

Violent Exclusions: Locating Performances of Absent Bodies in International Law

By

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Abstract

In response to UNESCO's 2001 *Convention on the Protection of the Underwater Cultural Heritage* and increased global access to subaquatic shipwreck sites by means of innovative deep-sea technologies, this thesis seeks to explore the shortcomings and implications of body regulation in international waters. By foregrounding historical colonial regulations of bodies across the middle passage, I survey contemporary changes in international oceanic laws and maritime archaeological practices used to evaluate wreck sites. Guided by scholars like Sarah Dromgoole, Timothy Darvill, Laurajane Smith, Craig Forrest, and Jean-Luc Nancy, I examine performative discourses around systems of *valuing* bodies and colonial narratives of commodification that these systems perpetuate. In an attempt to seek out counter-narratives, examining Chiharu Shiota's work *The Key in the Hand*, Nick Cave's "Sea Sick," and the *One Million Bones Project*, provides insight into ways of dismantling the present-absent dichotomy perpetuated by protectionist initiatives like those of the 2001 UNESCO *Convention*.

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Introduction: the Law, the Sea, and the Body

What is the word for bringing bodies back from water? From a “liquid grave”? Months later I do an Internet search for a word or phrase for bringing someone back from underwater that has a precise meaning as the unearthing contained within the word exhume. I find words like resurrect and subaquatic but not “exaqua.” Does this mean that unlike being interred, once you’re underwater there is no retrieval—that you can never ‘exhumed’ from water? The gravestone or tombstone marks the spot of interment, whether of ashes or the body. What marks the spot of subaquatic death? Families need proof, Koff says—they come looking for recognizable clothing and say, “I want the bones.” I, too, want the bones.

M. NourbeSe Philip, *Zong!*

Before nightfall on the evening of November 29th 1781, just as the slave ship *Zong* was nearing Jamaica on the last leg of its voyage from the coast of Africa, the crew made the unanimous decision to throw 133 slaves overboard to their death (Walvin 1 and 97, Krikler 1, Baucom 8). At eight that evening, fifty-four women and children were pushed overboard, composing the first of three waves of violent killings aboard the *Zong* (Walvin 98). Not two days later, on December 1st, forty-two men were thrown overboard followed by another thirty-eight more men and women; shortly thereafter, ten Africans jumped when they realized what was happening (98)¹. The premeditated decision to purposefully drown the 133 slaves “reflects the wider pattern of slave ships” where “[m]ass suffering, sickness and death formed a distinctive, inescapable background noise—and smell—from the slave decks” (54-5). However, the events surrounding the *Zong* make the legacy of the voyage vastly different from the countless slave ships that bared witness to the murder of slaves (Walvin 55, 101). The *Zong* is remembered as

¹ Although all of the 133 African men were handcuffed and in irons, one of the ten who jumped overboard managed to climb back onto the ship and survived the journey making the total number of deaths 132 (Walvin 98).

much for the events that occurred in the days before its arrival on Jamaica as for the events that occurred before the ship set sail and the court case that took place after its return (Walvin 134).

The killings on the *Zong* were both a “practical and a commercial decision” in a time where the “massive oceanic transportation of millions of Africans was not simply the result of *ad hoc*, unplanned circumstance,” but instead, “derived from carefully devised political strategies and economic policies in government and commercial offices throughout Europe” (Walvin 29-30). The slave trade across the Atlantic was supported by the legal, commercial, and medical culture whereby the murder of slaves was not only commonplace on slave ships, but it “could openly be justified in court” (Krikler 394). While the *Zong* murders were a familiar by-product of slavery in this instance, they were also surrounded by extraordinary circumstances that left an imprint on the public’s mind at the time. Leading up to the massacre, the *Zong* carried nearly 440 Africans on a ship that would normally transport half that number. These numbers resulted in overcrowding and an understocked inventory of potable water aboard the ship. While the ship’s captain, Luke Collingwood, had attended many voyages across the Atlantic as a surgeon on slave ships, it was aboard the *Zong* that he made his first trip as master (Krikler 409)². James Walvin argues that as the ship came closer to its destination, Collingwood became ill, thus appointing a passenger on the ship, Robert Stubb³, as acting captain rather than the first mate, James Kelsall (Walvin 96). The Captain’s illness, his delusional state, the change in

² A master, Captain, and skipper all denote the person in charge of the ship during the voyage (The Shipping Law Blog (Q: Master, Captain or Skipper?)). They are not always the owner of the ship. In the case of the *Zong*, although the Collingwood was the Captain, the owner was Gregson slave-trading syndicate (Walvin 54).

³ The ship’s sole passenger (Walvin 96).

command, and the shortage of drinking water may all have created the conditions that led to the murdering of the 132 slaves on board the ship⁴. It was these conditions that resulted in the Captain making the call to save the “marketable” slaves—those who were not sick and would survive the trip with the remaining water reserves—that the Liverpoolian owner of the ship argued against the insurers in court when he was attempting to claim payment for his lost cargo (Walvin 1-2)⁵. The *value* of the slaves, as determined by the surgeon who captained the *Zong*; the *value* that the insurers believed the market would pay for the slaves based on ability, gender, and condition; the *value* lost when the slaves were thrown overboard; the *value* assigned to each slave and the *value* owed to the owner of the lost slaves, revolve around the idea of *value* being something attached to and separate from the bodies that are being evaluated for their usefulness in a market- and capital-driven economy⁶.

Ian Baucom argues that the *Zong*'s voyage and subsequent associated trial highlight an intrinsic truth about the way that insurance functions in a society run by finance capitalism; insurance assumes that the “real test of something’s value comes not at the moment it is made or exchanged but at the moment it is lost or destroyed” (Baucom

⁴ Refer to footnote 1.

⁵ Gregson v. Gilbert

⁶ The term “value” or “values” speaks to notions of constructed “significance” economically, culturally, and socially, and as a category (or hierarchy of categories) that forces some *things* to have a greater significance than others (Baucom 18). The analysis of something’s value and its value in relation to other things brings must be considered within an understanding of “systems of value.” This term highlights the notion that values are not isolated nor separate from other understandings of significance, but instead, feed into systems or cultural discourses already in play. The constructed and assigned value of something fits into larger processes or systems of evaluation that determine where in the hierarchy of significance that thing is situated. I hence use “systems of value” as a way to indicate that the value attributed to something is relational to other values and the processes and practices of arriving at that value are also relational to other practices of valuing.

95). This idea relies on the assumption that insuring commodities is not about the object itself, but about the exchange in objects (95). In an insurance or money culture, “value survives its objects, and in doing so does not just reward the individual self-interest of the insured object’s owner, but retrospectively confirms the system-wide conviction that that value was *always* autonomous from its object, *always* only a matter of agreement” (95). Subsequently, the economic or financial value attributed to a body as recognized under insurance law is attached to the body while it is both alive and dead. More specifically, if a body is owned by someone apart from itself, the value or worth of that body in an exchange could then be collected if the commodity is “damaged” and therefore is not as valuable as it was before the damage occurred (108). Baucom uses the phrase “what would have been” the value if the cargo on the *Zong* had not been lost (108). It is the culture surrounding *value* and the attributed value to bodies as they moved across the Middle Passage that opens up a discussion of the relationship between the chained bodies on slave ships as they were moved across the Atlantic (some of whom remained there), bodies of law that not only regulated this movement but also justified the violence that occurred in instances like *Zong*, and bodies of water, as the space used to transport, confine, separate, and facilitate the transaction of bodies. The events and legal discussions surrounding the *Zong* massacre help to illuminate the deeply entrenched colonial roots in the way bodies are treated and the impact that the understanding of value and ownership of bodies has on law.⁷

⁷ Ania Loomba’s conceptualization of “colonialism” is particularly useful when understanding the breadth of the term. Loomba suggests that colonialism encompasses the moments of encounter and settlement between peoples, as well as the processes and systems of control and capitalistic drives of imperialism

Histories of movement across international waterways which subsume narratives of empire and the lingering memories of colonization not only remain alive today but anchor and inform our contemporary understandings of property. The middle passage, the sea journey undertaken by slave ships from West Africa to the West Indies, informs the histories and representations of these memories—where movement across the nautical space is directly tied to “relocation, displacement, and restlessness” (Gilroy 133). For example, Paul Gilroy’s *The Black Atlantic: Modernity and Double Consciousness* follows Gilroy’s “intellectual journey across the Atlantic” (4) where the middle passage is seminal in understanding the black diaspora. More particularly, ships crossing the middle passage are what connect the fixed locations across the Atlantic, and embody not only a European modernity, but also the slave trade (17). Gilroy argues that understanding the history of the middle passage relies on a conceptualization of ships, as it was ships “that would carry [Africans] into the woes and horrors of the middle

(Lomba 1-4). I utilize this view not only when approaching the history of colonization that forced movement across the Atlantic, but also the ongoing processes of colonization that continue through contemporary times. Subsequently, in this paper, the use of the word “colonial” or “colonialism” is in relation not only to practices of imperialism, but also the “distinctive ideology of imperialism” whereby race, ethnicity, and constructions of history are intrinsically connected to these ideologies (Ashcroft, Griffiths, Tiffin 40-42). These ideological practices facilitated the Slave Trade across the Atlantic middle passage and the inhumane treatment of Africans during their enslavement as well as, arguably, the treatment of their bones today (Ashcroft, Griffiths, Tiffin 40-42). I also employ the use of the term “colonial mentality” or “colonial discourses” (as Edward Said understood them) as deeply rooted practices that are “instrument[s] of power” and systems of oppression (Ashcroft, Griffiths, Tiffin 36-38). For Lois Tyson colonial discourses (or “colonialist discourse” as she terms it), marks the “relationship to the language in which colonialist thinking was expressed” and was “based on the colonizers’ assumption of their own superiority, which they contrasted with the alleged inferiority of native (indigenous) people (Tyson 419). This relationship, as highlighted in binarisms like the Self vs. Other, are not only intrinsic to colonialism (Tyson 420; Ashcroft, Griffiths, Tiffin 154-58), but also elemental in the continued colonialism and colonial mentalities as institutionalized practices today. Resultantly, the use of the word “colonial,” “colonialism,” and “colonial mentality,” reflects not only past moments of imperial expansion, and settlement, but the past, present, and ongoing effects and practices of colonial ideologies existing throughout institutions and within societies more broadly.

passage” (189). With nearly 10-20% of enslaved people dying from sickness, falling overboard, or committing suicide on each trip⁸ (“The Middle Passage” *Portcities Bristol*), alongside the countless shipwrecks and lost bodies across the middle passage as a result of the slave trade, the question ‘whose property are the bones that are found on shipwrecks in or around the middle passage?’ speaks to the black diasporas of today, histories of colonization, empire, and violence, as well as the law and nation-centric claims to ocean territory. In answering the question ‘who owns the bones?’, it is essential to consider these histories and the implication of ownership in order to fully understand the political and cultural ramification of claims to black bodies, particularly in international waters.

In reflecting upon the claim to bone and body ownership, Tanya Shields argues that “[b]lack feminists have consistently prompted us to think of this flesh as more than metaphor, more than material substance or residue; it was and is life” (Shields 12). Shields outlines the violent treatment of black bodies during slavery as reflected in literature such as Toni Morrison’s *Beloved*, where black flesh is used for profit and for pleasure, as well as examples of the use of black flesh when Henrietta Lack, an African-American cancer patient, had her cells taken without her awareness and consent in 1951 to benefit and profit the medical institute she was being treated at (Shields 9-12). For Shields, the use and conceptualization of Caribbean (and subsequently many African) identities is entrenched in colonial discourses that associate the black body with “sexed bodies, racialized bodies, commodified bodies” (Shields 10). The question then of ‘who

⁸ Approximate statistics from: “The Middle Passage”, *Portcities Bristol Blog*
<http://discoveringbristol.org.uk/slavery/routes/from-africa-to-america/atlantic-crossing/middle-passage/> .

owns the bones' is contextualized within broader histories of body ownership and the lack of self-determination, particularly regarding African bodies.

The connection between bodies of water and human bodies is explored through an array of mediums like art and literature. Postcolonial literary authors have depicted the division between the spaces of the ocean and the spaces of human remains blurred. Works like "The Sea is History" by Derek Walcott, describe "bone soldered by coral to bone," emphasizing the inability to distinguish between ocean life and human remains. Similarly, M. NourbeSe Philip's collection of poetry entitled *Zong!* breaks apart words like "bodies" and "bones" and spreads them among "ocean" and "sea" as if they were drowning. For many artists and writers, blurring the distinction of boundaries of bodies reiterates the deep connection that the ocean has with cultures and identities. Another postcolonial piece entitled *Feeding the Ghosts* by Fred D'Aguiar echoes and reinterprets the connection between identities and sea. For D'Aguiar, histories of people and histories of the ocean are so deeply connected that they consume one another until bodies of people and bodies of sea become conjoined memory. The examination of human remains at sea and the histories to which they speak, are deeply rooted in identity. Histories of violence against bodies at sea, and histories of movement across bodies of water inform my exploration of legal regulations of bodies (bodies of water and human remains). My arguments presuppose that the regulation of both living and dead bodies at sea is related to a more global discussion of identities and the politics, histories, and power dynamics behind body ownership.

Arguably, colonization has changed the way in which bodies at sea have been treated, displayed, interpreted, and evaluated. The uncovering of human remains and their origins as a practice, has been facilitated by developments in maritime archaeology.⁹ In fact, maritime archaeology has advanced alongside the increased capabilities of deep-sea exploration. As coastal nations develop long-range weaponry and tools of exploration, the ability to utilize ocean spaces further out to sea continuously increases. These capabilities have facilitated military and resource-based missions to be carried out further and further out from land. With oceanic technological advances for both security measures and scientific expeditions, the distance traveled by a cannonball¹⁰ and the depth explored by a diving bell¹¹ are no longer indicators of the parameters of a territory's legal jurisdiction. Alongside the advancing deep-sea technology, colonial expansion also augmented the distance and depth of *territorial waters*.¹² Expanding territorial waters meant that the actual area of international waters¹³ began to shrink as nation states were

⁹ I am employing the term 'maritime archaeology' in this thesis rather than underwater archaeology, marine archaeology, or nautical archaeology. Although they all deal in some way with the relationship between human interaction and the ocean, maritime archaeology is a practice of study of things within, under, near, and over water, not restricted to marine or coastal shelf areas and also not isolated to one type of wreck site or marine object; the broad scope of this term is useful because it allows me to discuss the general reliance in international law on the practices within not only maritime archaeology, but its more specific sub-fields (Australian Institute for Maritime Archaeology).

¹⁰ Historically, territories would extend as far as they could defend their land: the average cannonball shot approximately 3-nautical miles; this is in contrast to the contemporary 12-nautical mile average of territorial waters (Kent 'historical origins of the three-mile limit' p. 537, 1805).

¹¹ The average depth of a diving bell in the late eighteen hundreds was only about 100 meters. The invention of the diving suit (first scuba gear) could dive significantly deeper.

¹² Territorial waters or 'internal waters' is in reference to the areas in the ocean close to coastal shorelines where the jurisdiction of the state or nation extends into the water. On average, the nation's claim tends to extend approximately 22km into the ocean and it is this areas whereby any objects, heritage, or objects found in this area is under the legal jurisdiction of that coastal region unless otherwise seized under Article 18 of the Convention for the Protection of Underwater Cultural Heritage (UNESCO, *Convention*, 2001, Article 7, 14, 18).

¹³ International waters or 'high sea' includes the areas of water spaces that are 12 nautical miles outside of a territory and thus past territorial waters that are not controlled by a nation or nation state (Geoscience

forced to determine which waters belonged to whom. The negotiations around claims to ocean spaces were not about the water itself. Rather, military strategy and access to resources are claims that have historically dominated ocean and marine areas.

Competing territorial claims implicate the “things” found in any contested ocean space. Claims to any form of underwater cultural heritage (hereafter known as UCH) are caught-up in claims to the territory; these heritage claims are buried in politics, ideologies, histories, and conflicts. When it comes to heritage outside of *territorial waters*—and in international ocean spaces—more than one cultural history is implicated in the discussion. Scholars like Timothy Darvill and Laurajane Smith examine possible constructions and ramifications of the term “cultural heritage” in order to illuminate any validity behind claims to their history. Specifically, human remains as cultural heritage connect bodies to water as much as they connect identities to histories, and as M. NourbeSe Philip proclaims “I, too, want the bones.” In spaces like the middle passage, where identities and histories are intertwined with colonialism across the ocean, entitlements to underwater human remains carries with it the weight of oppression and remnants of empire.

Locating human remains at sea is not always an easy task. As I explore later in this thesis, the physical boundaries of bodies and bones underwater become blurred with sea life and many lives lost at sea throughout human history will be unrecoverable. The human remains that are identifiable at sea are most often found attached to a vessel or

Australia). It is the area of international waters or contested waters that my main focus will be on throughout this thesis.

ship. This connection between shipwrecks and human remains is paramount to acknowledge because the United Nations estimates that there are over three million shipwrecks on the seafloor, whose enclosed compartments or sealed rooms may contain human remains as identifiable by maritime archaeologists.¹⁴ With the improvements and innovations on deep-sea technologies, the possibilities of finding underwater shipwrecks and UCH have increased exponentially over the past hundred years. As the likelihood of discovery increases, so has the looming fear of global exploitation. Shipwrecks could contain gold, silver, and valuable merchandise¹⁵ as well as cultural heritage that allows for archaeologists to gain historical information about the ship's origins, travel, occupants, and cultural connections. Commercial exploitation would therefore not simply be a mistreatment or abuse of the gold and silver goods on the ship, but also of the histories and communities to which the ship connects, both on the continent and in the diaspora. Elazar Barkan and Ronald Bush argue that the “[n]egotiation of identities often takes place through the medium of cultural property, such as art, religious and other artifacts, sacred sites, and even human remains” (Barkan and Bush 16). If the shipwreck is commercially exploited—where its contents are sold off to private bidders or the site becomes a hub for tourism—the heritage is valued primarily for monetary gain. According to Barkan, “[p]ossession of one's cultural property [and cultural heritage]

¹⁴ United Nations Educational, Scientific and Cultural Organization, *The Protection of the Underwater Cultural Heritage*. Wrecks available at <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/the-underwaterheritage/>.

