J. East Asia & Int'l L. Vol. 19/No.1 (2026); 33-60
Publication type : Research Article
Section : Issue Focus
DOI : http://dx.doi.org/10.14330/jeail.2026.19.1.02

Legal Divergence and Cooperative Governance of Underwater Cultural Heritage: A Comparative Study of China, Japan, and Korea

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The maritime regions of Northeast Asia are repositories of rich yet vulnerable underwater cultural heritage (UCH). This shared legacy transcends national boundaries, presenting a complex governance challenge. A comparative analysis of the three states reveals significant divergence in their domestic legal regimes concerning key issues: the definition and scope of protected heritage, the assertion of ownership and jurisdictional rights, approaches to management in disputed maritime zones, and the sensitive status of sunken state vessels. These policy disparities, set against a backdrop of geopolitical tension and an ineffective international legal framework, critically undermine coordinated protection efforts. This article systematically maps these policy differences to argue that the very necessity of trilateral cooperation stems directly from this comparative landscape of divergence. It concludes that establishing a collaborative governance framework is not merely a diplomatic aspiration but a pragmatic imperative for the effective safeguarding of this common regional heritage.

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All the websites cited in this article were last visited on April 29, 2026.

Keywords
Underwater Cultural Heritage, Comparative Analysis, China, Japan, Korea, International Cooperation

I. Introduction

The maritime region of Northeast Asia—encompassing the Yellow Sea, the East Sea (Sea of Japan), and the East China Sea—holds a significant wealth of underwater cultural heritage (UCH). These submerged sites function as "time capsules," offering invaluable insights into maritime history and long-term patterns of regional interaction.[1] Despite such significance, the UCH sites are increasingly threatened by looting and physical degradation, both of which can compromise particularly the structural integrity of shipwrecks and result in the irreversible loss of archaeological and historical context.[2]

The protection of this heritage faces considerable challenges, due to a confluence of legal, political, and operational factors. At the international level, the existing regulatory regime offers incomplete solutions. While the United Nations Convention on the Law of the Sea (UNCLOS) establishes general principles for ocean governance, its provisions relating to UCH are insufficient and fragmented.[3] The more specialized 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage (UCH Convention) even remains ineffective in Northeast Asia, as none of the three key coastal states—China, Japan, and Korea—have ratified it.[4]

Consequently, the domestic cultural heritage laws of these countries serve as the primary legal basis for the UCH protection in these waters. However, substantial disparities in their national legislation—particularly regarding the scope of protected objects, the ownership rights, and applicable jurisdictional rules—pose serious obstacles to developing a consistent and collaborative regional framework for protection and enforcement. The legal divergences

1 Zhijiang Wei et al., *China, Japan and Korea Maritime Security Complex and "Security" in The East China Sea,* 40(4) Mod. Int'l Rels. 36-43 (2015).

2 Oliver Holmes et al., *The world's biggest grave robbery: Asia's disappearing WWII shipwrecks*, Guardian (Nov. 3, 2017), https://www.theguardian.com/world/ng-interactive/2017/nov/03/worlds-biggest-grave-robbery-asias-disappearing-ww2-shipwrecks; Craig Forrest, *A New International Regime for the Protection of Underwater Cultural Heritage,* 51(1) Int'l & Compar. L. Q. 511-54 (2002).

3 Tullio Scovazzi, *The Law of the Sea Convention and Underwater Cultural Heritage,* 27(4) Int'l J. Marine & Coasta. L. 753-61 (2012); Sarah Dromgoole, Underwater Cultural Heritage And International Law 54 (2013).

4 UNESCO, States Parties to the 2001 Convention, https://www.unesco.org/en/underwater-heritage/states-parties.

among these nations are further exacerbated by ongoing territorial and maritime disputes and enduring sensitivities surrounding sunken state vessels. Together, this complex geopolitical and legal landscape leaves the region's invaluable UCH vulnerable to continued damage and loss.

Given the accelerating pace of new shipwreck discoveries, the need for a coordinated regional approach to protecting UCH has become increasingly urgent. Against this backdrop, this research aims to address the pressing issue of protecting UCH from a comparative legal and policy perspective. It begins with outlining the current state of UCH in Northeast Asia, followed by a concise analysis of the relevant international legal frameworks. The article then provides a thorough examination of the laws and practices concerning UCH in China, Japan, and Korea, identifying key points of legal conflict and jurisdictional overlap. Building on this analysis, the final part proposes actionable frameworks for regional cooperation to improve the preservation and governance of this shared underwater heritage.

II. Heritage Value and the Imperative for Preservation

A. Dual Origins of Heritage: Historical Trade Networks and Naval Conflict Sites

The maritime area of Northeast Asia holds a wealth of UCH, attributable to several interconnected factors: the geographical proximity of China, Korea, and Japan; a shared cultural foundation in Buddhism and Confucianism; and the sustained cultural and maritime exchanges fostered by this closeness.[5] Within this stable maritime network, both official tributary missions and private commercial ventures have further strengthened regional bonds. These historic routes have left a material legacy in the form of numerous merchant shipwrecks. A notable example is the Taean wreck, discovered off the Korean coast in 1975, which carried a cargo of over 20,000 ceramics pieces from China (Yuan dynasty) and Korea (Koryo dynasty).[6]

Naval engagements have also contributed substantially to the UCH in these

5 Wei et al., *supra* note 1.

6 Seoung Park & Chang Choe, *Protection and Management Policy of Underwater Cultural Heritage in Korea*, *in* Ocean Law and Policy-Twenty Years of Development under the UNCLOS Regime 148-60 (Carlos Espósito et al. eds., 2016).

waters, resulting in the sinking of countless warships and transport vessels.[7] Major conflicts such as the Imjin War: Japanese invasion of Korea (1592–99), the First Sino-Japanese War (1894–95) and World War II, led to substantial losses of multinational fleets. In particular, recent advancements in underwater archaeology have led to the discovery of such historic wrecks as the Qing warship Zhiyuan (confirmed in 2014) and the Japanese transport Awa Maru (found in 1977), illustrating the diverse origins of vessels lost in these contested seas.[8]

B. Beyond Archaeology: The Socio-Political Significance of Shared Maritime Heritage

The UCH of Northeast Asia holds immense archaeological and historical value; its significance transcends the technicalities of excavation, deeply influencing the social and political fabric of the region.[9] For China, Japan, and Korea, these sites are not only archives of national memory and identity, but also shared testaments to an intertwined past—tangible records of interaction, exchange, and collective maritime history. In a region often strained by strategic rivalry, this heritage offers a strong foundation for dialogue and trust-building. Scholars regard this potential as "heritage diplomacy," in which collaborative preservation can create neutral platforms for engagement, helping to foster interpersonal and institutional trust even amid political tensions.[10] This function is especially pertinent in Northeast Asia, where historical grievances and geopolitical competition have long undermined mutual confidence.[11] As a shared material legacy, UCH functions as a catalyst for mutual understanding and the construction of transnational historical narratives.

