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| **Salvage** |
| **Source:** MLA **Date:** May 3, 2002 **Committee:** [SALVAGE](http://www.mlaus.org/committee-profile.ihtml?id=280)   **FORMAL REPORT OF THE COMMITTEE ON**  **SALVAGE**    The spring 2002 meeting of the Salvage Committee of the Maritime Law Association was held on May 1, 2002 at the law offices of Haight, Gardner, Holland & Knight in New York City. Fifteen committee members attended the meeting.    The first topic of discussion was the National Maritime Salvage Conference 2002, held in Seattle during January 16-17, 2002. A number of committee members attended the conference, which included heavy representation from the salvage industry in the United States and the U.S. Coast Guard.    A major topic during both the conference and the Salvage Committee meeting was maximizing the effective role of the salvor when the U.S. Incident Command System (ICS) is utilized to respond to a maritime casualty. The ICS Unified Command focuses on minimizing damage to the environment; the preservation of the ship and cargo as an end in itself has become secondary to environmental concerns. Salvage masters, traditionally used to assuming a commanding role after a marine casualty, must learn to accept a more subordinate yet still critical role within the ICS. The salvage master must find a way to maintain communications with the ICS Unified Command and to influence its decisions.    One approach is for the salvage master to leave a qualified salvage representative (*e.g.*, a trained company employee or consultant) at the ICS command post. This person can communicate the salvage master's observations and intentions to the Unified Command and regularly pass information back to the salvage master. The representative must be skilled and credible, with sufficient force of personality to "maintain a presence" within the ICS.    The Committee also discussed the status of the UNESCO Convention on the Protection of the Underwater Cultural Heritage (UCH). The Convention was adopted on November 2, 2001 by 87 affirmative votes of UNESCO member States. Four States voted against the Convention (Norway, Russia, Turkey, and Venezuela), and fifteen abstained (Brazil, Colombia, Czech Republic, France, Germany, Greece, Guinea-Bissau, Iceland, Israel, Netherlands, Paraguay, Sweden, Switzerland, United Kingdom, and Uruguay).    The United States (while not a member of UNESCO) could have formally acceded to the Convention, but it declined to do so. The U.S. Representative at the plenary session stated that the U.S. could not accede to the Convention in its present form "because of objections to several key provisions relating to jurisdiction, the reporting scheme, warships, and the relationship of the convention to UNCLOS." The Representative also noted for the record that "in our view, as a matter of international law and with particular reference to Article 311(3) of UNCLOS, the convention's provisions apply only among Parties to it."    The Convention is unfavorable to traditional salvage operations on historic shipwrecks. Salvors assert that objects underwater are subject to marine peril and eventual destruction, and should be recovered. Under the convention, however, the first option for the protection of underwater cultural heritage is its "*in situ*preservation," *i.e.*, leave it in place underwater. This provision underscores a key disagreement between salvors and archeologists. Are objects underwater subject to marine peril that justifies their salvage? The Convention embraces the archeologist's answer to this question.    Rule 2 of the Convention's incorporated annex declares, "[t]he commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods." To facilitate future research, archeologists prefer to maintain objects in a unified collection rather than allowing their dispersal. They also assert that allowing the commercial sale of artifacts will result in the ruin of the many shipwreck sites by encouraging plunder.    Here is another key point of disagreement between salvors and archeologists. Is it legitimate to sell underwater cultural heritage as a commercial item? The right answer may be tied to the initial question of maritime peril. It may be inherently reasonable to allow the sale of these objects if that will encourage their discovery, recovery, and preservation, especially if the alternative (prohibition of sale) will result in their continued "loss" to mankind and eventual destruction by the elements underwater.    Interestingly, there has been little discussion of the importance of recovering artifacts that have inherent aesthetic value. Some physical artifacts, such as select pieces of sculpture, jewelry, and ceramics may be unique and important works of art. Their aesthetic value could greatly outweigh their anthropological value. Should these objects be left underwater? Such objects may be sold initially to individual collectors. But many of them, over time, end up in public art collections. In this sense, their discovery, salvage, and commercial sale may eventually result in a direct benefit to the public at large.    These debates will go on, and the Committee will continue to monitor developments in this area of the law.    Respectfully submitted,    William T. Storz, Chair |