

The Sovereign Immunity Entitlement of Sunken Foreign Military Wreck Within Indonesian Territorial Water

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Abstract

The 2014 retrieval of two Dutch warship wrecks from Indonesian waters, remnants of World War II's Battle of Java, sparked legal debate regarding sovereign immunity for sunken warships. The wrecks' disappearance, revealed during a 75th-anniversary commemoration, questions the continued applicability of such immunity in foreign waters. This study examines the wrecks' legal status, particularly their exclusion from the 2001 UNESCO Convention due to their age. Employing juridical-normative research, the study analyses international legal instruments, court decisions, literature, and state practices. Findings suggest that while sovereign immunity persists, its scope is limited. A non-operational wreck serves no military purpose but maintain its identity. The absence of a comprehensive international framework underscores the importance of the Indonesia-Netherlands bilateral agreement in protecting remaining wrecks. The study concludes that increased international cooperation is crucial for addressing legal uncertainties surrounding sovereign wrecks and ensuring their preservation.

Abstrak

Pengangkatan dua bangkai kapal perang Belanda dari perairan Indonesia pada tahun 2014, peninggalan Pertempuran Laut Jawa di Perang Dunia II, memicu perdebatan hukum mengenai kekebalan kedaulatan kapal perang yang tenggelam. Hilangnya bangkai kapal ini, terungkap saat peringatan 75 tahun oleh Karel Doorman Foundation, menimbulkan pertanyaan akan keberlanjutan penerapan kekebalan tersebut di perairan asing. Penelitian ini mengkaji status hukum bangkai kapal, khususnya karena tidak termasuk dalam Konvensi UNESCO 2001 akibat usia mereka. Menggunakan metode penelitian yuridis-normatif, studi ini menganalisis instrumen hukum internasional, putusan pengadilan, literatur, dan praktik negara. Temuan menunjukkan bahwa meskipun kekebalan kedaulatan masih berlaku, ruang lingkungannya terbatas. Status non-operasional bangkai kapal perang tidak menghilangkan identitasnya, meskipun tidak lagi memiliki fungsi militer. Ketidadaan kerangka hukum internasional yang komprehensif menekankan pentingnya perjanjian bilateral Indonesia-Belanda dalam melindungi bangkai kapal yang tersisa. Penelitian ini menyimpulkan bahwa peningkatan kerja sama internasional sangat penting untuk mengatasi ketidakpastian hukum seputar bangkai kapal berdaulat dan memastikan pelestariannya.

INTRODUCTION

Sovereign immunity has long been considered a legal mechanism to safeguard the sovereignty and dignity of states,¹ ensuring equality among nations, as states are key subjects in international law.² This doctrine reflects the principle of *par in parem non habet imperium*, which holds that one sovereign cannot assert jurisdiction over another.³

Historically, sovereign immunity protected rulers from the jurisdiction of their own courts and extended to protection from foreign courts.⁴ Vattel emphasized that a traveling prince should be free from foreign jurisdiction, as his dignity demands respect.⁵ Over time, the application of sovereign immunity evolved, leading to two perspectives: absolute immunity, where states are fully protected, and a restrictive approach, where immunity is limited in certain circumstances.⁶ Article 32 of UNCLOS recognizes sovereign immunity for state-owned military vessels, though exceptions exist, such as in warfare, where captured enemy vessels lose this immunity.⁷

The practice of war has also resulted in significant numbers of the sunken battleship, dozens of these wrecks are among others located in Indonesia.⁸ Approximately there are at least 110 Dutch flagships sunk across the Indonesian water.⁹ Most of these wrecks regarded as war graves for the flag states and their very existence represent historic ties symbolising nationalism from their fallen

¹ M. R. Garcia, "The Doctrine of Sovereign Immunity of Foreign States and Its Recent Modifications," *Virginia Law Review* 42, no. 3 (1956): 335.

² Ian Brownlie, *Principles of Public International Law*, 5th ed (Oxford: New York: Clarendon Press; Oxford University Press, 1998).

³ L. Oppenheim, R. Y. Jennings, and Arthur Watts, *Oppenheim's International Law. Vol. 1, Peace*, 9th ed (London: Longman, 1996).

⁴ Garcia, "The Doctrine of Sovereign Immunity of Foreign States and Its Recent Modifications."

⁵ Garcia.

⁶ Garcia.

⁷ "United Nations Convention on the Law of the Sea (UNCLOS)" (UNTS, 1994).

⁸ Dozens of WWII warship wrecks from the UK, Australia, the Netherlands, and Japan lie in Indonesia's territorial sea, holding thousands of servicemen. Oliver Holmes, Monica Ulmanu, and Simon Roberts, "The World's Biggest Grave Robbery: Asia's Disappearing WWII Shipwrecks," *The Guardian* (blog), November 3, 2017, <https://www.theguardian.com/world/ng-interactive/2017/nov/03/worlds-biggest-grave-robbery-asias-disappearing-ww2-shipwrecks>.

⁹ J Pieters, "Netherlands, Indonesia Team up to Protect Naval Ship Wrecks," *NL Times* (blog), July 4, 2018, <https://nltimes.nl/2018/07/04/netherlands-indonesia-team-protect-naval-ship-wrecks>.

soldiers such as the Dutch wrecks of *Hr.Ms. De Ruyter*,¹⁰ *Hr.Ms. Java*,¹¹ and *Hr.Ms. Kortenaer*.¹²

The advancing technology increases the chances of discovering and exploiting sunken warships. The 2001 UNESCO Convention protects underwater cultural heritage, including wrecks over 100 years old.¹³ Most WWII wrecks, including those in Indonesian waters, do not yet meet this requirement. This raises debates on whether sovereign immunity still applies to sunken warships, as some argue they have lost their original identity and function.¹⁴ Other authors argue that sunken naval ships remain the flag State's property unless explicitly abandoned under international law norms.¹⁵ Sovereign immunity is based on international comity, where states respect each other's independence by avoiding jurisdiction over foreign state property used for public purposes. Clarifying its application to sunken naval ships is essential for international compliance.

Article 32 of UNCLOS governs the sovereign immunity of state-owned military vessels. This paper tries to examine whether the sunken foreign warships in Indonesia's territorial water falls within the scope of warships under UNCLOS Article 29 and as consequence, retain their sovereign immunity. Further, it explores the argument that immunity is lost upon sinking due to loss of functionality, supported by the 1944 *Baltimore, Crisfield & Onancock Line, Inc. v. United States*

¹⁰ Hr.Ms. De Ruyter a Dutch flag warship class cruiser, launched May 11, 1935. Sunk in the Battle of Java Sea, February 27/28 1942. "De Ruyter," *Netherlands Navy* (blog), accessed September 24, 2024, https://www.netherlandsnavy.nl/Photo_ruyter.htm.

¹¹ Hr. Ms. Java a Dutch flag warship class cruiser, launched August 6, 1921. Sunk in the Battle of Java Sea, February 27, 1942. "Java-Class Cruisers," *Netherlands Navy* (blog), accessed September 22, 2024, <https://www.netherlandsnavy.nl/Javacl.htm>.

¹² "Report of the Joint Expert Meeting on the Appreciation (Track II) of the Dutch Shipwrecks in the Java Sea" (The Hague Netherlands: Ministerie Van Defensie, January 1, 2017).

¹³ UNESCO, "Convention on the Protection of the Underwater Cultural Heritage" (2001).

¹⁴ David J. Bederman, "Rethinking the Legal Status of Sunken Warships," *Ocean Development & International Law* 31, no. 1–2 (January 2000): 97–125, <https://doi.org/10.1080/009083200276085>.