Furthermore, cooperation in culturally focused, technically oriented domains—such as underwater archaeology—can function as a form of practical collaboration. Studies suggest that addressing less politically charged issues first can help institutionalize cooperation, develop shared procedural norms, and then create positive interdependencies—spilling over into more

7 Jeremy Harwood, World War Two At Sea: Conflicts on the Oceans 1939-1945, 217 (2015).

8 Ran Guo, *On China's Legal Regulation and Improvement of Sinking National Ships*, 229(5) L. Rev. 164-75 (2021).

9 Stefan Claesson, *The Value and Valuation of Maritime Cultural Heritage*, 18(1) Int'l J. Cultural Prop. 61-80 (2011).

10 Tim Winter, *Heritage Diplomacy*, 29(1) Int'l J. Cultural Pol'y 130-4 (2022).

11 Zhenyong Zhu, *Will Trilateral Cooperation be Affected by Political Changes?* [三方合作会否受政局变化影响？"中日韩+"智库合作论坛在沪举行], The Paper [澎湃新闻] (May 5, 2025), https://www.thepaper.cn/newsDetail_forward_30836788.

sensitive areas such as territorial disputes or maritime delimitation.[12] Existing trilateral mechanisms in the fields like public health, disaster response, and environmental protection demonstrate that China, Japan, and Korea already possess a capacity for pragmatic, results-oriented dialogue—a model directly applicable to heritage conservation.[13] By jointly safeguarding a legacy that reflects connectivity, the three nations may transform vulnerable underwater sites into a foundation for regional cooperation and mutual respect.

C. From Degradation to Looting: The Imperative for Coordinated Protection

UCH in Northeast Asian faces severe threats. The submerged sites exist in environments with strong currents, sedimentation, and microbial corrosion, which erode their structural integrity. Compounding these natural processes are direct anthropogenic dangers: looting, driven by antiquities markets, strips sites of artifacts and contextual information; bottom trawling and dredging cause catastrophic physical destruction; and pollution and coastal construction exacerbate degradation.[14]

The responsibility to protect this shared legacy rests with those countries including China, Japan, and Korea. Immediate and collective action is urgently demanded because multilateral approaches are adequate to address threats inherently transnational. Looting, pollution, and commercial fishing cross maritime jurisdictions of these countries. As illustrated by the 1985 salvage of the Geldermalsen (also known as the "Nanking Cargo") in the South China Sea,[15] a commercially driven operation would often destroy the archaeological site in order to maximize profit.[16]

The heritage does not reside within a single national jurisdiction; rather, it exists as a collective regional asset. In this regard, the Asian Cultural Heritage Alliance—an intergovernmental body—was initiated by China with diverse Asian membership. The Alliance reflects a growing regional commitment to

12 Rostam Neuwirth & Zhijie Chen, *The Guangdong–Hong Kong–Macao Greater Bay Area: Cultural Heritage Laws as a Bridge between Past and Future,* 50(2) H.K. L. J. 743-80 (2020).

13 *E.g.*, PRC, China, Japan and South Korea signed a new joint action plan for environmental cooperation [中日韩签署新一期环境合作联合行动计划] (Sept. 29, 2025), https://www.gov.cn/lianbo/bumen/202509/content_7042712.htm.

14 Alyne Delaney & Katia Frangoudes, *Coastal and maritime cultural heritage: from the European Union to East Asia and Latin America*, 23(3) Mar. Stud. 26 (2024).

15 Michael Hatcher et al., The Nanking Cargo 2-4 (1987).

16 Elena Perez-Alvaro & Craig Forrest, *Maritime Archaeology and Underwater Cultural Heritage in the Disputed South China Sea*, 25(3) Int'l J. Cultural Prop. 375-401 (2018).

institutionalizing collaborative stewardship rather than fragmented, unilateral efforts.[17] Functional cooperation between the neighboring countries offers practical benefits. A notable example is the collaborative management of the Skerki Bank shipwreck site in the Mediterranean where multiple stakeholder nations coordinate through a UNESCO-facilitated committee. It provides a compelling model for managing a single, indivisible heritage site across multiple jurisdictions.[18]

A coordinated regional framework—supported by harmonized legal principles, joint monitoring, and systematic knowledge-sharing—can thus bridge the gap between discovery and protection. The absence or hesitation of any one party creates a critical vulnerability in the regional network, leaving this shared heritage permanently at risk. Collaborative protection is thus not merely preferable, but a necessary and rational pathway to ensuring its survival for future generations.[19] Establishing such a coordinated approach, however, is challenged not only by the absence of an effective international legal framework, but also by significant divergences in national legislation.

III. International Legal Frameworks on the UCH Protection in Northeast Asia

A. The UNCLOS: Principled Provisions and Ambiguities

The UNCLOS plays a crucial role in defining states' rights and obligations across different maritime zones. However, only two provisions apply to UCH: Article 149 in Part XI (The Area) and Article 303 in Part XVI (General Provisions). While these regulations offer an initial legal basis for the UCH protection, they remain fragmented and further lack thoroughness.[20] One primary deficiency is the flawed and inconsistent jurisdictional framework governing UCH beyond the territorial sea. Within the contiguous zone, Article

17 Ran Guo & Sarah Ward, *The Asian cultural heritage Alliance: a new public good for the protection of underwater cultural heritage in Asia?*, 32(3) Int'l J. Cultural Pol'y 299-322 (2026).

18 UNESCO, Fact Sheet: Multilateral underwater archaeological mission under the auspices of UNESCO on the Skerki Bank and in the Sicilian Channel (2022), https://unesdoc.unesco.org/ark:/48223/pf0000388533.

19 Zhen Lin, *Jurisdiction over Underwater Cultural Heritage in the EEZ and on the Continental Shelf: A Perspective From the Practice of States Bordering the South China Sea*, 50(2-3) Ocean Dev. & Int'l L. 170-89 (2019); Hui Wu, *International Law Challenges for Underwater Cultural Heritage Protection in the South China Sea,* 55(3) Ocean Dev. & Int'l L. 259-301 (2024).

20 Craig Forrest, Maritime Legacies and the Law: Effective Legal Governance of WWI Wrecks, 110-2 (2019).

303(2) creates a legal contradiction: it permits coastal states to regulate the removal of heritage, but fails to grant explicit jurisdiction over objects in situ, complicating the authorization and management of archaeological work.[21] Further seaward, the regulatory gaps widen considerably. In the extensive areas of the Exclusive Economic Zone (EEZ) and the continental shelf, the UNCLOS remains largely silent. Since coastal states' sovereign rights here are confined to natural resources and UCH is anthropogenic, it falls into a legal void.[22] This absence of clear jurisdiction leaves such heritage vulnerable to unregulated salvage operations, often motivated by a "finders-keepers" approach.

The regime established for "the Area" (beyond national jurisdiction) under Article 149 is further weakened by ambiguous terminology regarding states with historical or cultural ties. Undefined terms such as "country of origin," "state of cultural origin," and "state of historical and archaeological origin" open the door to conflicting claims—based on such factors as the flag state of the vessel or the state where objects were manufactured—which ultimately undermine the provision's protective intent.[23] In summary, the UNCLOS framework pertaining to UCH is fragmented and incomplete, significantly constraining any effective safeguarding efforts.

B. The UCH Convention: Progress and Gaps

To remedy the shortcomings of the UNCLOS in safeguarding UCH beyond territorial waters, UNESCO adopted the Convention on the Protection of the Underwater Cultural Heritage (UCH Convention) in 2001, which entered into force in 2009.[24] The UCH Convention defines its scope as encompassing "all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water … for at least 100 years." (Article 1) It establishes a set of core principles, prioritizing in situ preservation, prohibiting commercial exploitation, and promoting international cooperation. (Article 2)

The UCH Convention aims to establish a comprehensive protection framework, particularly for heritage located outside the territorial sea. For UCH

21 Mariano Aznar, *The Contiguous Zone as an Archaeological Maritime Zone,* 29(1) Int'l J. Marine & Coastal L. 1-51 (2014).

