Trafficking in Pacific World War II Sunken Vessels
The ‘Ghost Fleet’ of Chuuk Lagoon, Micronesia

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Abstract—This paper examines the 2001 Convention on the Protection of the Underwater Cultural Heritage (CPUCH) and how this international legal instrument has contributed to the international legal framework for the protection of cultural property. The focus of this paper is on the need to protect sunken World War II wrecks located in the Pacific Ocean, especially military wrecks residing in the territorial waters of developing coastal States. As will be discussed, the 2001 CPUCH fails to include World War II sunken wrecks in its definition of underwater cultural heritage (UCH). The 2001 CPUCH also makes significant changes to Admiralty Law while its regulatory regime focuses on international maritime waters. Changes in International Law can create unintended consequences and unforeseen harm at domestic and regional levels. A common concern for law enforcement personnel and archaeologists is whether the 2001 CPUCH will promote a higher demand for underwater relics of the Second World War. Also, domestic and regional geopolitical issues, such as colonialism and neo-colonialism, can hamper the effectiveness of international legal instruments. As the 2001 CPUCH only came into force in January 2009, expected consequences and harms have yet to be fully realised, but it is envisioned that there will be a marked increase in trafficking in World War II relics, especially within the Pacific region, given its abundance of sunken military wrecks. The ‘Ghost Fleet’ of Chuuk (known formerly as Truk) Lagoon consists of over 50 Japanese ships sunk during a two day intensive Allied bombardment of Chuuk in February 1944. The Lagoon, in its entirety, represents a unique underwater cultural landscape, which captures a distinct moment in time when two opposing military forces clashed on Micronesian territory. The aftermath of ‘Operation Hailstorm’ (the Allied name given to the military air strike) has produced a wealth of underwater cultural material that attracts divers and war tourists to Micronesia throughout the year. The sunken Japanese vessels and aircraft are used to illustrate jurisdictional, law enforcement and ethical problems in the protection of sunken World War II wrecks located in the territorial waters of a Pacific coastal State.

I. INTRODUCTION

Looters are reducing countless shipwrecks into seafloor rubble in their wanton search for buried treasure to sell to collectors on the international market. Illicit trafficking in cultural property (such as antiquities, art and underwater relics) is a multi-billion dollar enterprise [1]. Although exact figures are difficult to establish due to the clandestine nature of such activities, there is consensus that the trade in cultural property is exceeded only by the trafficking in illicit narcotics and arms [2]. The protection of cultural property is a fundamental concern of International Law. Numerous international treaties, bilateral and multilateral agreements have been entered into by the international community. The major international agreements include the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict [3], the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the World Heritage Convention [4], the 2000 United Nations Convention Against Transnational Organised Crime [5] and the 1995 Convention on the International Return of Stolen and Illegally Exported Cultural Objects [6]. The above international legal instruments primarily relate to the protection of cultural property located on land, for instance, immovable

1 The sunken Japanese wrecks are colloquially known as the ‘Ghost fleet’ of Chuuk Lagoon.


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objects such as buildings and monuments and moveable relics encompassing antiquities and artworks. However, due to rapid advances in marine technology, the seafloor is increasingly being targeted by treasure hunters, salvagers and specialist collectors. Therefore, in 2001 the United Nations Education, Scientific and Cultural Organisation (UNESCO) drafted a treaty that specifically addressed the protection of sunken shipwrecks and other underwater archaeological sites. As a result, the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage [1] (CPUCH) is an international treaty that represents the international community’s response to the risks of increased looting and destruction of underwater cultural heritage around the world. The CPUCH, in accordance with Article 27 of the CPUCH, came into force on 2nd of January 2009,

