



Presentation Abstract

Marie Jacobsson, Ministry for Foreign Affairs, Sweden, UN International Law Commission, and Lund University

Protecting Maritime Graves: The Case of the Wreck of M/S Estonia

On a fateful night in September 1994, the Estonian cruise ferry *M/S Estonia* sank off the Finnish coast in international waters (Finnish fisheries zone) claiming over 850 lives. Instead of removing the wreck, the three states most concerned (Estonia, Finland and Sweden) concluded an agreement in February 1995, by which they designated the wreck and its surrounding area as a maritime grave.¹ Most notably, the parties undertook the obligation to criminalise any activities disturbing the peace of the final place of rest, in particular any diving or other activities with the purpose of recovering victims or property either from the wreck or the sea-bed. The agreement was supplemented a year later by a Protocol which opened the original treaty to all states. In 2000, the initiation of criminal proceedings in Sweden against nationals of third states pursuant to relevant domestic legislation prompted several reactions.

The *M/S Estonia* case still raises a variety of challenges for the law of the sea both of a jurisdictional and substantial character. Does the law of the sea provide a standard to cope with tragedies of such immense proportions, and who is to decide? How are those marine sites to be protected from desecration and looting? Alleviating the tension between competing interests such as humanitarian considerations and safety of navigation constitutes an exercise in ocean governance *par excellence*. In the event, the concerned states adopted a specialised regional solution, even though its effectiveness requires compliance by a variety of actors. Its opposability vis-à-vis non-participating states could be contested in view of traditional notions of international law such as the freedom of the high seas and the *pacta tertiis* rule. Despite its novelty and complications, the *Estonia* arrangement inspired a comparable solution for the *Titanic*.² Could such solutions attain an objective character and in what ways?

UNCLOS does not directly address the issue of the protection of maritime graves in international waters. Could, nonetheless, its provisions or their underlying principles lend themselves to an interpretation in favour of such protection? How would such an interpretation interact with other relevant parts of the Convention? What can other multilateral agreements, such as the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage, add to the picture? Besides participation in specialised regimes, actions through competent international organisations - primarily the IMO but also regional institutions – could also promote coordination among states enhancing thus the protection of such sites.

This contribution examines the intricate issue of maritime graves by revisiting the *M/S Estonia* case. In the light of more recent developments in state practice it explores the idea of special protection under international law for maritime graves.

¹ Agreement Between the Republic of Finland, the Republic of Estonia and the Kingdom of Sweden Regarding the *M/S Estonia* (23.02.1995) and Protocol (23.04.1996) reprinted in M Jacobsson & J Klabbers, 'Rest in Peace? New Developments Concerning the Wreck of the *M/S Estonia*' (2000) 69 *NJIL* 317, 330-332.

² Agreement Concerning the Shipwrecked Vessel RMS *Titanic* (06.11.2003) [2003] UKTS No. 4 Cm 5798, available online on http://www.gc.noaa.gov/gcil_titanic-intl.html (last visited on 09.10.2012).