22 Janet Blake, International Cultural Heritage Law 230 (2015).

23 Scovazzi, *supra* note 3; Dromgoole, *supra* note 3.

24 Convention on the Protection of the Underwater Cultural Heritage, https://www.unesco.org/en/legal-affairs/convention-protection-underwater-cultural-heritage#item-0.

found in a coastal state's EEZ or on its continental shelf, the Convention creates an international cooperation mechanism based on reporting and consultation.[25] A state party that discovers UCH in these zones must report it to the coastal state and to UNESCO. (Article 9) The coastal state must then notify other state parties with verifiable links—such as the flag state, cultural origin state, or historical origin state. Subsequently, all concerned states are expected to consult to designate a "coordinating state." (Article 10(3)) Once designated, the coordinating state is responsible for organizing and implementing specific protective measures based on collective agreement, with all parties obligated to cooperate. (Article 10(5)) The UCH Convention also authorizes coastal states to take urgent interim measures against imminent threats to UCH in their EEZ or continental shelf. (Article 10(4)) A similar reporting, notification, and consultation system applies to UCH located in the area beyond national jurisdiction. (Articles 11 & 12) While the Convention's cooperation mechanisms may face practical challenges such as procedural complexity and potential delays, its reporting and notification system represents a significant institutional response to the jurisdictional ambiguities left by the UNCLOS. It creates a structured platform for multilateral consultation, shifting focus toward the preservation of cultural heritage and encouraging cooperation among all states who have a demonstrable interest in the UCH.

However, the regional impact of the UCH Convention remains limited in Northeast Asia, as none of the key coastal states—China, Japan, or South Korea—has yet ratified the instrument mainly because of, e.g., the Conflict with Maritime Jurisdictions; Geopolitical Sensitivity in Northeast Asia; "In Situ" Preservation vs. Practical Recovery; and Ownership and State Sovereignty.[26] This reveals a deeper structural gap: at the international level, the UNCLOS offers only general principles with limited enforceability, while the UCH Convention lacks regional participation.[27] Consequently, protection efforts in Northeast Asia rely primarily on the domestic laws of the three key coastal states.

25 Lin, *supra* note 19.

26 *See generally* Scovazzi, *supra* note 3; Xintong Li & Yen-Chiang Chang, *A Step Closer to the Convention on the Protection of the Underwater Cultural Heritage 2001: China's Latest Efforts in Regulation*, 147 Marine Pol'y 5-7 (2023); Sarah Ward & Mingfei Ma, *Protection of the Underwater Cultural Heritage in Asia: Policy, Law and Practice*, 143 Marine Pol'y 2-3 (2022).

27 Hui Zhong, *The protection of underwater cultural heritage in disputed maritime areas*, 44(4) Asian Persp. 651-76 (2020).

IV. Domestic Legislation in China, Japan, and Korea: A Comparative Analysis

A. Overview: Divergent Legislative Approaches and Principles

1. China

China has established a highly specialized and state-led protection system. The cornerstone is the Regulations on the Protection of Underwater Cultural Relics (UCH Regulations: **中华人民共和国水下文物保护管理条例**), which operationalizes the general principles of the Cultural Relics Protection Law within the underwater domain. These regulations have been systematically strengthened through strategic revisions, significantly enhancing their preventive and proactive capacities. A pivotal example was the 2022 amendment, which established a concrete legal basis for the creation of Underwater Cultural Heritage Protection Zones.[28] This innovation was subsequently elevated and solidified by the revised Cultural Relics Protection Law (**中华人民共和国文物保护法**), which came into effect on March 1, 2025.

As the fundamental statute in the field, the formal codification of the "Underwater Cultural Relics Protection Zone" system marks a critical development, granting the regime higher legal authority and coherence. (Article 40) Under this system, provincial-level governments can designate and manage entire maritime areas with high relic concentrations, institutionalizing a preemptive, protection-first paradigm. An integral part of this updated framework is the mandatory pre-construction assessment mechanism. (Article 43) It requires any major underwater projects prior to archaeological investigation and assessment—such as the construction of cross-sea bridges, submarine cables, or dredging activities, thereby preventing destructive impacts at and to the source.[29] Under this reinforced system, the state, primarily through the National Cultural Heritage Administration and its dedicated Underwater Cultural Heritage Protection Center, leads all core activities, including surveys, archaeological excavations, and research. In this regard, any international

28 PRC Ministry of Culture and Tourism, Answer Reporters' Questions on the Revision of the Regulations on the Protection and Management of Underwater Cultural Relics [**司法部、文化和旅游部、国家文物局有关同志就《中华人民共和国水下文物保护管理条例》修订答记者问**] (2022), https://zwfw.mct.gov.cn/flagship/zcjd/zcjdDetail?uuid=310.

29 PRC, What Changes have been Brought about by the Implementation of the Newly Revised Cultural Relics Protection Law? [新修订的文物保护法施行，带来哪些变化？] (Mar. 4, 2025), https://www.gov.cn/zhengce/202503/content_7009974.htm.

cooperation must align with these state-led projects, which ensures unified planning, direct administrative oversight, and the protection of national interests.[30]

2. Japan

Japan does not have a separate legal category for UCH; rather, its protection is primarily administered under the existing framework for "Buried Cultural Properties" within the Law for the Protection of Cultural Properties. This model relies on a multi-agency process: local boards of education manage and register sites, while newly discovered objects require an initial assessment by police regarding their status.[31] Although this approach utilizes existing legal resources, its non-specialized nature presents practical challenges, such as the efficiency of site registration.[32] This situation can be attributed to the relatively slow development of the UCH protection system in Japan.[33]

3. Korea

Korea's systematic protection of UCH began in the latter half of the 20th century.[34] Its legal framework, originally centered on the 1962 Cultural Heritage Protection Act (modeled after Japanese law), has undergone significant modifications since its inception. Following the country's accession to the World Heritage Convention, the traditional term "cultural property (문화재)" has been progressively replaced by the broader concept of "national heritage (국가유산)."[35] This reform process culminated in the landmark passage of the Framework Act on National Heritage in 2023 (국가유산기본법) and the enactment of related laws, such as the Act on Conservation and Utilization of Cultural Heritage (문화유산

30 Bingbin Lu & Shichao Zhou, *China's State-led Working Model on Protection of Underwater Cultural Heritage: Practice, Challenges, and Possible Solutions*, 65(1) Marine Pol'y 39-47 (2016).

31 Japanese Agency for Cultural Affairs (JACA), How to Protect Underwater Ruins (Report) [『水中遺跡保護の在り方について』（報告）] (2017), at 13-5, https://www.bunka.go.jp/seisaku/bunkazai/shokai/pdf/r1392246_01.pdf.

32 Randall Sasaki & Setsuo Imazu, The History, Status, and Future of Underwater Cultural Heritage Management in Japan (2017), at 7-8, http://www.themua.org/collections/files/original/21e51f4b41e1b3395559720616aed879.pdf; Tatsuya Nakada & Toshiaki Hayashibara, The Cultural Property of Military Forts on the Sea or Kai-hou in Tokyo Bay: From the viewpoint of underwater cultural heritage, at 8-9, http://www.themua.org/collections/files/original/9f0ba36f1fb6110060cb154fdaf0b66e.pdf.

33 JACA, *supra* note 31.

34 Park & Choe, *supra* note 6.

35 Hanhee Hahm & Yong Kim, *An Examination of the Developmental Process and Characteristics of the Korean Intangible Cultural Heritage Protection System*, *in* Handbook on Intangible Cultural Practices as Global Strategies for the Future 285-308 (Christoph Wulf ed., 2025).

의 보존 및 활용에 관한 법률), which came into force in May 2024. These legislative changes mark a major systemic shift in the country's approach to heritage protection.

