work undertaken with respect to UCH in the EEZ between coastal states and other states is to be solved on an equitable basis and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.¹² The uncertainty of this wording has been somewhat alleviated by the 2001 UCH Convention.

Continental Shelf. In accordance with Article 76(1) of the UNCLOS,

the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Where the continental margin extends beyond 200 nautical miles from the baselines, the outer limits of such continental margin are to be determined by a number of straight lines connecting between a number of fixed points and these outer limits are not to exceed either 350 nautical miles from the baselines or 100 nautical miles from the 2,500-meter isobath.¹³

Article 77 provides that "[t]he coastal States exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources" and such rights "do not depend on occupation, effective or notional, or on any express proclamation." Because UCH by its nature is not a natural resource as defined by Article 77(4),¹⁴ coastal states do not possess sovereign rights over UCH on the continental shelf. Furthermore, whether a coastal state possesses any sovereign rights or jurisdiction over the archaeological

research activities undertaken on its continental shelf, and whether foreign states have to acquire consent from coastal states in order to undertake archaeological research on the continental shelf are open to discussion and debate.

The Area Beyond National Jurisdiction

As already noted, Article 149 of the LOS Convention provides:

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

The Area referred to in the provision means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, or the seafloor beyond the maritime zones to which coastal states can claim. The Area covers approximately 60% of the seafloor. The resources of the Area are the “common heritage of mankind.”¹⁵ Accordingly, “[n]o State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall . . . appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.”¹⁶ Although “[a]ll rights in the resources of the Area are vested in mankind as a whole, on whose behalf the [International Seabed] Authority shall act,”¹⁷ the term “resources” is strictly defined as being limited to “all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules.”¹⁸ The UCH located or found in the Area falls outside of the definition of “resources;” thus, the International Seabed Authority (ISA) does not have jurisdiction over UCH found in the Area.

The conduct of states and activities occurring in the Area are to be carried out in the following manner:

- The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part [i.e., the Part XI on the Area], the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international cooperation and mutual understanding;¹⁹
- The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part;²⁰
- Neither this Part nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters superjacent to the Area or that of the air space above those waters;²¹ and,
- Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.²²

In the light of these four standards, any state may undertake maritime archaeology activities in and excavate UCH from the Area. First, as noted above, the resources of the Area means mineral resources; thus, the provisions relevant to the resources of the Area are not applicable to the UCH. Second, undertaking maritime archaeology activities will not depart from “maintaining peace and security and promoting international cooperation and mutual understanding.” Third, undertaking maritime archaeology activities is a reasonable exercise of freedom of the high seas; however; such freedom is subject to the constraint in

Article 149 that "All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin."

Other LOS Convention Provisions Relevant to the Protection of Underwater Cultural Heritage

The above subsections explore national rights over UCH, nevertheless, Article 303(1), (3), and (4) contained in LOS Convention Part XVI "General Provisions" are applicable to all maritime zones. These paragraphs provide:

1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.
2. 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.
3. 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.

As indicated in Article 303, states are obliged to protect and cooperate for the protection of UCH found in all seas, and activities undertaken are not to affect the rights of identifiable owners, salvage law, cultural exchanges, and relevant international agreements. The content of these limitations and their effect on the protection of UCH will be examined below.

The Rights of Identifiable Owners. With regard to the legal content of the "rights of identifiable owners," mainland China scholar Chao Hong-yeh (趙紅野) considered the rights to be "ownership."²³ In other words, the provisions with regard to archaeological and historical objects in Article 303 of the 1982 LOS Convention do not affect the ownership of identifiable owners of such objects. However, the view herein is that, for UCH found in a coastal state's internal waters or territorial sea, the coastal state can determine whether or not to respect the ownership of identifiable owners. In other words, the clarity of a coastal state's exclusive authority, namely national sovereignty, over its internal waters and territorial sea trumps the general provision of Article 303 of the LOS Convention with regard to "the rights of identifiable owners" of UCH.

For archaeological and historical objects found in a coastal state's contiguous zone, EEZ, and continental shelf over which national sovereignty does not exist, the coastal state is obliged to respect Article 303(3) with regard to not affecting the rights of identifiable owners. Thus, Article 303 leaves unresolved complicated issues with regard to how to discern and ascertain ownership, whether the rights of an original owner have been relinquished, and how the ownership should be reattributed if the original owner has given up its claim to or relinquished its ownership over UCH.²⁴ Related issues include the divide between ownership of a vessel and ownership of cargo. Finally, can and should identifiable owners be the flag states of vessels lost hundreds or even thousands of years ago?

The Law of Salvage or Other Rules of Admiralty. Cynthia Furrer Newton succinctly described the relevance and influence of the law of salvage and the law of finds to the control and disposition of UCH as follows:

The law of salvage and the law of finds developed from the ancient doctrines of *mare liberum* and *mare clausum* and from British maritime law. Because the British frequently adjudicated issues related to shipping on the high seas, and because maritime law is intrinsically international, the current law of salvage and law of finds developed primarily in the British courts. This foundation gave the law of salvage and the law of finds their international character and authority. Through repeated application, the law of salvage and the law of finds became customary international law. This customary international law served as the foundation for the LOS Convention.

Customary international law is one possible source of law for settling international disputes Because the LOS Convention is the first treaty with provisions specifically dealing with [objects of an historical and archaeological nature] OHANs, the law of salvage and the law of finds would control the disposition of OHANs if the LOS Convention is not recognized or in effect between the parties to the dispute.²⁵

In maritime law, “salvage” originally meant “the thing or goods saved from shipwreck or other loss,” although it is now more frequently understood to mean the compensation received by those saving a ship or goods from shipwreck, fire, pirates, enemies, or any other loss or misfortune.²⁶ When a ship and cargo, or any part thereof, are saved from impending peril by the exertions of any person, or are recovered after an actual abandonment or loss, such persons are denominated salvors and are entitled to a compensation for their services, salvage.²⁷

Craig Forrest indicated that “[t]he policies that form the foundation of salvage law are to encourage individuals to voluntarily save lives and property at sea and to return such saved property to its owner for reintroduction into the stream of commerce.”²⁸ Thus, “[b]efore salvage law may be applied, [four] criteria must be satisfied: (a) property in marine peril on navigable waters; (b) voluntary efforts to rescue the property; (c) partial or total success; and (d) conducted *bona fide* in the interest of the owners.”²⁹

However, with respect to the preservation and protection of UCH, the application of salvage law has an inherent conflict in terms of different values. As an oft-quoted commentary indicates:

