

# 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*<sup>1</sup>. 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 recoveries<sup>2</sup>. In parallel to this the Ministry of Defence, following an extensive public consultation exercise<sup>3</sup>, activated, for the first time in relation to shipwrecks, the Protection of Military Remains Act 1986<sup>4</sup>. 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 1979<sup>5</sup>. 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 vessels<sup>6</sup>. 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 initiatives<sup>7</sup> 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 heritage<sup>8</sup>. 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.

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

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

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

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

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

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> "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 Heritage<sup>9</sup> and the United Kingdom ratifying the *Valletta Convention*<sup>10</sup>. 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*<sup>11</sup>, 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*<sup>12</sup>, 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.

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<sup>9</sup> Under the National Heritage Act 2002.

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

<sup>11</sup> 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.

<sup>12</sup> '*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](http://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 vehicles<sup>13</sup>.

### **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’s<sup>14</sup> 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.’”<sup>15</sup>
- (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.

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<sup>13</sup> *Heritage Law at Sea*. Part 2: Protection of Wrecks Act 1973

<sup>14</sup> CBA

<sup>15</sup> ‘*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](http://www.britarch.ac.uk/valletta/valletta_final_cba_fullhtml)

### 2.3 Valletta: Article 2i

*Each State's legal system must provide for the maintenance of an inventory and the designation of protected monuments and areas.*

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

That Maritime Sites and Monuments Records be established on a statutory basis<sup>16</sup>.

### 2.5 Recommendation

There is a need for the accuracy of Historic Environments Records to be verified in-situ. Consideration should also be given to extending the Record to encompass vessels out to the limit of the United Kingdom's jurisdiction, in waters of United Kingdom dependencies and United Kingdom vessels in international waters.

### 2.6 Valletta: Article 2ii

*Each State's legal system must provide for the creation of 'archaeological reserves' for the preservation of material evidence to be studied by later generations.*

### 2.7 Comment

Currently it could be argued that these are imposed by the restrictions created by designations under the Protection of Wrecks Act 1973 and Protection of Military Remains Act 1986 and scheduling under the Ancient Monuments and Archaeological Areas Act 1979. However, these only relate to small localised areas around these protected sites.

### 2.8 Recommendation

Consideration should be given to reviewing Part II of the Ancient Monuments and Archaeological Areas Act 1979, with a view to applying it below the low water mark to 'areas and processes to which the stringencies of monument control cannot extend'<sup>17</sup>.

### 2.9 Valletta: Article 2iii

*Each State's legal system must provide for the mandatory reporting of the chance discovery of elements of the archaeological heritage and the making available of them for examination.*

### 2.10 Comment

The Explanatory Report on the *Valletta Convention* states that, "A State ... may only require mandatory reporting of finds of precious materials, or on already listed sites"<sup>18</sup>. Currently, mandatory reporting of underwater sites is restricted to the 'finding or taking possession of wreck' under the Merchant Shipping Act 1995. In one respect this provision exceeds the requirement in Article 2 iii, because all wreck material must be

<sup>16</sup> *Heritage Law at Sea Part 3: Consultation, Advice and Information*

<sup>17</sup> '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](http://www.britarch.ac.uk/valletta/valletta_final_cba_fullhtml)

<sup>18</sup> *European Convention on the Protection of the Archaeological Heritage (revised) (ETS no. 143)* Explanatory Report p.7. The full text of the Explanatory Report is available at <http://convention.coe.int/Treaty/en/Treaties/Word/143.doc>

reported if taken into possession irrespective as to whether it consists of precious materials. Therefore in this respect the United Kingdom's current provision exceeds that required by the *Valletta Convention*. However there is no requirement to report maritime cultural heritage finds which do not constitute *wreck* under the Merchant Shipping Act 1995<sup>19</sup>. It should also be noted that it is unclear whether the Merchant Shipping Act 1995 applies to harbours, which are areas of high archaeological potential.