The updated legal framework classifies "heritage" into three integrated domains including cultural, natural, and intangible, collectively termed "national heritage." While retaining a strong central governance model, the new system substantially bolsters preventive mechanisms by mandating preliminary archaeological surveys prior to major construction projects and operating through a coordinated, multi-tiered management structure spanning the national to local levels.[36] Such a duty to "surface survey" aims to ensure heritage integrity through prior assessment, proactive prevention, and continuous oversight. Institutional reforms have followed these legal developments. In May 2024, to align with the new legislative paradigm and its terminology, the former Cultural Heritage Administration was officially renamed and reorganized as the National Heritage Service (국가유산청). This restructuring tries to enhance the agency's capacity to implement highly advanced policies in accordance with both domestic objectives and broader international guidelines, including those of UNESCO.[37]

4. Evaluation

The differences in these three protection systems reflect varying institutional choices in addressing the challenges of UCH preservation from highly specialized, strong state intervention models to a reliance on pre-existing general legal frameworks. These distinct legal ideas and implementation models may lead to divergent interpretations and approaches when heritage is linked to transnational history or located beyond clear jurisdictional boundaries.

B. Comparative Criteria for Defining and Selecting Protected Objects

1. China

China employs a spatio-historically defined system. Its UCH Regulations clearly define "underwater cultural relics" as being "any underwater remains located within its internal waters, territorial seas, and jurisdictional maritime

36 Act on the Protection and Inspection of Buried Heritage, art. 6 (Protective Measures for Construction Projects); Framework Act on National Heritage art. 4.

37 Korea Heritage Service, Vision & Mission, https://english.khs.go.kr/html/HtmlPage.do?pg=/about/vision_mission.jsp&mn=EN_04_02.

areas —and originating from China." (Article 2) This encompasses a wide chronological range, from ancient oceanic trade vessels, like the Nanhai No.1 (Song/Yuan dynasties), to historically significant modern shipwrecks, such as the Zhiyuan from the First Sino-Japanese War.[38] Notably, the UCH Regulations specify an exception for objects submerged after 1911 that have no relevance to major historical events, revolutionary movements, or notable figures, thereby narrowing the scope for certain modern artifacts. (Article 2)

2 Japan

Japan integrates UCH within the broader category of "buried cultural properties" under the Law for the Protection of Cultural Properties (文化財保護法). This approach extends protection uniformly to a wide chronological spectrum, from prehistoric shell mounds to modern-era shipwrecks. A particularly significant and sensitive category within this spectrum comprises sunken warships, such as Yamato from World War II. The Japanese government asserts claims over these sites, framing them not merely as archaeological resources but as "maritime graves" deserving of respect.[39] Consequently, their management transcends pure heritage conservation, as they are imbued with political weight as potential war graves and national symbols of power embedded within Japan's modern militarized past.

3. Korea

Korea prioritizes a national historical narrative in its selection practice, with the legal definition evolving from the traditional framework. The former Cultural Heritage Protection Act defined "underwater cultural heritage" broadly to encompass submerged artifacts and sites of historical, artistic, or academic value. (Article 4) This has been substantively expanded and reframed by the Framework Act on National Heritage (2023). Article 3 of this new law defines "national heritage" as "cultural, natural, and intangible heritage—formed either by human or natural forces—that holds significant historical, artistic, academic, or scenic value for the nation, its people, or the world." It explicitly ties their values to reinforcing a distinct Korean cultural identity and national uniqueness. In practice, this legal conception codifies a clear tendency to prioritize objects

38 PRC, Underwater Archaeology in China [中国水下考古经历从无到有、从弱到强—唤醒沉睡海底的历史瑰宝] (July 7, 2024), https://www.gov.cn/yaowen/liebiao/202407/content_6961829.htm.

39 US Federal Register, Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property (Feb. 05, 2004), https://www.federalregister.gov/documents/2004/02/05/04-2488/office-of-ocean-affairs-protection-of-sunken-warships-military-aircraft-and-other-sunken-government.

perceived as having a direct link to the Korean historical continuum, directly serving the goal of identity construction. For instance, wrecks like the Jindo Ship—a Yuan dynasty vessel interpreted as evidence of Koryo dynasty's maritime exchange — are emphasized for their potential to illuminate specific periods of Korean history and commerce, thereby materially anchoring and validating the national narrative.[40]

4. Evaluation

The distinct legal frameworks established by China, Japan, and Korea pose significant challenges to the protection of UCH. First, conflicts may arise from the divergent legal concepts and their practical application. China's framework centers on relics "originating from China," while Korea prioritizes assets that are "a product of Korean history and tradition," embodying national identity. In practice, however, the pivotal standard of "originating from China" introduces distinct operational complexities. The core challenge lies in defining and evidencing 'origin' for archaeologically complex sites.[41] In the case of ancient trade vessels carrying mixed cargo, for instance, does 'origin' refer to the shipbuilder's nationality, the home port, the owner's identity, or the cultural source of the primary artifacts? Such determination proves particularly complex regarding wrecks from past regional trade networks, given their multifaceted material provenance. Similarly, demonstrating a direct and exclusive link to a singular national history can be contentious. These differing priorities and definitional ambiguities could bring them to competing claims over a single historic shipwreck from past transnational trade. In addition, disparities in protection standards and scope may obstruct holistic preservation efforts. For example, a merchant ship that sank in the late nineteenth century in adjacent waters might not meet China's protection criteria due to its "post-1911" restrictive clause, yet it could qualify under the frameworks of Japan or Korea.[42] This inconsistent status for the same heritage creates practical difficulties for any cross-national collaborative protection initiatives.

Finally, profound differences in historical perceptions present a deep-seated

40 Segil Jang et.al., A Study on the Designation of Maritime Cultural Heritage International Exchange Districts (2024), at 2-4, https://www.jthink.kr/jthink/eng/inner.php?sMenu=A0000&pno=3&mode=view&no=76.

41 Kuen-chen Fu, *Chinese Perspective on the UNESCO Convention on the Protection of the Underwater Cultural Heritage*, 18(1) Int'l J. Marine & Coastal L. 109-26 (2003); Park & Choe, *supra* note 6.

42 Hongye Zhao, *Recent Developments in the Legal Protection of Historic Shipwrecks in China*, 23(4) Ocean Dev. & Int'l L. 305-33 (2009).

challenge.[43] When Japan preserves WWII-era warships as sites of national memory, it carries inherent political symbolism. For those who suffered during the war, such as China and Korea, these wrecks are potent symbols of invasion and loss. This fundamental divergence elevates the issue beyond archaeology and law, transforming it into a politically charged matter of contested historical narratives and public sentiment, thereby severely complicating the search for regional consensus.

C. Divergent National Regulations on Ownership and Rights

1. China

China maintains the most explicit and absolute claim through its UCH Regulations, combining territorial and personal jurisdiction: it asserts ownership not just over all relics within its territorial waters, but also extends this to relics of Chinese origin or unknown provenance located within its continental shelf and EEZs. (Articles 2 & 3)

2. Korea

Korea's legal framework for underwater cultural heritage is primarily established under the Act on the Protection and Inspection of Buried Cultural Heritage. Unlike China's system, it does not assert explicit state ownership in direct terms. By mandating state protection for "all tangible cultural heritage" within its maritime zones, however, the Act establishes a de facto presumption of state control, granting the government final authority over the management and disposition of discoveries.[44] This fundamental principle of state stewardship has been redefined from "cultural property" to "national heritage" by the Framework Act on National Heritage (2023). This new paradigm has established a public right to enjoy cultural heritage. (Articles 5 & 23)

The right of access to heritage as a civic entitlement stands in distinct philosophical contrast to the uncompromising state-ownership frameworks typified by the Chinese model. This rights-based approach is integrated into a comprehensive protection system designed for holistic coverage, as mandated by the Framework Act on National Heritage. The Act, legally defining "national

43 Zhen Lin, *The protection of sunken WWII warships located in Indonesian or Malaysian territorial waters*, 113(1) Marine Pol'y 1-7 (2020).