¹⁵ Jason R. Harris, "The Protection Of Sunken Warships As Gravesites At Sea," *Ocean and Coastal Law Journal* 7 (2001), <http://digitalcommons.maine.edu/oclj/vol7/iss1/11>; Rean Monfils, Trevor Gilbert, and Sefanaia Nawadra, "Sunken WWII Shipwrecks of the Pacific and East Asia: The Need for Regional Collaboration to Address the Potential Marine Pollution Threat," *Ocean & Coastal Management* 49, no. 9–10 (January 2006): 779–88, <https://doi.org/10.1016/j.ocecoaman.2006.06.011>; Chen R, "Bilateral or Multilateral Agreements between States for the Settlement of Dispute over Ownership of Underwater Cultural Heritage: Background, Ownership Clauses, and Implications for China," *China Oceans Law Review*, 2022, 111.

case. In contrast, the 1955 *Prins Frederick case* asserts that salvage laws apply only to commercial vessels, as warships are crucial to national security. Consequently, states may prevent the salvage of sunken warships to protect their heritage and dignity.

The debate on coastal states' duty to protect sunken warships while respecting their sovereign immunity remains crucial. These ships retain some immunity after sinking, complicating issues like illegal salvage and looting. This discussion examines whether coastal states bear responsibility for damage due to inaction, focusing on states with shared interests as coastal or flag states, especially for wrecks under 100 years old.¹⁶

This writing seeks a peaceful solution to protect sunken warships in Indonesian waters while maintaining diplomatic ties with flag states. Balancing sovereign protection of WWII wrecks with coastal state jurisdiction is complex. Though wrecks like *De Ruyter* and *Java* are not yet 100 years old under the 2001 UNESCO Convention, its spirit underscores the historical and philosophical basis for flag states' protection efforts.

RESEARCH METHODS

This research utilizes a juridical-normative method, reviewing international law and rules concerning the protection of sunken warships and salvage activities, particularly in relation to breaches of sovereign immunity. It also examines Indonesian law and policies on the immunity of warships and underwater cultural heritage protection. The Statute Approach is employed to explore formal legal matters through case analysis and other relevant issues, using both international and domestic legal materials.

Section 1 focuses on the commercial salvage of the *De Ruyter* and *Java* wrecks, examining their sinking, discovery by Australian divers, and alleged looting in 2014-2016. Section 2 discusses whether warships retain sovereign

¹⁶ Salvage of HMS *Repulse* and HMS *Prince of Wales*, sunk off Malaysia in December 1941, and commercial salvaging of HMAS *Perth*, a former Australian naval ship.

immunity after sinking and analyzes relevant international legal frameworks, including the 2001 UNESCO Convention and the 2015 resolution by *the Institut de Droit International*. Section 3 addresses exemptions from salvage under international law and Indonesia's stance, considering cultural heritage protection and the possible end of immunity through abandonment for commercial salvage.

RESULT AND DISCUSSION

A. The Looting of Hr. Ms. De Ruyter and Hr. Ms. Java

During the Battle of Java in WWII, the remaining Allied ships, including Dutch cruisers *De Ruyter* and *Java*, gathered in Surabaya.¹⁷ On February 27, they engaged two Japanese heavy cruisers¹⁸, Haguro and Nachi, 90 miles north.¹⁹ Nachi torpedoed Java, sinking it in 15 minutes and killing 512 crew at 06.00 S, 112.05 E.²⁰ Haguro then struck De Ruyter, sinking it with RADM Karel Doorman and 345 crew at the same location.²¹

The wrecks of Hr.M. Ships *De Ruyter* and *Java* remained undiscovered until December 2002,²² when MV Empress scuba divers located them near Bawean Island in the sea of Java.²³ Despite being explored by divers in 2008, there was no official recognition by either the Netherlands or Indonesia at the time. The wrecks were subjected to technical or tourist dive trips and commemoration visits on the sea surface years after.²⁴ Following the next visit in 2008, the visiting of the two cruisers was recorded on film showing the wrecks were lying well-preserved on the seabed.²⁵

¹⁷ "Expedition: Battle of the Java Sea Revisited" (Karel Doorman Foundation, 2016).

¹⁸ "Expedition: Battle of the Java Sea Revisited."

¹⁹ "Expedition: Battle of the Java Sea Revisited."

²⁰ "'Java' (Netherlands Navy)," *Netherlands Navy* (blog), accessed September 24, 2024, http://www.netherlandsnavy.nl/Java_his.htm.

²¹ "Expedition: Battle of the Java Sea Revisited"; "Hr. Ms. De Ruyter," *Pacific Wrecks* (blog), September 20, 2023, https://pacificwrecks.com/ship/hrms/de_ruyter.html.

²² "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer" (Ministry of Foreign Affairs of the Republic of Indonesia, 2017).

²³ "De Ruyter-Class Cruiser," *Netherlands Navy* (blog), accessed September 22, 2024, <https://www.netherlandsnavy.nl/DeRuyter1.htm>.

²⁴ "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

²⁵ "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

The wrecks were discovered through diving explorations in the late 1990s. During the search of MV *Empress*, the bells of *De Ruyter* and *Java* were retrieved,²⁶ *De Ruyter*'s now displayed in The Hague and *Java*'s stored in Surabaya.²⁷ Though the 2002 discovery was not formally reported, Dutch naval ties are acknowledged.²⁸ The bells' display symbolizes Dutch ownership, reinforced by a planned plaque at the site. In 2017, a ceremony led by the Dutch ambassador in Surabaya honored the wrecks, affirming Dutch ownership through mutual recognition by both States.²⁹

A 2002 joint verification identified *De Ruyter* by its unique bridge and gun turrets,³⁰ while *Java* was recognized by its funnel features and shell casings.³¹ Historical records from Indonesia and the Netherlands confirm these wrecks as warships lost in the Battle of Java, supported by discovery coordinates from 2002.³² These warships, having never been under enemy control or used for non-commercial purposes, retain their sovereign immunity under Article 32 of UNCLOS, which prevents their seizure or detention by legal processes, nor to any proceedings *in rem*.³³

a. The alleged looting of the sites during 2014 -2016

Allegedly between 2014 and 2016, two of Dutch Military Wrecks was being the object of illegal salvage activity carried out by *Jatim Perkasa Salvage*, a Private Corporation registered under Indonesian law.³⁴ This looting became apparent in 2016 when the Dutch foundation *Karel Doorman (KDF)* attempted to assert control

²⁶ "Expedition: Battle of the Java Sea Revisited."

²⁷ "Expedition: Battle of the Java Sea Revisited."

²⁸ "Karel Doorman Fund," *Militaire Fondsen NL* (blog), accessed September 24, 2024, https://militairefondsen.nl/karel_doorman_fonds/index.php.

²⁹ "Herdenking Slag in de Javazee in Surabaya," *Oorlogs Graven Stichting* (blog), March 1, 2017, <https://oorlogsgraven.net/nieuws/artikel/82/herdenking-slag-in-de-javazee-in-surabaya>.

³⁰ "Joint Verification of the Location and Condition of Hr.Ms. *De Ruyter*, *Java* and *Kortenaer*."

³¹ "Joint Verification of the Location and Condition of Hr.Ms. *De Ruyter*, *Java* and *Kortenaer*."

³² "Joint Verification of the Location and Condition of Hr.Ms. *De Ruyter*, *Java* and *Kortenaer*."

³³ "International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels (Brusel Convention)" (UNTC, 1926).

