



Legal aspects of sea burial

1. Introduction

Sea burial is the disposal of human remains in the ocean, normally from a ship or boat. It is regularly performed by navies, and is done by private companies and citizens in many countries. It can encompass scattering the ashes of cremated remains, but sometimes it involves burial in a casket, burial sewn in sailcloth or burial in an urn.

In some regions, notably in Asia, sea burials are becoming more and more popular. Recently, the third largest city of China, Guangzhou (Canton), even started offering a subsidy of 1,000 yuan (\$161) to the family members of any person with a Guangzhou household registry who died after 1 January and is willing to be buried at sea. In addition, the sea burial is for free.¹

Whether sea burials are allowed, and if so under which conditions, depends in the first place on national legislation of countries (with regards to the waters within their jurisdiction on the one hand, and ships flying their flag on the other hand). It can be added, that some countries do not have legislation in place regarding sea burial. In the second place, International treaties like the UN Convention on the Law of the Sea (UNCLOS) and the International Convention for the Prevention of Pollution from Ships (MARPOL) can influence the possibilities to regulate sea burials, notably from the point of view of protection of the sea environment. Both regimes do not define or mention sea burial, but

¹ Li Wenfang, *Guangzhou govt subsidizes sea burials*, China Daily European Edition, 18 February 2013. Guangzhou's government was reported saying that the move aims to deepen the reform of funeral procedures, save land and change social traditions.



at times individual countries regulating sea burials invoke UNCLOS or MARPOL when doing so.

In this paper, first some of the differences between applicable national law systems with regards to sea burial are highlighted. Then, the applicability of international law to sea burials is discussed. Based on the findings in these parts, the question whether it would be useful to formulate a declaration concerning Sea Burials to be submitted to the United Nations Convention on the Law of the Sea (UNCLOS) and / or to the International Marine Organization (IMO) for consideration under the Marine Pollution Convention (MARPOL) will be turned to.

2. Sea burials and national law

Sea burial is regulated differently in many countries in the world through national legislation. If sea burial of cremated remains is allowed, there usually are rules in place setting a minimal distance from land (often 3 nautical miles). Sometimes, additional rules apply, for instance with regards to obtaining a permit in advance or notifying the authorities afterwards, with regards to no interference with shipping, fishing etc. In some countries, e.g. the USA and Germany, regional authorities can set up their own regulations. There is thus a wide variety of rules that apply which at times forces those who want to perform a sea burial to travel to other countries in order to get the burial they want. For instance, in the Netherlands a sea burial other than scattering ashes is not allowed, contrary to the situation in the United Kingdom. From there, a sea burial can be performed.² Similarly, Germans that want ashes scattered at sea often turn to the Netherlands because here, rules are less strict than in Germany itself.³

In a more elaborate investigation, the exact characteristics of national or regional systems could be worked out, and attention could be paid to the reasons for imposed restrictions and their proportionality.

² Trouw, *Een, twee, drie in Godsnaam. Nederlandse wet verbiedt begraven op zee, maar via Engeland kan het wel*, 10 November 2012,

³ Trouw, *Een, twee, drie in Godsnaam. Reportage Asverstrooiing op zee*, 7 September 2012.



Based on information found on the internet, the USA could serve as one of the examples. Here, burial at sea of human remains that are not cremated shall take place at least 3 nautical miles from land and in water at least 600 feet deep. Certain areas, including east central Florida, the Dry Tortugas, Florida and west of Pensacola, Florida to the Mississippi River Delta, require water at least 1800 feet deep. A Code of Federal Regulations at 40 CFR 229.1 contains details. All necessary measures shall be taken to ensure that the remains sink to the bottom rapidly and permanently. Cremated remains shall be buried in or on ocean waters without regard to the depth limitations specified for non-cremated remains in the above paragraph provided that such burial takes place at least three nautical miles from land. Sea burials need to be notified afterwards to the Environmental Protection Agency (EPA). However, states can impose their own special rules. For instance, in order to be allowed to scatter ashes off the coast of California, a person must be licensed through the California Department of Consumer Affairs. This is called a Cremated Remains Disposer license or CRD. This is in addition to any licenses issued by the Coast Guard.

In an overview, the similarities and differences between the different systems could be illustrated in the following manner:

| Country | Cremated remains | | | Other | | |
|-----------------|------------------------|----------------------------|----------------|------------------------|--------------------|------------------------|
| | Notification or permit | Distance from land / areas | Depth of water | Notification or permit | Distance from land | Depth of water |
| USA | Notification to EPA | >3 nautical miles | - | ? | >3 nautical miles | >1800 feet |
| USA, California | Permit | ? | ? | ? | ? | ? |
| Australia | - | >3 nautical miles | - | Permit | | >6600 feet (2000 mtrs) |
| Hong Kong | Permit | Designated areas | ? | ? | ? | ? |
| Germany | Depends | >3 nautical | ? | ? | ? | ? |



| | | | | | | |
|-------------|----------|-------|---|------------|---|---|
| | on state | miles | | | | |
| Netherlands | ? | ? | ? | Prohibited | - | - |

3. Sea burials and international law

3.1 General

If countries are a party to conventions such as the UN Convention on the Law of the Sea (UNCLOS) or the International Convention for the Prevention of Pollution from Ships (MARPOL Convention, short for “marine pollution”), this might bring about specific implications to what they can or must regulate where sea burials are concerned, depending on which part of the sea we are talking about.

Chances are high that states are a party to one or both of these treaties. In February 2013, 165 countries were parties to UNCLOS. The main country not party to the Convention is the United States of America (USA). The USA does recognise that almost all provisions of UNCLOS reflect customary international law. As for MARPOL, this Convention has 152 parties as of 31 January 2013.