44 Act on Protection and Inspection of Buried Cultural Heritage, art. 20. It establishes *de facto* state control over all cultural heritage discovered within Korean maritime zones. It applies within the territorial sea, exclusive economic zone (EEZ), and continental shelf.

heritage" to encompass not only properties from the past but also those of present and future value (Article 3), provides that its protection system is designed to include both designated and non-designated heritage items (Article 23) and to mandate those protective measures across varied spatial scales—from individual sites and cultural routes to broader heritage clusters or areas. (Articles 24 & 27) Consequently, while the state retains its stewardship role, the contemporary protective systems reflects a dual emphasis: embedding a rights-based approach and strengthening preventive conservation through an expanded and proactive legal framework.[45]

3. Japan

In contrast, Japan presents a significant internal legal contradiction. The Law for the Protection of Cultural Properties designates important UCH as public cultural property to be preserved for the national interest. (Article 93) This public stewardship principle, however, is directly challenged by the Law concerning the Salvage of Shipwrecks and the Lost Property Law,[46] which establish that, under specified conditions, salvaged or found items can become the legal property of the finder.[47]

These fundamentally divergent approaches to the UCH ownership reflect two irreconcilable governance paradigms presenting a profound dilemma for heritage protection. At one end of the spectrum is China's model of absolute state ownership, which applies to all its maritime zones despite its legal attempts to differentiate between relics of various origins. While this centralized approach may offer certain advantages for control and preservation, its broad assertion of sovereignty creates inherent tensions with international norms—particularly the principles of cooperation and the recognition of rights accorded to flag states and states of cultural origin.[48] This approach could serve to discourage practical international collaboration, as potential partners may perceive that their legitimate interests—such as research access, co-authorship, or shared stewardship—would be overridden within such an absolute framework.[49] A similar dynamic exists in Korea's legal system.

45 Hahm & Kim, *supra* note 35.

46 Asian Research Institute of Underwater Archaeology, Underwater cultural Relics and Cultural Property Protection Law [水中遺跡と文化財保護法], https://www.ariua.org/archaeology/in_japan/protection_law.

47 JACA, *supra* note 31.

48 Exemplary projects include the complete salvage of the Nanhai No. 1 and the comprehensive relocation of the Yangtze River Estuary No. 2 ship.

49 Nguyen Ngoc Lan, China wants to conserve even Vietnam's heritage? VIETNAMNET GLOBAL (Sept. 15, 2014), https://

Through mandatory reporting and state-led disposition mechanisms, its system establishes de facto state control, which can marginalize other states' claims, hindering cross-border cooperation.

At the opposite pole lies Japan's legal model, characterized not merely by ambiguity but by an intrinsic conflict between public heritage protection and private ownership incentives. The core tension in this regime stems from the contradictory aims of the protective Cultural Properties Protection Law and the privatizing provisions of the Law concerning the Salvage of Shipwrecks and the Lost Property Law. This framework encourages commercial operators to pursue private gain, as demonstrated by the systematic salvage of WWII wrecks in the Pacific for valuable metals.[50] Within this system, private profit frequently takes precedence over public stewardship, leading to the irreversible loss of scientific and archaeological context at culturally significant sites.[51]

In summary, the stringent state-centric models of China and Korea and the conflicted, market-leaning model of Japan converge in a mutually detrimental outcome: the erosion of effective UCH preservation. The former creates barriers to international cooperation essential for protection, while the latter actively incentivizes commercial exploitation and contextual disintegration.

D. Inconsistent Rules on Jurisdiction

The legal frameworks governing UCH in China, Japan, and Korea are divergent, ranging from expansive to highly constrained in scope. China employs a multi-tiered system focusing on the origin of artifacts. Its laws assert jurisdiction over all UCH found within its internal waters and territorial sea, regardless of origin. This claim extends to its EEZ and continental shelf, where the relics of Chinese origin or unknown ownership will be applied.[52] China also asserts the right to "identify the owner" over relics of Chinese origin located in international waters or within other states' jurisdictions.

vietnamnet.vn/en/china-wants-to-conserve-even-vietnams-heritage-E111506.html.

50 Holmes et al., *supra* note 2.

51 JACA, *supra* note 31.

52 PRC UCH Regulations arts. 2-3.

Table 1: Progression of UCH Governance Conflicts across Maritime Zones

Maritime Zone	Primary Conflict Type	Key Legal Tension	Expected Outcome
Territorial Sea	Absolute Sovereignty	Internal National Laws vs. International Standards	Fragmented preservation approaches
EEZ	"Hard Conflict"	Coastal State Jurisdiction vs. State of Cultural Origin	Legal stalemate and jurisdictional deadlock
High Seas	Strategic Rivalry	Overlapping Origin-based Claims (Nationalism)	Incentivized competition and erosion of cooperation

Source: Compiled by the authors.

Korea adopts a hybrid principle, combining geographic and origin-based criteria. According to the Act on the Protection and Inspection of Buried Cultural Heritage, its jurisdiction covers all tangible cultural heritage discovered within its internal waters, territorial sea, and EEZ, irrespective of origin. (Article 3.1) Beyond these zones, it claims jurisdiction specifically over heritage of Korean origin found on the high seas. (Article 3.2) Within the EEZ, Korea's jurisdictional claim is broader than China's, as it applies regardless of origin. Actually, on the high seas, both countries' claims are similarly origin-focused. Japan's framework is notably limited in geographical scope under the Law for the Protection of Cultural Properties. This Law does not have explicit provisions regarding the jurisdiction over UCH in its EEZ or continental shelf.

The interplay of these divergent frameworks generates a predictable and intractable regional governance crisis, characterized by strategic competition, and critical protection failures across maritime zones. Within EEZs, "hard conflicts" are inevitable in this context. For instance, the discovery of a historical shipwreck with Chinese origin in Korea's EEZ would likely give rise to a direct clash between Korea's comprehensive jurisdiction and China's counter-claim based on cultural origin, resulting in a legal stalemate.[53]

Conversely, Japan's legally constrained framework creates a profound protection vacuum. The absence of explicit statutory provisions for its EEZ and continental shelf relegates heritage in these vast areas to a "legal limbo," leaving

53 Mingfei Ma & Pengjv Ren, *On the Ownership of Underwater Cultural Heritage in the South China Sea: Conflict and Coordination* [南海海域水下文化遗产的所有权归属：冲突与协调], 39(2) Hum. & Soc. Sci. J. Hainan U. [海南大学学报人文社会科学版] 27–37 (2021).

it acutely vulnerable to commercial salvage and natural degradation.[54] On the high seas, the conflict transforms into strategic rivalry, as both China and Korea may assert overlapping origin-based claims for the same relics. This incentivizes competition rather than the cooperation under international law.[55] In essence, these national approaches do not merely differ; they actively produce a regional landscape riddled with disputes and practical protection gaps. Collectively, they constitute a crisis which cannot be resolved by a single nation.