¹⁵ Examples of prominent shipwreck excavations that resulted in the finding of gold, silver, or coin: The *SS Gairsoppa* was carrying silver worth £600 000, the *SS Montola* was carrying a cargo of silver worth £110 000, and the *Nuestra Senora de las Mercedes* was carrying nearly 600,000 gold and silver coins (Odyssey Marine Exploration, Shipwrecks available at <http://www.shipwreck.net/shipwrecks.php>).

seemingly creates a level playing field among powerful nations and weaker nations or minorities within nations” (16) as well as allows for a mediation “between the histories of perpetrators and victims” (17). Barkan and Bush’s assertion that heritage as cultural property is deeply linked to cultural identity suggests that the value attributed to the CH has ramifications on cultural identity. In light of legal shortcomings to protect cultural heritage found on shipwreck sites, the United Nations stepped in to prevent future commercial exploitation or practices that may undervalue or underappreciate the histories, cultures, and identities connected to the sites. The protection of possible future shipwreck discoveries and excavations is what motivated the United Nations to re-examine international treaties and laws surrounding the finding of, use, and examination of shipwrecks and their cultural heritage.

Regulation of the excavation, protection, and negotiating of UCH in international waters has gone through amendments in recent times. *The Convention on the Protection of the Underwater Cultural Heritage* (hereafter known as the *Convention*) addresses the inadequacy of law to deal with the pattern of commercial exploitation of shipwrecks and cultural artifacts submerged underwater (Dromgoole, *Underwater Cultural Heritage* 24). As outlined in the *Convention*, the protection of UCH extends to “all traces of human existence having a cultural, historical, or archaeological character which have been partially or totally under water, periodically or continuously for at least 100 years” (UNESCO). In a tangible sense, “Cultural Heritage” (hereafter known as CH) encompasses human remains. The restrictions and requirements set out in the *Convention* speak to normative practices of valuing, present in most archaeological practices as well

as CH laws on land. Without fully separating itself from either of these disciplines and the assumptions that they prescribe, the *Convention* falls prey to the same problem of commodifying the artifacts in order to determine their economic and cultural worth.

Focusing on the human remains that fall under the *Convention* and the ways in which they are classified and commodified leads to a discussion of how these processes also impact the communities and diasporas to which the human remains are attached and connected. As the UCH must have “historical or archaeological character,” the human remains are studied using archaeological practices as recognized under international law as being legitimate (UNESCO, *Convention*, Article 1). In order to understand how UCH is studied, classified, and how these practices impact the valuing of human remains, the established practices for CH on land provide a basis for the regulations in the international *Convention*. Since many of the conceptualizations of UCH in international law originate from definitions and understandings of land-based CH research, I will be highlighting the distinction between land and ocean dialogues surrounding bone and body reclamation (in the context of CH claims) in my first chapter. Unlike CH sites on land, UCH sites embody the possibility of intangibility and invisibility whereby more often than not, human remains cannot be recovered. The majority of human remains are either at a depth inaccessible to deep-sea divers, have decomposed or become intertwined and indistinguishable from sea life, or have moved with the waters to other areas.

Bringing context to the examination of the site of a shipwreck allows for a better understanding of the implications of the sunken CH. In particular, if our focus is on shipwrecks harbouring human remains that are found in or around the middle passage,

any contemporary claims to ownership of the bones is complicated by any past claims to ownership of the bodies.¹⁶ The examination of UCH in the middle passage must subsequently be contextualized by the violent aftermath of colonization across the sea. As a site of disaster, shipwrecks in international waters can be host to maritime archaeological endeavours whereby the aim is to excavate the remnants of histories and identities attached to the sunken vessel. In its reliance on maritime archaeological practices, international law assumes that the practices of this field do, in fact, minimize commercialization and exploitation of shipwreck sites. Resultantly, many of the terms used in the *Convention* are not problematized. The performance of archaeological researches on wreck sites, as well as the performativity of the UCH on the site itself, becomes integral in the ways in which the human remains are classified and valued. By exploring the performances of UCH and examination techniques that are present in maritime archaeological endeavors, I want to expose the ways in which colonial systems of valuing bodies are embedded in international law's regulation of shipwreck sites. This means that I will be looking at two types of performances. The first, are the performances used in maritime archaeological practices—the performances for examining artifacts, treating human remains, and evaluating the site itself. The second type of performance I examine considers the way the UCH performs authenticity and legitimacy to identify an archaeological site that falls under the scope of the *Convention* adheres to

¹⁶ Although discussions of reparations and reconciliation are relevant to this discussion, they are beyond the scope of this paper as they would also need to include further conceptualizations and surveys of scholarship related to memory, mourning, and collective memory. These are conversations perhaps better situated in further research that would include museums, monuments, memorials, and the displaying of wreck-site material after the classification and examination process.

normative/standard archaeological practices. Specifically, I look at the *Convention* and the requirements it prescribes—knowing that they must be validated through maritime archaeology—and examining possible consequences of acknowledging only certain types of performances through legal regulation. In this project, my focus is on the legal privileging of the performances of the visible and present bodies—as cultural heritage—in maritime archaeology, overlooking the performances of absent bodies.

Much of this project engages with activist and creative resistances to ongoing and historical colonial violence at sea. For activists like M. NourbeSe Philip, there is an urgency to reclaiming bodies lost at sea as an extension of projects of decolonization. As a space, the ocean encompasses an intersection of global movement with embedded histories of colonialism and violence. The dialogues with which I will participate in within this paper speak amongst themselves as much as they speak to a larger context of violent histories and absent bodies; the ways in which some bodies are present in histories, in museums, recognized in law, or perhaps simply given grave markers, emphasize a privileging of particular identities. An examination of which identities are excluded and which bodies remain *absent* from spaces such as law, allows for a discussion of potential resistances. Questions pertaining to who owns bodies and the implications of ownership and contested ownership begin to surface. Recognizing that the colonial underpinnings that I speak to in this essay are present in the context that this essay is written, I seek to explore the relationship between colonialism, law, and the process of exhuming bodies. Through this thesis, I explore processes of recovery and reclamation of bones and bodies, and the way such processes extend into the sea, as a

means of shedding light on the impact of colonization on bodies in international oceanic law and bodies of international oceanic law.

The impact of colonial discourses on the construction of bodies and the political, cultural, social, and economic spaces that some bodies are excluded from participating in is an extensively covered area of research. The gap in literature that I hope to bridge through this work is the impact of regulating and excluding particular human remains in international waters in current times, as an extension of those same regulatory colonial ideologies that forced those bodies across the Atlantic. In order to do this, I explore discussions of performativity as they are prescribed in international waters, performed through archaeological practices, and resisted in art and activism.

In order to interrupt colonial ideologies that permeate the processes of valuing human remains at sea, I utilize theorizations of the body through the works of Jean-Luc Nancy and Karen Barad as a means of reinterpreting the space of the body. These sources and their relation to the performing body speak to my framing of performativity theory when approaching wreck sites through maritime archaeology. However, another intervention could be made through a discussion of African cosmologies which emphasize the integral and lasting connections between body and spirit¹⁷. According to Igor Kopytoff, many African cosmologies incorporate an understanding of life and death

¹⁷ Although I use the term African cosmologies, the terms African “traditional” or “indigenous” religion have also been employed. According to Jacob K. Olupona, Sulayman S. Nyang, these terms have been criticized by many African scholars who believe that they are too static, unchanging, and situated in the past (Olupona and Nyang 17). African cosmologies, although broad, is useful in acknowledging the understandings of bodies as being connected to spirits before, during, and after life in many African traditions, religions, and spiritualities is reflected in everyday life and everyday language.

as something cyclical rather than linear, and interconnected, even after the spirit leaves the material body and enters the spirit world (Okwu 20; Kopytoff in his summary of John S. Mbiti's work 97). This understanding is particularly important when approaching histories of Africans who drowned at sea since, according to Austine S. O. Okwu, "deaths of young people and women during pregnancy or childbirth, homicide, suicide, and all deaths due to accident and/or outside the normal aging and the biological weakening of the body, are regarded as contrary to cosmic order" (Okwu 20). While a deeper engagement with African cosmologies is outside of the scope of my investigation, it is important to acknowledge that within African cosmological systems, the proper treatment of bodily remains is necessary to honor and care for ancestral spirits, who then in turn provide protection for the living. Such perspectives could also powerfully deconstruct colonial discourses surrounding bodies and their value as well as perhaps provide for areas of further research.

This investigation is divided into three main sections: "Part A: Mapping Bodies," "Part B: Drowned Bodies," and "Part O: Haunting Bodies."¹⁸ The initial section "Mapping Bodies" places international law scholarship in conversation with archaeological scholars. I will be addressing the way in which archaeological UCH is recognized, legitimated, and regulated. In order to do this, I will look at where oceanic CH laws stem from: as part of both dialogues in the Law of the Sea as well as CH claims

¹⁸ Part A, B, and O indicate not only the three distinct divisions of the body of work but also allude to blood types. Although blood is not present in marine archeological sites as blood in human remains is not present in the ocean, the reclamation of blood is something symbolic. Blood spilt in the ocean is an extension and reflection of colonial violence that international waters bared witness to; the Middle Passage is an example of a movement across waterways that transported bodies and holds past blood. My use of blood types of the title is an attempt to incorporate notions of bone reclamation as something connected with both non-living bodies as well as past, present, and future living bodies.

on land. An analysis of the culmination of these laws in what we now know as the *Convention* will include the way in which international law requires (normative) archaeological practices on and within the site in order for the UCH to be authenticated.

“Mapping Bodies” is separated into two main sections: the first addresses the regulations of CH in water and on land. Craig Forrest’s interpretations and criticisms of international regulatory oceanic treaties with discussions by Clay Mathers, Timothy Darvill, and Barbara J. Little’s discussions of CH sites on land ground this discussion with theorisations of international law and maritime archaeology. In this section, I analyze the *Convention’s* requirements to qualify as a successful (and unsuccessful) performative site. In the first article of the 2001 UNESCO *Convention*, there are descriptors of the type of artifacts, the placement of artifacts, and the location of artifacts that need to be incorporated into the overall performance of the site in order to fall within its scope and be processed thereon.

The second chapter of this thesis, “Drowned Bodies,” incorporates the implications of the authentication processes required by international law by analysing the regulations through a lens of performativity. Specifically, I look at the archaeological practices and UCH as sites of performances authenticated by international law. This opens up the discussion for implications that the law’s regulations have on human remains—or *present* bodies in UCH sites. By looking at the constructed binary of *present* and *absent* bodies and, more particularly, the privileging of *present* bodies, I explore the ramifications of excluding or rejecting performances of *absent* bodies. This rejection requires a deeper exploration of the normative qualifications prescribed by the

Convention but also by CH discussions on land so as to speak to where the performative legitimization of artifacts stems from.

The third and final section of the paper, entitled “Haunted Bodies,” looks at the resistances to privileging present bodies. I survey art and activism that directly speaks to the ways in which bodies have been *valued* and commodified while crossing the ocean. One piece that I focus on is Nick Cave’s artwork entitled “Sea Sick” which places romanticized colonial paintings of ships on top of one another with a racialized face of an African man in the top center, reminding the audience that many of those ships were contributing to the slave trade. My analysis places these activists in conversation with the legal and archaeological conversations from earlier chapters in order to (re)think through present and absent performances at UCH sites. Through this chapter, I bring to light colonial contexts that situate the UCH and problematize the approaches to evaluating CH.

In these upcoming three chapters, I aim to explore the implications of the legal regulation of bone and human remains at sea. In the following chapter, I intend to analyze the limitations of underwater cultural heritage regulation in order to expose new possibilities for reclamation through art and activism. By outlining the new legal regime at sea for underwater cultural heritage and examining the reliance international law has on certain archaeological performative practices, I hope to not only expose possible modern colonial violences at sea, but also to consider activist movements that have challenged these violences.

Part A

Mapping Bodies Law Sea Remains

I remembered the story of the Royal James and Mary, an English ship making its passage through the shoals of the tide country in the year 1694. Night stole unawares upon the many-masted ship and it capsized after striking a sandbank. What would be the fate of such a shipwreck in the benign waters of the Caribbean or the Mediterranean? I imagined the thick crust of underwater life that would cling to the vessel and preserve it for centuries; I imagined the divers and explorers who would seek their fortunes in the wreck. But here? The tide country digested the great galleon within a few years. Its remains vanished without trace.

(Amitav Ghosh, *The Hungry Tide* 186)

“Mapping Bodies” alludes, as the title suggests, to the Law, the Sea, and (human) Remains. This chapter amalgamates discussions of international legal scholars and heritage scholars in order to map the ways in which these legal discussions intersect in the understandings of the regulation of human remains. I will be incorporating a brief examination of the history of the 2001 *Convention on the Protection of Underwater Cultural Heritage* with its roots in International Law of the Sea and Heritage legal regulations on land. Juxtaposing the formation of the *Convention* with the assumptions that stem from international legal discussions, this chapter will lay out the groundwork for the analysis of the regulation of human remains in international waters. This comparison allows for the investigation of the ramifications that these regulations have on absent bodies in international waters within subsequent chapters.

Legal Regulation and Protection of UCH

The question of ownership over sunken ships and CH is not a new debate. Much of the contested claims revolve around the jurisdiction in which the vessel or artifacts lie, where the vessel was initially launched, where the ownership contract was signed, and the destination of the ship's journey. As global concern began to rise with increased looting by salvors and treasure hunters as well as competitive sovereign claims over shipwrecks, the need for protective jurisdiction became evident (Forrest, "A New International Regime" 511-12).¹⁹ These concerns are founded in part in the possibility of economic or cultural exploitation and potential loss of history or cultural heritage if the wreckage and artifacts remain in private hands (Dromgoole, *Underwater Cultural Heritage* 212). In order to better protect UCH, conventions such as the United Nations Law of the Sea Convention (UNCLOS)²⁰ and the UNESCO *Convention on the Protection of the Underwater Cultural Heritage* 2001, have strived to create regulations that prioritize the cultural value of the artifacts over their economic value. Though this was the goal of the conventions, they fail to fully address the *processes* of valuing and instead focus on the ways in which artifacts could be valued differently. Although my focus will be on the more recent Convention (the 2001 *Convention on the Protection of the Underwater Cultural Heritage*), it is also worthwhile to point out the protectionist push under UNCLOS in order to indicate a general trend towards protectionism.

¹⁹ The notion of sovereign immunity comes into play when it comes to warships and vessels since many of the ship's contents could be historically sensitive (including war artifacts) or subject to explosions if disturbed (Harris 77). Although my focus is not on warships exclusively, it is important to acknowledge sovereign immunity as both a useful protective measure against the dangers of looting as well as a contested legal area as much of the contents of the shipwrecks remain hidden from the public.

²⁰ United Nations Convention on the Law of the Sea 1982 (Montego Bay, 10 December 1982).

Determining the jurisdiction of a CH site (more often than not, a shipwreck site), is an essential first step in determining what provisions, treaties, or laws apply. Particularly, the identification of the shipwreck or artifacts submerged under water and where they are positioned is important in determining under whose patronage the CH falls. For example, if the vessel is identified as a warship, UNCLOS and the UNESCO Convention do not apply (Forrest, “Historic Wreck Salvage” 347, 349; Adams, “Ships and Boats as Archaeological” 292-310; Huang, 257). Conversely, if the CH is not attached to a warship and is situated in international waters, international treaties come into play²¹. Once the jurisdiction of the CH has been determined, the next question is how to protect it. These questions of jurisdiction and of protection are in response to an increase in global concerns of looting and exploitation of UCH (Forrest, “A New International Regime” 511-12; Dromgoole, *Underwater Cultural Heritage* 212). The relation between protection and exploitation is notably important as it assumes an inherent value or system of values embedded in the legal approaches to UCH.

In the mid nineteen-eighties UNCLOS facilitated one of the first important discussions of protection of UCH. This convention is significant because it “demarcated deep ocean space as a global commons yet also allowed coastal nation-states to extend their sovereignty and economic rights far out into the surrounding sea” (Thompson 20). Subsequently, the protection of UCH is tied to claims of territory, or lack thereof. The protectionist provisions in UNCLOS are mostly present in Articles 149 and 303. These provisions prescribe that “States have a duty to protect objects of an archaeological and

²¹ The jurisdiction of international treaties like the UNESCO *Convention* is also determined on whether or not the Nations surrounding the areas are ratified signatories of the treaty.

historical nature found at sea and shall cooperate for this purpose” (Dromgoole, *Underwater Cultural Heritage* 246). The idea that “States have a duty to protect” places an importance on statehood and on the state recognizing an obligation to safeguard particular objects located in the State’s borders. These provisions also reveal that protection is *only* considered a duty under UNCLOS if the objects are classified as objects with an “archaeological and historical nature.” In these instances, protection is dependent on the notion that the historical and cultural gain of the UCH must take priority over any economic gain.