The 2001 CPUCH contains several articles concerning the prevention of the illicit trafficking in UCH. The operative sections of the 2001 CPUCH are articles 14 through to 18. Article 14 builds upon Article 2’s stipulation that UCH shall not be traded, sold, purchased, or bartered as commercial goods. In accordance with Article 14, ‘States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to this Convention’ [11]. An article based on similar logic to Article 14 is Article 18, which stipulates that ‘each State Party shall take measures providing for the seizure of UCH in its territory that has been recovered in a manner not in conformity with this Convention’ [12]. Once seized, UCH must be recorded and protected, and all reasonable measures taken to stabilize it, preferably in situ [13]. In addition, the seizing State must advise the Director-General of UNESCO and any other State with a verifiable link, especially a cultural, historical or archaeological association, to the seized UCH [14]. The CPUCH also requires countries to prohibit the use of their territory and maritime ports for activities that cause harm to UCH [15]. Article 16 stipulates that States Parties should take measures to ensure that their citizens and vessels flying their flag do not undertake any activities directed at UCH that would be inconsistent with the aims of the 2001 CPUCH. Article 17 imposes criminal sanctions for dealing with UCH contrary to the CPUCH. In addition, there is an obligation placed on States by Article 17, to ensure that penalties drafted in violation of the CPUCH are severe enough to ensure effective compliance and to discourage looting, hence depriving offenders of their finds [16].

Article 1 of the CPUCH defines UCH as ‘all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years’ [17]. This is taken to include submerged buildings, aircraft, structures such as wharfs, objects of prehistoric character, as well as shipwrecks. In other words, the 2001 CPUCH defines underwater cultural heritage as a unitary category or collective unit, that is, historical shipwrecks over 100 years [18]. Some States, such as the United Kingdom and the Netherlands, do not rely solely on the ‘age’ of a sunken wreck but instead add a historical ‘significance’ requirement in their domestic legislation. However, in accordance with the CPUCH, sunken ships meeting the legal definition of UCH must be protected in situ when possible and not commercially exploited or salvaged [19]. The benefit of the CPUCH is that it allows States to protect their sunken ships, including their cargo and human remains, located in international waters. Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS III), freedom of the High Seas prevails in international waters. In other words, only the country to which treasure hunters are nationals of or their vessels are registered with, have jurisdiction to prohibit diving to a wreck located in international waters, no matter how culturally significant the site may be. If a State is reluctant to prevent its nations diving on anothe: State’s sunken wreck, located in international waters, there is little that can be done. The 2001 CPUCH overcomes this problem by relying on State Cooperation in the protection of UCH, that is, through international cooperation between contracting States, wrecks in international waters can be protected and preserved in situ [20]. By joining the 2001 CPUCH, States agree to prohibit their nationals from looting UCH regardless of location. The 2001 CPUCH also provides detailed rules for the reporting and coordinating of activities directed at UCH depending on the maritime zone that the UCH site is located within [21].

The CPUCH’s ‘primary purpose is to control treasure-hunting activities in international waters [22]’. The Economic Exclusive Zone (EEZ) [23] and continental shelf [24] regimes under the 1982 United Nations Convention on the Law of the Sea (UNCLOS III) collectively grants sovereign rights to coastal States, but only over natural resources, and therefore does not extend to cultural resources such as shipwrecks and their cargo [25]. However, much of the UCH which remains

20 Article 27 of the 2001 CPUCH states, ‘This Convention shall enter into force three months after the date of the deposit of the twentieth instrument referred to in Article 26.’ The instruments referred to in Article 26 are the State instruments of ratification, acceptance, approval or accession.
14 Article 14, 2001 CPUCH.
15 Article 18, 2001 CPUCH.
16 Article 17
17 Article 1, 2001 CPUCH.
20 See Article 2(2), 2001 CPUCH
21 See below discussion and also Articles 7-10 of the 2001 CPUCH.
22 See [17]
23 Articles 56(1)1982 UNCLOS III.
24 Article 77 (1) 1982 UNCLOS III.
unexplored is located on the outer reaches of the continental shelf or deep seabed (that is in international waters) [26]. Article 9 of the CPUCH places an explicit obligation upon all States Parties ‘to protect underwater cultural heritage in the EEZ and on the continental shelf’ [27]. Under Article 10 (2) of the CPUCH, a State Party in whose EEZ or on whose continental shelf underwater cultural heritage is located ‘has the right to prohibit or authorise any activity directed at such heritage to prevent interference with its sovereign rights or jurisdiction as provided for by international law, including the Law of the Sea’ [28]. Article 10 (4) allows the coastal State, as the ‘Coordinating State’, ‘to take all practical measures to prevent any immediate danger to underwater cultural heritage, whether arising from human activity (such as looting) or any other cause. In response to a threat a State may request assistance from other State Parties’ [29]. Article 10 of the 2001 CPUCH is a significant achievement in the protection of UCH as it allows a State ‘to take immediate action to prevent looting of a shipwreck found on its EEZ’ [30]. In granting this right to a coastal State, the CPUCH allows a State to ensure that a shipwreck found on its EEZ can be effectively preserved in situ on behalf of the international community as a whole [31]. Without the 2001 CPUCH, a State would have to rely on Article 59 of the UNCLOS III, which ‘provides for an assessment of unattributed rights in the EEZ’ [32]. For example, Article 59 relies on the principle of equity to determine unattributed rights in the EEZ. Article 59 states:

| In cases where this Convention does not attribute rights or jurisdiction to a coastal State or to other States within the Exclusive Economic Zone, and a conflict arises between the interests of the coastal State 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, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole [33].

Article 59 is a lengthy process and prevents States acting quickly to secure threatened UCH located in international waters.

The 2001 CPUCH strengthens the international framework that UNESCO had been supporting in the fight against illicit trafficking in cultural property. It also remedied some of the weaknesses identified in the UNCLOS’s regulatory framework for the protection of UCH. While the 2001 CPUCH targets looting and the salvage of historic sunken wrecks, it does at the same time bridge the gap in International Cultural Heritage Law, whilst reinforcing provisions of other international cultural heritage treaties. However, despite the numerous International Laws targeting cultural property, it is a fallacy to believe that trafficking in cultural property (including UCH) is likely to decrease in the immediate future. Arguably, there is the potential for the trade in historic UCH to shift to other forms of underwater cultural material that have been in the past less targeted by collectors and treasure hunters, such as war relics and weaponry. Also, in terms of law enforcement, consideration should be given to whether recent changes at the international level may see former areas of the world’s oceans (like the Mediterranean or Caribbean) abandoned by treasure hunters for new sites that are less policed, namely the vast Pacific Ocean and its wealth of World War II sunken wrecks.

A. The Legal Environment Ease of Use

The preservation of sunken wrecks in situ is dependent upon the physical environment in which the wreck is located. A wreck which lies exposed on the seabed is affected by physical factors such as water currents, the chemical composition of the water, the water’s oxygen content and temperature levels, as well as particular microorganisms within the water. Apart from the physical environment, the legal setting (or maritime zones) [34] in which a wreck is located is just as essential for site preservation. In other words, apart from considering how best to protect a wreck from natural threats, one needs to consider how to protect it from direct physical human impact, such as looting and commercial salvage, together with indirect interference arising from human activity including marine scientific research, deep seabed mining and marine genetic bioprospecting [35]. The legal environment in


[28] Article 9 (2), 2001 CPUCH.

[29] Article 10 (4), 2001 CPUCH.


[33] Article 59, UNCLOS III.

[34] The legal environment includes formal treaties and customary international.

which the wreck is located will determine a State’s ability to safeguard the site from both legal and illegal human activity. Two important international legal instruments are the 1982 United Nations Convention on the Law of the Sea (UNCLOS III) [28] and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) 2001 Convention on the Protection of the Underwater Cultural Heritage (UNCUCH) [27]. The UNCLOS III partitions the ocean into various legal environments, otherwise known as maritime zones. These zones are measured in distance from the coastal State’s shoreline. Depending on whether the wreck is situated beyond national jurisdiction, its location will affect a State’s ability to legally protect the site from traditional threats such as commercial salvage and criminal looting.

