

new world realities and/or in relation to the special circumstances of a particular case. After all, this is one of the purposes of legal scholarship. The author should be praised for his work in building a legally argued case in support of the aspirations of a certain ethnic group. It is often the case that weaker players in international relations do not have the understanding or the capacity to use international law in pursuing their claims.

Söderberg Professor of International Law and Human Rights,
Riga Graduate School of Law (Latvia);
Visiting Professor, Raoul Wallenberg
Institute, Lund University (Sweden)

Eke Boesten. *Archaeological and/or Historic Valuable Shipwrecks in International Waters. Public International Law and What it Offers*. The Hague: T.M.C. Asser Press, 2002. Pp. 256, €70/\$ 67/£45 paperback.

Until recently a largely neglected subject in international literature — except for an increasing minority of *connoisseurs* — the international legal protection of underwater cultural heritage has deserved the renewed interest it has received from international scholars and practitioners. The reason for this interest is quite simple: the negotiating process which finally led to the adoption of the UNESCO Convention on the Protection of Underwater Cultural Heritage on 2 November 2001 has opened up an entire province of multiple interests. These had been omitted by and large from the Third UN Conference on the Law of the Sea, leaving unresolved what one author referred to as '*la dialectique de l'objet et le lieu*';¹ namely the issue of whether the regime of underwater cultural heritage should be determined by its nature or its

location. During that conference, the suspicions of the great maritime powers that coastal states may seek to extend their jurisdiction to the archaeological or cultural objects embedded in their continental shelves made it impossible to establish a more elaborate legal regime. This left the codified law of the sea with some inconsistencies and lacunae, with partial answers only to be found in the two articles in UNCLOS devoted to the underwater cultural heritage: Articles 149 and 303.

The real problem is that these two articles — a truly constructive ambiguity accepted in Montego Bay — are extremely problematic to interpret and do not provide a useful guide for the protection of underwater cultural heritage as a whole. Indeed, the regime created by these two articles — and a sometimes erratic domestic jurisprudence, mostly in the US — has given a talented group of scholars room to propose the application *tout court* of common-law admiralty rules to underwater cultural heritage. Among those pushing for such a strategy, we find Ms Eke Boesten, who adds to her legal background the unique opportunity of having been an observer at the UNESCO negotiations which drafted the 2001 Convention. As she explains at the end of her book, Ms Boesten professes to act 'as an independent international consultant to commercial explorers, archaeologists, multinationals and governments alike on issues relating to maritime cultural heritage' (at 256).

The aim of the author is clearly stated in the foreword of the book: 'Motivated by the feeling that there is a perceived legal lacuna with regard to an international legal system to cover activities affecting archaeological and/or historical *valuable shipwrecks*, the search for a *global system of legislation* to regulate such activities in *international waters* will be the subject of this book' (at 3, emphasis added). I have emphasized the three main ideas that limit the scope of Ms Boesten's research: first, she only deals with shipwrecks (that is, not with underwater cultural heritage as a whole); second, she seeks to offer an organized and generally accepted legal system (that is, for all types of valuable shipwrecks,

¹ H. Cassan, 'Le patrimoine culturel subaquatique ou la dialectique de l'objet et du lieu', in *La Mer et son droit. Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec* (2003) 127.

and in a global perspective); and, third, she limits her quest to those wrecks located in international waters (that is, beyond the territorial seas of coastal states). Three main systems of rules are, henceforth, analysed in the book: (a) UNCLOS, particularly Articles 149 and 303 on the one hand, and the marine scientific research rules on the other; (b) admiralty law as basically applied by US domestic courts and the 1989 Salvage Convention as comprising 'the international rules for the salvage of (modern) wrecks' (at 4); and (c) the 2001 UNESCO Convention once in force or, at least, the principles on which it relies and which were accepted by consensus during the drafting process.

Ms Boesten offers quite an interesting approach to her research, summarized in the following two questions:

Which of the presented frameworks offers a workable legal framework, sufficiently developed to reconcile the various interests involved, and in the light of the improved technologies, to regulate activities affecting archaeological and/or historic valuable shipwrecks in international waters? If not, do these frameworks offer a vehicle to develop another framework and/or do they provide principles with the potential for development that should be incorporated in a new regime? (at 7).

Her critique of the legal framework established within UNCLOS offers an accurate *tour d'horizon* of the main lacunae still present in current law: problems regarding the ambiguities of the contiguous zone and the possible creeping jurisdiction of states (though I would have appreciated a more developed analysis of several domestic legislations enacting so-called 'archaeological zones' beyond the 12 nautical miles); in connection with this, the problems raised by the different rights and duties of different states over the continental shelves and the Exclusive Economic Zone (EEZ) and the role of coastal states over the wrecks embedded in their continental shelves; problems relating to the limited regime foreseen in Article 149 and its relation to the zone

management system; problems arising within the marine scientific research and the ambiguous scope of that term (although it could be said that, *in principio*, that research did not originally include underwater cultural heritage research); last but not least, problems relating to the possible role assigned to humankind and/or the 'preferential rights' reserved to some interested states.