The intention of Articles 149 and 303 was to better safeguard the UCH, however, UNCLOS is criticized for allowing States to have too much power over the shipwreck sites (Dromgoole, *Underwater Cultural Heritage* 114). This power led to protections being bypassed or unheeded (114). This criticism is especially true since Article 303(3) states that “nothing in this article affects the rights of identifiable owners, the law of salvage and other rules of admiralty, or laws and practices with respect to cultural exchanges” (UNCLOS 138). The provision for ownership ultimately grants too much authority to presumed owners even if their intention is monetary gain at the expense of any CH present (Dromgoole, *Underwater Cultural Heritage* 114). In response to the inadequacy of conventions such as UNCLOS, to protect UCH, the 2001 *Convention* wanted to specifically prevent any destruction or damage to the UCH site and to make protection of CH a priority (*Underwater Cultural Heritage* 60, 121; Forrest, “A New International Regime” 519) .

In 2001, the specialized United Nations agency *United Nations Educational, Scientific and Cultural Organization (UNESCO)* finalized the *Convention on the Protection of the Underwater Cultural Heritage* and the treaty came into effect in 2009²². Adhering to and building from the international Law of the Sea, Admiralty Law, and Cultural Heritage regulatory measures on land, the *Convention* was a result of over a decade of preparatory work in order to establish a comprehensive legal regime for UCH in maritime zones (Dromgoole, *Underwater Cultural Heritage* 24). Engaging with discussions of UCH, scholars such as Sarah Dromgoole, Craig Forrest, Malcolm Shaw, Bill Jefferey, Kuen-chen Fu, Gwénaëlle Le Gurun, Maija Matikka, and numerous others working within international law, heritage, policy, monument and artifact preservation, and shipwreck archaeology disciplines, have shifted their focus to include the more recent 2001 *Convention*.

Many scholars not only view the *Convention* as a useful tool to decrease looting, but also as a contested treaty because of its vague and ambiguous use of terms such as “cultural heritage.” Sarah Dromgoole, Craig Forrest, and Malcolm Shaw offer insights into the *Convention’s* roots, and the debated phraseology by drawing connections that the treaty has with previous international oceanic regulatory laws. Clay Mathers, Timothy Darvill, Barbara J. Little, Peter Hershey, and Anne Cottrell, add to the dialogue by broadening the discussion of CH. Specifically, the ways in which CH and UCH practices stem from anthropological and archaeological fields of study. In this section, I look at the

²² As of 2015, there have been 53 signatories to the Convention of the Protection of Underwater Cultural Heritage; 48 have thus far been ratified (UNESCO, Legal Instruments, Convention on the Protection of the Underwater Cultural Heritage. Paris, 2 November 2001. Found at: <http://www.unesco.org/eri/la/convention.asp?KO=13520&order=alpha>.)

way in which the *Convention* seeks to protect UCH, what CH is, and the way in which archaeological notions of CH seem to be privileged.

In order to look at UCH as it falls under the scope of the *Convention*, it is useful to look at the spaces that are governed by the treaty. The jurisdiction and oceanic space to which the *Convention* speaks, is situated in waters that are strewn with histories of territorial disputes. For Malcolm Shaw, the “seas have historically performed two important functions: first, as a medium of communication, and secondly as a vast reservoir of resources, both living and non-living” (Shaw 553). The interaction of these functions is what has facilitated a need for legal regulations surrounding territory that extends into and within oceanic spaces. When it comes to territory at sea, the indicator of territorial claims and the marker (or starting point) of territories are land masses (553). Maritime rights and obligations of coastal states are evidence for this land-based territorial orientation (553). According to Shaw, the “freedom of the high seas rapidly became a basic principle of international law” but there are also expansions of territories off land as the parameters of territorial waters (or territorial sea) began to extend (554). There has been a shift in legal regimes at sea, embedded in mentalities revolving around both commercial (and trade) purposes and the proclamation for the seabed being a “common heritage for mankind” (555). The notion that the sea could not only be an extension of territory, but perhaps property itself, meant that there was a global shift to claim this newly prescribed “valued” space of the ocean.

Shaw further argues that oceanic territories have had a history of disputed and controversial claims as to what legal jurisdiction ends in which area (Shaw 568). Many of

these disputes are rooted in the “use” or “purpose” of the claim that are typically not arbitrary territorial expansions, but instead strategic or practical demands. Some examples of these are fisheries, customs and immigration, and general resource management (568). When a shipwreck site is found, it must be determined if the vessel and CH are within a state’s jurisdiction or further out at sea. Similar to the earlier discussions in UNCLOS, the legal regulation of CH at sea is dependent on the location of the CH itself; if the CH is within *inland waters* or the *continental shelf* near a coastal region, it is likely that the CH will simply fall under the jurisdiction (and perhaps property) of that coastal nation. Past the disputes of state jurisdiction and the inland territorial claims near the coastline, the area beyond state jurisdiction is considered international waters. It is in these international waters, whereby state or national jurisdiction ends, that the *Convention* anchors itself. In order to prevent property claims from all sides that might result in exploitation or abuse of the CH, the *Convention* seeks protectionist legal regulation.

Sarah Dromgoole illuminates one of the core sentiments behind the creation of protectionist regimes for UCH sites, such as the 2001 *Convention*: the safeguarding of UCH from vandalism and exploitation (Dromgoole 2001, 2003, 2006, 2010, 2013; Forrest, “A New International Regime”). Dromgoole outlines the historical developments resulting in the need for safeguarding UCH sites in the way that she suggests that UCH has not always been as accessible or excavatable. The capabilities of oceanic exploration and locating CH sites underwater have been correlated with innovations in technology.

Diving Bells²³ are one example of technology that has changed the ways in which underwater surveys and shipwreck examinations have been carried out. The range of diving bell designs varied but in the seventeenth and eighteenth centuries the equipment “permitted access to wrecks lying at depths of up to eight fathoms (approximately fifteen metres)” (Dromgoole, *Underwater Cultural Heritage* 2-3). In the early seventeenth century hundreds of underwater suits²⁴ began to emerge with designs borrowed from successful diving bell experiments which increased the depth which could be explored by about 100 meters. In the nineteenth century through the nineteenth century, scuba diving drastically increased with the accessibility of gear and the commercial use of shipwrecks for tourism; however, with the lack of legal regulation of UCH and submerged shipwrecks, there was a vast amount of damage inflicted on UCH sites and many artifacts were removed (Dromgoole 3). These points suggest that technology for exploring UCH sites has impacted underwater tourism as much as it has impacted underwater archaeological examination. Although commercial exploitation and potential harm caused to UCH sites through tourism has been an incentive for UNESCO to create protectionary regulations for sites, the treaty seems to privilege practices that excavate UCH and promote accessibility of the potential knowledge that such excavations may harbour.

Technological advances that have facilitated the depth at which scientists and researchers can dive, are a major contributor to a renewed interest in the exploration and

²³ Diving Bells and underwater observation chambers are bell or barrel shaped devices used to submerge one or two occupants underwater and were used from the 1300s to the late 1800s with numerous (successful and unsuccessful) designs (<http://www.divingheritage.com/chambers.htm>).

²⁴ Innovations on the diving suit increased the depth at which could be explored and eventually lead to scuba diving equipment (<http://io9.com/the-strange-and-wonderful-history-of-diving-suits-from-1262529336>).

examination of UCH through maritime and deep-sea archaeology. More recently, scanning equipment has changed the way in which UCH can be found, excavated, and examined by archaeologists, allowing for a better understanding of the wreck site without disturbing the artifacts (Dromgoole, "Revisiting the Relationship" 47). With the improvement of scientific and archaeological technologies like Navstar Global Positioning System (GPS)²⁵, high resolution side-scan and bathymetric sonar systems²⁶, magnetic sub-bottom profiling devices²⁷, remote-sensing equipment²⁸, and the advanced submersible vehicle²⁹, locating and excavating potential CH sites has become more accessible globally ("Revisiting the Relationship" 38, 47). In fact, accessibility has also further increased the possibility of commercial exploitation of shipwrecks and looting of UCH sites. This exploitation suggests that the "possibility of human investigation" opens

²⁵ GPS systems, although originally designed for military purposes, became publically accessible in the mid-1990s and have been incredibly useful when it comes to shipwreck and CH sites. Unlike other mapping and locating technologies, GPS has allowed for the pinpointing of positions independent of reference points or land/shore lines (<http://www.gps.gov/>).

²⁶ High resolution side-scan and bathymetric sonar systems are surveying and scanning technologies whose manufacturers pride themselves on creating detailed scans that facilitate imaging of pipelines, cables, small objects, and the environment with low frequency resolution and high range performances (Klein Associates Inc, <http://www.l-3mps.com/klein/sidescansonar.aspx>).

²⁷ Magnetic sub-bottom profiling devices have been a dramatic innovation in maritime archeology because the equipment can withstand high pressured environments and scan the bottom of the ocean to get an indication of what lies below the seabed; these systems direct a pulse towards the sea floor in order to detect objects such as shipwrecks (Substructure: <http://substructure.com/about/marine-services-information/hydrographic-surveys/tools-used-to-examine-the-area-below-the-seafloor/>).

²⁸ Remote-sensing equipment is essential in exploring CH sites because it allows for the scanning of shipwrecks and areas of interest without disturbing them or causing damage to the site itself (<http://www.hamilton-scourge.hamilton.ca/remote.htm>).

²⁹ This relates to subaquatic vehicles like submarines as not only purposed for the Navy and other military advances, but also for deep sea exploration and data collection because of their ability to withstand extreme pressures (National Oceanic and Atmospheric Administration: <http://oceanexplorer.noaa.gov/technology/subs/subs.html>).

up potential for scientific exploration, damage or destruction of UCH, as well as influences the worth³⁰ of the UCH (*Underwater Cultural Heritage* 66).

The UCH being referred to in the treaty are negotiated through the mediation of territorial claims and boundary notions as discussed in UNCLOS, as well as efforts to protect or maintain CH as something that will benefit humankind globally (Forrest, “A New International Regime” 513). The term “benefit” suggests that there is an assumption that UCH has an inherent trait (or traits) that make it not only worth exploring, but also worth protecting. Consequently, it is essential then to outline what areas the *Convention* is attempting to protect. In order to adequately discuss the treaty, it is important to lay out the spaces to which it is referring:

For the purposes of this Convention:

1. (a) “Underwater cultural heritage” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as:
 - (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;
 - (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and
 - (iii) objects of prehistoric character.
- (b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage.

³⁰ I will be coming back to notions of worth and value later in this section.

(c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.³¹

Dromgoole articulates the way in which the treaty strives to “ensure and strengthen the protection of underwater cultural heritage and its overall objective is the preservation of UCH ‘for the benefit of humanity’” (Dromgoole, *Underwater Cultural Heritage* 59). This notion reveals the way in which the phrasing of the treaty limits its scope to UCH sites that are seen as archaeologically significant or valuable (70)³². When it comes to guaranteeing the prohibition of stealing, selling, or damaging potential underwater artifacts, the question then is, what constitutes UCH? Although the *Convention* states that ‘Underwater cultural heritage’ includes “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years,” this does not fully or adequately define CH (59). In actuality, “underwater cultural resource” or “underwater cultural property” have been used instead of “cultural heritage” (*Underwater Cultural Heritage* 80; Mathers et. al, 43). These two alternative phrases suggest that the term “cultural heritage” is not separate or altogether different from discussions of property, ownership, and resources.

An examination of the way in which UCH is interpreted in the *Convention* requires a comparison of definitions of CH in other contexts. According to Dromgoole, the UCH that the treaty refers to “comprises far more than just shipwrecks” and, in fact,

³¹ UNESCO, *Protection of the Underwater Cultural Heritage* Article 1, pg. 2.

³² The phrasing here also perhaps highlights the fact that the notion of “underwater” itself prescribes that the heritage must be situated in waters of a particular nature and distance from shore and be submerged to a particular degree in order to fall under the scope of the treaty (Dromgoole, 2013, 79).

“[i]n coastal areas, a wide range of evidence may be found of human occupation over millennia” (*Underwater Cultural Heritage* 66)³³. If UCH includes more than shipwrecks, to what types of material is it referring? Dromgoole explores the way in which UCH should be defined in order to actually allow for the protective measures that it proposes:

If the [legal] instrument will affect and, in particular, restrict human activities, then clearly an appropriate balance needs to be struck between the restriction imposed and the benefit derived from the restriction. In the context of archeological remains lying *in situ*, a proposal effectively to *prohibit* human interference (apart from in circumstances such as force majeure or necessity) is likely to be applied only to material of exceptional significance; on the other hand, a broadly framed definition would be quite appropriate for an instrument that merely requires the reporting of discoveries.
(Dromgoole, *Underwater Cultural Heritage* 65)

For Dromgoole, there needs to be a balance between specificity and broad categorization of the term UCH in order for it to be implementable. She suggests that the term itself encompasses a sort of tangibility where the material has to have intrinsic value or worth in order for it to fall under the scope of the convention (*Underwater Cultural Heritage* 66). She argues that the word “heritage” must have a value high enough that it is seen as worthy to be “passed on to future generations” whose “cultural” merit relies on being related or connected to humans submerged or located “underwater” (66). Although this definition seems to touch on the reasons for choosing the term “underwater cultural heritage” for the treaty, it also infers that the significance of the UCH is determined by something else—an invisible referent; the treaty does not specify what or whose heritage the UCH must be in relation to, but seems to refer to the system of valuing or system of determining cultural relevance from archaeological professions. The *Convention*

³³ These UCH may include “primitive fish-traps and shell-middens to the remnants of harbours and settlements that have become submerged over time” (Dromgoole, 2013; 66).

prescribes that the UCH must be “of an archeological and historical nature,” suggesting that the value or worth of the UCH is determined by archaeologists and not by lawmakers, looters, the global market of artifacts, or by the culture it speaks to or is situated near. The ways in which an archaeologist approaches the shipwreck and its histories directly implicates how the UCH is categorized and who will have access to it.

The economic and cultural value of UCH is also at times incompatible, according to Craig Forrest. He suggests that the development of maritime archaeology has forced a privileging of one type of value over another, which has consequently caused an immediate need for international UCH management (Forrest, “A New International Regime” 512). Forrest also argues that it is the development and extension of coastal archaeology that has helped to define the parameters of UCH (513). Forrest believes the incompatibility of economic and cultural value to be at the heart of the 2001 *Convention*. Specifically, Forrest argues that the treaty is “not simply concerned with the preservation of the archaeological value of UCH, or simply the physical preservation of the cultural heritage so as to realise the former value, but also to eliminate recognition of the economic value of UCH” (521). Although the argument that the *Convention* seeks to minimize the economic value of the UCH raises some interesting insight about the goals of international oceanic laws, Forrest points out that the treaty is likely unsuccessful in this endeavor (521).

Both Maija Matikka and Gwénaëlle Le Gurun see a correlation between the regulation and protection of UCH and archaeology. Matikka argues that the Finland Antiques Act implemented in 1963 privileges archaeological sites in as much as artifacts

or antiques become national property or property of the commons that must be protected from becoming personal property (Matikka 47). For Matikka, this protectionist law directly corresponds with the sentiments behind the 2001 *Convention*. Le Gurun highlights the way in which UCH archaeology strives to “contribute to drawing up a national archeological map” (Le Gurun 70-71). This correlation suggests that the link between UCH and archaeology as a means for determining the value of heritage is also encompassed in the preconceptions and constructs that archaeology as a discipline has—one being the need to connect or compare a site with others to form a more linear or better understanding of national or international history. According to Sarah Dromgoole’s accounts on the *Convention*, the core of this legal reformation is complex. It forces states to work collectively in the regulation of international waters while its protectionist goals revolve around the prohibition of human interference with cultural artifacts that may have archaeological value (Dromgoole, *Underwater Cultural Heritage* 24, 65). It is this archaeological *value*, and the supposed connection between value and heritage that forms the basis for the *Convention*’s protectionism.

Defining “heritage” in terms of the *Convention*’s regulatory measures of UCH requires an examination of the avenues that the treaty used to approach the subject matter; UNCLOS and legal heritage regulations on land both contributed to the context of the *Convention* (Forrest, “Cultural Heritage as the Common Heritage” 125). Forrest asserts that, like Dromgoole, the emphasis on protectionism in the *Convention* suggests that the *value* of the heritage extends past the material itself (Dromgoole, *Underwater Cultural Heritage* 66; Forrest, “Cultural Heritage as the Common Heritage” 133). In light

of heritage protection regimes, Forrest argues that heritage, as something “received from predecessors,” gains its value through the processes of archaeological evaluation and whose value is reiterated or confirmed through legal protection (Forrest, "Defining ‘underwater Cultural Heritage’” 3). Although neither Dromgoole nor Forrest seek to fully define “heritage” they both seek to examine the implications of the broad scope of the *Convention* and the possible pluralities of meaning that it signifies. Importantly, Forrest asserts that it is not necessarily the fact that the heritage is attributed value, but rather that “some traces may be more valuable than others” (8). If this is the case, then CH is both classifiable and hierarchical; the value of the CH is determined in part by the value of other CH.

Forrest furthers that this connection articulates a correlation between the value prescribed to the heritage and the “geological origin” (Forrest, "Cultural Heritage as the Common Heritage” 133). The placement of heritage in a constructed timeline or geographical history exposes a conflict between the supposed specific geological origin of the cultural heritage and the notion of it belonging to an international or “humankind” history (133). For Forrest, the notion of heritage extends in part from discussions in UNCLOS that outline the detrimental impact of looters in sunken shipwrecks whereby historic artifacts “should never be sold, and should not form part of private collections” (Fletcher-Thomenius and Forrest 3). The connection between defining “heritage” in law in relation to archaeological perspectives on heritage produces similar assumptions in law as are present in archaeological practices: one being that “commercial recovery operations do not produce good archaeology” (3), which suggests that there is an inherent

harm in commercialization of heritage. Forrest further asserts that when it comes to underwater or maritime archaeology, the archaeological community seems to argue that shipwreck heritage should not be disturbed and so the examination is done *in situ* (3).