UNCLOS III has been described as the ‘constitution of the ocean’ [39]. It creates maritime zones in which differing rights and obligations exist in respect to living and non-living resources of the ocean. The purpose of the maritime zones are to define the rights and obligations of coastal States, prescribe law making and law enforcement powers of coastal States over foreign vessels and nationals, define the rights of foreign States, and define the rights of the international community. Under UNCLOS III there are three categories of maritime zones: (i) zones under sovereignty of States; (ii) zones under sovereign ‘rights’ of States; and (iii), zones not subject to sovereignty or sovereign ‘rights’ of States. The first category includes the Internal Waters, Archipelagic Waters and the Territorial Sea (including the buffer zone, known as the Contiguous Zone). The Exclusive Economic Zone (EEZ) and the Continental Shelf both fall within the second category, while the High Seas and the Area (deep seabed) fall within the remaining category. In respect to UCH, UNCLOS III failed to stipulate how States should protect UCH beyond their contiguous zone, apart from declaring that all States had a legal obligation to cooperate [39].

B. Sunken Wrecks in Coastal States Territorial Waters

The 2001 CPUCH adopts the maritime zones created by UNCLOS III [40]. However, unlike sections 149 and 303 of UNCLOS III which attempt to provide limited protection to UCH, the 2001 CPUCH focuses on cases of ‘immediate danger’ to UCH, such as looting [41], and puts in place specific regulations for the reporting and coordinating of activities to protect UCH depending on the specific maritime zone the historic wreck is located within[42]. Importantly, States when responding to an immediate threat to their UCH may request help from other State parties to the Convention [43]. In contrast, underwater cultural material located in the territorial sea is subject to the coastal States’ jurisdiction. The CPUCH does not alter the delicate balance of UNCLOS III [44]. This means that historic wrecks may be in immediate danger from looting, theft or vandalism, but there is no right to encroach upon the offending State’s territorial sovereignty. In other words, as each State under International Law is a sovereign territory, a coastal State can deny access to the flag State if a sunken wreck (including battleships) is located within the coastal State’s territorial waters. The situation for foreign owned sunken wrecks located in the territorial seas of coastal States becomes more problematic if such wrecks do not meet the legal definition of UCH. For instance, the 2001 CPUCH declares that State parties must agree that the Rules [45] set out in the Annex to the CPUCH be applied to activities directed at UCH in their internal waters, archipelagic waters and territorial seas [46]. In other words, by becoming a party to the 2001 CPUCH, States must focus attention on the best practices of archaeological preservation (such as in situ management).

II. WORLD WAR II UCH

The islands of the Pacific witnessed furious fighting during the Second World War. Therefore, a significant amount of war material is still lying in the waters of the Pacific Ocean or scattered across the territories of numerous islands throughout the region. Typical examples include military hardware, such as sunken State vessels and their cargoes, together with abandoned command buildings, bunkers, forts and airstrips. Today, there is an increasing awareness of the vulnerability of sunken World War II ships and aircrafts residing in the territorial waters of impoverished Pacific Island States. In many instances these relics or vessels were bombed during Allied air-raids or deliberately scuttled or dumped into the ocean after the cessation of hostilities between the Allied forces and Japan in 1945. With the passing of time these discarded objects of war are beginning to be perceived by the global community, not as junk, but as objects of significant heritage value. However, if coastal States like Chuk, the Solomon Islands, Palau and Vanuatu fail to recognise sunken World War II wrecks and aircraft as ‘cultural heritage’, it presents a serious threat to the protection of these relics. Although World War II wrecks do not meet International Law’s definition of UCH due to the CPUCH’s age requirement, they do still represent a distinct ‘era’ or epoch in time and so deserve protection from salvagers, ooters and collectors. However, despite the issue of age and whether it should be a criterion for defining UCH, these war wrecks also pose a number of distinct legal and ethical problems if they are to be protected. It is these jurisdictional and ethical problems that set World War II wrecks apart from other forms of underwater cultural material.

31 UNCLOS III Article 303(1).
32 Article 3 of the 2001 CPUCH.
34 Articles 7-10, 2001 CPUCH.
35 Article 10 (4).
36 Article 7 (I).
37 See Article 33, 2001 CPUCH.
38 Article 7 (2), 2001 CPUCH

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which, in turn present a distinct challenge to International Law, including law enforcement officials. The up-coming case study of Chuuk Lagoon illustrates some of the difficulties in protecting World War II wrecks located in territorial waters of developing States.