Indeed, the heritage may be in greater danger from salvage operations . . . [than] from being allowed to remain where it is The major problem is that salvage is motivated by economic considerations; the salvor is often seeking items of value as fast as possible rather than undertaking the painstaking excavation and treatment of all aspects of the site that is necessary to preserve its historic value.³⁰

Likewise, Chao Hong-yeh pointed out that “salvage” means maritime assistance and the precondition for such assistance is that the vessel or goods to be salvaged are in distress.³¹ UCH has usually rested peacefully on the seafloor for hundreds or even thousands of years and has been preserved within the marine environment without facing immediate danger or marine peril. It is the salvage operation, aimed at the acquirement of properties rather than rendering assistance or protection, that will put UCH under peril and threat of destruction. Thus, it has been observed that the primary danger for UCH comes from application of salvage law or other rules of admiralty.³²

Regarding the law of finds, it is a set of customary laws that attributes the ownership of *res nullius* (a thing that has no owner) found at the sea to the finder.³³ If the law of finds is applicable to UCH, it will encourage finders to be the first occupant of UCH in order to acquire an ownership claim and the consequent commercial rewards. This approach is detrimental to the preservation and protection of UCH. Article 303(3), which stipulates that the provisions of Article 303 do not affect the law of salvage or other rules of admiralty, may not benefit UCH.

Laws and Practices with Respect to Cultural Exchanges. The only international instrument that deals specifically with cultural exchanges is the 1976 UNESCO Recommendation Concerning the International Exchange of Cultural Property.³⁴ Although the term “cultural property” may include UCH, the purpose of the 1976 Recommendation was to enhance international cooperation among cultural institutions. The Recommendation is therefore irrelevant to the removal and disposal of UCH and has no direct relevance with the provision of Article 303.³⁵

Other International Agreements Regarding Objects of an Archaeological and Historical Nature. The open-endedness of Article 303(4) in indicating that Article 303 was “without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature” may have been the result of a compromise in view of the bleak possibility of a breakthrough on UCH protection issues during the negotiations. With regard to the existing agreements that would be covered by Article 303(4), Moritaka Hayashi and Chao Hong-yeh both considered³⁶ that these include the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention;³⁷ the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;³⁸ and the 1972 Convention for the Protection of the World Cultural and Natural Heritage.³⁹ Shabtai Rosenne and Louis B. Sohn indicated that

[a] number of other articles of the Convention, ... refer specifically to the possibility that the subject matter of a given article may be governed by some other existing or *future* international agreement or other arrangement. These include articles ... 303 The terms of these articles vary considerably in relation to their own subject matter, and, where appropriate, article 311 grants priority to the other treaty.⁴⁰ (emphasis added)

Hence, the 1982 UNCLOS respects, in principle, the existence of other yet-to-be-developed or future international agreements and rules of international law regarding the protection of archaeological and historical objects.⁴¹ This further supports the view that Article 303(4) refers not just to treaties existing as of 1982, but also to international agreements and rules of international law that may be developed in the future with a more comprehensive approach on the protection of UCH.

A Brief Summation

Coastal states enjoy plenary sovereignty and jurisdiction within their internal waters and territorial seas. Although the 1982 LOS Convention is silent on whether coastal states can claim exclusive authority, including ownership claims, over UCH found or located in these waters, such exclusive authority is consistent with the internal waters and territorial sea regimes. Coastal states enjoy the right of control over the removal of UCH within their

contiguous zones. Beyond contiguous zones, coastal states do not have any rights over UCH flowing from their status as coastal States.

Within internal waters, territorial seas, and archipelagic waters, over which coastal states enjoy sovereignty, noncoastal states do not enjoy rights besides the possible rights of identifiable owners. Beyond these maritime zones, it is uncertain whether foreign states may undertake exploration, survey, and research activities directed at UCH found or located in the EEZ or on the continental shelf without the consent of coastal states.

States have the duty to protect archaeological and historical objects found at sea and to cooperate for this purpose. When undertaking UCH-related activities, states are not to affect the rights of identifiable owners, the law of salvage, or other rules of admiralty, or laws and practices with respect to cultural exchanges, nor prejudice other international agreements and rules of international law regarding the protection of archaeological and historical objects.

The 1982 LOS Convention leaves a number of issues unresolved. How are states to protect UCH found within the EEZ and continental shelf? Should Article 303(2), which deals with coastal state jurisdiction over the removal of UCH from the seabed of the contiguous zone, be applied *mutatis mutandis* to the EEZ and continental shelf? Or, should the approach adopted for UCH within the Area be applied *mutatis mutandis* to the EEZ and continental shelf so as to preserve and dispose of UCH for the benefit of humankind as a whole?

How should UCH be preserved for the benefit of humankind as a whole? Most often, the significance of UCH is not related to its locality on the seafloor; rather, it arises from cultural and historical linkages and from the particular spiritual and cultural meaning to the nation or people who originally created the UCH, and this significance is not equally shared by all peoples.⁴² Thus, while the “benefit of mankind as whole” is stressed, questions remain as to how to pay “particular regard” to the “preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.”⁴³

The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage

The 2001 UNESCO UCH Convention would appear to be the “to-be-developed” international agreement envisaged by Article 303(4) of the 1982 LOS Convention. It somewhat clarifies, supplements, and amends the rules provided for in the 1982 UNCLOS with respect to archaeological and historical objects found at sea.

The development of the UCH Convention involved three different legal spheres; namely, the law of the sea, admiralty law, and cultural heritage law. There was debate over whether UNESCO was the appropriate forum since early drafts of the Convention contained provisions that would, in substance, amend the 1982 LOS Convention.⁴⁴ Moreover, there was debate over whether the UCH Convention would be a self-standing convention or an implementing agreement to the LOS Convention.⁴⁵ In the end, UNESCO was the negotiating forum, with the negotiations conducted within a cultural heritage context. However, it has been observed that most of the state representatives were not experts in the field of cultural heritage and the dominant topic in the early meetings tended to focus on law of the sea issues.⁴⁶

Definitions and General Principles

UCH Convention Article 1(1)(a) defines “underwater cultural heritage” as: “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." The first paragraph of the Preamble of the Convention acknowledges the importance of UCH as an integral part of the cultural heritage of humanity.