As partial determiners of the origins and value of CH, experts in maritime or deep-sea archaeology impact how the artifacts are regulated. Since “‘underwater cultural heritage’ means all traces of human existence having a cultural, historical or archaeological character,” archaeological practices impact how the UCH is examined and excavated (UNESCO, *Convention*, Article 1(a)). Archaeological assumptions and processes subsequently also impact how the artifacts are categorized, what histories they are placed within, and what value is attributed to them. For these reasons, the definition of heritage and how it is used in practice also lies in maritime archaeological discussions.

Maritime Archaeology and the Value of UCH

As outlined earlier, deep-sea diving technology has increasingly become more publically accessible. Consequently, archaeological and historic remains lying at the bottom of the ocean are threatened by the increase in “industry, development, pollution, and treasure hunting” (Adams, “Alchemy or Science?” 48). When it comes to the analysing and protection of subaquatic artifacts and the production of knowledge of those artifacts, archaeologists have taken a “‘governing’ role” (Smith, “*Archaeological Theory*” 81). This role suggests that the discipline of archaeology plays a key part in the way underwater material is understood and how it should be governed. The discipline of archaeology is a “self-avowed ‘value-free science’ of the material remains of the past”

and as such, the analysis of the underwater material is understood to be fact. The question as to what assumptions are made in archaeological approaches to excavation and what types of practices they rely on in order to “value” the UCH.

The discipline of archaeology, although divided and subdivided into many facets of research and areas of exploration, can be articulated by the relationship between past and present (Shanks and Tilley 2). The field aspires to be a set of practices whereby the interpretive research bridges the “link between theory and data,, the assumption that the scientific practice of studying and excavating remains eliminates subjectivity does not allow for the field to adequately deal with the relationship of past and present as, in fact, a subjective experience (3, 12). Not to argue that all archaeological endeavors fall into this shortcoming, but rather, that the widely accepted practices of maritime archaeology generally grapple with these issues. Ian Hodder suggests that the scientific, objective approach to archaeology emphasizes a linearity that does not allow for recognition of points of discontinuity or conflict and subsequently, the story can only be told through the eyes of the privileged (Hodder 30-31).

Jonathan Adams argues that the profession of archaeology is trapped in a conflict. Firstly, much of the research methodologies of the archaeological community have moved to reflect policies that allow for the preservation of the archaeological remains in order to better understand their histories without destroying them (Adams, “Alchemy or Science?” 49). This movement is contrary to an increased interest in the profit of deep-sea artifacts and treasures globally (49). For Adams, the profession of archaeology is complex in its integration of careful scientific methods to ensure that artifacts are left

mostly undisturbed and, unlike common misconceptions, archaeologists are not treasure hunters (50). The problem that Adam identifies is the reality that in many instances, archaeologists are not given priority over shipwrecks and CH sites, and instead, the sites are victims of looters and commercial exploitation (50-51). In order to take proactive measures to ensure that the archaeological value of UCH is preserved, Adams argues that the following must be put into practice:

- (1) Management, in which quantification of the resource is a priority, allied to a rationalisation of international heritage protection.
 - (2) Communication and education: changing perceptions with the help of the media, not only of the general public but of legislators and administrators.
 - (3) Proactive, rather than reactive research, involving development of both theory and method in response to new source material.
- (Adams, "Alchemy or Science?" 51)

These practices would presumably help eliminate the possibility of profit-driven archaeology (Adams, "Alchemy or Science?" 50-51). Specifically, the idea of "international heritage protection" suggests that the protection of UCH needs to be a global effort without the inclusion of a profit-motive. Building from this idea, there is a lingering assumption that UCH has an inherent value that is worth protecting. For the purposes of this discussion, it is the ways in which maritime archaeology uses discourses of value that I will be examining. In the profession of archaeology, Clay Mathers, Timothy Darvill, and Barbara J. Little articulate the process of *valuation* as something central to archaeological practices and management (Mathers, et. al, 21). For these scholars, the process of valuing reveals, in part, the way in which heritage is defined. In fact, they argue that it is the "emergence of modernity" that has facilitated the "institutionalization, objectification, and commodification of archaeological materials"

(24). The comparing and contrasting of materials in order to determine value, is not simply about situating value as a “past” or “historically” driven number, but instead, according to Mathers, Darvill, and Little, it is about “reading the past but *also reading the present* [Mathers, Darvill and Little’s emphasis]” (24). CH and UCH are categorized and their value is in relation to other CH and UCH. Consequently, the “valuing” of CH opens up the definition of heritage as something situated in the past as well as the present.

Value or processes of valuing, are arguably embedded in notions of objectification and reification. The very idea of value “refers to a relationship, it is a meaning, a significance for another, for some-one,” and it is this significance that is substantially monetary (Shanks and Tilley 47). Although practices of valuing objects in order to determine their relation to people and histories is something that is commonly accepted in the discipline of archaeology and value itself is correlated to capitalist approaches to commodities, the value of UCH is classified based on its levels of monetary comparability and commensurability (47-48). The characteristics that are valued must therefore also have a level of consumerability if the comparability is measured on a capitalist scale (40-62). In fact, the value or “significance of the object is often enhanced by aesthetics or utilitarian considerations” (Barkan 17), feeding again into a capitalistic notion of value. For Michael Shanks and Christopher Y. Tilley, the assumed objective qualities of archaeological approaches, the aim of conservation and preservation of CH, more often than not, “which sustains and justifies a capitalist present” (Shanks and Tilley 62). Shanks and Tilley argue that the dependence on value is

fundamental in understanding the overarching assumptions and understandings of UCH in the archaeologist community.

When it comes to the ways in which archaeologists attribute value, Mathers, Darvill, and Little suggest that the systems of valuing are based in hermeneutics as well as situated in notions of signifiers and signified being constructed and, at times, arbitrary. They outline the key values that archaeological practices construct in order to better orient the way in which archaeology defines and uses the term heritage. These key values are as follows:

- archaeological remains should be preserved rather than destroyed because they represent a direct and tangible link to the past;
- care for the archaeological heritage is good because it brings economic rewards;
- it is better to have archaeological remains than not to have them;
- preservation in situ to maintain authenticity is better than investigation, which is short-term and destroys authenticity;
- visibility is preferred to non visibility;
- old things are more interesting than more recent things;
- the archaeological heritage is a collective heritage, owned by no one and available to everyone;
- investigation of archaeological remains is worthwhile because of the knowledge it creates;
- interest in the past brings social benefit in relation to the quality of life, and is a component of education and the process of socialization; and
- the archaeological heritage is a resource that can be used or stored up, as we think fit.

(Mathers, Darvill, and Little 28-29).

The scholars are not arguing that these values represent an uncontroversial view, but rather that these are the values that are typically foundational to archaeological discussions. Interestingly enough, many of these points not only mirror the outlining of CH in the *Convention*, but they also seem to speak to it. Notably, these archaeological

values suggest that CH is something that has inherent value and should be examined and excavated. The assumption that the CH must be studied, examined, and valued in order for humankind to benefit from the knowledge of the material, reiterates the intrinsic connection between CH as laid out in the *Convention* and archaeological approaches to CH.

According to Mathers, Darvill, and Little, dominant archaeological practices assume that “preservation in situ to maintain authenticity is better than investigation, which is short-term and destroys authenticity” (Mathers, Darvill, and Little 28-9). If altering or harming the CH “destroys authenticity,” the authenticity of the CH must first be established—the determining of the authenticity of CH directly impacts the value assigned to the artifacts. Just as the *Convention* requires the artifacts to be submerged under water for at least a century, archaeological practices must determine if the CH is authentically at least 100 years old. The determination of authenticity supposedly exposes the value in the CH when compared to other CH of the same time and history. Much of what Mathers, Darvill, and Little discuss applies to CH found on land, but when it comes to the assumptions made regarding the process of valuing of the CH and UCH, parallels between maritime archaeology and land archaeology can be drawn.

The valuing processes present in archaeology are carried through into the field of maritime archaeology, and more particularly, maritime archaeology surrounding shipwrecks. Maritime archaeological sites in particular expose pluralities of histories that intersect with the sea. Although I want to reiterate that not all UCH are attached to or

located on a vessel, the majority of human remains in international waters have been found on shipwrecks. Colin Martin states that:

[u]nlike an archaeological site on land, whose location usually reflects a positive choice by those who selected and occupied it, a ship is a mobile entity that can move freely over parts of the Earth's surface covered by water... should it become a wreck, the placement of its remains is likely to be fortuitous, unintended, and very possibly far from its original provenance. (Colin Martin, "Wrecksite Formation Processes", 47).

Martin differentiates land-based archaeology and ocean-based archaeology in part by the circumstances surrounding their position. Maarleveld J. Thijs suggests that legal regulation of ocean-based archaeology is "both the culmination of the international dialogue on heritage and the conciliation of heritage thinking and maritime law" (Thijs 934). For these scholars, it is essential to recognize the obligations to distinguish the difference in obligations that apply under different maritime zones in order to approach excavating or studying the UCH (935). Underwater (and deep-water) archaeology has been impacted by the developments of technology and subsequently the histories UCH have only been recently accessible (15). When it comes to oceanic archaeological sites, CH found at the same site will likely have one reference point—i.e. if the materials are all located in a shipwreck—rather than land-based archaeological sites whereby materials in the same site may still refer to different points in time (Forrest, "Has the Application of Salvage Law" 313). Oceanic archaeological practices do seem to require a process of heritage valuing in order to place the UCH in conversation with other archaeological sites. This again, reiterates the idea that the CH has a fluid definition that is founded by overlapping jurisdictional and cultural claims, as well as histories of movement across the site.

Maritime archaeologists have normative practices that allow them to categorize and evaluate UCH based on assumptions similar to those described above. Adapting Muckelroy's 1978 wreck site formation phase, Colin Martin outlines the stages of examination of UCH sites for archaeologists (Martin 47-54). This phase considers different stages of "wreckage" and how to consider the ways in which the UCH site may have ended up in the location where it was found. Many of the phases pertain to an evaluation of the physical condition of the wreckage (i.e. if some components of the ship are floating or broken off), the physical properties of the water surrounding the UCH (if there are any toxins that may erode the UCH or if the area may be unsafe for excavation), if the site has been tampered with (if it appears that things are perhaps missing or moved), and what materials are included pre- and post- wreckage if that information is available (Martin 47-54). For Martin, these stages contribute to the "anatomy of wreckage" or the illumination of the events leading up to the wreck, the event itself and the subsequent material left behind (50). The theory of wreck site formation stems from five classes of physical evidence:

- Class 1. Extensive structural remains with much organic material and many other objects, and coherent patterns of distribution.
- Class 2. Elements of structure with some organic material and many other objects, and ordered patterns of distribution.
- Class 3. Fragments of structure with some organic material and other objects and scattered patterns of distribution.
- Class 4. No structural remains and little organic material. Some other objects and scattered patterns of distribution.
- Class 5. No structural remains and no organic material. Few other objects and disordered patterns of distribution.

(Martin 53)

These five stages highlight the analysis of a wreck site through the materials physically present that remain. According to Martin, these five classes have been “widely followed” and scholars such as Gibbs emphasize the important addition of cultural attention when it comes to wreck sites (Martin 53).

The surveying of UCH based on methods of physical analysis, technological scans (as well as searches, probing and remote sensing), are all integrated methodologies in underwater and maritime archaeology. Through these methods, archaeologists are able to categorize the materials present in the wreckage (wood from the bows of the ship, barnacles, items or abandoned treasure of crew members, metal from artillery, human bones, sea water...). At Sea, Joe Flatman argues that “maritime archaeology has had a tendency since its inception to see the place but not the people, to depopulate the maritime cultural landscape” (Flatman 325). This suggests that any UCH categorized will likely be removed or isolated from the identities connected to them arguably. The scientific methods used in archaeology to categorize objects at the wreck site as present, absent, organic, inorganic, lost, recovered, valuable, or worthless assumes that these categories are factual and objective rather than constructed and subjective. The assumed neutrality in these categories becomes problematic when value is thus assumed to be based on facts and whose worth is dependent on a capital-centered approach to knowledge (Shanks and Tilley 65). In the *Convention*, the reliance on CH having archaeological value results in a preservation of monetary worth being a deciding factor in what CH is or is not protected under international law.

The categorization of things found on the wreck site, alongside the value attributed to these things through archaeological practices, results in symptomatic reification. Reification, the process by which things become objects, involves notions of ownership, property, and belonging (Busse 363). The CH is, as “traces of the past which we find in the present ‘belong’ to time other than the present,” and belong to a nation or nations, family or families, or perhaps persons depending on how the CH is classified, who is implicated in its histories, and what jurisdiction it falls under (Shanks and Tilley 10). If there is a correlation between value and ownership, in as much as the owner(s) (past, present, or future) may impact the monetary worth of the CH and thus affect its supposed value, then ownership in this instance means both a legal ownership as well as a cultural ownership. Subsequently, if UCH is the property of “humankind as a whole” under international law, it constitutes a public resource and “private interests must be subordinated” (Forrest, “Cultural Heritage as the Common Heritage” 318). However, the balance between economic, cultural, and archaeological values is rarely met because there is a deep-situated bias in the language of ownership (Forrest, “Cultural Heritage as the Common Heritage” 321, Shanks and Tilley 10).

For Laurajane Smith, entrenched in the discipline and discourses of archaeology is the idea of “stewardship” (Smith, *Archaeological Theory* 82). Stewardship is embedded in notions of a “‘protector’ of the past, a spokesperson or interpreter of the past, due to its ‘right’ as an intellectual and scientific pursuit to make pronouncements about the meaning of the past” (82). The idea of a protector or interpreter seems to coincide with the idea of ‘rightful’ ownership inasmuch as it is the duty of an owner to

protect (82). The claim to ownership of an UCH site and the knowledge gained and produced at this site is therefore connected to this idea of stewardship and has been used to “reaffirm the archaeological commitment to conservation” (82). Smith argues that recent advancements and renovations of the discipline revolve around the notion of stewardship and the idea that the knowledge surrounding CH has an owner and a translator perhaps reflecting colonial discourses surrounding power, ownership, and knowledge production.

When it comes to a legal ownership, since the focus here is on UCH that is in international waters (rather than sites that are in internal waters and whose UCH therefore belongs to the territories they reside within), the ownership of the UCH legal is shared among stakeholder nations. The cultural ownership refers to the idea that the CH belongs to “‘our’ history, ‘our’ past or the past of the whole of humanity” (Shanks and Tilley 11). Subsequently, the idea of ownership is a concept that includes a belonging to individuals, to cultures, as well as to time—all of which impact the perceived value of the CH. Mark Busse’s discussions of reification outline the ways in which the dominant processes of reification negotiate both *culture* and *tradition* into consumable commodities (Busse 359). The language around property ownership and the understanding of ownership as a more broad term, according to Busse, reiterates and maintains processes of reification (Busse 359). The ways in which property ownership are expressed can result in both a commodification of culture and a fetishization of objects (Busse 359. 362). The ways in which CH is understood and valued reflect the relations of belonging and property that are assumed and produced when the wreck site is studied.

The value and ownership of CH is also determined by the ways in which CH is understood more broadly. For Dromgoole, Forrest, Mathers, Darvill, and Little, the definition of CH is not static and specific, but nor is it as broad as outlined in the *Convention*. The definition does not outline the necessary traits of the artifacts, but instead, it pertains to the way CH is treated—or mistreated—and the spaces, sites, or materials that it is being compared against. For Smith, heritage can be, at times, a:

form of social control, or at least negotiation, over social values and meanings, as it creates a mentality or way of seeing and knowing that renders certain social problems – particularly those that intersect with claims to identity and representations—tractable and subject to regulation.
(70)

Heritage is subsequently objects as well as it is spaces and the treatment of those spaces.

The fluctuating nature of CH illuminates the heritage as not only material, but also perhaps a process by which a projected valuation occurs and past, presents, and futures are delineated (Dromgoole, *Underwater Cultural Heritage* 16; Harvy, 30). These discussions foster “dynamic understandings of cultural heritage rather than being used to encase that heritage in restrictive boundaries” (Mathers et. al., 110) and emphasize the way in which archaeological approaches to CH seem to be not only mirrored in the phrasing of the *Convention*, but also privileged.

There is a connection between a nation’s heritage and their sense of belonging (Lyons 116), whereby the value placed on the CH as well as the determined owner and accessibility of the CH impacts the culture whose histories it speaks to. The legal

regulations of CH as a means of protection, and in some instances control³⁴ and the way it is valued, impacts the supposed owner of the CH but also those who are denied ownership. Dromgoole suggests that there are implications to anyone, being a “state, corporation or an individual,” claiming ownership over CH, especially those attempting to demonstrate an “original owner” or “direct line of succession” (Dromgoole, *Underwater Cultural Heritage* 103). Interestingly, the *Convention* does not reference or discuss notions of ownership in its parameters, perhaps assuming that ownership rights will coexist (or be compatible with) the material that falls within its scope (117). There seems to be a general assumption that property must have an owner in order for its value to be appreciated. Cultural heritage and cultural property are subsequently not only interchangeable colloquially, but their connection runs deeper; processes of reification and the way in which legal regulation and archaeology values CH forces the components of the shipwreck to be objectified and owned.