A. The ‘Ghost Fleet’ of Chuuk Lagoon

Chuuk (also known by its German name Truk) is one of the four island states that make-up the Federated States of Micronesia (FSM), the other three being Pohnpei, Kosrae and Yap. [47] Chuuk was originally part of the colonial territory of the Caroline Islands, and as such, it has been a part of the Spanish, German and Japanese empires. After World War II Chuuk was administered by the United Nations as a Trust Territory, and today it is an independent State. It is located approximately halfway between Guam and Hawaii in the Pacific Ocean.

Chuuk Lagoon’s seafloor is a macabre and haunting graveyard of ships, aircraft, trucks, and tanks. It also serves as an underwater war-grave for some 4,000 Japanese sailors killed during ‘Operation Hailstorm’ in 1944 [48]. The Lagoon’s UCH is so impressive that there have been calls to have the area listed as a World Heritage Site [49]. However, despite the significance of this underwater time-capsule that preserves a moment when two global powers confronted one another during war-time, the Lagoon is being wontedly looted of its war relics which are then mostly siphoned off to the highest bidder.

Second World War underwater artefact theft is a major problem in Chuuk. As the lagoon is home to over 50 sunken Japanese wrecks it is a mecca for divers and wartime enthusiasts. However, these wrecks are more than empty vessels, they contain a wealth of objects associated with the ships’ crew. There is a diverse array of pieces ranging from military hardware, represented by ammunition, tanks, trucks, torpedos, and wooden boxes of shells and bullets, to that of domestic and personal items including lanterns, shoes, bathing suits, glasses, china plates and porcelain serving platters. The problem of looting and theft is confirmed by Clarke Graham, who, over several decades visiting Chuuk Lagoon has witnessed first-hand the dramatic reduction in the number of war-time artifacts. He vividly recalls:

In the 1970s, one could visit the Fujikawa Maru and see the six-inch shells lying closely together in the forward

starboard section of the first hold. During a 24 hours period in 1985, fishermen stole these shells and cut them open to remove the charges. Packed in large glass bottles with a homemade fuse attached, the charges were used to dynamite fish….One day in the 1980s, while diving the Shinkoku Maru, a large oil tank that had been part of Kito Butai – the fleet that attacked Pearl Harbour on December 7, 1941 – I discovered a rice bowl with a picture of Mt. Fuji painted on it. This, I said to myself, is an artefact that should be displayed in a museum. Unfortunately, the bowl was stolen.

In the 1990s, I began taking my two sons diving on the shipwrecks. I showed them places where things used to be, but were now missing. I remembered a dive into the engine room of the Suzuki, where some equipment had manufacturer’s nameplates. But I could not show these to my sons because divers had removed them [50].

Joanne Edney, writing in 2006, draws a similar picture of looting and the loss of significant cultural property from the historic site. Edney referring to the Japanese wreck of the Nippo Maru, states: ‘...the wreck had pistols removed from the decks by divers, along with deer antlers that had been carried for good luck by the Japanese seamen’ [51]. She further records that ‘brass lanterns and serving platters from the galley and crew quarters have been removed from the Shinkoku Maru, the manufacturer’s plate from the main engine of the Suzuki was reported to have been removed by divers, and on the Sankisan Maru medicine bottles, pencil erasers and 7.7 mm bullets have been taken’ [52]. During the author’s visit to Chuuk in late 2012, a number of seasoned divers recounted similar stories to those of Graham and Edney regarding the theft and vandalism of war artefacts, citing that objects, if not stolen, had often been repositioned for underwater photographs for divers’ personal portfolios or for the images to feature on websites specialising in salvaged war-time relics. Apart from theft of objects and the repositioning of relics, including human remains with the wrecks, another problem is underwater graffiti [53].