One of the Information Kits for the UCH Convention prepared by UNESCO identifies nine general principles.⁴⁷

- The preservation *in situ* of underwater cultural heritage shall be considered as the first option before allowing or engaging in any activities directed at this heritage (Article 2(5); Rule 1 of the Annex).
- Activities directed at underwater cultural heritage must use non-destructive techniques and survey methods in preference to recovery of objects (Rule 4 of the Annex).
- Underwater cultural heritage shall not be commercially exploited (Article 2(7); Rule 2 of the Annex).
- Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or law of finds, unless it: is authorized by the competent authorities, is in full conformity with the Convention, and ensures that any recovery of the underwater cultural heritage achieves its maximum protection (Article 4).
- Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites (Rule 5 of the Annex; Article 4(9));
- Responsible non-intrusive access to observe or document *in situ* underwater cultural heritage and international cooperation shall be encouraged (Article 2(10); Rules 7 and 8 of the Annex).
- Any discovery of or activity directed at underwater cultural heritage located in the EEZ, on the continental shelf of the coastal State or in the Area shall be subject to a specific system of reporting, notification and authorization. Special treatment is reserved for warships and other government ships or military aircraft with sovereign immunity (Articles 9–13).
- Prior to any activity, a project design for the activity shall be developed and approved by the competent authorities (Rules 9–16 of the Annex).
- Training in underwater archaeology, the transfer of technologies and information sharing shall be promoted and public awareness shall be raised in the value and significance of the underwater cultural heritage (Articles 19–21).

The Rules of the 2001 UCH Convention Supplementary to the LOS Convention

Article 3 of the 2001 UCH Convention characterizes its relationship with the 1982 LOS Convention as follows:

Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.

Article 4 of the UCH Convention expressly excludes with proviso the application of the law of salvage and law of finds to UCH activities and thus eliminates the doubt on inappropriate excavation of or ownership claims over UCH that might result from the application of the law of salvage or law of finds. This exclusion amounts to a substantive amendment to Article 303(3) of the LOS Convention.

As far as the rights and duties of coastal states over UCH found within their maritime zones, the 2001 Convention provides clearer rules. Article 7 confers on coastal states the “exclusive right” to “regulate and authorize” activities directed at UCH in their internal waters, archipelagic waters, and territorial sea. States parties to the UCH Convention are required to apply to activities directed at UCH in such waters the Rules set out in the Annex to the UCH Convention.

Regarding the contiguous zone, states parties “may regulate and authorize” UCH activities and are to apply Rules in the Annex to the Convention.⁴⁸

With regard to UCH in the EEZ or on the continental shelf, the UCH Convention provides that all states parties have a responsibility to protect UCH,⁴⁹ and that a state party has the right to “prohibit or authorize any activity directed at such heritage” in order to prevent interference with its sovereign rights or jurisdiction.⁵⁰ At the same time, a state party is to require that when its national, or the master of a vessel flying its flag, discovers or intends to engage in UCH activities located in its EEZ or continental shelf, or in the EEZ or continental shelf of another state, the national or the master report such discovery or activity to it or to the other state.⁵¹ Such reports are to be transmitted to all other states parties and notification of discoveries or activities is to be given to the Director-General of UNESCO. Authorization by a coastal state for UCH activities in its EEZ or continental shelf is to be done in conformity with the provisions of Article 10 of the UCH Convention. Acting as a Coordinating State, the coastal state is to consult all other states parties that have declared an interest in the UCH under Article 9(5) (based on a verifiable link, especially, a cultural, historical, or archaeological link to the UCH concerned) on how best to protect the UCH.⁵² As a Coordinating State, a coastal state is to implement protection measures agreed on by all consulting parties, issue all necessary authorizations for such agreed measures, and conduct any necessary preliminary research. In carrying out the functions of a Coordinating State, the coastal state is to act on behalf of the states parties to the UCH Convention as a whole and not in its own interest, and any such above-mentioned 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 LOS Convention.⁵³

For UCH located in the Area, Article 11 of the 2001 UCH Convention directs that: “State Parties have a responsibility to protect UCH in the Area in conformity with this Convention and Article 149 of the UNCLOS.” In addition, where “a national, or a vessel flying the flag of a State Party, discovers or intends to engage in activities directed at UCH located in the Area, that State Party shall require its national, or the master of the vessel, to report such discovery or activity to it” and “notify the Director-General and the Secretary-General of the International Seabed Authority of such discoveries or activities.”⁵⁴

The protection for UCH located in the Area is exercised based on the mechanism prescribed in Article 12 of the 2001 UCH Convention. Basically, this mechanism requests the UNESCO Director-General to invite all states parties that have declared interest in the concerned UCH to consult on how best to protect the UCH and to appoint a state party to coordinate such consultations as the Coordinating State. The ISA is also to be invited to participate in such consultations. The states parties are to take all practicable measures, if necessary prior to consultations, to prevent any immediate danger to UCH and the Coordinating State, once established, is to implement measures of protection agreed on

by the consulting states and issue all necessary authorizations for such agreed measures. The Coordinating State may conduct any necessary preliminary research on the UCH, issue all necessary authorizations, and promptly inform the Director-General of the results of such research, who in turn is to make such information available to other states parties. In coordinating consultations, taking measures, conducting preliminary research and/or issuing authorizations, the Coordinating State is to act on behalf of all states parties and for the benefit of humanity as a whole, with particular regard being paid to the preferential rights of states of cultural, historical, or archaeological origin in respect to the UCH concerned.⁵⁵

Table 1 presents, in a comparative manner, the rules contained in the LOS Convention and in the UCH Convention with respect to the coastal state's jurisdiction over UCH within and beyond the maritime zones of coastal states. This comparative display demonstrates that the rules on the jurisdiction of coastal states over UCH found in various maritime zones and that certain of the generally applied principles contained in the 1982 LOS Convention have been either supplemented or substantively amended by provisions in the 2001 UCH Convention.

Taiwan's Domestic Laws with Respect to Underwater Cultural Heritage

The implementation of an internationally adopted multilateral treaty depends on the willingness and support of states to put the spirit and letter of the treaty into practice. For states, the usual way to implement a treaty is to ratify the treaty and then incorporate its provisions into domestic laws and regulations. Due to political constraints, Taiwan cannot ratify or accede to the 1982 LOS Convention or the 2001 UCH Convention. However, there is nothing to prevent Taiwan from implementing the two treaties through its municipal legal framework.

