

Joint Nautical Archaeology Policy Committee

An Interim Report on

The Valletta Convention & Heritage Law at Sea

The legal framework for marine archaeology in the United Kingdom

Resurgam 1997

The Valletta Convention & Heritage Law at Sea
The legal framework for marine archaeology
in the United Kingdom

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Introduction

This interim report is a summary of the deliberations to date of the Joint Nautical Archaeological Policy Committee (JNAPC) concerning the present legal framework surrounding the protection of the underwater cultural heritage. Some two years have now passed since the publication of the JNAPC's report, *Heritage Law at Sea*¹. During that time there have been significant developments relating to underwater cultural heritage in the United Kingdom.

In the Spring of 2001 the Receiver of Wreck from the Maritime and Coastguard Agency held an amnesty for unreported wreck recoveries, which was extremely successful and resulted in many unreported finds of wreck being declared and the educational message being widely disseminated of the necessity to report all future recoveries². In parallel to this the Ministry of Defence, following an extensive public consultation exercise³, activated, for the first time in relation to shipwrecks, the Protection of Military Remains Act 1986⁴. This resulted in the designation of 21 wrecks under the Act and a rolling programme to review the status of all other maritime military remains in United Kingdom waters. It is understood that this programme will eventually result in all maritime military remains being designated under the Act. Additionally, Historic Scotland scheduled several wrecks of the scuttled German High Seas Fleet in Scapa Flow as monuments under the Ancient Monuments and Archaeological Areas Act 1979⁵. This marked the first utilisation of that legislation to protect underwater cultural heritage anywhere in the United Kingdom and Historic Scotland intends further scheduling of wrecked vessels⁶. The recreational diving organisations also launched an educational initiative, 'Respect Our Wrecks', which emphasised the best practice in wreck diving of leaving shipwrecks undisturbed in situ, while the Nautical Archaeology Society (NAS) launched its Diving with a Purpose initiative, which includes the Adopt a Wreck scheme. These widely supported initiatives⁷ emphasise non-intrusive wreck diving and actively promote avocational marine archaeological activity, as well as fulfilling government's commitment to promote responsible public access to the underwater cultural heritage⁸. All the above have fostered an appreciation amongst recreational divers of the non-renewable nature of the underwater cultural heritage and have collectively effected a cultural change in attitude towards that heritage.

¹ Joint Nautical Archaeological Policy Committee, 'Heritage Law at Sea' (2000) School of Legal Studies: University of Wolverhampton.

² 'Wreck Amnesty, Final Report, 23rd. January – 24th. April 2001' (2002) Maritime and Coastguard Agency, CD Rom.

³ "Military Maritime Graves and The Protection of Military Remains Act 1986: A Consultation Document" (February 2001) Ministry of Defence, Whitehall, London.

⁴ "Military Maritime Graves and the Protection of Military Remains Act 1986: Consultation Report" (November 2001) Ministry of Defence, Whitehall, London.

⁵ The Ancient Monuments & Archaeological Areas Act 1979 does not apply in Northern Ireland.

⁶ CADW scheduled the wreck of the *Louisa* in December 2001 but the vessel is now part of the reclaimed area of the Cardiff Bay project.

⁷ British Sub Aqua Club, Professional Association of Diving Instructors, Sub-Aqua Association, JNAPC, Maritime and Coastguard Agency, Ministry of Defence Police, Department for Culture, Media and Sport, English Heritage, CADW, Historic Scotland, Environment and Heritage Agency, Nautical Archaeology Society, and the National Trust.

⁸ "broaden access and appreciation of the heritage". English Heritage's mission statement. 2003.

Against this background legal innovations have also occurred, with the responsibility for underwater cultural heritage in England being transferred to English Heritage⁹ and the United Kingdom ratifying the *Valletta Convention*¹⁰. Individually each of these developments would have been significant, but taken together they can truly be said to have transformed the social, economic and political environment surrounding the underwater cultural heritage. Accordingly, notwithstanding the short time elapsed since the publication of *Heritage Law at Sea* and the fact that the United Kingdom is unlikely to ratify the *UNESCO Convention On The Protection of the Underwater Cultural Heritage*¹¹, the JNAPC felt it was appropriate to review the legal structure surrounding the underwater cultural heritage. Since the United Kingdom's obligations to the archaeological heritage are now governed by the *Valletta Convention*, that instrument must form the template against which any assessment of the United Kingdom's legislative structure is made. This report assesses what amendments the United Kingdom should implement in order to comply with the *Valletta Convention*. The issues identified in this report are relevant to the commitment from the Department for Culture, Media and Sport in *Force for our Future*¹², to conduct a review of marine archaeology legislation in order to ensure that it can meet present day requirements. They are also intended to form the basis for further substantive research and deliberation.

⁹ Under the National Heritage Act 2002.

