

Public Comment for the Record
U. S. Commission on Ocean Policy
1120 20th Street N.W.
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October 8, 2002

Gentlemen:

For many years I have been closely tied to our oceans, first as an active participant in small boat racing, then offshore sailing and deliveries, and then in underwater exploration and research. For over 28 years I have been actively involved (Chairman and principle owner) in the world's most proficient and productive school for commercial divers and more recently, until 2 years ago, as Chairman of the world's producer of the most ROVs for underwater work. For the past 34 years I have been the owner of the Lusitania and have maintained an ongoing effort to perform the definitive forensics examination on that most historic wreck. This has led to involvement in the investigation and study of additional shipwrecks and the laws concerned therewith.

As a result of the above involvement with several very specific aspects of ocean related activity, I would like to add my thoughts to the work you are doing to formulate policy for the future of our oceans. Suffice to say that the technology has been sufficiently advanced for both mechanical and human intervention that there are many more possible ramifications to these questions than existed even 20 years ago.

Perhaps my deepest concern is with what seems to me to be an increased politicizing of all matters with regard to the ocean. This is taking the form, among others, of choosing to ignore a tremendous heritage and evolution of admiralty (or maritime) law and supplanting it with the whims of whatever bureaucracy is currently addressing the matters at hand. In many cases this seems to be dependent more on the "squeaky wheel" principle of the moment rather than a carefully reasoned building on a heritage of precedent. I recognize that with advanced technology, as in most fields, questions arise in need of adjudication that were not even envisioned as possible 20 or 50 years ago. And some of these questions might even necessitate legislative solutions. But again, I would prefer to see such legislative solutions or bureaucratic policy decisions be tied back to historical legal traditions.

Please let me cite one current area which exemplifies my concern and which in my opinion is irrational in its current modus operandi. Currently it is popular to suggest that a country's "warships" remain permanently the property of such country. This needs to be logically re-examined. Obviously there would be some legitimate time frame during which there in fact might be "secrets" of some kind involved to warrant State of origin protection. In this day and age of fast technological and political

advances, I doubt that this could or should extend past 25 or maybe 50 years. After that, such "secrets" could be more appropriately consigned to history. Similarly the highly emotional cry of "war grave" has little legitimacy since most all religions agree that if there is a spirit, it leaves the body upon death, leaving little in the way of remains about which there needs to be concern even if afforded full respect. (see note 1 below) Also in what way are remains in warships any different than remains in non warships? The final question concerns what really is a "warship". Many cases would be debatable.

Upon close examination, it would make a great deal more sense to encourage the finding and exploration of all wrecks by not creating the artificial barriers to such. In most other exploratory sciences, we reward people who expend their time, energy, and resources exploring frontiers whether in nature, in labs, or elsewhere. But in ocean exploration we seem to be moving towards penalizing or even criminalizing those who wish to search the bottom for undiscovered wrecks with the history, culture, or even "treasure" that might be involved. This is inconsistent and makes no sense.

The other movement which I believe is unfortunate is the growing tendency to turn over this exploration, ownership, and research to so called public entities rather than the private sector. In the first place, most of these public entities have neither the personnel nor the financial resources to do the job. In the second place, since they are usually operating within very limited and target restricted budgets, it is not possible for them to bring to bear attention on the wealth of opportunities eagerly accepted by the significantly larger private sector. There seems to be an excessive concern that the private sector may not do it "right" whereas in fact, even if true, it won't be done at all if left to the public entities. So called in situ preservation is a myth born of lack of understanding of the hostile environment of the oceans.

Relative to the above comments is the perversion that underwater findings should not be allowed into the field of commerce or private collections. For a country built on the foundations of entrepreneurship and of private property rights, this restrictive concept against ownership and freedom to buy and sell is an abomination.

Finally I would like to address one other serious problem that has arisen in the past few years. This problem is the concept that any two or more countries can delineate a patch of international waters as being forbidden territory to anyone who wishes to visit such waters for whatever purpose. There are two such contemporary instances with which I am familiar. The first is the proposed but unratified Titanic Treaty by The USA, Britain, Canada and others. The second is the Estonia Agreement formulated by Sweden, Finland, and Estonia in 1995 with the express but unstated purpose of preventing proper forensic examination of a ferry boat sinking causing 852 horrible deaths. The significant point here is that there appears to be nothing in International Law, the Convention of the Law of the Sea, or other body of law or precedent that provides for such usurpation of rights. I believe this Commission should take an aggressive and public position against seizures, unfounded in law, before other countries decide to lay claim to other patches of international waters for whatever real or bizarre reasons. For reference I would suggest the appeals filed on my behalf by my attorney Ms. Eke Boesten with the Chancellor of Justice in Finland and with the International Tribunal for the Law of the Sea in Hamburg.

note 1 Please see "UNDERWATER" the July-August issue 2002, a magazine published by Doyle Publishing Company Inc. for the Association of Diving Contractors International Inc. Page 95 an article "Can Human Remains Affect your Bottom Line?" This is a summary of an afternoon symposium by experts on this subject which occurred in the Technical Program of the Underwater Intervention 2002.

In conclusion, I would add only that while it is understandable that with increasing demand being placed on ocean resources, some new and innovative policy considerations may need to be created. Nevertheless, in the rush to consider same, it is to be hoped that the commission will not overlook our history of "freedom of the high seas", our history of legal precedents and adjudication of problems related thereto, and our history of entrepreneurship and ownership which has contributed so much to our country as well as to the ocean environments which are the subject of this work.

If requested, I would be glad to elaborate on the above or appear before the commission to broaden any understanding of the points being expressed herein.

Respectfully submitted,



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