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International Law and Marine Archaeology, by H. C. Miller

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BOOK REVIEWS

International Law and Marine Archaeology

By H. C. MILLER
Belmont: Academy of Applied Science. 1973. Pp. 45.
Price unstated.

The monograph entitled "International Law and Marine Archaeology" emphasizes that yet an additional scientific discipline is to be compromised severly by the virulent, and seemingly unprogrammed, evolution of the law of the seas. Furthermore, marine archaeology is a science and methodology now suffering heretofore unknown constraints, the principal ones of which flow from increasing national awarenesses of cultural heritage. The problems are compounded by the post-imperialistic proliferation of nation states with new senses of independent dignity resting in deeply rooted cultural histories.

The monograph, by H. Crane Miller, is an expression of concern about the unilateral establishment by coastal states of maritime rights and ownership of adjacent waters and contents (natural and artifacts) formerly considered the high seas. In Mr. Miller's discussion, the emphasis is upon marine-located cultural artifacts. A good deal of comparison is offered between the rights of states to artifacts geographically located inland and those artifacts found on the floors of the bordering seas. The principal distinction, and perhaps the most important, lies in the fact that geographic and jurisdictional extension of territorial seas could give adjacent states exclusive rights and control over antiquities and sites not representative of that state's own cultural heritage.

In addition to efficient land and air transportation for international trade, many of the principal trade routes were, and continue to be, over territorial waters and the high seas. Often, when ships of war and trading vessels went down in combat or heavy seas, it occurred in waters adjacent to coastal states which had no interest in or relationship with the ships. On the other hand, even though land-oriented invasions of one nation or culture by another usually left behind significant facets of an alien culture in the form of custom or artifacts, the invading society usually became an integral part of the indigenous culture if the invaders lingered long enough to have some effect; i.e., characteristics either dominated, or were absorbed by, the host culture. Although international trade routes on land may have affected directly the geo-political boundaries and cultures of several nations through which they passed, it is not always true that international political or economic communication by sea routes affected

adjacent states. Often, at the time cultural artifacts were put on the seabed, intentionally or by natural causes, there were no claims—legitimate or otherwise—to such objects by adjacent states. If the items were not antiquities and not within territorial seas, it was sufficient to consider the laws of salvage, etc., in admiralty as adequate to cope with any potentially expressed interests or rights of individuals or nations. Sunken dwelling sites and structures do not offer the same problems.

If, as Mr. Miller indicates, lawyers can understand the new technology and skills making marine artifacts and sites accessible, they will have a strong "leg-up" in preparing for thy legal consequences of marine archaeology, rather than having to react hastily in the usual fashion on a *post facto* basis. Previously, marine archaeology was the province of our contemporary cultural grave robbers, the "scuba scavengers." Neither they, nor the occasionally well-prepared and financed expedition before 1960, were competent in terms of scientific methodology to understand and preserve the significance and integrity of marine archaeological sites. Most of the information remained undocumented and much of the historical significance was lost through the site integrity desecration.

To give some order and direction to recognizing and understanding this half-sister of the highly respectable land-oriented archaeology, Miller discusses three principal trends in international law that have directly affected the evolution of marine archaeology as a scientific discipline to date:

1. Efforts to establish international principles governing archaeological excavations;
2. Efforts to regulate the illicit movement of cultural property in international trade;
3. The expansion of coastal nation exclusive jurisdiction over the ocean and its resources.

In the first major trend, the principal formal effort is reflected in the *Recommendation* [under the auspices of UNESCO] *on International Principles Applicable to Archaeological Excavations,* established December 5, 1956. Although precatory and toothless in nature, this recommendation is the first public recognition of a serious problem involving very valuable and rapidly vanishing cultural assets. Almost two additional decades would pass before the determined efforts of a comparative handful of dedicated individuals would surface once more in the form of concrete accomplishments. Unfortunately, these individuals would find that once the issues and problems they were combating had received substantial public recognition, the ground-rules had been changed—at least in marine

archaeology where legitimate as well as inexcusable parochial views on maritime rights might well crush research interest. One might have preferred Miller to have taken the time to paint an occasional detailed problem of law and marine archaeology to attract the attention of lawyers in an exciting and constructive manner. James Bond type sagas are threaded throughout the history of marine archaeology, and could have been used in this monograph. International conventions, treaties, and domestic legislation and regulations dealing with the matter are so uninspiringly inorganic without the settings in which they are applicable.

After the UNESCO *Recommendation,* the next major document aimed at controlling the looting and despoilation of archaeological sites was the July 1969 *European Convention on the Protection of the Archaeological Heritage.* Miller asserts that this convention applies to a "relatively narrow range of cultural property." Although the time is well at hand to ensure that all formal recognition of cultural heritage problems also encompass those attendant to marine archaeology, it is sufficiently safe to assume that the marine environment was very much in mind in 1969 when the European Convention was formulated, particularly as provided in Article 1:

> For the purposes of this Convention, all remains and objects, or any other traces of human existence, which bear witness to epochs and civilizations for which excavations or discoveries are the main source or one of the main sources of scientific information, shall be considered as archaeological objects.