Maritime Zone Laws

There are two basic maritime zone laws in Taiwan; namely, the Law on the Territorial Sea and Contiguous Zone of the Republic of China (中華民國領海及鄰接區法) and the Law on the Exclusive Economic Zone and Continental Shelf of the Republic of China (中華民國專屬經濟海域及大陸礁層法).⁵⁶ The former contains one article involving archaeological, historical objects or relics, while the latter contains nothing with respect to UCH. The two laws predate the 2000 UCH Convention.

Article 16 of the Territorial Sea and Contiguous Zone Act stipulates that:

The historical objects or relics⁵⁷ found within ROC territorial sea and contiguous zone due to the conduct of archaeological, scientific research or any other activities are owned by the ROC and may be disposed of in accordance with relevant laws and regulations of the ROC Government.

With this provision, "ownership" over the UCH found within its territorial sea and contiguous zone and the right of disposal is acquired by the state. Based on ownership, this particular legislative provision clearly confers on the ROC government the jurisdiction over UCH found or located in these maritime zones.

As noted above, the LOS Convention does not explicitly provide that a coastal state can claim "ownership" over all the "archaeological and historical objects" or UCH found within its internal waters and territorial seas based on the exercise of its sovereignty. Nevertheless, Kuen-Chen Fu (傅崑成), the then-chair of the Committee on the Interior Affairs of the

Table 1

Comparative presentation of rules contained in the LOS Convention and UCH Convention with respect to the coastal states' jurisdiction over UCH within and beyond the maritime zones of coastal states

	1982 LOS Convention	2001 UCH Convention
Internal waters, archipelagic waters, and territorial sea	Sovereignty and exclusive jurisdiction enjoyed by coastal States but no specific rules provided for with respect to UCH.	Exclusive right to regulate and authorize activities directed at UCH.
Contiguous zone	Right of control over the removal of UCH from seabed in the zone.	Right to regulate and authorize activities directed at UCH.
Exclusive economic zone	No express rule providing coastal States with any sovereign rights and/or jurisdiction over UCH or relevant activities.	Right to prohibit or authorize any activity directed at UCH located in the zone to prevent interference with its sovereign rights or jurisdiction. As a Coordinating State, right to implement measures of protection agreed by all consulting parties, issue all necessary authorizations for such agreed measures, conduct any necessary preliminary research and issue all necessary authorizations therefor, but to act on behalf of the State Parties as a whole and not in its own interest, and any such above-mentioned 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 UNCLOS.
Continental shelf	Same as above.	Same as above.
The Area	To preserve or dispose of UCH found in the Area for the benefit of humankind as a whole. Preferential rights reserved for the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin (Article 149).	Consultation among all consulting parties called for by the Director-General of the UNESCO. As a Coordinating State, a right to implement measures of protection agreed by all consulting parties, issue all necessary authorizations for such agreed measures, conduct any necessary preliminary research and issue all necessary authorizations therefor, but to act on behalf of all State Parties for the benefit of humanity as a whole and particular regard is to be paid to the preferential rights of States of cultural, historical or archaeological origin respecting the UCH concerned.

(Continued on next page)

Table 1
Comparative presentation of rules contained in the LOS Convention and UCH Convention with respect to the coastal states' jurisdiction over UCH within and beyond the maritime zones of coastal states (*Continued*)

	1982 LOS Convention	2001 UCH Convention
General provisions	<ul style="list-style-type: none">• Duty to protect objects of an archaeological and historical nature found at sea and to cooperate for this purpose.• Do not affect the rights of identifiable owners.• Do not affect the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.• Do not prejudice other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature (Article 303).	<ul style="list-style-type: none">• The same.• Interest declared based on a verifiable link, especially a cultural, historical or archaeological link to the UCH concerned in the EEZ or on the continental shelf (Article 9(5)).• Particular regard paid to the preferential rights of States of cultural, historical or archaeological origin with respect to the UCH concerned found in the Area (Article 12(6)).• Not subject to the law of salvage or law of finds (Article 4).• Do not prejudice the rights, jurisdiction and duties of States under international law, including the LOS Convention (Article 3).

Abbreviations: LOS Convention, United Nations Convention on the Law of the Sea; UCH, underwater cultural heritage; UCH Convention, Convention on the Protection of the Underwater Cultural Heritage.

Legislative Yuan (Parliament of the ROC), took the view that “in accordance with the [UN Law of the Sea] Convention, it is permissible to assign ‘ownership’ to one’s own country and if there is ownership, there should naturally have ‘right of disposal.’”⁵⁸

The ownership rights over the UCH found within the contiguous zone as asserted in the Territorial Sea and Contiguous Zone Act is similarly suspect because Article 303(2) of the 1982 LOS Convention does not expressly stipulate whether coastal states possess ownership; rather, the Convention takes an indirect approach by providing to coastal states “certain” rights over the “removal” of such archaeological and historical objects from the seabed in the zone in order to control the traffic of such objects. Judged by the spirit and letter of Article 33(1), the nature of such rights is basically a “policing power.”

Because the 1982 LOS Convention contains no express rule to provide coastal states with sovereign rights or jurisdiction over UCH found or associated activities occurring within the EEZ or on the continental shelf, other than those provided for in Article 303, it is not surprising to see that the ROC EEZ and Continental Shelf Act is silent on UCH matters. Now, the 2001 UCH Convention provides a clear set of rules for UCH found within the EEZ or continental shelf of coastal states.⁵⁹ The ROC EEZ and Continental Shelf Act should be amended accordingly.

The Cultural Properties Preservation Act

The provisions contained in the ROC maritime zone acts, including Article 16 of the Territorial Sea and Contiguous Zone Act, depend on the support of other laws for their operational implementation. Only the Cultural Properties Preservation Act (文化資產保存法, or wên-hua tsu-chán pao-tsún fa in Wade system of Romanization) deals with the preservation, protection, and management of cultural properties.⁶⁰ In its earlier version, promulgated on June 12, 2002, Articles 17 and Article 32 referred to “submerged ownerless ancient objects” (沈沒水中無主古物) and “submerged ownerless ancient relics” (沈沒水中無主古蹟), respectively. These objects or relics were declared to be “State owned,” and awards would be offered to finders. There were no specific provisions with respect to their protection or management. Treating submerged objects and archaeological sites in the same way as other terrestrial objects and sites is not appropriate because such legal arrangements do not take into consideration the special physical environment or the preservation and protection requirements associated with submerged (especially, maritime) cultural heritage.