³⁴ *Aqwam Fiazmi Hanifan, Arbi Sumandoyo, and Mawa Kresna*, "Kerugian Negara Dari Pencurian Kapal Bersejarah," *Tirto* (blog), January 25, 2018, <https://tirto.id/kerugian-negara-dari-pencurian-kapal-bersejarah-cDND>.

over the wrecks in the Java Sea, coinciding with the 75th anniversary of *the Battle of the Java Sea*.³⁵

In late 2016, KDF assigned Exploration Company to lead *The 2016 Expedition*,³⁶ assembling a multinational team of divers skilled in photography and shipwreck exploration.³⁷ After obtaining permits from the Indonesian Ministry of Culture, they met with the Netherlands War Grave Commission in October to hand over a plaque for De Ruyter's site. However, during their November expedition aboard MV Empress, they failed to locate the wreck.³⁸ Using Multibeam Sonar, they found a trench with claw-like gouges, indicating the wreck had been completely removed, though some small debris resembling De Ruyter remained.³⁹

Later that day, a scan of *Java* revealed a 130-meter ship-shaped trench and a smaller one nearby, matching its known position.⁴⁰ Academics and salvage workers confirm that undersea looting targets valuable metals worth hundreds of thousands of dollars.⁴¹ Indonesian companies profit from this with minimal oversight, requiring only a salvage permit from the Directorate General of Sea Transportation.

b. Responses of Indonesia and the Netherlands government

The 2016 expedition confirmed that Hr. M. Cruisers De Ruyter and Java were completely removed. KDF alerted the Dutch government, prompting the formation of a verification team in early 2017, comprising Indonesian and Dutch experts. They found no official reports on the wrecks, with all prior information coming from third parties.⁴² Both nations agreed to review data to verify the wrecks' identities and investigate salvage activities.⁴³

³⁵ Ivan Watson and Kathy Quiano, "Wrecks of Sunken Warships Disappear From Ocean Floor," December 9, 2016, <https://edition.cnn.com/2016/12/08/asia/world-war-two-ships-battle-of-java-sea/index.html>.

³⁶ "Expedition: Battle of the Java Sea Revisited."

³⁷ "Manual of the Laws of Naval War" (Oxford: Institut de droit international, 1913).

³⁸ "Manual of the Laws of Naval War."

³⁹ "Expedition: Battle of the Java Sea Revisited."

⁴⁰ "Expedition: Battle of the Java Sea Revisited."

⁴¹ Watson and Quiano, "Wrecks of Sunken Warships Disappear From Ocean Floor."

⁴² "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

⁴³ "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

The joint verification team confirmed the wrecks as those lost in the Battle of the Java Sea (Feb 27, 1942) using Multibeam data, photos, and videos.⁴⁴ Experts concluded high-tech equipment was likely used for salvaging, though Indonesia issued no salvage permits in 2015-2016, with local reports showing no irregularities.⁴⁵ The team focused on verifying the wrecks and assessing Indonesia's role in preventing looting. Rather than assigning blame, both governments collaborated to protect Dutch wrecks as war graves, aligning with UNCLOS, which grants Indonesia full jurisdiction over its waters. In July 2017, a Notice to Mariner was issued at the Dutch government's request, supported by Indonesia's Ministry of Foreign Affairs. The Indonesian Navy marked the sites for navigation safety, while both governments plan to enhance their protection as cultural heritage and a place of remembrance.

The looting of De Ruyter and Java is not Indonesia's first case of naval wreck salvage; HMAS Perth also suffered a similar fate. Lying 35 meters deep in the Sunda Strait, the wreck lost many intact parts from its sinking during the Battle of Java.⁴⁶ Located in Indonesia's territorial waters, these wrecks pose jurisdictional challenges, as UNCLOS grants coastal states sovereignty,⁴⁷ while allowing foreign vessels innocent passage.⁴⁸ This creates a conflict between Indonesia's authority over its waters and the sovereign rights of nations claiming ownership of the wrecks.

⁴⁴ "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

⁴⁵ "Pengangkatan Kerangka Kapal/Pembersihan Alur Pelayaran Tahun 2016" (Kementerian Perhubungan Republik Indonesia, 2016).

⁴⁶ Linton Besser, Dan Oakes, and Norman Hermant, "HMAS Perth: WWII Warship Grave Stripped by Salvagers," *ABC Network* (blog), December 13, 2013, <https://www.abc.net.au/news/2013-12-13/outrage-as-warship-grave-stripped-by-salvagers/5156320>.

⁴⁷ Senada Meskin, "Legal Status of Warship Wrecks From World War II In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)," *Brawijaya Law Journal* 2, no. 2 (October 1, 2015): 103–19, <https://doi.org/10.21776/ub.blj.2015.002.02.06>.

⁴⁸ An incidental sovereignty which require no establishment in order to exercise the Coastal State's jurisdiction. Anthony Aust, *Handbook of International Law*, 1st ed. (Cambridge University Press, 2005), <https://doi.org/10.1017/CBO9780511494123>.

B. Sovereign Immunity as Against Other Nations

The development of the concept of jurisdiction is closely tied to the principles of state sovereignty, equality, and non-interference.⁴⁹ Jurisdiction and immunity are interrelated especially because immunity derogates from territorial jurisdiction, and are crucial for recognizing the sovereign equality of all states.⁵⁰ An absolute and constrained immunity framework has resulted from state practice, the development of doctrines, and social movements. Of particular influence, discussion would be interesting regarding the immunity status of warships, whether they are fully operational or shifting into wrecks.

International treaties have established codified norms pertaining to the immunity of warships as State-owned property. However further discussion is necessary when warships are sunken in foreign waters or on the territory of other sovereign states, or when they are no longer serving their intended purpose. The rules that apply to both fully functioning and non-performing warships, as well as wrecks, are covered in the discussion set forth.

a. The absolute sovereign immunity of warships and its entitlement

Warship is a state-owned naval force bearing particular markings and forms to distinguish itself based on the flag State identity. It is commanded by an official officer appointed by the flag nationality's government and is manned by a crew that adheres to regular armed forces discipline.⁵¹ Due to the status as military vessel representing the state for non-commercial purposes, warships enjoy extension of its flag State's protection.⁵² The Brussels Salvage Convention of 1910 marks the codification of warship immunity,⁵³ excluding warship to be bound of salvage and remuneration rights. However, those authorities do not account for the context of non-functional ships.

A sunken warship is argued to lose its immunity because it is no longer commanded by a responsible officer, nor is it manned by a disciplined crew, or

⁴⁹ Malcolm N. Shaw, *International Law*, 6th ed (Cambridge, UK: Cambridge University Press, 2008).

⁵⁰ Shaw.

⁵¹ "United Nations Convention on the Law of the Sea" (1982), art. 29.

⁵² United Nations Convention on the Law of the Sea, art. 32.

⁵³ Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

even being abandoned. Given that a warship may only be recognized as active while it is manned, the non-functioning warship can no longer be regarded as state organs.⁵⁴

The *Schooner Exchange v. McFaddon* illustrates an international limitation on the exercise of sovereignty. The most convincing case for this is the analogy comparing an ambassador and a warship, where immunity that an envoy enjoys stems from the implied consent considered the natural law of nations.⁵⁵ The Court granted immunity in rejecting McFaddon's claim, citing the impact of warships on the flag state's "power and dignity."⁵⁶ The case established that warships entering another state's port are not subject to that state's jurisdiction.⁵⁷

An English court ruled in the *Prins Frederick* case that salvage is limited to commercial vessels. The flag state of a sunken warship would have to take necessary action to stop the salvage since it would jeopardize the integrity of the country, assuming the exception of coastal state sovereignty were not recognized.⁵⁸ The court also drew the same connection to the diplomatic envoy, adding that a comparable privilege innocent passage right, that the defense and independence of sovereign states depend on the mutual safeguarding of rights.⁵⁹

The *Mercedez* case sets a significant precedent to address the issue.⁶⁰ A wide interpretation that allowing warship to engage in significant commercial activities while yet maintaining sovereign immunity and protection was criticized

⁵⁴ L. Oppenheim, R. Y. Jennings, and Arthur Watts, *Oppenheim's International Law. Vol. I, Peace*, 9th ed (London: Longman, 1996) in Harris, "The Protection Of Sunken Warships As Gravesites At Sea"; Institute De Droit International, "The Legal Regime of Wrecks of Warships and Other State-Owned Ships in International Law" (2015).