E. The Challenge in Disputed Maritime Zones

For the effective safeguarding of UCH, national jurisdiction should be clearly exercised. In this regard, the overlapping and unsettled maritime boundaries in Northeast Asia constitute a foundational obstacle. There are two challenge interrelated: unresolved maritime delimitation and underlying territorial disputes.[56] In the East China Sea, a fundamental disagreement exists between China and Japan regarding the applicable legal principles for defining the continental shelf and EEZ. China is advocating the "natural prolongation" principle, while Japan is insisting on the median-line approach.[57] Similarly, China and Korea continue to engage in protracted negotiations over overlapping maritime claims in the Yellow Sea.[58]

Furthermore, these maritime delimitation disputes are often compounded and intensified by unresolved territorial sovereignty claims over key islands, as maritime zones are measured from territorial baselines on land. The sovereignty disputes over the Diaoyu/Senkaku Islands (China vs. Japan) and the claims of Japan over Dokdo/Takeshima would obstruct the establishment of definitive maritime boundaries.[59] Ultimately, these disputes create expansive maritime zones of ambiguous or contested jurisdiction. Regarding the UCH protection, specifically, such legal ambiguity would bring a practical governance vacuum.

54 Forrest, *supra* note 20.

55 Kim Browne & Murray Raff, *The Protection of Underwater Cultural Heritage—Future Challenges*, *in* International Law of Underwater Cultural Heritage 392-3 (Kim Browne & Murray Raff eds., 2023).

56 Seokwoo Lee, *Evolution of the Law of the Sea and Ocean Policy in Northeast Asia*, 55(4) Ocean Dev. & Int'L. L. 501-12 (2024).

57 Xinjun Zhang, *Why the 2008 Sino-Japanese Consensus on the East China Sea Has Stalled: Good Faith and Reciprocity Considerations in Interim Measures Pending a Maritime Boundary Delimitation*, 42(1-2) Ocean Dev. & Int'L. L. 53-65 (2011).

58 *China and Korea are advancing negotiations on maritime delimitation* [外交部：中韩双方正在推进海域划界谈判], People's Daily (Apr. 21, 2025), https://www.peopleapp.com/column/30048852597-500006215043.

59 Suk Kyoon Kim, *The Senkaku Islands Dispute between Japan and China: A Note on Recent Trends*, 52(3) Ocean Dev. & Int'L L. 260-73 (2021).

Beyond this jurisdictional uncertainty, the UCH protection in these contested waters is further undermined by three political issues. First, the discovery of shipwrecks in disputed areas would frequently heighten diplomatic tensions, as unilateral archaeological initiatives are often perceived as claims of sovereignty rather than scientific endeavors, thereby politicizing conservation efforts. A notable example is the Scarborough Shoal incident, whereby China's intervention to halt Philippine maritime archaeology was viewed internationally as an action tied to its claims in the South China Sea, while China regarded the Philippines' archeological activities as a violation of its domestic heritage legislation.[60] Second, despite the clear importance of intelligence sharing and joint law enforcement in deterring unauthorized salvage, political sensitivities can severely constrain this kind of cooperation. Sharing operational data is often seen as compromising sovereign information, while participating in joint enforcement could be interpreted as tacit acceptance of another state's jurisdictional claims.[61] As a result, cooperative initiatives are frequently stalled by considerations of sovereignty, creating regulatory gaps and leaving the UCH sites inadequately protected. Third, competing nationalist historical narratives often instrumentalize the interpretation of UCH. For instance, China's maritime archaeological activities in the South China Sea have been widely interpreted as supporting its territorial claims and historic rights—a misunderstanding that the Chinese government has made little effort to publicly clarify or correct.[62]

These challenges are not isolated but form a self-reinforcing vicious cycle: political distrust fuels jurisdictional conflicts, which create enforcement vacuums that enable illicit salvage; the ensuing destruction of heritage then inflames nationalist narratives, which in turn deepen the initial political distrust. Within this detrimental cycle, the ultimate casualties are the UCH and their associated historical sites in which they are found.

F. The Legal Status of Sunken State Vessels

A "sunken state vessel" is not explicitly defined in the UNCLOS or the UCH

60 Jeremy Page, *Chinese Territorial Strife Hits Archaeology*, Wall St. J. (Dec. 2, 2013), https://www.wsj.com/articles/chinese-territorial-strife-hits-archaeology-1385954351.

61 *E.g.*, overlapping maritime claims have led China and Korea to establish a Provisional Measures Zone in the Yellow Sea under their fisheries agreement while negotiating their maritime boundary. *See* Kyong-ae Choi, *Seoul monitoring China-installed buoys, citing possible military purpose*, Yonhap News Agency (June 2, 2025), https://en.yna.co.kr/view/AEN20250602010000320.

62 Perez-Alvaro & Forrest, *supra* note 16; Hui Zhong, *Underwater Cultural Heritage and the Disputed South China Sea*, 34(3) China Info. 361-82 (2020).

Convention, but its meaning can be inferred from related provisions. The UNCLOS defines a "warship" primarily by its active service and command structure (Article 29), while the UCH Convention refers more broadly to "state vessels and aircraft" based on government ownership or exclusive non-commercial service at the time of sinking. (Article 2(8)) For the latter convention, a sunken state vessel may be classified as UCH if it has been submerged for at least a century and possesses historical significance.[63] Such definitional ambiguity within international law is particularly consequential in Northeast Asia, where the waters of China, Japan, and Korea contain numerous such wrecks due to a strong history of naval conflict.

In this regard, the critical question is whether sovereign immunity survives a vessel even after it has sunk. Japan champions the most absolute flag-state position. The Communication from the Government of Japan on the Legal Status of Sunken State Vessels (Japan's 2003 Communication) declares perpetual ownership and control over its sunken state vessels, regardless of their location or the time elapsed, unless ownership is explicitly relinquished.[64] Framing these vessels as "maritime graves," Japan insists that any activity require its express consent, a policy rooted in a strict interpretation of sovereign immunity.[65]

Conversely, China's approach is founded on robust coastal state jurisdiction. Its UCH Regulations mandate control over all UCH within its territorial seas, granting no exception for foreign state wrecks. In practice, this comprehensive territorial model directly conflicts with immunity claims, which was demonstrated by China's salvage of the Japanese vessel Awa Maru in the 1970s. Japan protested the action, citing the ship's status as a state-owned, non-commercial vessel. However, China proceeded with recovery operations, signaling a de facto rejection of any post-sinking immunity claims.[66]

Similar to China, Korea's cultural heritage legislation establishes a broad jurisdictional framework over UCH within its maritime zones. Its legal architecture prioritizes coastal state control and management over sovereign immunity claims by foreign countries, creating a structural tension with Japan's position. In this context, the core conflict lies in the dichotomy between the flag-state principle of permanent immunity (as typically asserted by Japan) and the coastal-state principle of territorial sovereignty and heritage management (as

63 UCH Convention art. 1.

64 US Federal Register, *supra* note 39.

65 *Id.*

66 Guo, *supra* note 8.

asserted by China and Korea). Whether a state vessel has continued immunity after it has sunk is a significant challenge under international law. While flag states invoke the enduring legal status of warships and state property, this position faces rigorous scholarly challenge.

Furthermore, functional continuity of a sunken vessel's status as a "warship" is increasingly questioned; critics argue that abandonment may be inferred from circumstantial evidence or prolonged period of inaction.[67] The UNCLOS and the UCH Convention avoid a definitive resolution. Notably, Article 2(8) of the UCH Convention explicitly defers the issue of sovereign immunity to general international law, creating a circular reference that presupposes a coherent rule which the Convention itself was intended to clarify.[68] This legal ambiguity has thus bifurcated state practices, which in turn impede the emergence of any binding customary international law on the matter.[69] In particular, Chinese scholars regard the perpetual immunity of sunken vessel as a historical injustice and an infringement on its sovereignty.[70]

Conversely, major maritime powers consistently claim continuing immunity for their sunken state craft, a position reinforced by domestic jurisprudence. This entrenched polarization precludes the emergence of a uniform state practice, thereby hindering the crystallization of a new customary norm.[71] In a recent US case concerning vessels such as the Mercedes, sovereign immunity was affirmed for sunken state vessels.[72] In contrast to the US approach, however, other state practices remain inconsistent and limited.[73]

Meanwhile, non-binding soft law instruments has fallen short of establishing a definitive legal standard to resolve this impasse. The 2015 Resolution of L'Institut de Droit International, while affirming the immunity position, lack the normative force to alter fundamental divergences in operational state behavior.[74]

67 Dromgoole, *supra* note 3.

68 For details, *see* David Bederman, *Rethinking the legal status of sunken warships*, 31(1-2) Ocean Dev. & Int'l L. 97-125 (2000).