The most recent revision of the Cultural Properties Preservation Act, promulgated by a Presidential Order on February 5, 2005, and coming into effect on November 1, 2005, by an Administrative Order issued by the Executive Yuan (the Cabinet of the Republic) on October 31, 2005, deletes the two articles relating to submerged objects and relics and, thus, makes the newly revised Act largely irrelevant to UCH. The only potentially relevant provision is Article 46, which prohibits foreigners to “investigate and excavate historical sites within the limits of territorial sea.” However, the linkage between Article 46 and the two 1998 ROC maritime zone acts is not sufficiently clear to allow the Cultural Properties Preservation Act to constitute as a substantive law supporting the implementation of the relevant rules contained in the maritime zone acts.⁶¹

In order to rectify the irrelevance of the Cultural Properties Preservation Act to the submerged objects and sites, Article 3(3) of the Enforcement Rules of the Act (施行細則) stipulates that the “relics [yi-wu in Chinese], vestige [yi-ji in Chinese] and the space in which they reside as referred to in the Article 3 subparagraph 2 of the Act include terrain and underwater.” However, this addition is troublesome because it appears

to deviate from a number of constitutional interpretations issued by the Constitutional Court of the ROC Judicial Yuan, which made it clear that it is permissible to have rules in Regulations or Orders only if they are fully authorized and clearly indicated so by the provisions of parent legislative laws.⁶² Moreover, Article 3(3) of the Enforcement Rules of the Act is not in line with Article 150(2) of the Administrative Procedure Act, which stipulates that: "The contents of a legislative order shall specifically stipulate the basis of its legislative authorization and shall not exceed the scope and legislative spirit of such legislative authorization."⁶³ Thus, the expansion of the applicability of the Cultural Properties Preservation Act to underwater or to maritime regions by its Enforcement Rules may be unconstitutional.

Although the recently revised Cultural Properties Preservation Act came into legal effect after the adoption of the 2001 UCH Convention, the Act reflects none of the contents of the 2001 UCH Convention and, with regard to UCH, Taiwan will need a new piece of domestic legislation to deal with the preservation, protection, and management of the UCH in an overall and comprehensive manner if Taiwan intends to implement the spirit and letter of the 2001 Convention.

Other Relevant Domestic Laws and Regulations

In addition to the odd and obsolete Cultural Properties Preservation Act and its regulations administered by the Council for Cultural Affairs, there are many substantive laws and regulations in other policy domains administered by other competent authorities that may also touch on the preservation, protection, and management of the UCH. This article will not list all of these laws and regulations; rather, the following will illustrate the extensiveness or pervasiveness of the undertaking of the preservation, protection, and management of the UCH in terms of domestic laws and regulations as well as the existing problems presented in these laws and regulations.

If a natural or legal person discovers purported UCH within the internal waters on the landward side of the territorial sea baselines (for instance, the discovered objects from purported shipwrecks in the Ma-Kun Port of the Peng-hu Islands⁶⁴) or within the territorial sea or contiguous zone on the seaward side of the baselines, the UCH will be treated as state-owned property in accordance with Article 16 of the ROC Territorial Sea and Contiguous Zone Act. The finder can, however, apply to excavate or salvage the UCH in accordance with Article 72 of the State-Owned Properties Act (國有財產法) and Article 6 of the Regulations on the Application for Excavation and Salvage of State-Owned Buried and Submerged Properties (國有埋沉財產申請掘發打撈辦法) administered by the Ministry of Finance. If the person is registered under Article 5 of the Regulations on the Administration of Salvage Business (打撈業管理規則) as a salvage business operating within a harbor area or harbor administrative region, such person will have to submit an application in accordance with Article 11 of these Regulations and follow Article 17 of the Commercial Ports Act (商港法) administered by the Ministry of Transportation and Communications. If the waters in question have been designated as a "Fortress and Citadel Zone" (要塞堡壘地帶) under Articles 4 and 5 of the Fortress and Citadel Act, (要塞堡壘地帶法) by the Ministry of National Defense, or as a "Historical Preserve Zone" (史蹟保存區) within a national park by the Ministry of the Interior in accordance with Articles 12 and 15 of the National Parks Act (國家公園法), then one has to apply for permission from the respective competent authorities in order to enter or to undertake activities directed at UCH.

Before finders undertake exploration or excavation for UCH, they must hire certified divers in accordance the relevant provisions of the Labor Safety and Sanitation Act (勞工安

全衛生法) administered by the Council for Labor Affairs. If it is necessary to hire foreign experts to be the divers, then applications in accordance with the Employment Service Act (就業服務法) must be made.

Under the Cultural Properties Preservation Act, finders are to report to the competent local authorities of the Special Municipality or County (City) where the finding is located in accordance with Article 41 (historical sites) and Article 74 (ownerless ancient objects) so as to allow such competent local authorities to initiate emergency protective measures. However, as already noted, the Cultural Properties Preservation Act has nothing to do with UCH; thus, it is doubtful that the provisions in the Act with respect to historical sites include submerged historical sites and UCH thereof.

When competent authorities engage in UCH monitoring and protection, they may need the assistance from the Coast Guard or Harbor Police. However, it is not clear whether the task of preservation, protection, and management of UCH falls within the administrative duties of the harbor police. A similar doubt exists with respect to the responsibilities of the Coast Guard Administration, a ministerial-level agency responsible for the security, safety, and protection of coastal areas and maritime zones as well as the enforcement of laws applicable to the maritime zones.

When a purported UCH is excavated from waters, the competent authorities of local and central governments are to move such UCH to an appropriate location for preservation, disposition, and management in accordance with the Cultural Properties Preservation Act and the Enforcement Rules of the Act. The competent authorities may also approve the establishment of maritime museums for the curation and display of UCH in accordance with the Social Education Act (社會教育法) administered by the Ministry of Education, and the Urban Planning Act (都市計畫法) and the Regional Planning Act (區域計畫法) administered by the Ministry of the Interior. Competent authorities may also provide financial assistance or tax breaks to relevant groups or organizations in accordance with rules of the Cultural and Arts Awards and Financial Assistance Act (文化藝術獎助條例), the Regulations on Cultural and Arts Business Sales Tax and Entertainment Tax Reduction (文化藝術事業減免營業稅及娛樂稅辦法), or the Regulations on Awards and Financial Assistance to Cultural Properties (文化資產獎勵補助辦法) administered by the Council for Cultural Affairs. For the finders of UCH, competent authorities can offer remuneration in accordance with Articles 15 and 16 of the Regulations on the Application for Excavation and Salvage of State-Owned Buried and Submerged Properties administered by the Ministry of Finance.