Highlighting the incompatibility between archeological pursuits of history and the systems of commodification and economic categorization that goes into valuing the UCH, ownership is a contested issue in the archaeological community (Forrest, "Has the Application of Salvage Law" 317). Forrest reminds us that ownership claims to UCH are not new; specific discussions and regulations surrounding the Law of Salvage come into this discussion. However, there seems to be a greater effort to reconcile these claims with protecting *cultural* property (318). The protectionist claims are meant therefore as a safeguarding against not only looting but also processes of commodification that found

³⁴ Barkan argues that in many instances protectionist attitudes are an extensions of efforts to control rather than from altruistic intentions (Barkan 27).

the valuing processes of property ("A New International Regime" 520, 521). As archeologist discussions point out, however, the incompatibility between finding a separate cultural value of UCH and economic value make reconciliation difficult. In fact, although well-intentioned, the *Convention* has not succeeded in fully removing the market from the valuing equation of UCH, as suggested by both Dromgoole and Forrest. The very process of comparing archeological sites through the valuing process interacts with the prescribed economic values of certain materials over others, which not only feeds into economic discussions, but facilitates their lasting stronghold over CH.

This first chapter provided overview the recent discussions in international law for the protection of UCH and the dependence on particular archaeological practices in order to determine the value of the artifacts. The lingering colonial approaches to valuing bodies are arguably still present in international legal approaches to CH because of the reliance on archaeological practices that have not sufficiently decolonized their own approaches to UCH sites. In order to explore the relation between archeological sites at sea, the protectionist claims of the *Convention*, and the valuing processes of UCH, it is useful to look at the way in which international law requires particular performative utterances from the archeological sites in order for them to fall under its scope. In the next chapter, I hope to hone in on the assumptions in international law, archaeological practices, and values of UCH to look at the ways in which performance of UCH and archaeological performances predominantly exclude the non-visible.

Part B

Drowned B o d i e s
Law Sea Remains

“The bone is a symbol of people lost, and people who survive and struggle. It is a symbol of a fundamental human connection: we all have bones, they are our structure, they hold us up. In creating bones, participants learn about violence in faraway nations and make connection to their own experiences to reveal the commonalities that bind us together as humans.”³⁵

(One Million Bones Project, 2013)

Exhuming non visible bodies is not an easy task. It certainly seems to contradict processes of CH examination and archaeological wreck site evaluation processes; however, the histories that are crafted into the broader shipwreck narrative of a site, are themselves partially not visible. Bodies that are disavowed from these narratives, shed light on social constructions of the authentic body—or the body performing authentically. The characteristics that encompass a representable image of ‘human remains’ (as outlined in the *Convention* and upheld through practices of categorizing *things* on wreck sites) force not only bodies into exclusion, but also identities. In order to expose the absent bodies, present bodies must be better defined. Although in my examination of the *Convention’s* limitations and maritime archaeology’s classifications, I have adopted the term human remains as international law has employed it, the term itself is never fully explored or defined in the treaty. The question then becomes, what are human remains? The *Convention* seems to use them as a category of objects found at the wreck site that must be safeguarded. Walcott’s description of bone and coral fused together where, as

³⁵ www.onemillionbones.org/the-project, accessed on 12 feb. 2016.

time passes and parts of bone and flesh become indistinguishable from ocean matter, the classification of “human remains” is dismantled as the boundary between human and everything else begins to blur. If human remains are (presumably) organic remnants of a human who was once alive and is now dead, the boundaries of where bodies end and begin are perhaps constructed.

In *Corpus*, Jean-Luc Nancy argues that the body does not have boundaries because it does not take up space, but rather, the body *is* space (Nancy 6, 14). The weight of the body is partially determined by gravity and by the things ingested within it, and the places of the body are reconstituting themselves as many times as they are constituting something else; the skin and its flexible and permeable nature is “variously folded, refolded, unfolded, multiplied, invaginated, exogastrulated, orificed, evasive, invaded, stretched, relaxed, excited, distressed, tied, untied” (Nancy 14). The body is therefore shifting inside and outside the space it inhabits as things outside the body are constantly negotiated as permitted or excluded from entering into the inner layers of the flesh (14). In this way, Nancy also does not make a distinction between the living and dead body, inasmuch as the constant movement of live cells happens in both instances—the body is simultaneously alive and dead (14). For Nancy, the body is “a place that opens, displaces and spaces phallus and cephalé: *making room for them* to create an event (rejoicing, suffering, thinking, being born, dying, sexing, laughing, sneezing, trembling, weeping, forgetting...)” (16). Nancy’s discussions of the body illuminate the problem with the category “human remains” inasmuch as the category is not self-contained, nor does it encompass a living or dead body, but instead, perhaps an opening of bodies (10-16). This

reimagining of the body as space allows for me to use the term human remains to indicate the category of classification used in the *Convention*, while also acknowledging that the present/absent bodies binary is already deconstructed. The present human remains that are found on the wreck site are always incomplete as all bodies, according to Nancy, are constantly external and openings with no limits or internal spaces. The performance of the present bodies is therefore an extension of the constructed category of body through the performance in archaeology of categorizing the components of the wreck site. In this way, exposing the absent bodies is a means of dismantling the very idea of human remains as a category.

Through archaeological performances, human remains become significantly more static and objectified than the body would be understood through Nancy's work. According to Paul Schilder, the human body shifts—expands and shrinks—as objects or others come into contact with it (Schilder 210), but what of how someone is perceiving another body? The construction of the boundaries of another body—dead or alive—could arguably shift depending on the person observing them. Consequently, the types of boundaries created when the human remains on the ship are constructed as something separate from sea life, from the wood on the vessel, and even from the water, impact the size, shape, and image of the bodies themselves. The encounter between the bodies on the shipwreck and the archaeologists evaluating the bodies is what (re)constructs those bodies into 'human remains' where the boundaries of the fragmented bodies are placed in rigid categories of what they are and what they are not. The bodies are thus stripped of their subjecthood—classified as objects—until they are placed in a narrative with

(re)inscribed subjecthood. Human remains, as a category of bodies, are therefore directly tied to understandings of the value of some bodies over others.

Throughout this chapter, I explore the implications of categorizing and valuing human remains through archaeological performances, while incorporating a discussion of the performances of the wreck site. It is these performances alongside earlier conceptualizations of UCH and the body as being intrinsically located in and around human remains that reveal particular performances of excavation and examination practices as standardized in maritime archaeology. The performances recognized or understood in the space of the shipwreck site as authenticated by archaeologists further reveal treatments of human remains that do not account for the bodies that may be absent.

As a result, performativity and performance theory is a useful lens for opening up conversations about the ramifications of privileging particular practices over others. The theory allows me to interrupt protectionist narratives by highlighting what is excluded and perhaps rejected when certain archaeological practices are relied upon in international law. This chapter orients performativity and gives an overview of scholarship that uses performativity in relation to heritage. From here, I incorporate our earlier discussions of UCH and archaeological practices in their relation to international waters and the 2001 *Convention*. By placing these dialogues in conversation, I want to expose the excluded, absent bodies from the protectionist, and arguably colonial, narrative within the *Convention*.

UCH and Performance

CH as a site of performance is something numerous scholars have examined, including Laurajane Smith. For Smith, heritage itself is an act of “doing” and is “a process or a performance, in which certain cultural and social meanings and values are identified, reaffirmed or rejected, and should not be, though it often is, conflated with sites or places” (Smith, *Performing Heritage* 69). In her work focusing on the performative quality of heritage, Smith argues that notions of “authentic heritage as past material culture” need to be interrupted with practices that focus on the “ways material culture is used as aids to remembering/forgetting, and as prompts for recalling and authenticating cultural and social experiences” (69). Smith aims to re-theorize heritage as a process and a performance rather than a “‘thing’, place, site, or monument” because it exposes the ways in which heritage speaks to moments—presently, previously, and in the future—and forms systems of meanings that “intersect with claims to identity and representation” (69-70). Smith’s 2006 and 2012 work take on the task of deconstructing normative narratives of CH and attempt to reframe the ways in which heritage should not only be thought about, but also curated, re-enacted, and (re)constructed.³⁶ This type of theorization directly opposes normative constructions of heritage that suggest that all CH has innate value. For this reason, Smith seems to be proposing a different approach to archaeological practices for uncovering and *valuing* CH.

³⁶ Recently, numerous scholars have argued that there is meaning actively constructed in museum curation and how the presentation and re-enactment of sites through exhibitions (Moscardo 1996; Falk and Dierking 2000; Bagnall 2003; Mason 2005; Watson 2007; Alivizatou 2012).

In order to better position performativity theory with understandings of CH, the ways that performativity is used and how it has changed is important. Performativity, as a lens, is grounded in J.L. Austin's *How to Do Things with Words*, and whose conversations are expanded and continued through both Jacques Derrida's discussions on deconstructing and Judith Butler's theories pertaining to the performative elements of gender. The way in which speech acts are received, interpreted, and reiterated, as well as the way they impact the performer and the audience, has shifted the very meaning of language; the notion of language being a form of action sparked theories of "doing" (Bauman and Briggs 62). When it comes to deriving meaning or interpreting symbols in actions, the influence that performativity scholarship has had on discussing the action not as an isolated incident but instead, as a relationship between actors, audience, materials, and the repetition of actions (Loxley 2). Both Gregory Bateson and Erving Goffman's work acknowledge the intrinsic connection between language and social action which further correlates performativity to something relational.

For Butler, performativity opens up intersections between gender, sexuality, and spaces (implicated by places). This type of intersection is also reflected in archaeology and geography with discussions of materiality in the way that its practice is used to describe the "relationships between objects, agency, memory and objects and objects and practice" (James A. Johnson and Seth A. Schneider 234, citing Miller 2005). Consequently, notions of objects (being human, things, materials, or actions) "doing" is generative in the spatial construction and the overall reception of the performance.³⁷ Like

³⁷ "Doing" is taken from descriptions of the agency of objects from Anthony Giddens' 1984 work.

Smith's theorization of heritage as "doing" rather than inert, the idea of performance itself cannot be reduced to actors, audiences, and scripts, but instead, performance encompasses the "doing" of (what is perceived to be) "reality" in and around the social space. The spatial component of performativity is particularly relevant when looking at UCH as it is the space of the ocean that guides archaeologists in their evaluation of UCH and the histories surrounding it.

Jane Bennett's work *Vibrant Matter: a Political Ecology of Things* also explores the spatial relations between subject and object. She discusses notions of materiality and the meanings that are embodied in objects (Bennett xvi). She suggests that non-human subjects have equal agency to their human counterparts in the spaces that they create and influence (Bennett xvi). During the portion of her work that focuses on non-human bodies, she depicts them as "actants rather than objects" in a way that does not deny human agency, but seeks to incorporate objects as subjects of agency as well (Bennett 10). Considering objects as actants is particularly useful when considering the performative nature of UCH sites; by assuming that actants are both human and nonhuman, performative utterances are located in both the human and non-human spaces of UCH sites. According to Dragos Gheorghiu and George Nash, the objects in archaeological sites facilitate a translation of the past and a possibility of a "relationship between the living and dead" (Gheorghiu and Nash 7). Gheorghiu and Nash emphasize the complexities of temporalities in and around material located in UCH sites. Bennett's work alongside Gheorghiu and Nash's work articulates the connection between the

objects located in UCH sites as more than material, but as material that speaks to more than one temporality and whose position and condition reveal particular performances.

Building on both Smith and Bennett's work, in this section, I argue that UCH is not only performative in its spatial construction, but that archaeology, in its practices, approaches, and validation in international law, contributes to the performance. As discussed earlier in the previous chapter, one component of Mathers, Darvill, and Little's argument is that archaeological approaches assume that there is inherent worth in UCH and the potential to learn from the histories shrouding the artifacts themselves. The presumed value in this knowledge is reflected in the *Convention's* drive to not only protect UCH, but also to allow the "greater good of humanity" to learn from the histories that may be uncovered when excavating the UCH. For the purpose of clarity, I will break down the analysis of performances in the following ways: 1) the performances of archaeological practices during shipwreck examinations must be seen as authentic by international courts; 2) if the practices are seen as authentic, the value assigned to the UCH by archaeologists is also seen as authentic; 3) if the spatial performances of the UCH fit within particular categories recognized under the *Convention*, then the UCH falls under the protective scope of international law.

Archaeological processes of evaluating UCH sites in international waters are not only institutionalized practices, but also performances. Michael Shanks argues that "archaeology may be conceived itself as performance, one where the remains of the past are mobilized in practices, often conceived as mimetic of representing or restoring behavior" (Shanks 149). The stages of gathering data, evaluating the present material,

and analysing the wreck site are not only (re)iterable and received as appropriate and authentic means of archaeological excavations, but they are also embedded in recognized discourse that allows for their meaning to be carried through with their intention.

Subsequently, the performance of data collecting, and data evaluation, must be seen as authentic³⁸ in order to be recognized as evidence for whether or not the characteristics of the UCH fall under the scope of the *Convention*. The performance of archaeological evaluation alongside the spatial performance of the UCH site itself must both authenticate the characteristics of the UCH in order for regulatory (and protectionist) measures of international law to apply.

The first component of the exploration of performances surrounding the regulation of human remains in international water denotes the archaeological practices during shipwreck examination—more specifically, the archaeological performances that are relied upon by international law in order to classify the human remains on a shipwreck. The impression of the archaeological performance on site is partially determined by the academic and political actors affiliated with the site, as well as an adherence to a globalized standard of archaeological practices (Mathers, Darvill and Little 31, 47). For instance, “the heritage industry” as outlined by Hewison (1987) emphasizes an economic gain from the UCH that is reflected in the “standard approach across the globe is to establish sets of criteria whereby the relative value of any site can be compared with the relative value of another, usually similar, site” (Mathers, Darvill and Little 47). The ways in which the archaeological endeavors manifest on a wreck site

³⁸ As opposed to “inauthentic” practices of an archaeologist destroying the site or altering the layout before studying the material.

therefore are compared with the archaeological practices on other sites, and are thus judged in relation to one another. A successful archaeological performance—perhaps one that results in a site with economic, social, and or cultural gain—is contrasted with the archaeological practices that have not performed successfully. I argue that the profession of archaeology relies to some extent on the regulation of performances in order to authenticate the CH itself. In order to better understand this concept, Melissa Tyler and Laurie Cohen’s “Spaces that Matter: Gender Performativity and Organizational Space” illuminate the spatial dynamics of performances and the authentication of some performative practices over others. Although their discussion focuses on gendered relations in the workplace, their overall discussion about the ramifications of authentic versus inauthentic performances is useful for the ways in which archaeological practices are used to value UCH. The archaeological performances themselves produce a set of knowledge (or myths as argued by Laurajane Smith) or “construct pictures of past cultures” that are legitimized only if the archaeological practices are deemed authentic (Smith, *Cultural Heritage* 10; Forrest, “Has the Application of Salvage Law” 313).

One could argue that the narrative or story pieced together by archaeologists dismantles the initial categorization of the objects found on the shipwreck. According to Michel de Certeau in *The Practice of Everyday Life*, “what the map cuts up, the story cuts across” (de Certeau 129); the performance of labeling and classifying the wreck site is then contrasted with the narrative that the UCH fits into. The underlying concern is not necessarily then with the idea of classification itself, but rather, with the regulation of classifications in a way that does not allow for a narrative to dismantle or ‘cut across’ the

category. For example, ‘human remains’ is a required category under the *Convention* whereby in order to be protected, they must fulfill particular characteristics, physical positions (and locations) and embody specific attributes in order to fall under the required category. These requirements force particular performances of the evaluation of the wreck site in a way that includes certain types of objects and excludes others, consequently restricting the possible narratives that an archaeologist may be able to address. It is the relation between performances of archaeological practices in international waters and the requirements of international laws like the *Convention* that elucidate shortcomings in approaches to UCH sites.

Tyler and Cohen argue that spaces are organized and negotiated in ways that necessitate certain performances in order to participate in the space, be it gender, race, or even attitude (Tyler and Cohen 177). If someone wishes to participate in these practices within the space, they must be able to conform to the power relations embedded within the normative performances or risk being excluded or rejected from the space (177). Similar to Butler, Tyler and Cohen further argue that successful performances are recognized (and thus authenticated) if they conform to the norms of the space (179). Although these authors are referring to gender, a similar argument can be made for the normative practices and spatial constructs in archaeological practices. Subsequently, archaeological practices like the ones outlined by Colin Martin, are not only “widely followed,” but also widely accepted as practices that result in accurate *valuing* of the material. The performances of the archaeologists must therefore adhere, to at least some

degree, to these practices in order to participate in the excavation and have their evaluation of the materials authenticated.

As Martin argues, there are specific categories that archaeologists use to classify materials and it is through the proper use of materials, an examination of the wreck site, and an understanding of the histories that might come into play around the site, that the UCH can be understood and analyzed (Martin 53). The notion of organizing the site through classification assumes that everything is in fact classifiable, that the methods being used accurately allow for the determining of the category, and that these practices allow for a greater understanding of the site. For Luciana D'Adderio, the objects themselves, in this case the UCH, "can be 'partial representations' containing selected and codified configurations of the multiple (ostensive) views and physical arrangements that make up a routine" (D'Adderio, 204). This idea suggests that, like Tyler and Cohen, D'Adderio believes that the meaning and understanding of artifacts is not inherent in the object entirely, but is spatially embedded in the *routine* or performed practices as well. D'Adderio further suggests that there must be a translation of these elements in order to fully grasp the meanings present. One key element of D'Adderio's work is the idea that "knowledge and action are not simply '*distributed between*' but '*stretched across*' actors and artifacts" (208). This understanding echoes the idea that knowledge pertaining to the artifact is not inherent in the object itself, but is in fact part of the object, the space, and in the people who are examining the artifact. Subsequently, the performances of archaeologists, the space of the UCH site, and the artifacts themselves, all contribute to the overall performance, knowledge production, and histories surrounding the site.