In August 1971 the Chuuk legislature designated Chuuk Lagoon a District Monument and enacted legislation making it illegal to remove or disturb any of the wrecks, human remains and objects in the lagoon[54]. The law was developed in


response to issues surrounding diving, theft and the need to protect the wrecks as war graves to the more than 4000 Japanese sailors killed during ‘Operation Hailstorm’. Importantly, the legislation has not remained static as it has been amended three times, the most recent in 2000 when it was incorporated into the Draft Chuuk State Code, Title 25. Maritime and Marine Resources and documented as Chapter 8, Chuuk Lagoon Monument [55]. Today, diving permits are required before diving over the Japanese wrecks and there is an expectation, although difficult to enforce, that divers be accompanied by a local dive guide. However, despite legislative initiatives to protect the ageing wrecks, most Chuukese people lack a personal connection or an emotional attachment to the sunken military vessels. This is problematic for law enforcement as locals are reluctant to be proactive in the protection of Chuuk’s ‘Ghost Fleet’. Factors contributing to this lack of community interest in safeguarding the wrecks’ future are based on issues of colonialism and neo-colonialism. [50] For instance, neo-colonialism is an on-going and contentious political issue in Chuuk. Since the end of World War II Chuuk has had to rely on external aid and assistance. Today, Chuuk is highly dependent on American monetary grants, however under the FSM Compact of Free Association with the United States, America attaches specific conditions to the monetary funds, including the right to have military bases in the region and to regulate matters of regional security. In fact, there is a strong desire by some villagers on Chuuk to have the wrecks removed altogether, given that they serve as physical reminders of repression under colonialism and the horrors of war-time, all of which culminates in a sense of ‘dark history’, best forgotten. Other locals only see value in the wrecks as a source of reliable income from the many foreign tourists who visit the region each year to dive on the wrecks. In contrast, Japanese World War II veterans and their families consider Chuuk Lagoon as an open war grave. As Dan Bailey points out, the Japanese government over many years has requested that the Chuuk government repatriate the bones of Japan’s war dead for burial in their homeland [57]. In more recent times, the Japanese government has accused the Chuukese government of holding the remains of their deceased sailors hostage for the benefit of Chuukese tourism [58].

Chuuk is an extremely poor [59] nation. The World Bank in 2005 placed the Federated States of Micronesia in the lower-middle income category of developing nations [60]. The Japanese sunken war wrecks located in the territorial waters of Chuuk State ironically produce valuable revenue and local employment to the small islands through the hundreds of tourists who visit the region each year. Also, the wrecks, to the

Indigenous population of Chuuk represent a dark and painful period in their history, and so, as stated earlier, a sense of sentimental value is somewhat limited or missing altogether. Complicating the matter, the lagoon is an open ‘war grave’ for the thousands of Japanese killed during ‘Operation Hailstorm’ [61]. Also, there is the valid question of these metal wrecks posing an environmental threat to the local marine environment and fishing industry. A related and disturbing concern is whether these wrecks and their cargo are a health threat to the numerous communities and villages that surround the 30 mile wide lagoon. Alarming, the vessels contain large quantities of oil and fuels along with toxic chemicals such as lead and mercury that make up the ships’ structures. Also, there is an abundance of decaying crates of ammunition, bullets and unexploded shells [62]. Although most contemporary sunken warships possess toxic and dangerous materials, the ‘Ghost Fleet’ of Chuuk Lagoon is problematic given the fact that the fifty or so wrecks are within close proximity to one another, and furthermore, they are physically cocooned within the lagoon [55]. The conflict between the lagoon’s stakeholders regarding the value and use of the Japanese sunken wrecks and the disagreement surrounding the vessels’ heritage status illustrates the competing and diverse interests of the lagoon’s stakeholders. As the ‘Ghost Fleet’ of Chuuk Lagoon demonstrates, foreign owned relics located in a coastal State’s territorial waters present a challenge in their management and preservation, irrespective of domestic legislative interventions and undertakings at an international level.