In order to protect historical sites and preserve their surrounding environment, historical site preservation plans (遺址保存計畫) may be completed in accordance with Article 43 of the Cultural Properties Preservation Act, and Regulations on the Reviewing of Designation and Abolishment of Historical Sites (遺址指定及廢止審查辦法) and Regulations on the Monitoring and Protection of Historical Sites (遺址監管保護辦法) administered by the Council for Cultural Affairs.

Within the areas being designated as marine preserves (海洋保護區), national parks (國家公園), or scenic sites (風景區), competent authorities may operate leisure and tourism businesses and may impose limitations on uses by the public in specific waters to protect the *in situ* UCH in accordance with the Tourism Development Act (發展觀光條例) and other laws and regulations administered by various agencies.

If an alleged UCH is found in a development site located near shore, the project will have to be halted and a report filed immediately to competent authorities of the Special Municipality or County (City) Governments pursuant to Article 75 of the Cultural Properties Preservation Act. However, if the location of UCH is at the sea, it will be difficult

to ascertain the responsible local governments, especially when the local governments ever possess administrative jurisdiction over the adjacent marine region is in doubt under the current constitutional and administrative regime.

Issues Relating to Constitutional Arrangements

The previous subsections have shown that, on the surface, there are numerous existing laws and regulations involved with UCH in Taiwan; however, most have problems of applicability due to their terrestrial approach and nature. The constitutional rules and associated legal arrangement of the ROC Constitution⁶⁵ further complicate this issue.

One of the basic principles of the ROC Constitution is the so-called "institution for a balanced division of powers between the central and local governments" (均權制度) that is reflected and provided for in Chapter X, Powers of the Central and Local Governments, especially Article 111, which stipulates:

Any matter not enumerated in Articles 107, 108, 109, and 110⁶⁶ shall fall within the jurisdiction of the Central Government, if it is national in nature; of the province, if it is provincial in nature; and of the hsien,⁶⁷ if it concerns the hsien. In case of dispute, it shall be settled by the Legislative Yuan.

Article 108(1)(20) of the ROC Constitution stipulates that matters relating to the "[p]reservation of ancient books and articles and sites of cultural value" (有關文化之古籍、古物及古蹟之保存) are matters that "the Central Government shall have the power of legislation and administration, but the Central Government may delegate the power of administration to the provincial and hsien governments" (由中央立法並執行之,或交由省縣執行之). Although Article 166 of the ROC Constitution stipulates that: "The State shall ... protect ancient sites and articles of historical, cultural or artistic value" (國家應...保護有關歷史、文化、藝術之古蹟、古物), it is silent on the preservation, protection, and management of the submerged sites where UCH is located.

In response to revisions of the ROC Constitution, the Local Institution Act (地方制度法) was promulgated on January 25, 1999. Article 18, paragraph 1, subparagraph 4, item 4 and Article 19, paragraph 1, subparagraph 4, item 4 of the Local Institution Act stipulate that the "cultural properties preservation of Special Municipality" (直轄市文化資產保存) and "cultural properties preservation of County (City)" (縣(市)文化資產保存) fall within the scope of the autonomous affairs of the Special Municipality or County (City). Furthermore, the Cultural Properties Preservation Act, just like most other substantive laws of the ROC, stipulates in Article 4 that "... the agency in charge in the Central Government shall be the Council for Cultural Affairs of the Executive Yuan; in the Special Municipality is the Special Municipality Government; in the County (City) is the County (City) Government."

On the issue of whether the administrative jurisdiction of local governments extends to the waters beyond the high-tide mark or low-tide mark, the Ministry of the Interior issued an Explanatory Order to local governments in 2005 in which it is clear that the administrative region of a province (city) and county (city) does not extend to or include maritime areas beyond the high-tide mark.⁶⁸ Pursuant to the Explanatory Order, it is apparent that the administrative jurisdiction over the autonomous affairs relating to cultural properties preservation of the local governments does not apply to maritime areas beyond the high-tide mark. In other words, the preservation, protection, and management of UCH is not a matter of autonomous affairs nor belonging to the administrative jurisdiction of local governments once the UCH is found or located in maritime areas beyond the high-tide mark.

The domestic administrative jurisdiction over the preservation, protection, and management of UCH in Taiwan involves: (1) the constitutional regime, (2) the division of powers between the central and local governments, and (3) whether marine affairs should be reserved to the legislative and administrative jurisdiction of the central government.

A Brief Summation

Taiwan has claimed a territorial sea, contiguous zone, EEZ, and continental shelf through its two 1998 maritime zone laws. However, these laws do not specifically deal with UCH matters, other than one provision in the Territorial Sea and Contiguous Zone Act that claims “State ownership” over the “historical objects or relics” found within the ROC’s territorial seas and contiguous zone and delegates the power of disposal of such objects through the relevant national laws and regulations. The only relevant national law on cultural objects though is the Cultural Properties Preservation Act, whose provisions are generally irrelevant to the UCH. The recent expansion of the applicability of the Act to the maritime areas through its Enforcement Rules may well be unconstitutional. The array of issues relating to the discovery, excavation, preservation, protection, and management of the UCH potentially involve a number of municipal laws and regulations administrated by many government agencies of other policy domains. In addition, the issue of administrative jurisdiction over the UCH is complicated, even involving the constitutional arrangements, the division of powers between the central and local governments, and the reservation of marine affairs to the legislative and administrative jurisdiction of the central government.

Conclusion

The 1982 LOS Convention contains provisions dealing with the protection of objects of an archaeological and historical nature found at sea; however, it does not provide a comprehensive legal framework and has left significant controversy; especially, in terms of coastal states’ rights in the EEZ and continental shelf for the protection of UCH found in these zones and the applicability of the law of salvage and other rules of admiralty.

This article has reviewed and compared the rules with respect to UCH in the 1982 LOS Convention and the 2001 UNESCO UCH Convention. This comparison leads to the conclusion that the UCH Convention not only supplements, but substantively amends, the provisions of the 1982 LOS Convention. Supplementing exists in the sense that the UCH Convention clarifies the rights and duties of coastal states with respect to UCH found within their national maritime jurisdiction, and amending exists in the sense that the UCH Convention expressly limits the applicability of the law of salvage and law of finds with respect to the protection and management of UCH as provided for in Article 303(3) of the LOS Convention.

Confined by its international diplomatic situation and peculiar international status, Taiwan has not been able to participate in the drafting and adoption of most international legal instruments, or to ratify or accede to such international treaties. However, Taiwan should neither abstain from exercising the rights conferred on coastal states on the protection of UCH by international conventions, nor depart from the norms of international rules.