As Mathers, Darvill, and Little have argued, there is an underlying assumption that CH holds inherent value and is thus worthwhile examining because of the knowledge that can be gained (Mathers, Darvill, and Little 28-29). This is in line with D'Adderio's argument that traditional approaches by organizational scholars who assume that knowledge of artifacts and things are gained from external sources. D'Adderio interrupts this assumption by suggesting that "the skills and capabilities of actors are *mediated* and fundamentally *transformed* by the capabilities of the tools and instruments that they use in their work" (D'Adderio 208). In other words, the performances of the archaeologists, the tools used, and the assumptions made through the accepted archaeological practices, will ultimately play a role in the overall knowledge production and understanding of the UCH site; the UCH does not *give* knowledge, but is an actor in constructing the knowledge, which is then translated so archaeologists then classify it using the categories already prescribed by the profession (D'Adderio 220, citing Bowker and Star, 1999). For D'Adderio, "artifacts embody the ways in which specific agencies [such as the profession of archaeology] understand and organize their world" (D'Adderio, 220, citing from D'Adderio 2001 and 2003). Archaeological practices, as performative, must be regarded as *successful* or *authentic* in order for their evaluations to be considered correct. These performances also influence the performance of the UCH.

If the archaeological performances are deemed successful and authentic representations of the accepted archaeological profession, and the UCH is evaluated using the categories and archaeological tools, the UCH must fulfill another set of categories in order to be protected under international law. Specifically, according to the

Convention the UCH must have “cultural, historical or archaeological character” and “have been partially or totally under water, periodically or continuously, for at least 100 years.” This description immediately presupposes that the material must have some connection with culture and history. In order to determine if in fact the material fulfills these requirements, archaeologists must compare these materials with CH whose historical and cultural markers have already been established and valued. For Gaynor Bagnall, the way in which heritage is connected to culture and history is through performances of consumption and reminiscence. This notion theorizes that it is the reception of archeologists (and perhaps stakeholders in the heritage) who probe into collective cultural memories and constructions of histories in order to create a connection between and past and present, that determine the “value” or authenticity of the heritage (Bagnall 93). Bagnall further argues that performativity is a type of spatially implicated social practice whereby the relationship between the reception of the visitors to the site reveals constructions around the performance itself (87). This suggests that the visitors or audience of the performance are not necessarily passive. The performance of the UCH as artifacts, and the performance of archaeologists through accepted archaeological practices, must result in the conclusion that the UCH has value that the *Convention* is looking to protect.

The *Convention* also regulates the depth and types of waters that the UCH must be situated within in order for the material to fall within its scope. If the UCH is found in territorial waters for example, the prescriptions set out in the treaty do not apply but rather, the legal regulations of UCH as set forth by the nation whose territory the waters

belong to prescribes the characteristics needed in order to be regulated. As well, the *Convention* outlines the fact that the UCH must be submerged “for at least 100 years” which imposes a particular temporality or temporal performance of the archeological site. Regardless of whether the UCH were submerged 99 years, 150 years, or 80 years, if the archaeologists evaluate it as having been submerged for at least 100 years and its location is in international waters, the UCH falls within the scope of the treaty. This suggests that there is not an inherent truth to the temporality, but instead that the position of the material (be it attached to a vessel or not) and the physical characteristics of the material found must speak to a history that is at least 100 years in the past. Subsequently, if the UCH *looks* as though it is part of or in relation to another archeological site whose material is “proven” to be from a past that is at least 100 years separate from the present, then the UCH will be seen as authentically at least 100 years old and therefore within the regulatory scheme of the *Convention*. This also fits into similar notions of the treaty’s presupposed notion of “prehistoric” inasmuch as the temporality of the UCH site must be determined in relation to the material (and their placements and characteristics) found on site as well as compared to the CH at other sites that were deemed prehistoric.

These prescriptions as set out by the *Convention* expose particular present conditions that must be fulfilled in order for the overall spatial performance of the archeological site to be considered culturally and historically significant enough to be placed under the protection of international law. The value of the UCH is therefore tied into the overall reception of the site; the reception is intrinsically linked with the spatial construction of the site (be it a shipwreck or not), the location of the site, the finders of

the site, the regions adjacent to the site, the perceived histories that the site speaks to or is situated within, and the overall performative utterance or “doing” that happens when archaeologists evaluate the “speakability” of the site. If in fact, the site (being the objects, materials, construction, location, and situation) “speaks” to a significant history³⁹ at least 100 years in the past which allows for it to be “valued,” it then falls within the scope of the treaty. It is evident that the characteristics as set out by the *Convention* require a *present* performance where materials in the archeological site are *visible* and *speak* to particular histories or temporalities. How does this impact human remains that are considered UCH?

UCH: Present and Absent Bodies

According to Alfred Arteaga in *Violence and the Body*, “[t]he violent act, the violent event, is a bodily occurrence. It is the sharp flash against flesh, and it is the blood-colored response” (Arteaga vii). The connection between violence and the body is essential when looking at human remains in the context of violent histories. In light of colonialism across international waters, the treatment of human remains found in the ocean is as much political as it is cultural. The performances of archaeologists and the translation of the performances within the UCH site provide insight into the threads of colonialism that international law may still have. The process of categorizing UCH (as in Colin Martin’s discussion) creates a binary between the visible and non visible as well as a binary between the present and absent (Mathers, Darvill, and Little 28-29). The process

³⁹ “Significant history” refers to the *Convention*’s prescription that the UCH must have an “archaeological character” which is determined by the privileging of certain histories over others.

of evaluating artifacts including human remains relies on methods that acknowledge absent histories through present artifacts; however, absent artifacts remain unacknowledged. These binaries become controversial when dealing with human remains. The ocean, as a space of intersection between global histories of movement and colonization, places both present and absent submerged bodies in conversation with histories of violence. Subsequently, I argue that there is an inherent violence in excluding absent bodies.

In the performances of archaeological practices and UCH, the idea of human remains complicates the processes of evaluation. Governing assumptions in archaeology like “care for the archaeological heritage is good because it brings economic rewards” and “visibility is preferred to non visibility” become particularly problematic when dealing with human remains (Mathers, Darvill, and Little 28-29). If human remains undergo the same process of evaluating as other artifacts on site, considerations like economic value become troubling. The time period or history of the bones could implicate its economic value, casting a direct connection between bodily net worth and the time period in which the body may have been situated. This type of hierarchizing histories and spaces reflects a broader history of classification informed through colonialism.

The *Convention* outlines that “States Parties shall ensure that proper respect is given to all human remains located in maritime waters” and that “[a]ctivities directed at underwater cultural heritage shall avoid unnecessary disturbances of human remains of venerated sites (UNESCO, *Convention*, 2.9 and Rule 5 of the Annex). Notions of “proper

respect” or “unnecessary disturbances” are not defined or elaborated on further in the *Convention* which leaves their respective interpretations relatively open. Perhaps, similar to the way in which CH was broadly defined, the notion of “proper respect” and “unnecessary disturbances” refers back to archeological practices since the CH themselves must have an “archeological character.” Dromgoole asserts that human remains are not always present at UCH sites and their presence is usually determined by the length of time submerged or the spaces that they are attached to (i.e. it is more likely that human remains would be found in a shipwreck whose cabins or compartments are sealed off) (Dromgoole, *Underwater Cultural Heritage* 326-327).⁴⁰ Although it is relatively rare to find human remains in UCH sites, the *Convention* took a proactive approach to protectionist claims because of the future possibility of finding human remains at sea. For Dromgoole, the question is not whether or not there are human remains present at the site but instead, how the *Convention* prescribes treating these remains and what that could implicate. The notion of “unnecessary disturbance” is perhaps stemming from the consideration of past lives lost and the way in which they need to be carefully studied *in situ* beforehand to determine how to excavate (328).

The performance required of UCH both spatially and temporally is important because it contributes to the value attributed to the shipwreck site. It is this value that not only impacts whether or not the UCH falls within the scope of the *Convention*, but it also has a direct influence on the understanding of any human remains on site. The very

⁴⁰ Peter Hershey suggests that there has been many findings of human remains on or attached to shipwrecks throughout history. Some examples include: the HMS *Victory*, the HMS *Investigator*, the HMS *De Braak*, the USS *Monitor*, the HL *Hunley*, the HMS *Bedfordshire*, the British warship *Mary Rose*, and the *La Belle*. According to Hershey, “many shipwrecks are gravesites of some fashion” and the possibility of finding future human remains at sea is not as low as commonly perceived (Hershey 363).

notion of a state prescribing cultural relevance to objects indicates that the term cultural heritage is something of value that must be protected and kept for future generations, suggesting that the worth of the human remains, to some extent, must be determined in order to prove their relevance. This also means that the use of the word “property” (when “underwater cultural property” is employed rather than UCH) is equally problematic because it emphasizes that the objects in question *must* have an owner and that they have a monetary value alongside the assumption that those things must be excavated and studied in order to fully appreciate their value. When it comes to human remains, assigning a monetary value is controversial because it could reflect colonial histories when bodies could be openly bought and sold.

Thus far, these arguments have amalgamated into the idea that the *Convention* privileges an approach to cultural artifacts that emphasizes the ability for cultural heritage to be owned and regulated in order to be safeguarded. This notion of ownership is derived from the reliance on archaeological performances that presume practices of valuing. Consequently, although human remains must be treated with respect, they, as categorized as CH, are also processed through the valuing system whereby they must have an owner and an estimated monetary value. As the archaeologists survey the UCH site, the placement of the human remains, the condition, and the history to which they are perceived to speak to, impacts the performance of the UCH and reveal the performances of human remains (or non-living bodies) that are regarded as authentic.

In order to claim authenticity, the *Convention* claims that the UCH must have “cultural, historical or archaeological character.” If determining the UCH’s character

requires performances that allow for the classifying of material and opens up layers of privileging of certain histories over others, meanings of words like cultural, historical, and archaeological become attached to discussions of *worth* and *value*. This attachment is especially true with the word “significance,” used twice in the *Convention*. The first use is in “Article 20—Public Awareness” and the second is in rule 14 of “Section III.

Preliminary Work.” These states:

Each State Party shall take all practicable measures to raise public awareness regarding the value and significance of underwater cultural heritage and the importance of protecting it under this Convention.
(*Convention*, “Article 20”)

The preliminary work referred to in Rule 10 (a) shall include an assessment that evaluates the significance and vulnerability of the underwater cultural heritage and the surrounding natural environment to damage by the proposed project, and the potential to obtain data that would meet the project objectives.
(Section III. Preliminary Work, Rule. 14.)

In both cases, the word “significance” is equated with something determinable, pertaining to UCH, and something that would warrant the artifact’s protection. This reiterates the idea that performances in archaeology seek to authenticate the value of the UCH in order for it to fall under international protection; however, the authenticated UCH also must hold some form of “significance.” The word significance carries with it numerous connotations and it is defined as “the quality of being worthy of attention; importance, consequence” (OED 2). As I discussed earlier that the performance and subsequent value of the UCH is not inherent or isolated, the importance or quality is determined by comparison. These points suggest that the cultural, historical, or archaeological significance must be something of *worth* in contrast to other things that have similar worth. The “significance” of the UCH subsequently determines if it is worth protecting.

When it comes to human remains, the question then is not whether or not it is significant, but *how* significant and who is allocating that significance.

The only mention of how to handle and negotiate human remains under the *Convention* is in Article 2 section 9 that states that proper respect needs to be allotted to them. There are no instructions as to how to determine the ‘significance’ of the site nor the ‘significance’ of the remains. Nevertheless, the approved and normalized archaeological practices of evaluating the site suggest that there *is* indeed some ‘significance’ in particular human remains. As evidenced earlier, the types of performances required to determine significance and attribute value, privilege the present and physical evidence of human remains. Processes of using physical evidence to locate bodies in history through their traces or their remains in order to better value the UCH site (or wreck site) as a whole, has two clear implications; the first being that the human remains ultimately get sorted into a system of valuation and the second being that the human remains are used as vehicles to facilitate valuing. Although, on the surface, using bone residue or skin tissue to help “date” the wreckage or connect it to a particular history seems to be a useful exercise, it is also an attempt at situating or being privy to the performances of the living-body by means of analysing the non-living body. In doing so, can archaeologists escape the system of commodification that UCH is exposed to? Systems of valuing UCH privilege materials that are visible, present, traceable, and through archaeological surveys, can be authenticated. How does this authenticating process value or devalue bodies? Where does this leave absent or invisible human remains and bodies?

According to Tanya Shields—in her recent work *Bodies and Bones: Feminist Rehearsal and Imagining Caribbean Belonging*—bones are simultaneously tangible and intangible commodities where they are categorized with a monetary value but then also deeply situated in culture. Shields argues that bones and bodies are important historical points of discussion since “flesh cannot be ‘discoursed’ away” (Shields 5), which allows us to define the subject or the individual within society, culture, history, politics, communities, and law. Bodies and bones subsequently facilitate discussions of movement and histories; this liminality means that bones and the memory of bodies have the ability to be situated both in the past *and* present. The commodification of bones is relevant to the compartmentalization that thrives in colonization. This past/present delineation situates bones within contemporary discussions of Caribbean resistances to international law since legal categorization of bones forces bones into the past by suggesting that they need to be protected and placed in museums for people to look at and remember history. Remembering *past* histories rather than discussing *present* histories, forces the identities connected to that history into the past: a static, permanent state. This practice does not recognize the dynamic nature of histories and therefore misinterprets the significance of bones and bone retrieval.

Even though deep-sea diving and underwater examination technology is improving, it still only recognizes present bodies. This means that human remains that have been pulled apart by the ocean and scattered among reefs for hundreds of years, will not be recovered physically. For Anna Farthing, absent human remains, or intangible human remains, are just as *significant* as visible, present and tangible ones. Farthing

argues that “drawing attention to the absence of material evidence” can be just as useful in exploring history as mapping the tangible evidence (Smith, *Performing Heritage* 94). This is because it allows for a more holistic picture or understanding of the underlying history and is particularly useful when considering colonial histories across the ocean where slave routes transported bodies of men, women and children. Specifically, the history of the middle passage between the mid-fifteenth century to the early nineteenth century includes the transporting of over ten million Africans to the “New World” on primarily British ships in a coerced intercontinental migration (Mallipeddi 235). The middle passage therefore facilitated a “deadly enterprise” (Mallipeddi 235) that resulted in the exploitation of African bodies and their associated bones. Driven by economic exploitation, the Caribbean more particularly, bared witness to the commodification of African bodies for the sake of financial and economic gain of Western and European societies (Mallipeddi 237)⁴¹. In this context, absent bodies are not simply the occasional overboard sailor, but thousands of abandoned slaves.

As I outlined in the introduction, the *Zong* Massacre highlights the connection between value, bodies, and the rejection of bodies deemed less profitable in histories of colonialism on the seas. As technology continues to improve, the likelihood of finding slave ships across (and near) the middle passage increases. The valuing performance on the *Zong* figuratively fragmented the bodies long before the waves of the ocean mangled

⁴¹ It is also important to note that “[s]lavery had existed in Africa well before maritime European nations initiated the trade, but the growing demand for slave labor profoundly altered the nature of the institution [and the experience of slavery for slaves] on the continent” (Mallipeddi 238-239). I will not be discussing the slavery within Africa prior to the slavery transportation on the Middle Passage because my focus here is on the reclaiming of bodies lost during coerced slavery across ocean spaces near the Caribbean. I recognize that these are not isolated histories of slavery.

their remains. According to Ian Krikler, the entire process of medically examining, evaluating, and purchasing the Africans classified particular bodies with values before they headed out to sea (Krikler 397). In the instance of the *Zong*, the Captain, Collingwood, as a practicing slave ship surgeon, brought his medical training to his role as master of the ship. Krikler outlines:

In determining that value through an elaborate selection process, surgeons aboard slavers played a crucial role. If captives were purchased, they would then be held prisoner, stowed, transported and (if they survived) prepared for market. However, if the captives were deemed not good enough to be purchased, the surgeon was in effect denying them value as a commodity. The slave then – if he or she could not be sold elsewhere – underwent what might be termed “commercial death”. And, as we shall see, in the slave trade, commercial death all too often spelled actual death. (Krikler 397)

Krikler asserts that the marketability and condition attributed to each slave body as determined by the slave ship’s surgeon would result in a value pertaining to that slave’s life. This notion reiterates the ramifications of reification and processes of valuing that contribute to the “culture of violence which forms the background to what happened on the *Zong*” (Walvin 43). While the killings themselves were not the focus of the court case, the case centered instead around “whether mass murder was covered by an insurance policy” (Walvin 101). The murdered Africans were “now mere numerical and financial details in a commercial transaction” (Walvin 101). This goes to show how these systems forced certain bodies into positions of no-value, where they were literally and figuratively forced into absence over the course of the route across the ocean.

In order to counter narratives of exclusions, a reimagining or dismantling of conceptualizations of the body and of value is needed. This can be observed in recent

works of art and activism whose goals have been to interrupt the privileging of present bodies. Nick Cave's artwork not only places ships within a colonial history, but speaks to a larger issue of privileging some histories over others. When it comes to human remains, the archaeological performances embedded in the classification of UCH and the required physical performances of the UCH site as prescribed by law meet resistance through advocacy like "Sea Sick," attempting to make the absent present. By incorporating art and literary activism into my discussion, I hope to address ways in which normative performative narratives are disrupted.