Miller's discussion of the European Convention emphasizes in part questions of coastal state jurisdiction and sovereign rights on the continental shelf raised by establishment of conservation zones for excavation by future generations. An important issue of the "future generations" policy is the completely negativistic approach designed to protect areas of interest presumably until indigenous archaeologists and excavation technology become good enough to ensure safe and meaningful excavation.

Prima facie, this appears to be a noble and far-sighted policy, but it denies reasonable access by alien experts to certain sites of man's cultural heritage and increases dramatically the probability of loss or damage to these sites and artifacts through natural erosion, disintegration and catastrophies, as well as clandestine pilferage.

In any event, there is so much change in the rapidly evolving state of technology as well as the prevailing political climate, that the doctrine of *rebus sic stantibus* (treaties cease to be obligatory when the state of facts and conditions upon which they were founded has sub-

stantially changed) may well be applicable to the European Convention, and the specific reason for formulation of the subsequent 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.*

Although Miller believes this 1970 Convention [presently under consideration by the United States Senate, along with attendant implementing legislation] is much more restrictive than the European Convention, it is still obvious that, despite the timeliness for international regulations, emphasis still needs to be placed on the need for extensive transitional bilateral arrangements among nations for the preservation of cultural artifacts and sites. The subject continues to be too highly political to be accommodated totally by one multinational convention and one set of international implementing regulations and sanctions. Again, as emphasized by Miller, this convention is a reflection of "self-help measures through limited measures of cooperation, none of which are retroactive." It is apparent that the basic thesis of this latest convention is also precatory in nature.

As observed by Miller, certain trends over the past decade show a firm policy of almost all coastal states to extend their national boundaries seaward into areas heretofore considered the high seas. Until very recently, unilateral extensions of jurisdiction have generally not been total and inclusive. They have extended to specific areas, over specific activities, objects and resources: fishing rights, submarine mineral rights, military warning areas in, over and beneath the high seas, variations on the North American Air Defense Identification Zones. In the forthcoming 1973 Law of the Sea Conference, under the aegis of the United Nations, basic oceanographic and other scientific research will be a closely considered—albeit highly expendable—issue by coastal states attempting to extend their territorial waters. The effect of the conference on marine archaeology is discussed by Miller in proper detail.

Several significant conclusions are drawn by Miller, among which are the following interpretations:

1. Economic considerations in the form of tourism and international trade of artifacts are significant factors in the amount and quality of control imposed by economically poor, but culturally rich, nations.

2. Marine archaeology can be pursued for its inherently valuable objectives, but also simply for the increase of knowledge to better understand cultural heritage.

3. National pride and economic value can stimulate an increase of indigenous scientific and technological skills.

4. Conflicting interests, directly related and tangential, currently obviate the smooth development of a body of international law applicable to marine archaeology.

5. The development of an effective international constituency is essential to focus sufficient attention upon the legal requirements of marine archaeology as a scientific pursuit sufficiently distinguished from land-based archaeology.

There is no doubt but what a carefully considered treatise on the law of marine archaeology is timely. Mr. Miller's monograph seems better suited as an interesting article for a legal periodical; it does not serve as a detailed account of the legal problems attendant to marine archaeology. Conclusions occasionally seem to conflict and discussions are, for the lack of complete information, sometimes more confusing than they are enlightening. The subject matter, without exciting case examples and footnoted anecdotes of which there are many, tends toward the sere. Perhaps as a chapter in a broader treatment of marine archaeology the contents of Miller's monograph would be more fitting and instructive despite its apparent sketchiness.

The emphasis seems to have been more on new twists to international law of the sea, rather than a concerted focusing on how to accommodate or control multiple uses of the sea. Some of these accommodations can be seen in the substance of bilateral arrangements covering the excavation and movement of cultural property, but Miller apparently is forced to avoid and exploration of this area. Reliance also seems to be upon observations of law without discussing the weaknesses in applicability to marine archaeology. The principal exception is his discussion of the law dealing with the continental shelf.

There are several facets of the monograph that tend to leave the reader with a sense of unfulfillment—of recognizing the probable existence of a legal problem involving marine archaeology, but sensing it to be a small aspect of two much larger problems and forces: (1) archaeology and cultural artifacts, generally, and (2) the potential shambles of customary and written law of the seas which the 1973 Law of the Sea Conference will address, with the interests of marine archaeology as a very expendable chip in the anticipated negotiations. Miller has helped sound an initial clarion, but it does not seem to give his colleagues much direction.

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