While the international community has developed a legal regime—the 2001 UNESCO UCH Convention—on the preservation, protection, and management of UCH or archaeological and historical objects found at sea, Taiwan is falling behind in its domestic legal regime with respect to the preservation, protection, and management of UCH.

This article has undertaken a survey on the domestic legislation of Taiwan relating to the preservation, protection, and management of UCH. It has found that the preservation, protection, and management of UCH involves Taiwan's constitutional arrangements and legislative framework. It is time for the ROC government to pay more attention to UCH found or located in its maritime zones. Drafting a new piece of legislation, rather than amending the existing but insufficient Cultural Properties Preservation Act, is a necessary move so as to echo and embody the values and rules on the protection of UCH developed in the international community. At the same time, more substantive actions should be taken by the ROC government so as to promote social awareness about the significance and value of UCH. Being an "Ocean State" is not just a political slogan,⁶⁹ it requires a domestic legal regime, administrative capacity, and social support to substantiate it.

Notes

1. LOS Convention, 1833 *U.N.T.S.* 397.

2. Ambassador Tommy T. B. Koh, "A Constitution for the Oceans," closing remarks at the final session of the Conference, the full text of this speech is available at the Web site of the UN Division of Oceans and the Law of the Sea at www.un.org/Depts/los/index.htm (accessed Aug. 1 2005, and on file with the author).

3. UNESCO UCH Convention (2002), 41 *I.L.M.* 40. It should be noted that there are gaps between the Chinese and English versions of the UCH Convention. Although the Chinese version is an authentic version, the Chinese translation is not of quality.

In accordance with Article 27, the UCH Convention is to enter into force 3 months after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, or accession. As of October 2, 2008, there were 20 states parties: Panama, Bulgaria, Croatia, Spain, Libyan, Nigeria, Lithuania, Mexico, Paraguay, Portugal, Ecuador, Ukraine, Lebanon, Saint Lucia, Romania, Cambodia, Cuba, Montenegro, Slovenia, and Barbados, in chronological sequence. Thus, the UCH Convention will enter into force on January 2, 2009.

4. The United States was not a member of UNESCO when the UCH Convention was adopted. The United States had some strong reservations on some of the provisions of the Convention. For the U.S. attitude, see "Consideration of the UNESCO Convention on the Protection of Underwater Cultural Heritage: Report of the CMI Working Group," in *CMI Yearbook 2002*, 154–157, at 154; and Robert C. Blumberg, attorney-advisor, Office of Oceans Affairs, State Department, "International Protection of Underwater Cultural Heritage," especially n. 17, a paper presented at University of Virginia Center for Oceans Law and Policy's Annual Conference on Law of the Sea Issues in the East and South China Seas, Xiamen, China, Mar. 12, 2005, the full text is available at www.state.gov/g/oes/rls/rm/51256.htm (accessed Dec. 28, 2006). The United States resumed its membership in UNESCO on Oct. 1, 2003.

5. LOS Convention, art. 17.

6. *Ibid.*, art. 19(2)(j).

7. *Ibid.*, arts. 55 and 57.

8. *Ibid.*, art. 56(1)(b) and (c).

9. *Ibid.*, art. 246(1).

10. *Ibid.*, art. 246(2).

11. *Ibid.*, art. 246(3) and (5).

12. *Ibid.*, art. 59:

In cases where this Convention does not attribute rights or jurisdiction to the coastal State or other States within the exclusive economic zone, and a conflict arises between the interests of the coastal States and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taken into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

13. *Ibid.*, art. 76(4) and (5).

14. *Ibid.*, art. 77(4) directs that “[t]he natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species”

15. *Ibid.*, art. 136; and see R. R. Churchill and A. V. Lowe, *The Law of Sea*, 3d ed. (Manchester: Manchester University Press, 1999), 239. According to art. 133(a), the “resources” in the “Area” means “all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules.”

16. *Ibid.*, art. 137(1).

17. *Ibid.*, art. 137(2).

18. *Ibid.*, art. 133(a)

19. *Ibid.*, art. 138.

20. *Ibid.*, art. 141.

21. *Ibid.*, art. 135.

22. *Ibid.*, art. 147(1).

23. Chao Hong-yeh, “The Ownership Issue of Objects Found at the Bottom of Contiguous Zone,” *Chong-Kuo Kuo-Chi-Fa Nien-Bao* (Chinese International Law Yearbook) (1991), 413–435, in Chinese.

24. *Ibid.*, at 413.

25. Cynthia Furrer Newton, “Finders Keepers? The *Titanic* and the 1982 Law of the Sea Convention,” *Hastings International and Comparative Law Review* 10 (1986): 159–197, at 165–166.

26. See the term “salvage” at the Web site of the Bouvier’s Law Dictionary at www.constitution.org/bouv/bouvier.s.htm (accessed Dec. 28, 2006).

27. See the term “salvors” at the Web site of the Bouvier’s Law Dictionary, *ibid.*

28. Craig J. S. Forrest, “A New International Regime for the Protection of Underwater Cultural Heritage,” *International and Comparative Law Quarterly* 51 (2002): 511–554, at 534.

29. *Id.*

30. *Ibid.*, at 534–535.

31. Chao Hong-yeh, *supra* note 23, at 418–419.

32. *Ibid.*, at 419.

33. See the definition “finder” at the Web site of “The ‘Lectric Law Library’s Legal Lexicon” at www.lectlaw.com/def/f117.htm (accessed Dec. 28, 2006). The definition “finder” at the Web site of the Bouvier’s Law Dictionary, *supra* note 26, provides a similar and more detailed description.

34. Anastasia Strati, *The Protection of the Underwater Cultural Heritage: An Emerging Objective of the Contemporary Law of the Sea* (The Hague: Martinus Nijhoff, 1995), 174. The Recommendation can be found at the UNESCO Web site at portal.unesco.org/en/ev.php-URL_ID=13132&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on Apr. 26, 2008).

35. Strati, *supra* note 34, at 175.

36. Chao Hong-yeh, *supra* note 23, at 425–427; and Moritaka Hayashi, “Archaeological and Historical Objects Under the United Nations Convention on the Law of the Sea,” *Marine Policy* 20 (1996): 291–296, at 292.