⁵⁵ Theodor Meron, *Henry's Wars and Shakespeare's Laws Perspectives on the Law of War in the Later Middle Ages* (Oxford University Press, 1993), <https://doi.org/10.1093/acprof:oso/9780198258117.001.0001> in Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

⁵⁶ Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

⁵⁷ Harris.

⁵⁸ Harris.

⁵⁹ Harris, 114–15.

⁶⁰ David Curfman, "Thar Be Treasure Here: Rights to Ancient Shipwrecks in International Waters—A New Policy Regime," *Washington University Law Review* 86, no. 1 (January 2008): 181; Jie Huang, *Law of the Sea Reports* (American Society of International Law, 2012) in Yves Winter and Joshua Chambers-Letson, "Shipwrecked Sovereignty: Neoliberalism and a Disputed Sunken Treasure," *Political Theory* 43, no. 3 (June 2015): 287–311, <https://doi.org/10.1177/0090591714555577>.

by seven members of the US Congress.⁶¹ The court formula of sovereignty read as an attempt to assuage the anxieties of afflicted sovereigns. According to this viewpoint, sovereignty is something that is both performed and manifested in the court's rulings, in addition to being a specific category in the legal case.⁶² The court's decisions are part of a long-standing practice that uses ritual and theater to project, stage, and animate governmental power.

b. The rights of Captor State on the wrecks of warship in armed conflict

Sovereign immunity may be lost in three cases: (1) when a warship is captured during armed conflict before sinking,⁶³ (2) through an international agreement,⁶⁴ or (3) by clear abandonment, gift, or sale.⁶⁵ To preserve a warship's sovereign immunity, it must be confirmed that its final voyage was sovereign in nature, operated under its flag State's mandate, served a non-commercial purpose, and was overpowered by enemy forces.

During the Battle of Java, there was no sign of an attempt to seize these ships. As soon as the Japanese forces struck the enemy fleet, they immediately withdrew from the combat zone. Transfer of title occur by the seizure of a battleship during the ongoing fight before it sinks.⁶⁶ The original flag State still owns these wrecks because Japanese force did not seize control of the ship. The establishment of KDF strongly opposed the possibility of endorsing implied abandonment by the Netherlands government as this foundation specially established to maintain the historical value of these naval ships.

Following the end of hostilities, the sunken ships and remains of the crew are entitled to particular respect as war graves and should not be disturbed;

⁶¹ "Brief Amicus Curiae of Members of Congress on the Proper Construction of the Sunken Military Craft Act, No. 10-10269J United States Court of Appeals for the 11th Circuit," 2010.

⁶² Winter and Chambers-Letson, "Shipwrecked Sovereignty."

⁶³ Harris, "The Protection Of Sunken Warships As Gravesites At Sea," 116.

⁶⁴ See "Treaty of Peace U.S. - Japan" (1951); "Compact of Free Association," U.S.-Marshall Islands, T.I.A.S. No. 11661 § (1986) granting title to U.S. vessels sunk during Atomic Bomb testing at Bikini and Kwajalein Atoll.

⁶⁵ Harris, "The Protection Of Sunken Warships As Gravesites At Sea." For example, in the War of 1812, the United States relinquished title to the Hamilton and the Scourge.

⁶⁶ Rob Regan, "When Lost Liners Become Found: An Examination of the Effectiveness of Present Maritime Legal and Statutory Regimes for Protecting Historic Wrecks in International Waters with Some Proposals for Change," *Tulane Maritime Law Journal*, Regimes for Protecting Historic Wrecks, 29 (2005): 118.

regardless of the right of captor in the time of hostilities.⁶⁷ Indonesian government has no jurisdiction over these wrecks unless their very presence poses a risk of injury or devastation to the environment, pollution, radioactive radiation, or other potential hazards, proven by thorough analysis of the careful study and reasoning

c. The restrictive sovereign immunity status of warship

Walker clarifies that neither the CHS nor UNCLOS address sunken public vessels. Once a ship sinks and loses its identity, it is no longer considered a vessel.⁶⁸ However, state practice and international agreements have strengthened wreck immunity. *The Institut de Droit International* affirmed in its 2015 Resolutions that sunken State ships remain state property,⁶⁹ and are exempt from non-flag state jurisdiction.⁷⁰ Coastal states retain control over wrecks in their archipelagic waters.⁷¹ Salvaging these ships must comply with international law, the 2015 provisions on ownership and immunity, and recognized archaeological methods.⁷²

State-owned vessels including sunken warships are entitled to sovereign immunity, unless the owner decides differently.⁷³ The wreck is also covered by sovereign immunity from the time these warships were in service. The 2001 UNESCO Convention retaining standpoint that sovereign immunity still applicable by safeguarding state ships as cultural heritage.⁷⁴ Thus, before taking any action against sovereign wreck, the rightful owner must give their expressed consent.

Warships are state property symbolizing sovereignty, history, and independence. As wrecks, they retain value, holding artifacts and heroic

⁶⁷ Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

⁶⁸ Tucker v. Alexandroff, No. 183 U.S. 424 (U.S. Supreme Court January 6, 1902) in Jerry E. Walker, "A Contemporary Standard for Determining Title to Sunken Warships: A Tale of Two Vessels and Two Nations," *University of San Fransisco School of Law Maritime Law Journal* 12 (Spring 2000).

⁶⁹ Institute De Droit International, *The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law*, art. 4.

⁷⁰ Institute De Droit International, art. 3.

⁷¹ Institute De Droit International, art. 7.

⁷² Institute De Droit International, *The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law*.

⁷³ IMO, "International Convention On Salvage" (1989), art. 4 (1) & (2), <https://law.justia.com/cases/federal/appellate-courts/F2/140/230/1567148/>.

⁷⁴ UNESCO, *Convention on the Protection of the Underwater Cultural Heritage*, art. 1 (8).

significance as servicemen's final resting places. Odyssey cited the *Mercedes case*, where the U.S. Supreme Court upheld 19th-century sovereignty concepts despite modern inconsistencies,⁷⁵ reinforcing sovereign immunity for sunken warships.⁷⁶ Japan supports this by recognizing state vessels and their artifacts as sovereign.⁷⁷ The reasoning from *Schooner Exchange v. McFaddon* similarly applies to imperiled or sunken warships.

A Norwegian court ruling reaffirms that a state's ownership of its submerged warships does not expire over time. Under customary international law, naval warships, state vessels used for non-commercial purposes, aircraft, and related artifacts remain protected by sovereign immunity,⁷⁸ regardless of their location. The UK holds that any activity involving these sites requires flag state permission.⁷⁹

Different stands were taken in the 1944 *Baltimore, Crisfield & Onancock Line, Inc. v. United States* case, which seems to support the loss of sovereign immunity,⁸⁰ due to the fact that sunken warships are not legally considered to be vessels since they are not able to navigate.⁸¹ This has prompted some authors to contend that a warship's immunity may be revoked.⁸² Meanwhile, other authors have posited that the United States has maintained a non-abandonment policy with regard to its sinking battleships in international practice, supporting the deep-rooted, universal justifications for safeguarding sunken vessels because of the potential for human remains to be found there.⁸³

In *Mercedes*, the right to sovereign immunity is based on the idea of

⁷⁵ Winter and Chambers-Letson, "Shipwrecked Sovereignty."