As explained in the introduction, neither of the regimes defines nor explicitly mentions sea burial. In order to answer the question whether individual countries regulating sea burial are correct in stating that their laws and regulations are implementing UNCLOS and/or MARPOL further investigations will be needed to establish whether these regimes, or other treaties, cover sea burials in its various forms, but notably the scattering of ashes.

3.2 UNCLOS

The UNCLOS differentiates several maritime zones. First of all, there is the territorial sea. Inside the territorial sea, states have full jurisdiction. This is usually an area of 3 nautical miles from the coast. Hence, sea burial often is not allowed inside the territorial sea. The fact that states prohibit sea burials seems to be in line with UNCLOS, because the Convention affirms their full jurisdiction there.

In the area adjacent to its territorial sea, called the contiguous zone, the coastal State may exercise the control necessary to prevent infringement of its sanitary laws and regulations within its territory or territorial sea (art. 33 UNCLOS). One



of the questions that arise here is whether laws regulating sea burials can be regarded as sanitary laws in the sense of this provision. Further research would be needed to answer this question.

Then there is the Exclusive Economic Zone (EEZ, Article 55, 57 UNCLOS) where states *inter alia* have the right to regulate “the protection and preservation of the marine environment”. One of the questions that arise here is whether laws regulating sea burials can be regarded as necessary for the protection of the marine environment. Again, further research would be needed to see whether sea burials could be said to form an issue that touches upon the protection and preservation of the marine environment in the sense of the UNCLOS. In that regards, Article 1.1 (4) UNCLOS is of importance, in which “pollution of the marine environment” is defined as “the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities”. It would need to be established whether sea burials are resulting in or are likely to result in the type of deleterious effects mentioned in Article 1. It would seem likely that sea burials would fall under one or more of the examples of deleterious effects.

Lastly, there are the High Seas (art. 86 UNCLOS). The High Seas are open to all States. The freedom of the High Seas is exercised under the conditions laid down by UNCLOS and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines (...)
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.



These freedoms are to be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under UNCLOS with respect to activities in the Area (art. 87 UNCLOS). From these and the following provisions of UNCLOS it seems that states have the right to regulate sea burials on the high seas as they want, as long as they ensure that the interests of other states are not affected. Note that probably sea burial on the High Seas will be less frequent than burials closer to the coast.

UNCLOS also contains a number of provisions regarding the protection of the marine environment against pollution. Art. 192 explains that states have the obligation to protect and preserve the marine environment. Art. 194 adds that states shall take, *individually or jointly as appropriate*, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities (emphasis added). It is specifically added at the end of Art. 194(1) UNCLOS that states “shall endeavour to *harmonize their policies* in this connection.” Then there is Article 210(4) UNCLOS that says that “States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.”

The parts in (the added) italics in these provisions stress the importance that UNCLOS attaches to multilateral solutions to issues that affect the protection and preservation of the marine environment. If it can be established that sea burials form a potential problem to the marine environment in the sense of the UNCLOS, as was explained above when discussing the EEZ, this would make it an issue that could warrant the setting up of an international legal framework.



3.3 MARPOL

MARPOL is the main international convention that deals with the prevention of the marine environment from pollution by ships. It focuses on operational or accidental causes of pollution, and sets out specific rules for a number of types of pollution in its Annexes.

MARPOL explains in Article 2(2) that harmful substance means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the present Convention. It would need to be investigated whether the remains of humans could constitute harmful substances in the sense of this provision. Only if that would be the case, the MARPOL regime would be applicable to sea burials.

It can be noted that some claim that MARPOL Annex V prohibits sea burials if bodies are wrapped in plastic.⁴ According to Regulation 1 of Annex V, garbage “means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically except those substances which are defined or listed in other Annexes to the present Convention”. This definition does not seem to cover sea burials. However, Regulation 3 of Annex V clearly states that “the disposal into the sea of all plastics, including but not limited to and plastic garbage bags is prohibited”. This provision could include plastic body bags or plastic urns and thus form a condition that needs to be observed in sea burials.

4. An UN / UNCLOS and IMO / MARPOL Declaration

From the provisional observations above it shows that there are differences between national regimes regarding sea burials, and at times even between the regimes of parts of one country (USA, Germany). This can cause confusion, legal uncertainty, hindrances etc. In addition, in practice it leads to individuals that want to have a sea burial for their relatives or friends to resort to travel abroad (examples: ash scattering from Germany to the Netherlands, sea burial from

⁴ See the comment by Bill Hayden underneath Dennis Bryant, *Burials at sea*, <http://www.maritimeprofessional.com/Blogs/Maritime-Musings/October-2010/Burials-at-sea.aspx>.



the Netherlands to the United Kingdom). A good argument can be made that such situations are undesirable and uniformity of rules could help improve this situation.

From the preliminary investigations of the UNCLOS it follows that this regime could cover sea burials. If further investigations confirm this, the UNCLOS contains various provisions calling for multilateral solutions to issues that affect the protection and preservation of the marine environment. Submitting a FIAT-IFTA declaration concerning Sea Burials to the United Nations / UNCLOS - Convention on the Law of the Sea would be in line with a first step towards such a multilateral solution.

Where MARPOL is concerned, the preliminary investigation showed that it is less clear whether that the regime of that Convention would cover sea burials, although Annex V could set some conditions on sea burials where the use of plastic is concerned. Further investigations are necessary to confirm this analysis. Nevertheless, it is likely that sea burials are within the competences of the International Maritime Organisation. In that light, submitting a FIAT-IFTA declaration concerning Sea Burials to the IMO could be another manner in which to further the coming into being of a multilateral solution to the challenges posed by the different national and regional regimes regarding sea burials.