CHAPTER 16

The 24-Mile Archaeological Zone: Abandoned or Confirmed?

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I Introduction

After the adoption of the United Nations Convention on the Law of the Sea (LOSC) in 1982 commentators took disparate views on the legal effects of Article 303(2) LOSC. The question arose whether that provision, which concerns archaeological and historical objects found on the seabed, had created a new jurisdictional zone distinct from the contiguous zone, well-established in the pre-existing law of the sea as a maritime zone in which the coastal State had the possibility of using a limited set of jurisdictional powers in order to protect certain interests regarding its territory, including the territorial sea.1 In 2001 the Convention on the Protection of the Underwater Cultural Heritage (UCHC) was adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO).2 It entered into force in 2009 and establishes a comprehensive international mechanism for the protection of the underwater cultural heritage, thus supplementing the fragmentary provisions of the LOSC on archaeological and historical objects found at sea.

It is the aim of this essay to re-examine the issue of the so-called ‘archaeological zone’, taking into account new developments following the adoption and entry into force of the UCHC. However, it will first be necessary to revisit the controversy concerning the proper interpretation and application of

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II Law of the Sea Convention

1 The Jurisdictional Powers of Coastal States in the Contiguous Zone According to Article 33 LOSC

The jurisdictional powers that the coastal State may exercise in its contiguous zone are determined by Article 33(1) LOSC:

In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.3

First of all, as generally accepted by doctrine, it should be noted that in its contiguous zone the coastal State has enforcement jurisdiction in order to prevent and punish violations of only those laws and regulations that are exhaustively listed in Article 33(1), i.e. customs, fiscal, immigration or sanitary laws and regulations. In addition, from the wording of the provision it is clear that the violations must be linked to the State’s territory, including the territorial sea. Thus, the coastal State may not use the afforded powers to punish acts occurring in the contiguous zone itself. In other words, on the basis of Article 33(1), States are not allowed to extend their legislative jurisdiction to the maritime zone adjacent to their territorial seas.4

3 Article 33(1) LOSC follows the wording of Article 24(1) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone almost verbatim. The only noteworthy difference is that in the LOSC the contiguous zone is no longer defined as being part of the high seas, as was the case with the 1958 Geneva Convention. This adjustment of the wording is necessary due to the creation of the exclusive economic zone. Article 33(2) LOSC sets the maximum breadth of the contiguous zone at “24 nautical miles from the baselines from which the breadth of the territorial sea is measured.”