⁷⁶ Natalino Ronzitti, "Le Régime Juridique Des Épaves Des Navires de Guerre et Des Navires d'Etat En Droit International," *Annuaire de l'Institut de Droit International* Volume 76 (Institut de Droit international, 2015).

⁷⁷ Harris, "The Protection Of Sunken Warships As Gravesites At Sea," 121.

⁷⁸ "Protection and Management of Historic Military Wrecks Outside UK Territorial Waters, Guidance on How Existing Policies and Legislation Apply to Historic Military Wreck Sites" (Department for Culture Media & Sport and Ministry of Defence United Kingdom, April 2014), 7–8.

⁷⁹ "Protection and Management of Historic Military Wrecks Outside UK Territorial Waters, Guidance on How Existing Policies and Legislation Apply to Historic Military Wreck Sites."

⁸⁰ *Baltimore, Crisfield & Onancock Line v. United States*, No. 140 F.2d 230 (4th Cir. 1944) (n.d.).

⁸¹ *Baltimore, Crisfield & Onancock Line v. United States*.

⁸² Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

⁸³ Harris.

sovereign equality, which acknowledges that all sovereigns have the same formalities. According to the Court, this is an example of the territorial sovereign's implied permission to release the foreign sovereign from its absolute and exclusive jurisdiction.⁸⁴ Therefore, US courts have no authority to bind other sovereigns' laws and decisions in a way that would violate their equality and independence in order to protect their interests in comity and dignity.

The Indonesian government lacks authority over the alleged unlawful salvage activities since the looted objects belong to the Netherlands. Indonesia can only rule on the matter with Dutch approval; otherwise, the court risks acting *supra vires* under the *Mercedes* ruling.⁸⁵ This approach reflects concerns over threats to state interests, as commercial salvage operations impact historical preservation, national dignity, and cultural assets.

Scholars criticize the broad application of absolute immunity to sunken warships,⁸⁶ arguing that once a warship sinks, it loses its function as a state organ.⁸⁷ Vierucci suggests immunity should apply only if the wreck contains military documents or instruments.⁸⁸ These critiques question whether functional obligation should be a requirement for sovereign immunity. While immunity remains, it now takes a limited form, as a non-operational wreck serves an archaeological, rather than military, purpose.

Article 2(1) of UNCLOS grants coastal states jurisdiction over vessel wrecks within their territory. Tanaka highlights that a coastal state's territorial sovereignty determines the legal status of its territorial sea.⁸⁹ Meanwhile, Article 221 of UNCLOS allows coastal states to prevent pollution from shipwrecks but does not authorize the removal of wrecks threatening international navigation.

⁸⁴ *National City Bank of New York v. Republic of China*, No. 348 U.S. 356 (1955) (U.S. Supreme Court March 7, 1955) cited in Winter and Chambers-Letson, "Shipwrecked Sovereignty."

⁸⁵ Winter and Chambers-Letson, "Shipwrecked Sovereignty," 296.

⁸⁶ Luisa Vierucci, "Le Statut Juridique Des Navires de Guerre Ayant Coulé Dans Des Eaux Étrangères : Le Cas Des Frégates Espagnoles Juno et La Gala Retrouvées Au Large Des Côtes Des Etats-Unis," *Revue Générale de Droit International Public* 105 (2001): 705–25; Valentina Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels," *Italian Yearbook of International Law* 2009 XIX (2010): 253–57.

⁸⁷ Lassa Oppenheim, *International Law: A Treatise*, ed. Lauterpacht (London, 1995); Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels," 10.

⁸⁸ Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels."

⁸⁹ Yoshifumi Tanaka, *The International Law of the Sea*, 2nd ed (Cambridge, United Kingdom: Cambridge University Press, 2015).

This gap is addressed by the 2007 Nairobi International Convention,⁹⁰ which imposes strict liability on wreck owners,⁹¹ to remove hazardous wrecks from territorial seas or the EEZ.⁹² The sunken Java and De Ruyter, along with their weapons, pose no immediate threat unless triggered.

If Indonesia seeks to claim affected State status, it must consider the hazards posed by these wrecks.⁹³ The Convention excludes warships and State-owned non-commercial vessels unless the State decides otherwise, regardless of their removal feasibility.⁹⁴ This makes full acceptance of the Convention challenging, but alternatives exist. In certain cases, a coastal State's EEZ allows it to enact strict liability laws for wreck removal,⁹⁵ if the wreck poses environmental risks.⁹⁶ Both Indonesia and the Netherlands, as UNCLOS 1982 signatories, must cooperate in protecting historical objects at sea.⁹⁷ However, this duty does not limit the Coastal State's exclusive jurisdiction,⁹⁸ as seen in the Netherlands-Australia agreement on Old Dutch shipwrecks off Western Australia.⁹⁹

All aforementioned gaps suggesting a notion that UNCLOS fails to address the treatment of sunken warship directly. International law community held view that UNCLOS's warship-related clauses may provide an address on the matter.¹⁰⁰

⁹⁰ Malgosia Fitzmaurice, David M. Ong, and Panos Merkouris, eds., *Research Handbook on International Environmental Law* (Cheltenham, UK: Edward Elgar Publishing Limited, 2010).

⁹¹ "The Nairobi International Convention on the Removal of Wrecks" (2007), arts. 2 & 6.

⁹² "The Nairobi International Convention on the Removal of Wrecks" (2007). The Netherlands is Signatory party while Indonesia is not a member.

⁹³ The Nairobi International Convention on the Removal of Wrecks, art. 6.

⁹⁴ The Nairobi International Convention on the Removal of Wrecks, art. 4.

⁹⁵ Article 58 extends many high seas freedoms from Article 87 to the EEZ, including navigation, overflight, and submarine cable laying. Article 59 mandates resolving EEZ conflicts based on equity, prioritizing flag State interests over coastal State claims. This supports the permissibility of sunken warship recovery under UNCLOS. However, debate arises as these vessels rest on the ocean floor, raising questions about their classification under the EEZ or the Continental Shelf.

⁹⁶ Tanaka, *The International Law of the Sea*, 123–24.

⁹⁷ United Nations Convention on the Law of the Sea, art. 303 (1).

⁹⁸ "Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Italy Regarding the Salvage of H.M.S 'Spartan'" (1952); "Agreement between the Government of the French Republic and the Government of the United States of America Concerning the Wreck of the CSS Alabama" (1989); J Ashley Roach, "Sunken Warships and Military Aircraft," *Marine Policy* 20, no. 4 (July 1996): 351–54, [https://doi.org/10.1016/0308-597X\(96\)00016-4](https://doi.org/10.1016/0308-597X(96)00016-4).

⁹⁹ "Agreement between Australia and the Netherlands Concerning Old Dutch Shipwrecks, and Arrangement," ATS No 18 § (1972).

¹⁰⁰ Bernard H. Oxman Oxman, "The Regime of Warships Under the United Nations Convention on the Law of the Sea," *Virginia Journal of International Law* 24, no. 4 (1984).

Article 87 does not specifically discuss the retrieval of sinking warships. Thus, salvage operations and other actions that might disturb a soldier's last resting place aboard a warship are permitted under the general rule of freedom on the high seas. However, as the alleged looting occurred within Indonesian territorial waters, the high sea regime will not be covered in this writing's discussion.