¹⁰ The United Kingdom ratified on 21st September 2000 and the Convention came into force in the United Kingdom on 21st March 2001. The full text of the Convention is available at <http://convention.coe.int/Treaty/en/Treaties/Word/143.doc>

¹¹ Hereafter 'the UNESCO Convention'. Although the United Kingdom is unlikely to ratify the Convention in the foreseeable future, it has stated broad acceptance of the Convention's basic tenets including the Annex, while disagreeing with certain specific provisions, in particular, those relating to Sovereign Immunity and 'blanket protection'; see further '*UNESCO Convention on Underwater Cultural Heritage: Explanation of Vote*' Foreign and Commonwealth Office: Whitehall (2001); '*Taking to the Water*' English Heritage (2002) para. 7.3, which makes reference to the Convention and states that there is broad support for virtually all of its provisions.

¹² '*Force for our Future: The Future of the Historic Environment*'. Department for Culture, Media and Sport. (2000) Para. 4.38; also available on-line at www.english-heritage.org.uk/discovery/heritage-review

Executive Summary

1. In order to comply fully with the articles of the *Valletta Convention*, the United Kingdom will be required to make amendments to the legal and procedural framework surrounding the management of the underwater cultural heritage. This interim report concludes that the following recommendations, most of which will require the introduction of new legislation, should be implemented as soon as possible:

- 1.1 The scope of the Protection of Wrecks Act 1973 should be extended to include aircraft and vehicles.
- 1.2 Local Authority Sites and Monuments Records should be a statutory requirement and in coastal authorities should include a maritime component.
- 1.3 Sites recorded on Maritime Sites and Monuments Records should be verified in-situ.
- 1.4 A general obligation to report disturbances to historic wreck should be introduced.
- 1.5 The transparency of procedures for designation and licensing should be improved.
- 1.6 Activities which cause disturbance in areas designated under the Protection of Wrecks Act 1973 should be regulated.
- 1.7 Licensing procedures for the removal of human remains should be extended to those found underwater.
- 1.8 Support for educational and museum initiatives to develop public awareness of the value of the archaeological heritage should be continued.
- 1.9 The Ministry of Defence should be prepared to licence appropriate intrusive activities under the Protection of Military Remains Act 1986 where a sound archaeological case can be made for granting a licence.
- 1.10 Provision should be made in the Protection of Wrecks Act 1973 and the Ancient Monuments and Archaeological Areas Act 1979 for the confiscation of equipment used in diving or salvage operations as a sanction in offences relating to underwater cultural heritage, on a similar basis to that provided for in the Protection of Military Remains Act 1986.
- 1.11 Consultation between the Receiver of Wreck and local and national curatorial authorities should be formalised.
- 1.12 Consultation between the relevant Secretary of State and local and national curatorial authorities should be formalised.

- 1.13 Consultation with the relevant Secretary of State in all consent procedures applicable to works and activities affecting the seabed should be formalised.
- 1.14 Consultation between Government departments and heritage agencies prior to the salvage or sale of government owned vessels should be formalised.

2. This interim report has also identified issues where further research is required to determine what specific amendments are needed to the United Kingdom's legal framework relating to underwater cultural heritage legislation to ensure compliance with the *Valletta Convention*. These are:

- 2.1 That Part II of the Ancient Monuments and Archaeological Areas Act 1979 (relating to areas of archaeological importance) should be reviewed, with a view to applying it below the Low Water Mark.
- 2.2 That in the event that the planning regime is extended to below low water, archaeology should be made a material consideration.
- 2.3 That a unified consent procedure should be created for offshore activities.
- 2.4 That the definition of a monument in the Ancient Monuments and Archaeological Areas Act 1979 should be amended to achieve conformity with the definition of archaeological heritage in the *Valletta Convention*.
- 2.5 That the definition of 'wreck' material, which must be reported under the Merchant Shipping Act 1995, should be amended thereby extending the Receiver of Wreck's jurisdiction.
- 2.6 That continued support and encouragement should be given to the Maritime and Coastguard Agency's policy for the Receiver of Wreck to deal with all finds irrespective of their context.
- 2.7 That the remit of the Portable Antiquities scheme should be extended to include maritime finds.
- 2.8 That an alternative mandatory reporting scheme should be introduced in the longer term, which would become the prime legislation relating to the reporting of antiquities.
- 2.9 That the problem of salvors acquiring possessory rights to maritime cultural property, especially in relation to sites designated under the Protection of Wrecks Act 1973 or scheduled under the Ancient Monuments and Archaeological Areas Act 1979 should be addressed.
- 2.10 That maritime cultural property should be removed from the salvage regime, while continuing to provide an incentive to honesty.

- 2.11 That a general obligation to report disturbances to maritime archaeological remains should be introduced.
- 2.12 That a Code of Practice should be introduced in relation to authorisation and supervision of maritime archaeological activities.
- 2.13 That legislation requiring a form of authorisation for the use of metal detectors, or other detection equipment, where these are specifically directed at the underwater cultural heritage, should be introduced.
- 2.14 That the publishing of publicly accessible Annual Reports in respect of each of the protected wreck sites should be made a statutory obligation.
- 2.15 That a statutory duty should be placed upon all Government departments, agencies, statutory authorities and undertakers to protect and conserve the underwater cultural heritage when discharging their statutory functions.