More problematic is the second main part of Ms Boesten's research. As explained above, she tries, in what is a plausible effort, to adapt admiralty law principles to the protection of underwater cultural heritage. She does attempt to deduce the most favourable jurisprudential precedents for the protection of valuable wrecks — but this looks like an impossible mission. Indeed, the erratic precedents of US courts (from the *Cobb Coin* case to the *Treasure Salvors* saga, not to mention the peripatetic *Titanic* adventures before these courts), and the dramatically conflicting answers sometimes given by various circuit appeal courts make this source of law very unreliable for the purposes of regulating wrecks.

Moreover, there is still a *problème de fond*, partly due to the author's selective approach: Eke Boesten accepts the universal character of admiralty law, i.e. that the law of salvage and the law of finds are part of public international law. Those laws, however, are private law rules codified in limited fashion in public documents (the 1910 and 1989 Salvage Conventions) which originated in common law jurisprudence, most of them being initially alien to civil law tradition. And it is here that the strongest criticism of the volume can be made: US domestic decisions are the only ones used; there is no reference, for instance, to French, Spanish or Italian court decisions (and only three English decisions plus one Australian). Although Ms Boesten makes this clear from the very beginning, her explanation of this choice is unconvincing (see note 11). It is based on the idea that '[n]o consistent practice with regard to the issue under consideration has been found' (note 13), a hypothesis that is not rigorously demonstrated. The practice may be reduced, but it

is not inconsistent because common principles applicable to shipwrecks embedded either in sovereign or in international waters exist. Among the noteworthy cases that have spelled out these principles are cases relating to the *Alabama*, the VOC shipwrecks, the *Juno* and *La Galga*, the *Binkerhead*, *La Belle*, or the *Sussex*, not to mention the more recent *Erebus* and *Terror*, the *Spartan*, several German *U-Boats* cases, the *Admiral Nakhimov* or, even, the *Titanic* or the *Lusitania*.

This linguistic, cultural and geographic selectivity is also apparent in the author's selective bibliography, one almost exclusively comprising publications written in English (and six Dutch bibliographic references) and focusing on Anglo-American literature. Completely omitted is the rich tradition of opinions by Italians or French, as well as Spanish and German international lawyers. The result is a partial evaluation of the current law and the 'universal' character of the assumptions underlying admiralty law. This weakens Boesten's generally well-crafted research.

The analysis of the third main part of Ms Boesten's book focuses on the new legal framework offered by the 2001 UNESCO Convention, once it comes into force. The conclusions drawn together in this part provide a very useful tool for the future improvement of the global regime, which, generally speaking, underwater cultural heritage deserves. The author leads the reader through the main problems that arose during the drafting of the Convention. However, her claim that '[n]o consistent practice can be found which would indicate that the explicit abandonment of sunken warships is required nor has any customary international law developed on this subject' (at 147) is open to doubt. Perhaps a more elaborate analysis of cases reported above would have yielded a different conclusion.

Having said this, Ms Boesten's analysis of other main items discussed in Paris — including the relationship of the 2001 Convention with UNCLOS, the so-called 'jurisdictional issues' or the problems regarding the activities indirectly affecting the underwater cultural heritage — is clear and generally convincing.

The author should be praised, in particular, for continuously striving to challenge the 'constructive ambiguities' adopted both in Montego Bay and in Paris with interesting proposals in order to find a workable regime. Indeed, from my perspective, the main credit due to Ms Eke Boesten is for seeking to develop new frameworks from the legal canvas analysed. One cannot but agree with her conclusion that existing norms do provide principles for a new legal regime on the protection of underwater cultural heritage.

The principles and general rules — first and foremost, the duty to preserve underwater cultural heritage, in general, and valuable shipwrecks, in particular — are well identified, re-elaborated and applied (in a deconstructive and constructive process) by Eke Boesten. Those principles include *in situ* protection under the archaeological rules annexed to the 2001 Convention, non-commercial purposes in underwater activities, and the balanced respect of sovereign rights of flag and coastal states, not to forget the preferential rights of especially interested states. Finally, one would have to agree with Ms Boesten that cooperation, both particular and regional, seems to be the best workable tool to protect the time capsules embedded in the sea floor for future generations.

University of Valencia Mariano Aznar

John Strawson (ed.). *Law after Ground Zero*. London: Glasshouse Press, 2002. Pp. 256. £19.99 paperback. ISBN: 1904385028.

Reading *Law after Ground Zero* is a bit like eating a *hors-d'oeuvre*: satisfying bits but never a completely satisfying meal. Some of the chapters in this book will surely titillate the taste buds and should at least leave you desiring more. The book, like so many other publications on the events of September 11, seems to be a product of a conference and, hence, there is a wide diversity of theoretical approaches to the topic. While this diversity can sometimes detract from the cohesiveness of an edited volume, in this instance I thought