C. The Sovereign Immunity Wrecks of Warship as Opposed to Salvage and Find Rules

a. The international rules of salvage activity

The law of finds and the law of salvage are two alternative methods for treating salvors that are provided by admiralty law. The law of salvage views treasure hunters as first responders providing vital assistance to vessels in maritime peril; while the law of finds is seen as part of customary international law regulating abandoned a shipwreck's loss of title for which a legal property can be claimed against a ship's original owners.

The 1910 Brussels Salvage Convention excludes warship out of salvage and remuneration rights. The Convention on the International Unification of Certain Rules Relating to the Immunity of State-owned Vessels establishes guidelines for customary salvage rules. It prevents warships, patrol boats, fleet auxiliaries, and other state-owned vessels operated for non-commercial purposes from being subject to a legal process's seizure, arrest, or detention, as well as any *in rem* procedures. The Brussels Convention of 1910's traditional salvage principles were embraced by the newly adopted Convention in London¹⁰¹ and additional measures were added based on the actual evolution. The 1978 *Amoco Cadiz accident*, which resulted in the spillage of 10 million gallons of crude oil in an open sea, exposed the shortcomings of the previous salvage regulations that omits provisions pertaining to the marine environment.¹⁰²

The majority of state practices have established that sovereign immunity extends to warship wrecks. Hence, unauthorised salvage is prohibited and can only

¹⁰¹ IMO, International Convention On Salvage.

¹⁰² L Rosenthal and C Raper, "Amoco Cadiz and Limitation of Liability for Oil Spill Pollution: Domestic and International Solutions," *Virginia Journal of Natural Resources Law* 5, no. 1 (1985).

occur with the flag state's approval, even if the wrecks are situated in territorial waters of other State. The location of these wrecks does not take away the flag state's ownership, mutual permission to respect the sovereignty of the coastal states.¹⁰³ In contrast to admiralty law, common law of finds grants the claimant an ownership interest in the vessel. Evaluating explicit or implicit abandonment is a challenging chore from a factual and application perspective.

b. The stands of the Indonesian government

Indonesia did not ratify the Brussels Convention until recently. However, the Netherlands' ratification during colonization led to its indirect adoption through the Netherlands Act (S.Ne 1924-573), later enacted as S.1933-47 jo.38-2. After independence in 1945, a constitutional provision maintained the binding authority of existing laws unless modified by the Indonesian government.

The 1989 Salvage Convention aimed to replace the Brussels Convention, with the Netherlands adopting it in 1990. Although Indonesia is not a party, the global acceptance of these regulations signals growing uniformity. Indonesia has opted to use the Lloyd Open Form for salvage services,¹⁰⁴ regardless of the Convention's consent. Indonesian salvage law is found in the Kitab Undang-Undang Hukum Dagang (Indonesian Commercial Code), specifically Book II, Chapter VII, Articles 545–568k. Provisions from this code were included in Law No. 21 of 1992 on navigation, later replaced by Law No. 17 of 2008 due to evolving maritime law. However, Indonesia has not fully adopted all provisions from the Convention, such as the requirement for the wreck owner's permission for salvage operations.

Underwater works involve activities related to ships, installations, and constructions below the sea surface. Salvage is defined as rescuing ships and cargo in danger in navigable waters,¹⁰⁵ and does not address battleship wrecks or related activities.¹⁰⁶ The new law requires commercial salvors to obtain approval from the Minister of Sea Transportation before conducting salvage or other underwater

¹⁰³ Institute De Droit International, *The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law*.

¹⁰⁴ Meskin, "Legal Status Of Warship Wrecks From World War Ii In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)."

¹⁰⁵ "Law No. 17 of 2008 on Shipping" (2008), art. 1 (51).

¹⁰⁶ "Law No. 21 of 1992 on Shipping" (1992), art. 1 (8).

works.¹⁰⁷ Shipwrecks are defined as abandoned, sinking, or grounded vessels, but the law does not address state-owned or commercial vessels. The authority to approve salvage operations is unclear in Law No. 17 of 2008, leading to reliance on Brussels Conventions standards. The law also lacks provisions on requiring the owner's consent for salvage. In 2009, a Presidential Decree established the National Committee to manage surveys, removal, and use of valuable cargo from sunken ships. Government Regulation No. 10 of 1993 authorizes the Ministry of Culture to grant licenses for salvaging or using cultural heritage objects, making the licensing process complex. A salvage license requires the object to be preserved as cultural heritage, and a register has been created for formal government acknowledgment and protection of these objects.¹⁰⁸

The 2001 UNESCO Convention and Indonesia's cultural heritage definition include sites, buildings, artifacts, human remains, and their contexts, covering vessels, aircraft, and their contents.¹⁰⁹ Thus, warship wrecks qualify as cultural heritage. Prior to the 2017 agreement between Indonesia and the Netherlands, there was no violation in protecting Dutch warship wrecks. Law Number 17 of 2008 does not specify whether salvage operations apply only to commercial vessels or also to State-owned vessels, nor does it set a time frame for salvage, leaving room for World War II wrecks to be recovered despite their potential value.

Shipwrecks, as defined by Ministry of Transportation rule PM 71 of 2013, refer to sunken, abandoned ships that are stranded or washed ashore. Salvage permits are required from the Ministry's General Director and granted to licensed businesses.¹¹⁰ While the regulation doesn't address the fate of abandoned wrecks, the sovereign status of warships under Law Number 34 of 2004 affirms that the Navy's duty includes conducting naval diplomacy.¹¹¹ This regulation reflects diplomatic immunity and sovereignty,¹¹² meaning warship wrecks are protected

¹⁰⁷ Law No. 17 of 2008 on Shipping, art. 204.

¹⁰⁸ "Law No.11 of 2010 on Cultural Heritage" (2010).

¹⁰⁹ Law No.11 of 2010 on Cultural Heritage, art. 1 (1).

¹¹⁰ "Minister of Transportation Regulation PM 71 of 2013 Regarding Salvage and/or Underwater Works" (2013), art. 6 (1).

¹¹¹ "Law No.34 of 2004 on Indonesian National Army" (2004), art. 9 (c).

¹¹² Law No.34 of 2004 on Indonesian National Army.

by sovereign immunity and are not considered abandoned.

The complexity of salvage licensing, due to multiple authorities overseeing the matter, enables underwater looting by simply applying for permission from the Directorate General of Sea Transportation.¹¹³ The government's lack of oversight allows looters to access abandoned wrecks. The plundering of the *De Ruyter* and *Java* wrecks between 2014 and 2016 suggests the Indonesian government may be at fault for its inaction. If properly supervised, warship wrecks would be better protected.

In December 2016, Indonesia and the Netherlands signed a letter of intent on the Joint Appreciation of several wrecks, leading to a meeting in February to confirm the identities and locations of *De Ruyter* and *Java*. By August, the wrecks were confirmed as Dutch, and both governments began discussing preservation efforts. A framework for protecting undersea cultural heritage was signed,¹¹⁴ and in July 2017, Indonesia issued a Notice to Mariners, banning diving, fishing, and anchoring near the wreck sites.¹¹⁵

c. The nexus between international protection of underwater cultural heritage and wrecks of warship's sovereign immunity

Warship wrecks receive stronger protection under international cultural heritage laws, reinforcing sovereign immunity and allowing flag states to safeguard their legacy through archaeology. This approach shifts focus from ownership to historical value, helping states maintain their historical legitimacy. The 1998 draft Convention on the Protection of Underwater Cultural Heritage set a 100-year cutoff, excluding provisions for unilateral inclusion of newer wrecks.