International Law has the ability to shape domestic law often for better; however, there can be unintended or unforeseen harm and consequences which can arise when International Law interfaces with domestic issues, such as neo-colonialism, poverty and internal politics. Thanks to the 2001 CPUCH there is now greater protection afforded to the traditional forms of UCH (for instance, pirate ships, the 16th century Spanish galleons, and colonial vessels of the great explorers) located in international waters. However, there is an increasing need to address foreign owned contemporary wrecks located in the territorial waters of coastal States, especially in territorial waters of impoverished States. In other words, foreign owned ships resting on the seafloor of developing coastal States will in the future come under increasing threat from treasure hunters and salvage operators who are out to make a profit. Undoubtedly, commercial salvage operators will aim to take advantage of recent changes in International Law’s definition of UCH combined with the economic, social and

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56 The FSM is an independent country in a Compact of Free Association with the United States.
58 See [55] D. Baily p.3.
political realities facing impoverished Pacific nations. As the 2001 CPUCH only came into force in January 2009, the unintended harms and consequences arising from the changes made at the international level have yet to be fully realised, but it is expected that there will be a marked increase in trafficking in Second World War underwater cultural material. Therefore, it is vital that States at domestic, regional and international levels cooperate by formulating agreements to protect contemporary military underwater cultural relics, especially ensuring that their domestic criminal laws are synchronised to combat such an eventuality.

III CONCLUSION

There are a number of reasons contributing to the increased looting of World War II sites in the Pacific Ocean. In recent years there has been a rise in war and ‘dark heritage’ tourism. Also, there are the issues of the indifference shown towards foreign owned military remains from the local Indigenous population, together with the fact that World War II heritage represents a dark and painful history for the Pacific Islanders. In addition, local communities are becoming increasingly aware of the impact that physical war remains have on their marine and coastal environments, and most importantly, their health. The contemporary threat to World War II relics is greatly accentuated by the 2001 CPUCH’s failure to incorporate Second World War underwater relics into its protective legal framework. The lack of official recognition given to such historic wrecks is not the only problem created by the 2001 CPUCH. As was shown, other provisions in the 2001 CPUCH have truncated the law of salvage and banned the commercial sale of UCH. The former lawful activity of collecting UCH, in some instances, is now a criminal offence. These legislative changes at the international level have the potential to shift the focus from traditional forms of UCH onto less regulated categories, in particular, World War II wrecks. Unfortunately, these wrecks are already vulnerable given that a large number of them are located in the territorial waters of developing States. These States often lack the financial, physical and human resources to effectively perform normal governance duties, let alone possess physical infrastructure and human resources, including a ‘desire’ to protect foreign owned wrecks from looting, theft and vandalism.

World War II wrecks will without doubt become increasingly prominent in the public’s mind. A growing media focus on military wrecks will be generated from the forthcoming acknowledgment by UNESCO of World War I vessels falling under the legal definition of UCH. World War I UCH will start to fall under the 2001 CPUCH commencing from 2014. Undoubtedly, this will create a focus on underwater military remains including underwater battle sites across the globe. In addition, the issues of oil pollution and chemical toxicity of sunken World War II wrecks form environmental problems that are unlikely to be resolved in the immediate future. The ongoing problem of poverty and the lack of human and financial resources within the Pacific region, especially in Micronesia, are a further concern for law enforcement and the protection of the region’s UCH. What we do not want is unscrupulous salvage companies offering to provide a quick and cheap fix to the problems facing third world States. The threat posed by corporate salvagers and scrap metal dealers is a genuine one given that a large number of World War II wrecks lie in the waters of developing nations [64]. The changes under International Law, combined with Micronesia’s current political climate and its limited economic growth, creates a volatile situation, one which places the region’s vast collection of military relics at the mercy of salvage operators, treasure hunters and World War II memorabilia collectors. The management of UCH is no longer confined to the realms of archaeology; rather, UCH is a collective concern for archaeologists, legislators, judges and law enforcement personnel worldwide.

Figure 1. The author stands beside a World War II Japanese ship located on the Island of Dablon (Tonoas), Chuk State. The ship was under construction when the shipyard was destroyed during ‘Operation Hailstorm’, February 1944 (photo by author, December 2012)

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