37. Available at the Web site of UNESCO at http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on Aug. 19, 2008).

38. Available at the Web site of UNESCO at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on Aug. 19, 2008).

39. Available at the Web site of UNESCO at http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on Aug. 19, 2008).

40. Shabtai Rosenne and Louis B. Sohn (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. 5 (Dordrecht: Martinus Nijhoff, 1989), para. 311.8, at 240.

41. Strati, *supra* note 34, at 175–176.

42. See also *ibid.*, at 9.

43. LOS Convention, art. 149.

44. See Forrest, *supra* note 28, at 516–517.

45. *Ibid.*, at 517.

46. *Id.*

47. Quoted from the Information Kit prepared by UNESCO, coded "Subaqua Fiches/English 11/06/02 18:26," available at the Web site of UNESCO at www.unesco.org/culture/legalprotection/water/images/infkite.pdf, at 7–8 (downloaded Nov. 23, 2005, and on file with the author). Different versions of the Information Kit for the 2001 UNESCO UCH Convention can be found at different Web sites, such as the one coded CLT/CH/INS/06/12 and entitled "Information Kit UNESCO Convention on the Protection of the Underwater Cultural Heritage" available at www.dac.gov.za/projects/heritage/underwater_convention/UCH%20convention%20information%20kit.pdf (downloaded on Aug. 31, 2006, and on file with the author) and another entitled "Information Kit for the 2001 UNESCO Convention on the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage" available at unesdoc.unesco.org/images/0015/001528/152883E.pdf (download on Dec. 24, 2007, and on file with the author).

48. UCH Convention, art. 8.

49. *Ibid.*, art. 9(1).

50. *Ibid.*, art. 10(2).

51. *Ibid.*, art. 9(1)(a), (b), and 9(3).

52. *Ibid.*, art. 10(3)(a) and (b). The UCH Convention uses the wording "verifiable link," which is different from the wording used in the 1982 UNCLOS—"identifiable owner."

53. *Ibid.*, art. 10(5) and (6).

54. *Ibid.*, art. 11(1) and (2).

55. *Ibid.*, art. 12.

56. Both of these two Acts were promulgated by Presidential Orders to become effective on Jan. 21, 1998. For the official English text of the laws, see the Web site of the Department of Land Administration of the Ministry of the Interior at www.land.moi.gov.tw/law/enhtml/ (accessed Aug. 14, 2008).

57. The term "historical objects" is *li-shi wen-wu* in Chinese, while "relics" is *yi-ji*. To be noted, the official English texts of the laws do not precisely mirror the original Chinese text. This article uses its own translation when it cites the provisions of these laws.

58. Legislative Yuan (or the Parliament) of the ROC, *Special Volume on Legislative Yuan's Legislative Cases*, Volume 288(II), pp. 349–350, in Chinese.

59. UCH Convention, art. 9, "Reporting and notification in the exclusive economic zone and on the continental shelf" and art. 10, "Protection of underwater cultural heritage in the exclusive economic zone and on the continental shelf" are the two provisions that specifically provide rights and duties for coastal states and other states on the protection of UCH found within the EEZ and on the continental shelf of coastal states.

60. In Chinese, *tsu-chán* (資產) means or has the connotation of a property or an asset that does not precisely reflect the meaning of the English word "heritage," which has the connotation of legacy. In this article, "properties" is used to reflect the literal meaning of the Chinese terms in the Cultural Properties Preservation Act.

61. I conducted a study and offered recommendations on the legislative direction and content of UCH legislation as well as suggesting a draft legislation for the protection of UCH, under a project commissioned by the Council for Cultural Affairs in August 1999. However, the results of that study have either been put aside or ignored.

62. For example, the Constitutional Interpretation No. 570 issued on Dec. 26, 2003, states: "If it is authorized by legislative law to issue orders as supplemental regulations, the purpose, content and scope of the authorization should be specific and definite." See the English text of the Constitutional Interpretation No. 570 at the Web site of the ROC Judicial Yuan at www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=570 (accessed on Apr. 26, 2008). The Constitutional Interpretation No. 522 issued on Mar. 9, 2001, states: "If the law authorizes the issuance of orders to make supplementary provisions in respect of the requisite elements, the purposes, contents and scope of such authorization shall be specific and clear." See the English text of the Constitutional

Interpretation No. 522 at the Web site of the ROC Judicial Yuan at www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=522 (accessed Apr. 26, 2008).

63. For the English text of the Administrative Procedure Act, see the Web site of the Ministry of Justice at law.moj.gov.tw/Eng/Fnews/FnewsContent.asp?msgid=2096&msgType=en&keyword=Administrative+Procedure+Act (accessed Apr. 26, 2008).

64. In the Western world, the Peng-hu Islands are also known as the Pescadores.

65. The Constitution of the ROC was adopted on Dec. 25, 1946 by the National Assembly convened in Nanjing, while the ROC still ruled mainland China. Promulgated by the Central Government on Jan. 1, 1947, and taking effect on Dec. 25, 1947, the Constitution comprises 175 articles in 14 chapters, plus 12 supplemental articles added in seven rounds of revision since 1991. The full text of the ROC Constitution and its Additional Articles can be found at the Web site of the Office of the President, Republic of China, at www.president.gov.tw/ (accessed Apr. 26, 2008).

66. The ROC Constitution, art. 107 reads: "In the following matters, the Central Government shall have the power of legislation and administration: . . .;" art. 108 reads: "In the following matters, the Central Government shall have the power of legislation and administration, but the Central Government may delegate the power of administration to the provincial and hsien governments: . . .;" art. 109 reads: "In the following matters, the provinces shall have the power of legislation and administration, but the provinces may delegate the power of administration to the hsien: . . .;" and art. 110 reads: "In the following matters, the hsien shall have the power of legislation and administration: . . ."

67. In Chinese, *hsien* is a local administrative unit under a province and it is equivalent to a county in the United States.

68. This Explanatory Order was issued by the Ministry of the Interior on May 24, 2005, by a letter referenced as Tai-Nei-Ti-Tze (台內地字) No. 0940007600. The full Chinese text of this Order is available at www.meinong-land.gov.tw/modules/newschina/index.php?storytopic=0&start=235 (downloaded Apr. 24, 2008, and on file with the author).

69. Since the Democratic Progressive Party (DPP) took power in Taiwan in 2000, "Hai-Yan Li-Kwo" or "Building the Nation Through the Oceans" has become a political slogan. Following the elections in March 2008, the Kuomintang (Nationalist Party) regained power. The new president, Ma Yin-Jeou, proclaimed in his platform that his government will establish a new Ministry of the Oceans.