Every state has jurisdiction over UCH within its borders based on its chosen law, typically maintaining ownership unless abandoned. Consistency among states relies on international customary law. Warships are protected due to historical, archaeological, environmental, and cultural significance. Hugo Grotius argued that

¹¹³ Directory authority as part of the Ministry of Transportation of Indonesia

¹¹⁴ Dwi Arum Wandasari, "Analisis Kerjasama Indonesia-Belanda Dalam Kasus Hilangnya Kapal *De Ruyter*, *Java*, Dan *Kortenaerdi* Perairan Indonesia," *Journal of International Relations* 4 (2018): 115–21; Ministerie van Buitenlandse and Ministerie van Onderwijs, Cultuur en Wetenschap, "First Results of Dutch-Indonesian Investigation in the Java Sea Released," 2017.

¹¹⁵ Ministry of Foreign Affairs of Republic of Indonesia

attacks on artistic or sacred sites, including memorial structures, are prohibited.¹¹⁶ The U.S. NOAA emphasizes respectful handling of human remains and preserving sovereign immunity for non-abandoned ships or aircraft, recognizing sunken warships and graves as national symbols.¹¹⁷

UNCLOS links UCH to warship wreck conservation, requiring states to protect historical and archaeological artifacts at sea.¹¹⁸ However, it does not override salvage or admiralty laws,¹¹⁹ allowing States Parties to apply both rules in their national interest. Article 303 uses both “archaeological objects” and “objects of historical origin” without clear time limits, creating uncertainty over its scope. Some argue it covers only centuries-old artifacts, while others contend it includes recent finds. When read with Article 33, it implies antiquities cannot be removed from the contiguous zone without coastal state consent, effectively creating an “archaeological zone.”¹²⁰ Ultimately, Article 303’s broad yet vague protections, combined with admiralty law references, create ambiguity and paradox. Article 149 of UNCLOS grants preference to States of origin for archaeological and historical artifacts found in their territory. However, the regime’s vagueness makes it ineffective.¹²¹ The 2001 UNCLOS Convention on underwater cultural heritage addressed this gap. Before looting was discovered, none of the wrecks were officially reported, and Indonesia had no clear policy on their preservation,¹²² making proper protection difficult without formal

¹¹⁶ Jesse S. Reeves, “Grotius, de Jure Belli Ac Pacis: A Bibliographical Accounts,” *American Journal of International Law* 19, no. 2 (April 1925): 251–62, <https://doi.org/10.2307/2189252> translated in James Brown Scott, ed., *Classics of International Law*, vol. 1, 3 (Washington: Carnegie Institution, 1913); Sidney D. Bailey, *Prohibitions and Restraints in War* (London: Oxford University Press, 1972) in Harris, “The Protection Of Sunken Warships As Gravesites At Sea.”

¹¹⁷ National Oceanic and Atmospheric Administration (NOAA) and Office of Public and Constituent Affairs, “Turning to the Sea : America’s Ocean Future,” 1999.

¹¹⁸ United Nations Convention on the Law of the Sea, art. 303 (1).

¹¹⁹ United Nations Convention on the Law of the Sea, art. 303 (1).

¹²⁰ Lucius Caflisch, “Submarine Antiquities and the International Law of the Sea,” *Netherlands Yearbook of International Law* 13 (December 1982): 3–32, <https://doi.org/10.1017/S0167676800002993>.

¹²¹ Caflisch.

¹²² Wandasari, “Analisis Kerjasama Indonesia-Belanda Dalam Kasus Hilangnya Kapal De Ruyter, Java, Dan Kortenaerdi Perairan Indonesia.”

documentation.¹²³

d. The substantial impact of sunken military ship regarded as war gravesites

States are required by the 1949 Geneva Conventions for the protection of war victims and the 1977 Additional Protocols to treat the deceased with dignity,¹²⁴ register them appropriately,¹²⁵ and, if feasible, perform medical examinations.¹²⁶ The UNCLOS does not address the protection of sinking warships containing the bodies of fallen soldiers, thus salvage operations and other actions may seemed to be permitted under the general rule of freedom on the high seas. However, as the alleged looting occurred within Indonesian territorial waters, the high sea regime will not be covered in this writing's discussion.

State identity, nationalism, and historical legacy are assets a nation upholds. Recovering every fallen soldier from war, especially those lost at sea, is often impossible. To honor them, states use symbols related to the conflict, location, or vessels. The Mercedes case highlights the importance of preserving war graves as a tribute to fallen sailors.¹²⁷ Recognizing sunken warships as final resting places, the U.S., France, Germany, Japan, Russia, and the U.K. issued a 1995 declaration affirming that such sites deserve respect, and the flag state may take legal action to prevent disturbance or salvage.¹²⁸

International law mandates governments to conserve maritime historical artifacts, ensuring submerged statecraft recovery follows expert scientific guidelines and respects human remains. States may use military force to protect and salvage sunken state-owned vessels in any waters. This principle was upheld in *Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel*, where the court ruled that Spain

¹²³ Ministry of Foreign Affairs of the Republic of Indonesia, "Laporan Kinerja 2017 Direktorat Jenderal Amerika Dan Eropa" (Ministry of Foreign Affairs of the Republic of Indonesia, 2018).

¹²⁴ "Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea" (1949), art. 18.

¹²⁵ Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, art. 19.

¹²⁶ Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, art. 20.

¹²⁷ Winter and Chambers-Letson, "Shipwrecked Sovereignty."

¹²⁸ Robert S. Neyland, "Preserving and Interpreting the Archaeology of the United States Navy," in *International Handbook of Underwater Archaeology*, ed. Carol V. Ruppé and Janet F. Barstad (Boston, MA: Springer US, 2002), 765–81, https://doi.org/10.1007/978-1-4615-0535-8_46.

retained ownership of *La Galga* and *Juno*, which sank in U.S. waters in 1750 and 1802.¹²⁹ In U.S. practice, salvors may occasionally plunder military gravesites under implied abandonment. However, the *Sea Hunt, Inc.* case and Bill Clinton's remarks highlight the need for stronger justification to preserve warships unless explicitly abandoned. The UK, through the 1986 Protection of Military Remains Act,¹³⁰ prohibits excavation, diving, and salvage to honor soldiers lost at sea, enforcing accountability,¹³¹ even in international waters.¹³² While Australia and Indonesia lack specific regulations on warship wrecks as war graves, both have laws recognizing and commemorating fallen warriors.¹³³

Since *De Ruyter* and *Java* sank with their crews, their wrecks are war graves protected under international conventions. The KDF event and monument marking their 75th anniversary reflect the Netherlands' commitment to honoring them. While coastal states and rightful owners have national measures to respect fallen soldiers, international practices uphold war graves' sanctity. Following the *sic utere tuo ut alienum non principale*,¹³⁴ Indonesia should ban salvaging foreign warship wrecks in its waters, preserving war graves and demonstrating goodwill.¹³⁵

e. The significant effect of the State's expression of abandonment

All sovereign states must respect each other's independence, dignity, and public property while adhering to international comity.¹³⁶ Abandonment leads to

¹²⁹ *La Galga* sank in 1750 near the Maryland/Virginia coast after a hurricane, while *Juno* sank in 1802 en route to Spain due to a severe storm. Both wrecks remained lost until *Sea Hunt, Inc.* discovered them. Although Virginia initially issued a salvage permit, the U.S. Court of Appeals for the Fourth Circuit ruled that, since Spain had not abandoned the ships, they were not subject to salvage., see M. Morgan, "United States Court of Appeals for the Fourth Circuit: *United States v. Jackson*, 327 F.3d 273 (4th Cir. 2003)," *Capital Defense Journal*, 2003; Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

¹³⁰ "Protection of Military Remains Act 1986" (1986), sec. 2 (2).