Part O

Haunting B  d i e s

Gardening in the Tropics, you never know
 what you'll turn up. Quite often, bones.
 In some places they say when volcanoes
 erupt, they spew out dense and monumental
 as stones the skulls of desparecidos
 – the disappeared ones.
 Olive Senior, “Brief Lives” (lines 1-6), *Gardening in the
 Tropics*

Si bene calculum ponas, ubique naufragium est.
 [If you reckon well, shipwreck is everywhere.]
 Petronius, *The Satyricon*

The previous chapter established ways in which archaeological practices are performative and how the process of examining UCH is a performance in itself. As a process of “doing,” UCH is inspected for its authenticity and its attributes that allow archaeologists to affix it within a broader system of valuing. Such performances that rely heavily on processes of valuing, are validated through and supported with international law in treaties like the *Convention*. When it comes to the interpretation and understanding of human remains, I incorporated a discussion by Nancy in an attempt to interrupt the understanding of what the body entails. Like Nancy, many contemporary artists and activists are also challenging what defines the body and in particular, by incorporating art and literary activism into my discussion, I hope to address the ways in which normative performative narratives are disrupted. In particular, I am looking at resistances to the pattern of commodification and classification attributed to the performances on

shipwreck sites by artists who shift the focus to performances of absent bodies in order to change the interpretation of the site as a whole.

I. *Locating Absent Bodies*

Chiharu Shiota's work *The Key in the Hand*, installed in the Japan Pavilion of the Venice Art Biennale in 2015, portrays what looks like a shipwreck site: incorporating lifeboats with old, damaged, darkened wood that appears to be sinking into the floor. Fifty thousand antique keys are suspended from hundreds of thousands of feet of crimson yarn strung across the exhibit, flowing from the vessels to the ceiling. The current of keys and red yarn mimic the way a key might hang in the water, suspended for a moment before the brass drifts and sinks to the bottom of the ocean. The room stands as if witness to a violent catastrophe; the two sunken lifeboats, pulling down thousands of keys, trailing threads of blood. In Shiota's interviews, she states that she wanted to explore notions of memory through the use of the keys. Whether you are walking through the art installation or viewing Sergey Khodakovskiy's short film featuring this particular exhibit, a moment in Ellen O'Grady's story *Outside the Ark: An Artist's journey in Occupied Palestine* seems to stop time and ring true: a small boy sits in Sunday school learning about Noah's Ark from a picture depicting a scene after the flood with "lush green trees and colorful plants" and a rainbow filled sky and the boy's words "WHERE ARE ALL THE BODIES?" haunts the reader's initial perception of the scene (O'Grady). A disaster bygone with wrecked life boats, waves of blood, and floating keys—but where are all the bodies?

The layers of red yarn in Shiota's work obscure the audience's view of the ceiling and much of the boats themselves, creating what appears to be a wave of blood around each of the vessels. There is, however, an obvious lack of bodies on or near the boats considering how much blood seems to be spilling from them. One possible explanation is that the bodies enter into the exhibit as viewers, walking through the installation itself as they move under the suspended yarn and keys. The hand, in *The Key in the Hand* is possibly the hand of each individual whose physical body enters the scene. If each key holds or opens a memory with subsequent histories and corresponding hands that hold these histories, the performance of entering into the exhibit by each viewer becomes central in understanding the absent bodies from the installation. It could be that Shiota believes that the violence portrayed in the exhibit is unlocked or brought to life through the bodies of the audience. In this instance, there is a reliance on the performance of the viewer and therefore a requirement of the type of participation from the viewer.

Utilizing Nancy's theorizations about the body being a perpetual opening and a space whereby the live and dead body are an extension of one another, the bodies that enter into the exhibit become a part of the past and present. The viewers themselves are perhaps meant to represent both dead and live bodies interacting with the scene of an atrocity. Thus, the performance of the viewer, as a body moving through the room, becomes a representation of a present body in the present moment as well as an absent body of the past moments that the art itself represents. In contrast, for those who are viewing the installation through the YouTube video of Khodakovskiy's film, the camera person becomes the invisible body, the absent body, moving through the installation as

the viewer's body is separate from the physical space of the exhibit. The camera person takes the viewer through the exhibit by walking in and around the ships, remaining under the yarn as anyone walking through the installation would do. By watching the video, the viewer is also watching a past moment of the invisible cameraperson as they have previously walked through the installation, perhaps further delineating the temporal space of the art. There are other explicit and implicit bodies besides that of the cameraperson. Particularly, *International Art Magazine's* release of Khodakovskiy's film includes a moment nearing the one minute thirty (1:30) mark where the viewer of the short film sees a glimpse of three people near the doorway on the right entering into the exhibit. The physical bodies of those visitors—present during the shooting of the filming of the exhibition—are in the past of the person viewing the film on YouTube; however, those visitors, like the viewer of the film, are closer to the present than both the initial installation of the art piece and the histories that the exhibit represents. That is to argue that there is a moment when numerous temporalities with visible and invisible histories are present during the screening of the film where bodies of pasts and presents are all brought together in those moments. Further, the absent-present binaries that this installation initially constructed by excluding bodies from the violent scene is deconstructed with the incorporation of the viewer who walks *under* the yarn—perhaps under the symbolic bloody water—through the artwork (rather than viewing the installation from behind glass).

The limits of bodies, or the constructed boundaries of the body, are created through the senses or by things like touch and sight (Nancy 23). If this is the case, then

the constructed boundaries of the bodies that physically walk through the exhibit are created when people reach out to touch the hanging keys (as depicted on the artist's webpage). The performance of walking through the installation and touching the keys establishes a connection between the exhibit visitors and the histories that the installation depicts. Drawing a parallel between the visitors of the exhibit as they examine and touch the keys of the installation and maritime archaeologists as they examine objects on a wreck site, similar instances of temporal disruption between present bodies and past events come into play. In this example, the maritime archaeologist would perhaps take some of the components from the wreck site and analyze them at research facilities rather than study them in situ. These boundaries however, are also deconstructed. The performance of the maritime archaeologist being present on the wreck site in order to categorize and value the things found on location influences the objects themselves. The bodies entering into the exhibit and wreck site are vital in the production of knowledge and the performances of the *things* that are present and absent.

Like maritime archaeologists, the performance of the viewer or researcher of the wreck site is integral in placing the absent bodies. One main distinction between the discussion of the performance of archaeological dives wreck sites and the performance of an art admirer is that the exhibit is not requiring or pursuing an authentication of performances that rely on commodification. That is to say that the exhibit's absent (and present) bodies are neither being categorized nor are any of the items or bodies in the installation being valued. It is the simultaneous lack of and incorporation of bodies that

provides a platform for the exhibit to challenge the ways in which wreck site histories are presented.

Chiharu Shiota's discussions of shipwrecks and memory, as well as the ways in which she challenges the normative categorization and valuing of human remains, is not in isolation. There have been recent works of art and activism taking place globally whose goals have been to interrupt the privileging of present bodies. The *One Million Bones Project* is another example of the expansive reach of this discussion. This project was a social movement created in 2013 to hand-create and publicly display bones on the National Mall in D.C. in order to represent the bones of people lost to mass atrocities worldwide. The public display features plaster bones strewn across the earth, laid on top of each other, creating a vast scene of fragmented stories on fragmented bodies that would have otherwise remained absent. This project is not only advocating for awareness, but is also attempting to show, through collaboration, that the past is physically within the present and the direct connection human memory has to physical material. In addition to the recollection and figurative recording of memories onto the bones, the project also entailed the physical (re)creation of bones.

For many of the people who created the plaster bones and inscribed their stories of violence onto them, the bodies in those stories will actually not be physically recovered. The project's aim is to uncover these bodies figuratively by exposing their stories. Arguably, if the site is also a representation of sites of CH, the depiction of human remains in *One Million Bones* performs multiple histories and narratives with stories inscribed upon the plaster pieces. By making the absent bodies present but

simultaneously fragmented, the project highlights the impact that violent pasts—particularly invisible violent pasts - have on the present. The project does not seek to create or expose whole bodies or whole stories that had been absent, but to perhaps disrupt the narrative that had originally excluded the bodies by incorporating fragmented ones. Ultimately, the strip of land in front of the National Mall in D.C. becomes something of a mass grave site for memories, histories, and absent bodies.

Nick Cave's artwork not only places ships within a colonial history, but seems to speak to the larger issue of privileging some histories over others. The installation "Sea Sick" includes a dozen overlapping oil paintings of large colonial ships with romantic cloudy sky backdrops and similar white masts. Near the center, at the top of the installation is a plastic gold ship, two gilded cast hands, and a ceramic spittoon shaped in a racialized, stereotypical depiction of a black man's head. Like Shiota's work, there seems to be a missing feature; in a time of colonialism, whereby many of these ships likely transported slaves, where are all the bodies to be found in these paintings? Cave highlights the missing bodies with the inclusion of the spittoon. This could perhaps represent the histories of oppression that are present but not depicted in the paintings, but because the spittoon is below the gold ship, it also represents the invisible, submerged, drowned bodies that are also excluded.

Busse's discussions of reification and the ways in which there is a privileging of a particular means of knowledge production over others mirrors Cave's critique of the lack of context when it comes to slavery. In this instance, it becomes clear that the colonial oil paintings depict knowledge, histories, and cultural productions that exclude certain

bodies from the story—in particular, black bodies. By including the spittoon, a cultural product of imperialism, Cave is simultaneously pointing out the lack of black bodies as well as illustrating that an incorporation of black bodies in colonial histories results in a racialized version of the black body that is fragmented (the head only). In other words, including absent bodies in a colonial model may result in a reification and racist objectification of black bodies. Placing the spittoon above the center point in the art piece, Cave is also perhaps trying to draw the attention away from the ships and away from any presupposed center, reconstructing the romantic seascape of the ship.⁴²

Drawing a parallel between Cave’s art and archaeological performances of examination on shipwreck sites, the performance of creating a whole image or a whole narrative from the components on site has implications as the previous chapters have outlined. Objects, images, and artifacts are “central to archaeological research, but [archaeologists] do not consider them in isolation” (Schiffer 6), suggesting that the way each artifact or component is understood will impact the larger construction of a narrative. As investigated earlier, archaeological performances that rely on methods that vindicate hierarchies of value result in a privileging of some bodies over others. Like Cave’s work addresses, placing weight and value on particular components of a

⁴² Another way of understanding the ways in which these artists are challenging the regulation of bodies in international waters and the performance of archaeological endeavors on shipwreck sites, is through a speaking back to colonial approaches to bodies. Similar to the way postcolonial literature seeks to write back to the colonizer (Tyson 429), postcolonial art is perhaps speaking or embodying the idea of writing back in a different sense. As Cave illustrates, the paintings of ships exclude certain bodies and certain histories from the landscape, highlighted by the inclusion of a fragmented absent body. In addition, Cave embraces the notion of postcolonial inasmuch as he “sets out in one way or another to resist colonial perspectives” (Boehmer 3). This means that postcolonial art, like literature, is not only in dialogue with colonial materials, but also histories of texts, histories of cultures, of individuals, and interrogates systems of gender, culture, and power. Although I do not focus on postcolonial theory, it does play a role in my understanding of the way art and literature resist colonial materials.

shipwreck may result in a larger image that maintains colonial narratives of ocean travels—the romanticized images of slave ships without the realities of harsh living and black bodies. The inclusion of black bodies into the narrative however, as “Sea Sick” asserts, results in a racialized and fragmented image of the black body. By including excluded bodies into shipwreck narratives, archaeologists may perpetuate the colonial violences already present in the narratives. Simply including the excluded bodies does not solve the problem. “Sea Sick” embodies perhaps the ramifications of incorporating absent bodies into narratives that are situated within systems of value. Consequently, a reworking and dismantling of these systems is necessary in order to include absent bodies and fully address the colonial violence in the narratives. In this way, Cave is speaking to archaeological performances of narrative creation in the way that he is critiquing the lingering colonial approach to including and excluding particular types of bodies in shipwreck imagery that is reflected in maritime archaeology.

One way to dismantle colonial narratives is to deconstruct them textually. Similar to the way in which M. NourbeSe Philip “reads the untold story that tells itself by not telling” by violently tearing up the history she is describing, Cave also seeks to fragment the constructed linear history of the ships in the paintings (Philip, 193). By overlapping the paintings and including partial limbs of black bodies, all of the images are in pieces, placed together to create the whole, yet fragmented, installation. The histories of the ships are challenged even though Cave does not complete the story for the audience in the installation. Cave’s art criticizes the romanticised ships and exposes the missing bodies. Unlike *One Million Bones Project*, Cave does not use inscribed words or writing to guide

the fragments of stories. Similar to Shiota's work, Cave's art simultaneously represents the absent bodies as well as the present bodies of the viewers who enter into the space of the exhibit. "Sea Sick" is a jarring representation of the latent racism that romanticized images of colonial ships disguise.

II. *Performances of Absent Bodies*

Shiota's *The Key in the Hand, One Million Bones Project* and Nick Cave's "Sea Sick" are examples of activism through art that disrupt normative narratives of shipwrecks and global atrocities through the incorporation or exclusion of particular bodies. The artwork as a performance as well as the performance of the viewer or audience of the art, engages with the global discussion of absent bodies in history and the commodification of bodies in and across international waters.

Karen Barad suggests that performativity relies too heavily on linguistic analysis and proposes that a *posthumanist* performative approach be adopted to better reflect the dynamic interplay of performances (Barad 135). In fact, Barad argues that "performativity is properly understood as a contestation of the unexamined habits of mind that grant language and other forms of representation more power in determining our ontologies than they deserve" (133). An agential realism, or posthuman, approach allows for a better understanding of not simply human performances, but rather, the boundaries of human performances (136). For Barad:

posthumanism is not calibrated to the human; on the contrary, it is about taking issue with human exceptionalism while being accountable for the role we play in the differential constitution and differential positioning of the

human among other creatures (both living and nonliving).
(136)

This approach allows Barad to move the human away from the center of performative theory and instead, look at performance as something that constructs boundaries between culture and nature (136). Deconstructing the idea of any-‘thing’ in isolation, Barad asserts like Nancy, that the boundaries of the body are blurred. In her discussions of Agential Realism, she highlights the simultaneous embodiment and disembodiment of humans whereby the boundaries shift depending on the position of the subject (155). For instance, the boundaries of the body seem “visually self-evident” as one would pick up a cup of coffee and have it not fall into their flesh, but rather, stay seemingly separate from it (155). This physical boundary is problematized in a similar way as Nancy challenged its limitations through the incorporation of researchers like “[n]europhysiologists, phenomenologists, anthropologists, physicists, postcolonial, feminist, queer, science, and disability scholars, and psychoanalytic theorists” (155). It is through a perceived construction of a definite line or boundary that we think there is no interplay between the atoms of our hand and the coffee cup Barad explains (156).

The perception of a boundary allows for the creation of objects, suggesting that objects themselves (or the distinction between objects) are not there until it is visually created by an onlooker (Barad 157). Similar to the way in which Merleau-Ponty (1962, 143) argues that the senses themselves are what construct object boundaries (be it seeing or touching), Barad argues that the body is perhaps neither the beginning nor the end of a performance. Through her agential realist account, Barad furthers that “nature is neither a passive surface awaiting the mark of culture nor the end product of cultural

performances” (183). This account opens up possibilities of blurred boundaries between perceived objects, humans, and nonhumans alike. Similar to the way in which Nancy understands bodies as being created through their limits and through the sensorial moments that find these limits, Barad understands the body as a constructed boundary whose limits are wrongly understood as separate from nature (Nancy 16, Barad 183). These theorizations pertaining to the ways in which boundaries are fluid, blurred, and not-fixed, is in opposition to the practices of reification discussed earlier.

In Shiota’s *The Key in the Hand*, the temporal boundaries of the past and present become blurred, just as the space of the body is challenged as absent bodies are only made present through the presence of an external body. Similarly, *One Million Bones Project* focuses on the bones themselves as a present embodiment of invisible violent pasts. “Sea Sick” also challenges boundaries visually through the placement of the art pieces, as well as highlights the issue of absent bodies. These three art installations are useful in conceptualizing the role of the absent body in understanding histories of colonial violence. Utilizing Nancy’s understanding of the body as being both alive and dead, and Barad’s theorizations of the body as both of culture and nature, these three art pieces reiterate the bodies whose boundaries are recognized or privileged.

As outlined earlier, Laurajane Smith argues that heritage is itself a performance and the value attributed to that performance works to construct “ways of understanding” (Smith, *Performing Heritage* 69-70). Not only would the value, categorization, and conceptualization of the performances of CH therefore be representative of larger social and cultural constructs, but they also reveal perhaps systems of oppressions. The art

installations mentioned earlier likely highlight a pattern of an exclusion of particular bodies in histories. By only recognizing certain performances, archaeologists may reiterate the same pattern of exclusion. In the instance of a shipwreck found in international water, the boundary between artifacts, ocean life, and human remains (both dead and living cells), intertwined fluidly in extensions of one another, are categorized and valued; a practice that is criticized through each of the three art installations.

Consequently, these art pieces are confronting the assumption that meaning is derived primarily from what is present by highlighting instead what is absent. This realignment of focal points shifts the performances (from both the spectators and the objects in the artwork) away from a value-based system, to something more of an exposure of possibilities. Shiota's for example, realigns the focal point and highlights the absent bodies by erasing present bodies—the only bodies included in the installation are those liminal bodies of the exhibit's viewers. This erasure is also evident in "Sea Sick" with the including the spittoon as representative of an absent body made present only through colonial constructions. The tension between presence and absence is therefore not only exposed through these artworks, but it is also challenged. It is this challenging that allows the artists to speak to the broader contexts of present and absent bodies in culture and subsequently, in places like law and the regulation of bodies on shipwrecks.

Cave's "Sea Sick" suggests that the process of including absent bodies cannot be through the same system that analyses and categorizes present bodies. This is because the absent bodies will manifest in a way that fragments or racializes them. Similar to the way in which Frantz Fanon argues that the oppressed must fully abandon the systems of oppression at play rather than trying to work within them, "Sea Sick" reflects one

implication to exposing absent bodies. Furthering this argument, there also appears to be a recurring theme of violence against absent bodies in all three pieces of activist art. Each artwork incorporates a form of drowned or unearthed fragmented or absent body, critiquing the lack of recognition of absent bodies in discussions in international law and maritime archaeology. Referring back to the context of the middle passage and to histories of colonization across international waters, absent bodies are not only integral in gaining a fuller understanding of history, but also central to diasporic communities whose sense of belonging and identity may be connected to those existences. A useful practice at this point in the theorization of absent bodies and wreck sites, is to compare the art installations discussed earlier and a tangible example of a shipwreck.