69 Roberta Garabello & Tullio Scovazzi, The Protection of the Underwater Cultural Heritage: Before And After The 2001 UNESCO Convention 89-92 (2003).

70 Guo, *supra* note 8.

71 US Federal Register, *supra* note 39.

72 Jie Huang, *Odyssey's Treasure Ship: Salvor, Owner, or Sovereign Immunity*, 44(2) Ocean Dev. & Int'l L. 170-84 (2013).

73 Craig Forrest, *An International Perspective on Sunken State Vessels as Underwater Cultural Heritage*, 34(1) Ocean Dev. Int'l L. 41-57 (2003).

74 Institut de droit international, The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law (Aug. 29, 2015), https://www.idi-iil.org/app/uploads/2017/06/2015_Tallinn_09_en-1.pdf.

Therefore, such a critical governance vacuum—characterized by doctrinal debates, ambiguous treaty laws, contradictory state practices, and ineffective soft laws—fails to offer a conclusive resolution to the disputes surrounding UCH protection.[75]

V. Pathways Forward: Cooperative Solutions and Future Prospects

A. The Necessity and Feasibility of International Cooperation

Article 303 of the UNCLOS imposes a duty on states to protect archaeological and historical objects through cooperation. Such a general duty is elaborated in the UCH Convention. Article 2 mandates inter-state cooperation. Article 10(7) conditions activities directed at state vessels within the continental shelf and EEZ upon the dual requirements of flag state's consent and interstate cooperation.[76] Significantly, this duty to cooperate extends to disputed maritime areas, where Articles 74(3) and 83(3) of the UNCLOS obligate states to pursue provisional arrangements of a practical nature.[77] Consequently, such a collaborative approach provides a viable legal pathway for overcoming conflicts.[78]

In practice, international collaboration is a pragmatic and effective mechanism. There are successful examples in both multilateral and bilateral formats. Multilaterally, the joint management of the MS Estonia site by Sweden, Finland, and Estonia exemplifies how shared stewardship could prioritize memorial protection and technical cooperation.[79] Bilaterally, the partnership between France and Egypt in archaeological research on shipwrecks in Alexandria's Eastern Harbor, notably at Portus Magnus, underscores a commitment to shared scientific missions.[80] This pragmatic model is particularly instructive for sensitive disputes involving sunken state vessels. The 2020

75 Forrest, *supra* note 73; Lin, *supra* note 43.

76 Lin, *supra* note 19; Wu, *supra* note 19.

77 Hui Zhong, *supra* note 27.

78 Sarah Dromgoole, *Legal Protection for the Underwater Cultural Heritage: The Immediate Challenge and Methods of Response*, *in* Recent Developments in the Law of the Sea and China 467-82 (Myron Nordquist et al. eds, 2005).

79 Kari Takamaa & Philippe Lunetta, *Legal and Ethical Aspects concerning Human Remains in Water and Burial at Sea*, *in* Drowning: Prevention, Rescue, Treatment 1211-7 (Joost Bierens eds., 2014).

80 Franck Goddio & David Fabre, *Port of Alexandria: Underwater Archaeology*, *in* Encyclopedia of Global Archaeology 8737-45 (Claire Smith ed., 2020).

Australia–Netherlands agreement concerning WWII shipwrecks in the Java Sea, for instance, focuses on war grave protection and research, while setting aside unresolved legal questions.[81] These precedents affirm that cooperation offers a functional model for states to advance mutual interests for conservation despite underlying legal disagreements.[82]

These practices provide a highly relevant framework for China, Japan, and Korea in addressing shared challenges related to UCH. In order to apply this model to trilateral action, however, political will is necessary. Fortunately, these countries have demonstrated a commitment to mutual understanding and cooperation.[83] As noted by the Secretary-General of the Trilateral Cooperation Secretariat, they have exhibited a capacity to "turn crises into opportunities."[84] This political commitment was further substantiated by the Kyoto Declaration (Sept. 12, 2024), which emphasized enhanced cooperation through heritage preservation and cultural exchanges.[85] These political and diplomatic foundations create a solid platform for the UCH protection.

B. Assessing Feasible Models for Northeast Asia

The UCH protection is an emerging topic in international ocean governance. In the specific agreement concerning the Titanic, for example, relevant countries have established a protective framework to prevent ownership or jurisdictional claims[86] as well as regional regimes, like those in the Mediterranean and Baltic Sea.[87] There are two models specific to China, Japan, and Korea: The Marine Protected Areas (MPAs) and the Provisional Measures Zone (PMZ) frameworks.

The MPAs may be established beyond strict jurisdictional boundaries

81 The Netherlands and Australia, Cultural Policy 2025–2028, https://www.netherlandsandyou.nl/web/australia/themes/culture/cultural-policy-25-28.

82 Joanna Mossop & Clive Schofield, *Options for Cooperation and Joint Management in Disputed Areas of the Continental Shelf beyond 200 Nautical Miles*, 55(4) Ocean Dev. & Int'l L. 535-44 (2024).

83 PRC Ministy of Foreign Affairs, Joint Declaration of the 9th ROK-Japan-China Trilateral Summit (June 1, 2024), https://www.mfa.gov.cn/eng/xw/zyxw/202406/t20240601_11368782.html.

84 Jeong-Won Lim, *Korea, Japan, China progress by 'turning crises into opportunities,' says Trilateral Cooperation Secretariat chief*, JoongAng Daily (Mar. 11, 2025), https://koreajoongangdaily.joins.com/news/2025-03-11/national/diplomacy/Korea-Japan-China-progress-by-turning-crises-into-opportunities-says-Trilateral-Cooperation-Secretariat-chief/2259208.

85 *Ceremony held in Japan to award Culture Cities of East Asia 2025*, Xinhua News (Jan. 16, 2025), https://english.news.cn/asiapacific/20240913/52741434ef8e4446a345c51137f5589f/c.html.

86 Mariano Aznar & Ole Varmer, *The Titanic as Underwater Cultural Heritage: Challenges to its Legal International Protection*, 44(1) Ocean Dev. & Int'l L. 96-8 (2013).

87 Alessio Calantropio & Filiberto Chiabrando, *The Evolution of the Concept of Underwater Cultural Heritage in Europe: A Review of International Law, Policy, and Practice*, 6(12) Heritage 7660-73 (2023).

for specific conservation purposes safeguarding both ecological and cultural heritage. Notably, the UNESCO World Heritage Convention now recognizes marine areas of "cultural significance."[88] For example, the Papahānaumokuākea Marine National Monument in the US protects natural and cultural resources,[89] while the Indonesia–Australia agreement designates the wreck of HMAS Perth as a maritime conservation zone.[90] Through MPAs around historically significant wreck sites, China, Japan, and Korea could pursue their shared interest in researching, protecting, and preserving this common heritage.