¹³¹ Protection of Military Remains Act 1986, sec. 3 (1) (a) & (b).

¹³² Protection of Military Remains Act 1986.

¹³³ "War Cabinet Decision of 10 March 1922" (1992); "Indonesian Government Regulation Number 1 of 2010 Regarding the Board of Title, Mark of Services, and Mark of Honor (Peraturan Pemerintah Republik Indonesia Nomor 1 Tahun 2010 Tentang Dewan Gelar, Tanda Jasa, Dan Tanda Kehormatan)" (2010); Meskin, "Legal Status Of Warship Wrecks From World War Ii In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)."

¹³⁴ The expression that the rightful use of one's own property cannot be a legal wrong to another; and, if damage happens, it is *damnum absque injuria*, has long been recognize. See I GA., "Sic Utere Tuo Ut Alienum Non Laedas," *The Michigan Law Review Association* 5 (1990).

¹³⁵ "UNGA Res 2625 (XXV)," UN Doc A/RES/2625(XXV) § (1970).

¹³⁶ Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels."

the loss of sovereign immunity. If looted wrecks are brought to court, the Indonesian government has jurisdiction. However, if recognized as sovereign vessels, they remain protected by sovereign immunity, ending Indonesia's jurisdiction. Any unresolved state responsibility issues should be settled peacefully, or, if necessary, through an international tribunal.

There are two interpretations of abandonment: one asserts that a state explicitly relinquishes ownership, while the other assumes abandonment through inaction and time.¹³⁷ The latter, rejected by most states, argues that sovereign authority over vessel wrecks remains intact despite inaction.¹³⁸ The U.S. view of property is not time-bound but extends indefinitely,¹³⁹ aligning with the stance that all sunken warships and government aircraft remain the property of their flag state under international law.¹⁴⁰

When a warship's wreck is abandoned by its flag state, the law of finds grants ownership to the finder. If not abandoned, admiralty salvage laws apply, giving the salvor a lien but not ownership. The U.S. relinquishes title to sunken battleships only through intentional action, not merely by time or claims of rights.¹⁴¹ The necessity of sovereign immunity for military shipwrecks remains debated. In *United States v. Steinmetz*, the Third Circuit ruled that warships and their remains have sovereign immunity and a presumption against abandonment.¹⁴² Spain has filed claims over military wrecks, and under international law, a sunken warship

¹³⁷ Craig Forrest, "A New International Regime for the Protection of Underwater Cultural Heritage," *International and Comparative Law Quarterly* 51, no. 3 (July 2002): 511–54, <https://doi.org/10.1093/iclq/51.3.511>.

¹³⁸ Communication from the UK Foreign and Commonwealth Office, July 4, 2003; Communication from the French Foreign Ministry, November 28, 2003; Communication from the German Foreign Ministry, October 30, 2003; Communication from the Government of Japan, September 13, 2003; Communication from the Government of the Russian Federation, October 3, 2003; Embassy of Spain, Washington, DC, Note No. 128, December 19, 2002. US Department of State (public Notice 4614), Office of Ocean Affairs. See Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

¹³⁹ Office of Ocean Affairs and US Department of State, "Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property," n.d.

¹⁴⁰ See Communication from the Government of the Russian Federation to the US State Department.

¹⁴¹ "1988 U.S.C.C.A.N. 365," n.d.; "H.R. REP. No. 100-514(1), at 3-4 (1988)," n.d. in Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

¹⁴² *United States v. Steinmetz* 763 F.Supp. 1293, 1299, D.N.J. 1991 (1991).

retains its protected status. The U.S., Spain, and other nations recognize that disturbing such wrecks requires the sovereign owner's consent.¹⁴³

State precedent serves as the primary reference in this case, with Australia viewing 300 years of inaction as implied abandonment, while the Netherlands disagreed. The dispute was resolved through the 1972 ANCODS Agreement, which lacks a fixed method for proving abandonment. Due to its flexibility, Dutch artifacts were returned to Australia, recognized as the legal cultural "owner." Despite being the legal heir, the Dutch government granted Australia ownership of four wrecked vessels off Western Australia's coast.

It was suggested in the ILA and early UNESCO drafts that the Convention should only cover UCH that had been abandoned.¹⁴⁴ This was an attempt to sidestep ownership questions, since doubts about what constitutes abandonment had the unintended consequence of extending the scope of the negotiation to cover these topics, especially in relation to state-owned vessels.¹⁴⁵ The ownership and abandonment of UCH, especially wrecks, are contentious issues, but they shouldn't have any bearing on the wreck's archeological significance, and the removal of the abandonment requirements was warmly received.

CONCLUSION

While contemporary international law lacks specific regulations on the sovereign status of shipwrecks, customary law suggests these wrecks retain sovereign immunity unless abandoned by their flag state or seized by enemy forces.¹⁴⁶ However, the exercise of sovereign immunity may be affected by the coastal state's sovereignty over the wreck site, requiring authorization for activities in accordance with the coastal state regulation. To accommodate this gap, UNCLOS

¹⁴³ Claimant Kingdom of Spain's Motion to Dismiss or for Summary Judgement (n.d.); *Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel* (September 22, 2008).

¹⁴⁴ The ILA draft convention, stated that : "This Convention applies to underwater cultural heritage which has been lost or abandoned and is submerged underwater for at least 100 years."; Forrest, "A New International Regime for the Protection of Underwater Cultural Heritage."

¹⁴⁵ *Sea Hunt, Inc v Commonwealth of Virginia*, No. 221 F 3d 634 (4th Cir 2000) (Court of Appeals for the Forth Circuit 2000).

¹⁴⁶ HMAS Perth's wreck is located in Indonesian territorial sea, provides Indonesia control over access to the wrecks while Australia remains as the rightful owner.

1982¹⁴⁷ advocates for cooperation between sovereign states to address these issues. If a sunken foreign warship is within another state's waters, salvage and preservation are governed through the coastal State. Considerable number of bilateral agreements such as the Australia and the Netherlands Concerning Old Dutch Shipwrecks; United States and French regarding the wreck of *La Belle*; Agreement between the United Kingdom and Northern Ireland and Italy regarding the salvage of H.M.S. Spartan; as well as Indonesia and the Netherlands as expresses through the LoI on Joint Appreciation of *Hr. Ms. De Ruyter*, *Hr. Ms. Java* and *Hr. Ms. Kortenaer* is the practice of States on how bilateral and multilateral agreement becomes the answer to answer the issue of ownership and protection over the wrecks of State-owned vessels or warship. The 2001 UNESCO Convention supports this by granting coastal states exclusive rights to regulate activities involving underwater cultural heritage (UCH), and a resolution from the Institute of International Law in Talin supports a unified approach.¹⁴⁸ In February 2017, Minister Bussemaker visited Indonesia's Ministry of Education and Culture, resulting in a Memorandum of Understanding (MoU) to enhance cultural cooperation and protect maritime heritage. The three wreck sites *De Ruyter*, *Java*, and *Hr. Ms. Kortenaer* have been designated as 'historic shipwrecks' and marked on Indonesian nautical maps since July 2017. Consequently, activities such as diving and fishing around these sites are restricted to preserve this legacy. Both governments are working towards recognizing these shipwrecks as Cultural Heritage and monumental sites.

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¹⁴⁷ Article 303 “United Nations Convention on the Law of the Sea (UNCLOS).”

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