The JNAPC recommends that such research should be undertaken as a matter of urgency.

3. In the interim, however, a number of recommendations could be given immediate effect, as they will not require the introduction of new legislation. These are:

- 3.1 That more scheduling of monuments underwater occurs under the Ancient Monuments and Archaeological Areas Act 1979. This report has identified that Act as the single piece of legislation with most relevance to the *Valletta Convention*. Many of the requirements of the *Valletta Convention* are met by the Ancient Monuments and Archaeological Areas Act 1979, but only if the sites are scheduled.
- 3.2 That the United Kingdom should expressly adopt the principles of the Annex to the *UNESCO Convention* as a framework for future policy.
- 3.3 That Annual Reports made in respect of wrecks designated under the Protection of Wrecks Act 1973 should be published and relevant information be made publicly accessible.
- 3.4 That the Advisory Committee on Historic Wreck Sites continues to promote public access to suitable designated sites wherever possible.
- 3.5 That a wider educational process should be undertaken within the judiciary, police, maritime regulatory agencies and sea-users to raise awareness of the significance of criminal activities in respect of underwater cultural heritage.
- 3.6 That a Code of Practice governing activities directed at underwater cultural heritage should be endorsed as 'best practice' by the Heritage Agencies, the professional and the avocational archaeological communities. This Code would reflect the provisions of the *Valletta Convention* and the Annex to the *UNESCO Convention*.

- 3.7 That the financial resources available to all Government departments and the heritage agencies responsible for maritime archaeology should be reviewed as a matter of urgency to enable them to comply with the provisions and spirit of the *Valletta Convention*.

Background

The United Kingdom's legislation relating to underwater cultural heritage was created piecemeal to deal with specific situations or sites, for example 'Ancient Monuments' or 'Wrecks'. Consequently, within the United Kingdom authorisation of archaeological activity is limited to activities on specific sites covered by legislation such as consent procedures under the Protection of Wrecks Act 1973, the Ancient Monuments and Archaeological Areas Act 1979 and the Protection of Military Remains Act 1986. Furthermore, rather than encouraging preservation in situ as a first principle, the legislation does nothing to remove the financial incentive for the recovery of the underwater cultural heritage. In contrast it is recognised that both the *Valletta* and *UNESCO Conventions* provide a broad ethical approach, based on best practice, relating to the management of all archaeological sites, not just those sites covered by specific heritage legislation. The provisions of these *Conventions* also reflect the changes in archaeological standards and practices that have evolved in the last two decades, particularly in relation to the principle that wherever possible cultural heritage is best preserved in situ for the benefit of future generations.

One of the more intractable difficulties facing any reform of the legal framework is in reconciling these differing approaches, while securing the United Kingdom's compliance with the *Valletta Convention* in respect of underwater cultural heritage.

This report proceeds by examining each of the provisions of the *Valletta Convention* and identifying issues which, in the opinion of the JNAPC, require further consideration or amendment, either to secure the United Kingdom's compliance with the *Convention* or to provide more effective protection for the underwater cultural heritage.

Substance and analysis of the Valletta Convention

1.1 Valletta: Article 1

This article provides a broad definition of the 'archaeological heritage', which encompasses more than simply specific wrecks, monuments and military remains currently protected under the United Kingdom's maritime heritage legislation.

1.2 Attention is drawn to the recommendation in *Heritage Law At Sea*:

That the scope of the Protection of Wrecks Act 1973 be extended to include aircraft and vehicles¹³.

1.3 Recommendation

In order to secure compliance with the broad definition of 'archaeological heritage' in Article 1 further consideration should be given to:

- (i) Amending the definition of a monument in the Ancient Monuments and Archaeological Areas Act 1979. This recommendation is consistent with the Council for British Archaeology's¹⁴ proposal that "... the definition of 'ancient monument' should be extended to include 'any deposit that has been formed by past human activity, or that reflects the effects of such activity on the environment.'"¹⁵
- (ii) Extending the scope of the Protection of Wrecks Act 1973 to include aircraft and vehicles.

2.1 Valletta: Article 2

This requires signatory States to make provision for the maintenance of an inventory of 'archaeological heritage' as defined under Article 1 and for the designation of protected monuments and areas.

2.2 Recommendation

The JNAPC recommends that the Ancient Monuments and Archaeological Areas Act 1979 should be applied to sites below the low water mark using similar criteria to the scheduling of sites on land and that designations under the Protection of Wrecks Act 1973 should continue where appropriate.

¹³ *Heritage Law at Sea*. Part 2: Protection of Wrecks Act 1973

¹⁴ CBA

¹⁵ 'Valletta Convention: A Summary of the CBA Position' British Archaeology, No.62 (December 2001) pp. 43-42; see also 'The Valletta Convention – Full Position' British Archaeology at http://www.britarch.ac.uk/valletta/valletta_final_cba_fullhtml

