

NINTH COMMISSION

**The Legal Regime of Wrecks of Warships and
Other State-owned Ships in International Law**

Rapporteur : M. Natalino Ronzitti

RESOLUTION

The Institute of International Law,

Emphasising the duty of co-operation for the preservation and protection of cultural heritage,

Conscious of the duty to protect and preserve the marine environment,

Guided by the rules of customary international law enshrined in the United Nations Convention on the Law of the Sea (1982),

Recalling the Convention on the Protection of Underwater Cultural Heritage (2001) as well as the Convention on the Means of Protecting and Preventing the Illicit Transfer of Ownership of Cultural Property (1970) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995),

Taking note of the Nairobi International Convention on the Removal of Wrecks (2007),

Taking also note of the United Nations Convention on Jurisdictional Immunities of States and their Property (2004),

Bearing in mind the law of armed conflict at sea as well as the customary rules on the succession of States,

Being aware of the uncertainties that continue to surround the question of wrecks of warships and desiring to contribute to the clarification of international law concerning this matter,

Adopts the following Resolution:

Article 1
Definitions

For the purposes of this Resolution:

1. “Wreck” means a sunken State ship which is no longer operational, or any part thereof, including any sunken object that is or has been on board such ship.
2. “A sunken State ship” means a warship, naval auxiliary or other ship owned by a State and used at the time of sinking solely for governmental non-commercial purposes. It includes all or part of any cargo or other object connected with such a ship regardless of whether such cargo or object is owned by the State or privately. This definition does not include stranded ships, ships in the process of sinking, or oil platforms.

Article 2
Cultural heritage

1. A wreck of an archaeological and historical nature is part of cultural heritage when it has been submerged for at least 100 years.
2. All States are required to take the necessary measures to ensure the protection of wrecks which are part of cultural heritage.
3. Where appropriate, wrecks of the nature referred to in paragraph 1 should be preserved *in situ*.
4. Wrecks of the nature referred to in paragraph 1 not preserved *in situ* should be recovered in accordance with appropriate archaeological practices and properly displayed.
5. States shall take the measures necessary to prevent or control commercial exploitation or pillage of sunken State ships, which are part of cultural heritage, that are incompatible with the duties set out in this Article as well as in applicable treaties.

Article 3
Immunity of sunken State ships

Without prejudice to other provisions of this Resolution, sunken State ships are immune from the jurisdiction of any State other than the flag State.

Article 4
Sunken State ships as property of the flag State

Sunken State ships remain the property of the flag State, unless the flag State has clearly stated that it has abandoned the wreck or relinquished or transferred title to it.

Article 5
Status of the cargo

1. Cargo on board sunken State ships is immune from the jurisdiction of any State other than the flag State.
2. Cargo owned by the flag State remains the property of that State.
3. Cargo owned by other States remains the property of those States.
4. The sinking of a ship has no effect on property rights concerning cargo on board. However, cargo may not be disturbed or removed without the consent of the flag State.

Article 6
Armed conflict at sea

Wrecks of captured State ships are the property of the captor State if the capture occurred in accordance with the applicable rules of international law.

Article 7
**Sunken State ships in internal waters,
archipelagic waters and the territorial sea**

The coastal State, in the exercise of its sovereignty, has the exclusive right to regulate activities on wrecks in its internal waters, archipelagic waters, and territorial sea without prejudice to Article 3 of this Resolution.

Article 8
Sunken State ships in the contiguous zone

In accordance with Article 303 of the United Nations Convention on the Law of the Sea, the coastal State may regulate the removal of sunken State ships from its contiguous zone.

Article 9
**Sunken State ships in the exclusive economic zone
or on the continental shelf**

Any activity of the flag State on a sunken ship in the exclusive economic zone or on the continental shelf of a foreign State should be carried out with due regard to the sovereign rights and jurisdiction of the coastal State. In accordance with applicable treaties, the flag State should notify the coastal State of any activity on the wreck which it intends to carry out. The coastal State has the right to remove a wreck interfering with the exercise of its sovereign rights if the flag State does not take any action after having been requested to co-operate with the coastal State for the removal of the wreck.

Article 10

Sunken State ships in the Area

Without prejudice to Article 149 of the United Nations Convention on the Law of the Sea, wrecks of sunken State ships in the Area are under the exclusive jurisdiction of the flag State.

Article 11

Succession of States

The provisions of this Resolution are without prejudice to the principles and rules of international law regarding succession of States.

Article 12

War graves

Due respect shall be shown for the remains of any person in a sunken State ship. This obligation may be implemented through the establishment of the wreck as a war cemetery or other proper treatment of the remains of deceased persons and their burial when the wreck is recovered. States concerned should provide for the establishment of war cemeteries for wrecks.

Article 13

Salvage

The salvage of sunken State ships is subject to the applicable rules of international law, the provisions of this Resolution, and appropriate archaeological practices.

Article 14

Hazard to navigation and protection of the marine environment

1. Subject to Article 7 of this Resolution, the flag State shall remove wrecks constituting a hazard to navigation or a source of, or threat to, marine pollution.
2. The coastal State may take the measures necessary to eliminate or mitigate an imminent danger.

Article 15

Duty of co-operation

1. All States should co-operate to protect and preserve wrecks which are part of cultural heritage, to remove wrecks which are a hazard to navigation, and to ensure that wrecks do not cause or threaten pollution of the marine environment.
2. In particular, States bordering an enclosed or semi-enclosed sea should co-operate in the performance of their duties set out in this Resolution in a manner consistent with the rights and duties of other States.