While the MPA model offers a forward-looking conservation framework, the PMZ model provides a template for operational cooperation in the areas of overlapping claims. An example of the PMZ model was established around the Dokdo/Takeshima islets by the 1999 fisheries agreement between Korea and Japan.[91] The bilateral fisheries agreement permits regulated fishing while facilitating joint conservation measures.[92] In particular, the PMZ in this area does not prejudice either party's legal position regarding sovereignty or maritime boundaries.[93] Rather, the PMZ would have significant relevance for managing UCH in similarly contested maritime spaces.[94]

The application of either the MPA or PMZ model to protect shared UCH is both feasible and strategically advantageous for all three countries. First, political support exists within broader trilateral frameworks, such as the "China-ROK-Japan Cooperation Vision for the Next Decade" and the 2024 Kyoto Declaration's emphasis on enhanced cultural cooperation.[95] Second, all three states are parties to key international agreements, including the UNCLOS, the Convention on Biological Diversity, and the World Heritage Convention, which

88 UNESCO, The Operational Guidelines for the Implementation of the World Heritage Convention (2025), https://whc.unesco.org/en/guidelines.

89 Jing Wang, *On the Comprehensive Protected Area for Underwater Cultural Heritage in the South China Sea*, 44(4) China Ocean L. Rev. 67-91 (2022).

90 Kieran Hosty & James Hunter, *Death by a Thousand Cuts: an archaeological assessment of souveniring and salvage on the Australian cruiser HMAS Perth*, 47(2) Int'l J. Nautical Archaeology 281-99 (2018).

91 The ROK-Japan Fisheries Agreement 1999, art. 9.

92 Kentaro Serita, The Territory of Japan: Its History and Legal Basis 158-9 (2023).

93 Min Jung Chung, *Analysis of the Territorial Issue regarding the Liancourt Rocks between Korea and Japan*, 7(1) Korean J. Int'l & Compar. L. 60-4 (2019), https://brill.com/view/journals/kjic/7/1/article-p1_1.xml?srsltid=AfmBOooNN9v2MVzIDMwjAV4jgJneawKmKE2A3t7nhNNFp39fjS8iwO2M.

94 *South Korea says concerned by China's 'no-sail zone' in overlapping waters*, Korea Herald (May 24, 2025), https://m.koreaherald.com/article/10494664.

95 PRC, China-ROK-Japan Cooperation Vision for the Next Decade (Dec. 24, 2019), https://english.www.gov.cn/premier/news/201912/24/content_WS5e021e65c6d0bcf8c4c19616.html; *The culture ministers of South Korea, China and Japan sign the Kyoto Declaration to enhance understanding through cultural exchanges*, KBS News (Sept. 13, 2024), https://rki.kbs.co.kr/service/news_view.htm?lang=c&Seq_Code=83682.

provide a legal foundation for establishing protective zones as part of marine environmental stewardship.[96] Finally, these states possess similar cooperative models, such as the joint development zone established under the Korea-Japan Continental Shelf Agreement.[97] By leveraging the frameworks of MPAs and PMZs, the three countries can circumvent unresolved conflicts and concentrate on tangible common interests.

C. Moving beyond Political Suspicion

The discovery and research of UCH could become highly politicized and easily entangled with sensitive issues of sovereignty and maritime rights. An apprehension is that states concerned may view underwater archaeological activities as politically relevant to sovereignty claims. For example, if one country unilaterally conducts an archaeological project focusing on its own historical shipwrecks, other claimants might interpret it as an attempt to gather evidence for supporting "historic rights" or "historic possession" to strengthen its own legal stance.[98] Such suspicion fosters wariness of joint projects, fearing they may be exploited to legitimize another party's activities or reinforce its sovereignty claims in contested waters.[99]

However, UCH plays a very limited role in substantiating territorial sovereignty or maritime delimitation claims.[100] Under international law, the key elements for establishing territorial sovereignty are "effective possession with the intent to act as sovereign" and the "continuous and peaceful display of state authority."[101] Similarly, claiming historic rights requires demonstrating a state's long-term and exclusive exercise of jurisdiction over specific maritime areas. Sporadically discovered ancient shipwrecks hardly constitute sufficient legal evidence to prove such "continuous and effective control."[102] These wrecks

96 Wu, *supra* note 19.

97 Agreement between the Republic of Korea and Japan concerning the Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/jap-kor1974south.pdf.

98 Page, *supra* note 60.

99 Perez-Alvaro & Forrest, *supra* note 16.

100 Zhong, *supra* note 62.

101 On the criterion of effective control, *see Yemen/Eritrea Arbitration*, where the tribunal emphasized "an intentional display of power and authority … by the exercise of jurisdiction and State functions, on a continuous and peaceful basis." Conversely, in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, the ICJ held that activities of private individuals (e.g., fishermen) did not constitute étatique authority. *See* Malcolm Shaw, International Law 363-4 (2014).

102 Xinmin Ma, *Merits Award Relating to Historic Rights in the South China Sea Arbitration: An Appraisal*, 8(1) Asian

evidence vibrant trans-maritime trade networks—like the tributary system and Maritime Silk Route—representing shared regional heritage rather than exclusive sovereignty for any single state.[103]

In spite of political sensitivities, the UCH cooperation would not undermine the political and territorial sovereignty under international law. Such cooperation protects cultural heritage and builds mutual trust through low-risk technical exchange, creating a foundation for addressing broader regional maritime disputes.

VI. Conclusion

This research underscores that the safeguarding of UCH in Northeast Asia stands at a critical impasse, suspended between a pressing collective imperative for action and a complex entanglement of divergent national policies and deep-seated political sensitivities. An examination of the domestic legal frameworks in China, Japan, and Korea reveals not merely procedural discrepancies, but foundational differences in legislative philosophy and priority. China has cultivated a more centralized and assertive system; Japan administers UCH through its general statutes for "Buried Cultural Properties"; and Korea maintains regime reflecting its distinct administrative context. These disparities—evident in conflicting definitions, ownership principles, and jurisdictional claims—create a fragmented regional landscape that actively obstructs coordinated stewardship.

A formidable obstacle remains the political issue of sunken state vessels, particularly warships stemming from 20th-century conflicts. Entrenched national positions on sovereign immunity and ownership, intertwined with unresolved historical narratives, risk paralyzing any substantive initiative for cooperation. This challenge is acutely magnified within the region's disputed maritime zones, where overlapping jurisdictional claims create a governance vacuum, leaving invaluable heritage sites perpetually vulnerable.

Notwithstanding these challenges, this research contends that a functional, interest-driven pathway be both indispensable and attainable. The compelling need for cooperation, fueled by the transnational character of the heritage

J. Int'l L. 12-23 (2018).

103 Ran Guo, *China's Maritime Silk Road Initiative and the Protection of Underwater Cultural Heritage*, 32(3) Int'l L. Marine & Coastal L. 510-43 (2017).

and shared threats from natural degradation and human exploitation, must outweigh the inertia of dispute. Global precedents—such as the multilateral co-management of the MS Estonia and the bilateral Australia-Netherlands agreement on WWII shipwrecks—demonstrate that states can craft pragmatic arrangements that prioritize immediate conservation and scientific inquiry, while diplomatically deferring final resolutions on legal status.

For Northeast Asia, a viable model can be adapted from the established international marine governance, specifically the frameworks of MPAs and PMZ. While traditionally centered on fisheries, their core governance principle remains relevant: establishing cooperative regimes for agreed purposes in disputed areas, while explicitly suspending debates on sovereignty and delimitation. Given the regional sensitivities regarding territorial and maritime rights, this approach provides an essentially neutral and technical conduit for engagement. The protection of shared history presents a rare collaborative agenda that can be legitimately framed as the inherently apolitical and universal values for scientific preservation and common human legacy, thereby sidelining any political suspicion to allow practical progress to commence.

Received: Mar. 1, 2026
Modified: April 20, 2026
Accepted: May 1, 2026