A shipwreck itself, as mentioned in both Part A and Part B, is categorized by its location (the area it is found within, i.e. international waters or territorial waters), where it was heading and coming from, what the vessel contains, and the extent to which the performances of the archaeologists and the UCH are valued. A shipwreck:

can be both an object and an event. As object, a wreck is the physical remnant(s) of a boat or ship that has run aground, sunk, or in some other way become so significantly damaged that it is no longer properly operable as a sailing vessel. As event, a wreck is the process by which a boat or ship is destroyed or disabled. (Thompson 4)

The site of the shipwreck is therefore something neither temporally nor culturally fixed—just as it is a physical *place* it is also a constructed *space*. These categories are not mutually exclusive and interplay between the physical and the constructed is key in understanding how the exclusion of absent bodies is a result of how the place and space is constructed.

III. *Bodies and Shipwrecks*

In the late spring of 2015, the Smithsonian announced publicly the excavation of the wreck of *São José-Paquete de Africa*, a Portuguese ship heading to Maranhao, Brazil in 1794⁴³. Although the shipwreck was found off of the coast of Cape Town in South Africa (within territorial waters), the news gained global attention. The significance of this shipwreck lies in the fact that it is the first shipwreck found that had sunk while carrying slaves as cargo (Smithsonian, see footnote 31). Like many ships preparing to make the 7 000 mile voyage, the *São José* loaded over 400 slaves on the lower deck of the vessel. When the ship experienced abnormally high winds 100 meters from shore and sank, the Captain, crew, and half the slaves were able to make it to shore safely, leaving an estimated 212 slaves on board (Smithsonian, see footnote 31). According to the timeline on the Smithsonian news report, the *São José* and remaining enslaved Mozambicans “passes out of public memory” until 2010 when the shipwreck was linked to an archived account of the captain (Smithsonian, see footnote 31). With a team of researchers, The Ship Wrecks Project (SWP) identified the ship as the *São José* and full documentation and excavation efforts began in 2013 (Smithsonian, see footnote 31).

As the first slave ship excavation that includes a discussion of bodies directly linked to colonialism, the next few years of archaeological and preservation practices will

⁴³ The details of this announcement can be found here: <http://newsdesk.si.edu/releases/national-museum-african-american-history-and-culture-display-objects-slave-shipwreckfound->.

likely influence how a slave ship is to be examined and excavated if ever found in international waters. Thus far, the SWP has been using CT scanning and deep-sea diving technology to examine the wreck site without disturbing it (Smithsonian, see footnote 31). Although none of the human remains have been recovered, the identified remnants of shackles on site as found through the CT scans indicate that there is a high likelihood of human remains contained in the lower compartment of the vessel itself (Smithsonian, see footnote 31). The recovery of the *São José* also opens up possibilities for the discovery of slave ships further out at sea. These ships would not only fall under international law's jurisdiction, but would also potentially fall under the 2001 *Convention on the Protection of Underwater Cultural Heritage*.

“Sea Sick” highlights the invisible bodies of the slave ships in the oil paintings just as perhaps the CT scan reveals the invisible bodies on the *São José*. The way in which “Sea Sick” incorporates objects to allude to invisible bodies and histories by repositioning the spittoon in the frame suggests that there may be approaches to shipwreck archaeology that expose absent bodies in a way that recognizes colonial histories. In the instance of the *São José*, possibilities for opening up similar counter narratives are present, however, the question then is how the bodies that are found—and not found—on the ship will be categorized, displayed, or not. As this ship is directly linked not only to colonization but also the slave trade more specifically, the ship represents more than just one journey across the ocean. The *São José* is the first tangible encounter with a slave ship from that time period, as well as an important point of entry into the history of colonization. The treatment of present and absent bodies in this

shipwreck may very well influence how maritime archaeologists approach and value the artifacts and human remains on any future slave ships found in international waters.

In connection with the public announcement of the finding of the *São José*, a memorial service was held on June 2nd 2015 in Mozambique and a symposium was held on June 3rd at the Iziko Museums' TH Barry Lecture Theatre. The purpose of the symposium is "Bringing the São José Into Memory." Just as *The Key in the Hand* revolves around the importance of bodies and memory, this symposium seems to echo those sentiments. However, it is important to note the phrasing: "bringing into memory" rather than "bringing to light," exposing, remembering, or carrying to the present or future. The phrasing suggests that there has already been a forgetting and that the ship and the identities on the ship are to be remembered but also kept in the past; the 'human remains' is resultantly constructed into just that—humans that remain. Consequently, this phrasing situates human remains as things that are temporally fixed and things of the past rather than the present—a sentiment resisted by works like *One Million Bones Project* that attempts to bring the past into the present.

The performance of archaeologists and the performance of the site itself informs the production of knowledge and the broader narrative that gets put on display. Ian J. McNiven and Lynette Russell argue that the disassociation and appropriation embedded in western archaeological practices are inescapably colonialist (McNiven and Russell 4). The approach to examination, documentation, and means of producing knowledge are subsequently caught up in ingrained colonial understandings of history (McNiven and Russell 1-10; Smith, *Uses of Heritage* 282). If these approaches are not only used as a

baseline, but expected in international waters in order to qualitatively examine a wreck site, the types of narratives that will be produced are not immune to those systems of colonization that are already embedded in understandings of classification and value. By changing the way one might encounter spaces of memory and human remains, as seen in Cave's work and in *One Million Bones Project*, these artists open up the possibility of heritage performances being “not only physical experiences of ‘doing’, but also emotional experiences of ‘being’” (Smith, *Uses of Heritage* 71). This is particularly important when it comes to bodies.

Because of the way in which international law relies on an archaeological approach to authenticating shipwreck sites - resulting in a reification of human remains - it could be argued that the value placed on ownership and linear histories reflects a latent colonial understanding of bodies and property in international law. Recent pushes by the UN for recognition of colonization and for the protection of UCH are attempts at reconciling with the atrocities of the middle passage but do not fully engage with the temporal complexities and cultural significance of present and absent bones on shipwreck sites. With the increased possibility of finding shipwrecks in and around the middle passage in the near future with advances in deep-sea diving technology, the legal regulation of human remains is something that needs to be further discussed on an international level. This is particularly true for the legal history of body ownership and treatment, as well as the current legal protectionist legality surrounding bones highlighting the impact of colonization of past and contemporary diasporic individuals. Resistances and critiques in art perhaps aim to open up spaces of discussion for the retrieval of human remains and to

move away from the privileging of present bodies and of reification. The regulation of human remains is subsequently contingent on an understanding of the relation between bodies and property, rooted in a colonial system that privileges monetary worth over cultural significance.

Throughout this thesis, I have explored ways of understanding the body as something attached to culture, histories, and ways of understanding and accessing the past. In particular, my focus has been on the ways in which human remains on shipwrecks are regulated under international law and the practices of maritime archaeology that aid in their classification. Although there have been strides in the protectionist regime of the *Convention*, there are still many shortcomings when it comes to the approach to human remains at sea. If there are shipwrecks whose histories converge with those of the middle passage, the current approach to human remains as UCH is not only ineffective, but additionally detrimental as it originates from the idea that bodies can be valued, commodified, and ultimately owned. In this final chapter, I hoped to highlight some critiques and resistances to this approach that are present in art and activism where artists challenge the dominant colonial narratives by exposing absent bodies from histories of colonial violences. An incorporation of art and activism allows for an opening up of a much needed dialogue in international law's discussions of bodies lost at sea.

For many artists, such as Nick Cave and M. NourbeSe Philip, the interruption of hegemonic narratives and a challenging of normative constructions of black bodies is essential in changing the ways people understand and remember histories—especially

histories of violence. It is through this (re)configuring of what bodies mean and how groups and communities mourn histories or reclaim identities that will open up avenues international law. Rather than pushing for protectionism that relies on assumptions made about the artificial value of some wreck sites over others, some histories over others, and some bodies over others, dismantling what the body even means changes how value is or is not interpreted. For this reason, art and activism rooted in community is not only important, but essential to future discussions of international oceanic law.

(Re)Framing the Skeleton and Concluding Remarks

lives own their fact

of spent lives
murder
market
misfortunes

&

policy

lying dead
under seas

facts own their lives

- M. NourbeSe Philip, *Zong!* #22

The connection between systems of value and bodies is understood through the relationship between law, archaeology, and the way they interpret bodies attached to sunken vessels. Rhetoric surrounding bodies and surrounding their value—economic or cultural—has deep-rooted foundations in colonialism; the way the body is constructed and commodified and the supposed need for particular bodies to be protected illuminates a lingering colonial presence of identity, history, and movement. This exploration began with an overview of the *Zong* massacre: an event that encompasses not only systems of value at play to an extent whereby the valueless bodies are literally rejected from the ship, but the legal and social ramifications of the commodification and ownership of bodies. For Ian Baucom, the *Zong* is not simply one event (124-131). As the massacre is recounted and rewritten in a number of legal documents and transcripts, as it is forgotten and reiterated through the killings aboard other slave ships, the *Zong* becomes a series of events. Baucom outlines that the documentation of the *Zong* included “five documents, at

least nine and as many as fourteen accounts,” all “representing ‘one’ event” (Baucom 124-25). He identifies a problem with considering it as one event in the way that it narrows the understanding of what happened and forces the history to be confined to a singular moment in the past. Baucom argues that “the number we need to find some way to comprehend is neither one hundred thirty-three nor one hundred thirty-two but one, one, one” (130)⁴⁴. Envisaging the *Zong* as ‘events’ opens up a multiplicity of histories, moments, recounts, perspectives, and perhaps, performances. The *Zong* is not an isolated event, but rather an extension of and a departure from a multitude of events. These violent events that articulate the purchasing, ownership, and killing of bodies are subsequently reprised and interrupted by the evaluation of human remains found in sunken shipwrecks now.

By looking at the implications of the UNESCO *Convention on the Protection of the Underwater Cultural Heritage* 2001, I examined the changes in regulations of shipwrecks and bodies found on shipwrecks in international waters. Discourses around protectionism are tied up in rhetoric of cultural heritage and of archaeological and commercial understandings of value that are associated with cultural heritage. While a protectionist attitude has shifted some archaeological discussions away from profit-driven motives or economic-central understandings of shipwreck sites, as outlined throughout this thesis, the understandings of cultural heritage and the types of things and objects that are to be protected and how, bind such discussions to the inherent systems of value that

⁴⁴ The numbers 133 and 132 reference the number of slaves thrown overboard during the massacre, suggesting that the *Zong* as one event is not reflective of the lives lost. Instead, each murder was one event after another. This distinction is important to Baucom because it is in contrast to how it was treated in the court case: as one event of lost cargo rather than multiple murders of people (140).

speak to colonial histories of body ownership. If the *Zong* is interpreted as a series of events, I would then argue that the violence of valuing dead bodies on sunken slaves ships - in a way that reflects the commercial processes of valuing bodies during the voyage when they had been purchased - results in a circular reiteration of the events of the *Zong*. Although this is not a direct reiteration, by continuing to use the same suppositions of the way certain bodies, present or absent, hold value, and the way this value situates them among other bodies, international law is unable to move away from its ties to colonialism.

Like law, “[a]rchaeologists and other scientists are themselves active participants in the politics of identity” (Smith, "The repatriation of human remains" 409). The things excluded in the narrative of a wreck site are just as insightful as the objects and identities included. During this investigation I have further asserted that it is the type of people, and the types of bodies recognized and, equally importantly the people and bodies that are excluded, that is problematic. Although the “archaeological landscape [of the sea] is difficult to reconstruct and is never completely knowable, due both to a lack of data and to the breadth of information that must be considered” (Ford 3), the types of artifacts and objects focused on, and the way they are constructed and fit into a larger narrative, has an impact on the identities connected to that site. Specifically, when it comes to ocean spaces that witnessed violent colonial pasts, the performances of examination hold

particular weight ⁴⁵. How black bodies are treated on shipwrecks has a larger impact on identities and notions of belonging. Shields argues that:

In the process of national belonging, black bodies are public, black flesh is used without recognition, and black bone remains to incriminate those who have devalued the corporal experiences of black people in the Americas. . . . I do not distinguish between flesh, body, and bone—all are important gateways to understanding the centrality and intersections of one's body in the process of national belonging.
(Shields 13-14)

By excluding or perpetuating discourses of value and property of black bodies on shipwrecks of slave ships, I want to suggest that there is a connection between the violences that African bodies endured centuries ago and the treatment of their remains today. The further investigation of the law's role in these performances, speaks to lingering colonial attitudes of property and value present in international law.

This project informed by academic and non-academic discussions about the black Atlantic diaspora and the memories surrounding the middle passage. By connecting international legal scholarship, performance theory, maritime archaeological discussions, cultural heritage theorizations, reification and material culture breakdowns, and deconstructions of the body, alongside art that intervenes in normative narratives of history and bodies, I placed an array of disciplines in communion. The purpose of this was to expose the lingering privileging of present bodies and the emphasis placed on value. I wanted to highlight these issues as well as expose work like M. NourbeSe Philip's *Zong!* that not only speaks to the legal regulation of bodies, but also actively

⁴⁵ Although the focus of maritime archaeology is not solely that of shipwrecks, the vessels remain central points of access into histories of movement across the ocean (Ford 5)

reclaims the absent and lost bodies. While the dialogue between activist art and literature, and law is not only useful in praxis in exposing the assumptions at play in law, it is also necessary. As the possibility of finding slave ship wreck sites in the middle passage increases, so does the need for a different conceptualization of the body. Without an intervention, the protectionist aim of the *Convention* will never fully address the violence and exploitation that are present within the systems of value already operating; absent bodies will be drowned alongside counter-narratives. A resurfacing of absent bodies and memory begins with an inclusion of dialectics that challenge the normative understandings of bodies, value, and history through transformative activism.

In conclusion, many scholars have asserted that the shortcomings of the *Convention* are a result of longstanding international legal governing principles like those of admiralty law where laws of salvage and finds “support the individual interest in private profit over the societal interest in public education” (Czegledi 158). Arguably, it is these principles that reproduce ideologies revolving around monetary gains that is incompatible with the underlying goals of the *Convention* (158). Arguments have also been made pertaining to the lack of clarity in the wording of the *Convention* where phrases like “benefit of humanity” and “underwater cultural heritage” remain vague and non-substantive as well as the tension between claims of ownership and desire for protection of UCH (Forrest, “A New International Regime” 519-20; Dromgoole, *Underwater Cultural Heritage* 96-7). While in theory, when it comes to the examination of UCH sites, the pursuits of archaeological interests are not solely driven by profit and those involved in the examination and excavation of the site are indeed cooperating in the

elimination of possible commercial exploitation (Dromgoole, *Underwater Cultural Heritage* 211-12); however, the realities of how sites are evaluated, the inclusion of *value* of objects as personal, cultural, or global property remains foundational in the governing of UCH. I am suggesting that the shortcomings of the *Convention* all originate from the larger problem of *valuing* that informs the construction of bodies.

Throughout these past few chapters, I have argued that the true shortcomings of the *Convention* in terms of its treatment of human remains runs deeper than just the phrasing or the understanding of what heritage entails. The systems of value and the construction of bodies that informs international law's protective pursuits, archaeological examinations, and ownership claims to human remains result in a violent exclusion—absent bodies on wreck sites and in history are rejected from the narrative created when the site is figuratively (and literally) excavated. If there are to be changes in international law to better include present bodies, my arguments suggest that amendments and clarifications of terms would not suffice in solving the shortcomings. Instead, there must be a (re)envisioning and a dismantling of the core understandings of *value*. For this, I have included literary and activist discussions that not only reject these systems of valuing, but strive to reconfigure the construction of absent bodies so that marginalized or absent histories are visible. To reiterate, the means of shifting away from privileging present bodies in international law is found in the dialogue between law, art, and literature.

The significance of incorporating this type of analysis and discussion into how human remains are regulated on shipwrecks speaks to the connection between bodies, identity, and belonging. As Laurajane Smith asserts:

For many indigenous communities the control of ancestral human remains is not only about defending their belief systems, but is embedded in wider struggles to control identity. It has to be understood that the collection of human remains and their study has, historically, often gone hand in hand with colonial domination and reclassification of Indigenous people as 'colonised'.
(Smith, "The repatriation of human remains 408)

The treatment of bodies on land and at sea is subsequently reflective of broader systems of body classification and racial hierarchies. Although this topic speaks to different types of spaces impacted by colonization, my focus has been on those spaces of the sea and the international negotiation of *things* and identities. With the possibility of wreck sites like the *São José*, there is an opportunity to shift the ways of approaching human remains on these vessels in addition to integrating different ways of producing knowledge.

Particularly, with the constant advancement in technology and the increasing likelihood of uncovering UCH sites that implicate violent histories, having scholars, archaeologists, activists, and stakeholders intervene in processes that may result in excluding or silencing certain histories or groups, is not only useful but necessary. This research aims to subsequently help inform future studies of shipwrecks and sites of UCH that include human remains in international or contested waters. Through the praxis of incorporating activism and art in a dialogue with international law and archaeology, the aim is to open up possibilities of literal and figurative body reclamation for identities and diasporic communities who have faced histories of body exclusion and regulation. By dismantling conceptualizations of the space of the body, the physical and temporal boundaries that

have been secured to the bones and flesh have the potential to be transformed into spaces of opening where a multiplicity of narratives can be reclaimed.

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