

Mariano J. AZNAR, *Maritime Claims and Underwater Archaeology: When History Meets Politics*, Brill, Leiden, 2021, 131 pp.

Professor Mariano Aznar has become one of the most prestigious experts in the law protecting underwater cultural heritage. His contributions on the subject are a point of reference for legal doctrine and practice throughout the world. In this new work, Professor Aznar applies all his broad and deep knowledge of this legal specialty to the analysis of maritime claims that invoke underwater archeology as causes in favor of claims of jurisdiction or sovereignty over marine spaces. The book offers a clear, well documented and persuasive explanation of the way in which these claims have been formulated, with a thorough analysis of their legal bases, without forgetting their political objectives and their ethical dimension.

Professor Aznar begins his argument by establishing the foundations of the law that protects underwater cultural heritage. The formidable United Nations Convention on the Law of the Sea was not clear or convincing in its regulation on this matter for legal reasons, but also because at the time the Convention was negotiated, marine archeology was not yet considered an independent scientific discipline or there were the technological advances that have driven it in the last two decades. Only two articles refer to the matter, 149 and 303, and neither of them provides satisfactory solutions. They reflect the evidence of the gaps in this incipient protection regime for underwater cultural heritage. These deficiencies were the subject of deliberations in various scientific forums, which prompted a process that resulted in a draft of articles that, after several years of negotiation, eventually became the UNESCO Convention on the Protection of the Underwater Cultural Heritage of 2001.

The author masterfully summarizes in a few pages the central questions about the UNESCO Convention and highlights two controversial points: the status of state ships and the problem of creeping jurisdiction. In relation to State ships, the conflict is revealed in article 7.3 of the Convention, where a recommendatory verb (“should”) is chosen rather than mandatory (“shall”). The maritime powers, past and present, would have preferred to establish the obligation to inform the flag State about the discovery of identifiable State ships and aircraft in its archipelagic waters and the territorial sea. The issue of creeping jurisdiction appears associated with the rights and duties that the Convention ascribes to the States parties in relation to activities carried out in the Exclusive Economic Zone or on the continental shelf. This issue is central to the author’s purpose. Professor Aznar maintains that the Convention establishes clear curbs on the jurisdictional ambitions of States that are against the Law of the Sea, as occurs when it states in article 2.11 that “[n]o act or activity undertaken on the basis of this Convention shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction”; or when it establishes in its article 3 that “[o] thing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner

consistent with international law, including the United Nations Convention on the Law of the Sea.” Professor Aznar accepts, however, that article 8 constitutes a basis to extend the jurisdiction of the States because that article states that “States Parties may regulate and authorize activities directed at underwater cultural heritage within their contiguous zone.”

The author recognizes the limited impact of archaeological activities and remains on international jurisprudence. Archaeological arguments have been made before the International Court of Justice in the *Temple of Preah Vihear* (1962) and in *Qatar v Bahrain* (2001) cases. In none of these cases was archaeology a determining argument, assigning them, in the best of cases, a secondary probative value. As a curiosity, but also showing the differences and possibilities offered by current technology, Professor Aznar says that an underwater archeology expedition in 2009 was able to determine the exact position of one of the British ships sunk by mines in the conflict that gave rise to the *Corfu Channel* (1949) case, providing data that would have been decisive for the solution of the controversy before the ICJ.

The rest of the work deals with its central object, that is, maritime claims based on arguments from underwater archaeology. Professor Aznar analyzes two types of claims. The first type includes state practices that use the protection of underwater heritage or its regulation to make jurisdictional claims in the contiguous zone, the EEZ or the continental shelf. The book provides exhaustive details of these practices, which include numerous domestic laws of the States, generally in the field of culture, and conventional practices. The laws differ in their form and scope, as some refer exclusively to activities within the contiguous zone, while others establish large maritime archaeological zones, called ‘maritime cultural zones’, as is the case in Mauritius or the Republic of South Africa. Regarding conventional practices, Professor Aznar refers to the declarations made by the States when ratifying the United Nations Convention on the Law of the Sea and, particularly, to the agreement of the States Parties to the 2001 Convention on the content of the Article 8, which implies the extension of the jurisdiction of the States to regulate and authorize activities aimed at the protection of underwater cultural heritage within the contiguous zone. According to the author, this state practice has crystallized a new rule of international law, which replaces the formula contained in article 303.2 of the United Nations Convention on the Law of the Sea, creating a new legal regime for the rights of coastal States in its contiguous zones in terms of protection of underwater cultural heritage.

The second type of claims considered in the book is characterized by the use of archaeological arguments and practices to claim sovereignty over large marine spaces. Three cases are analyzed. The first refers to Canada’s claims to the Arctic, which are based on its historical rights inherited from the United Kingdom, the consequences of the melting ice and the rights of the indigenous peoples of these territories. It turns out that the marine archeology investigations that have found the remains of the ships HMS *Erebus* and HMS *Terror*, which were part of Sir John Franklin’s 1845 expedition and which were found in 2014 and 2016, respectively, have been used as arguments for Canada in favor of its sovereignty claims over large areas of the Arctic, including the Northwest Passage, which may consequently affect freedom of navigation. The second case is built around China’s claims of jurisdiction and sovereignty over the vast marine

space known as the South China Sea. Professor Aznar demonstrates an extraordinary capacity for synthesis in describing the historical origins and current status of China's claims over the South China Sea. China has a strong underwater archeology program, supported by domestic legislation and advanced technologies, which seem to indicate a certain willingness to use underwater cultural heritage as an element in its arguments for its claims to jurisdiction and sovereignty. Aznar is careful in his judgment: he considers that China may have legitimate claims over the South China Sea, but that the Chinese historical evidence does not seem sufficient to substantiate those claims, and that if it intends to use the underwater cultural heritage of the disputed spaces, China should accept an appropriate scientific corroboration of that heritage, preferably through regional and international collaboration and joint archaeological activities as recommended by the UNESCO Convention, to which, however, it is not a State Party. The third case refers to Russia and differs from the previous ones because here it is not a question of providing underwater cultural heritage to support claims of jurisdiction and sovereignty, but of destroying it. Professor Aznar refers to the situation created as a result of Russia's illegal annexation of Crimea, which will, of course, worsen after Russia's invasion of Ukraine began on 24 February 2022. Despite the agreements of cooperation regarding the Sea of Azov and the Kerch Strait prior to annexation and the initiation of a procedure under Annex VII of the United Nations Convention on the Law of the Sea, which includes Ukrainian claims in favor of the protection of cultural heritage underwater, Russia, which has reneged on the UNESCO Convention, would be ruining this heritage in the marine spaces surrounding Crimea.

Professor Mariano Aznar maintains that these types of claims are neither legally nor ethically acceptable. His thesis is based on robust legal arguments and a profoundly respectful conception of underwater cultural heritage for the benefit of humanity. A conception that the author passionately defends with both his accurate pen and his diving equipment.

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