**2.11 Attention is drawn to the following recommendation in *Heritage Law At Sea*:** A general obligation to report disturbances to historic wreck should be introduced<sup>20</sup>. Notification to the Receiver of Wreck is currently only required if wreck is recovered and as a result considerable damage can occur to a wreck site before it is brought to the attention of archaeologists.

## **2.12 Recommendation**

Further consideration should be given to:

- (i) Extending the definition of 'wreck' material (which must be reported under the Merchant Shipping Act 1995) to include all finds below low water covered by the definition of archaeological heritage in the *Valletta Convention*<sup>21</sup> and to extending the Receiver's jurisdiction to include harbours if they are not currently covered by the Merchant Shipping Act 1995.
- (ii) Continuing to support and encourage the Maritime and Coastguard Agency's policy for the Receiver of Wreck to deal with all finds irrespective of their context.
- (iii) Extending the remit of the officers of the Portable Antiquities scheme to include maritime finds, their work being complementary to the role of the Receiver of Wreck, whose office would continue to deal with reports from below the Low Water Mark.
- (iv) Introducing an alternative mandatory reporting scheme in the longer term, which would become the prime legislation relating to the reporting of antiquities both on land and underwater.
- (v) Addressing the problem that can arise in the current situation where individuals can claim to be *Salvor in Possession* in relation to sites designated under the Protection of Wrecks Act 1973 or scheduled under the Ancient Monuments and Archaeological Areas Act 1979. As *Salvor in Possession* an individual may acquire possessory rights, which are akin to proprietary rights and could be protected under the European Convention on Human Rights. These proprietary rights will, in the absence of pecuniary compensation, act as a constraint upon the actions of the heritage agencies.

<sup>19</sup> There is no full definition of *wreck*, but it is defined as including *flotsam*, *jetsam*, *derelict* & *lagan*. Section 255 (1).

<sup>20</sup> *Heritage Law at Sea* Part 1: Merchant Shipping Act.

<sup>21</sup> Further consideration should also be given to the Receiver of Wreck's view that this already happens on a voluntary basis.

This is a complex issue, which raises difficult issues of law and policy. It will require further consideration and debate.

- (i) Removing the ability of a salvor to acquire possessory rights to maritime cultural property.
- (ii) Similarly, consideration should be given to removing maritime cultural property from the salvage regime, while continuing to provide an incentive to honesty<sup>22</sup>.
- (iii) That a general obligation to report disturbances to maritime archaeological remains be introduced<sup>23</sup>.

### **3.1 Valletta: Article 3**

*This requires the application of procedures for the authorisation and supervision of excavation and other intrusive archaeological activities to protect the 'archaeological heritage' through ensuring that appropriate research techniques and conservation measures are adopted by suitably qualified, specially authorised persons.*

#### **3.2 Comment**

This provision is perhaps one of the most difficult to interpret, since it is arguable that it encompasses an extremely wide range of possibilities, ranging from a requirement to licence all archaeological activities, whereby persons need professional archaeological qualifications in all circumstances, to simply a requirement for deemed qualification and authorisation through compliance with a Code of Practice upon completion of an avocational qualification such as those courses offered by the Nautical Archaeology Society.<sup>24</sup> This range of possibilities is considered below in relation to the specific provisions of Article 3i a, b & ii.

#### **3.3 Valletta: Article 3i a & b**

*Each State undertakes to apply procedures for the authorisation and supervision of excavation and other archaeological activities, so as to prevent illicit excavations or removals and so that appropriate methodology is applied to archaeological excavations and prospecting.*

#### **3.4 Comment**

The CBA does not envisage that 'blanket protection' will be applied to terrestrial sites in the United Kingdom. Presumably, parity of policy should be exercised in relation to maritime sites. Currently, in relation to specifically selected sites there are procedures to control activities under the Protection of Wrecks Act 1973, Ancient Monuments and

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<sup>22</sup> The United Kingdom has entered a reservation under Article 30 of the Salvage Convention 1989, which would enable it to remove cultural material from the salvage regime. However the issue remains open as to what regime should then be provided to deal with it.

<sup>23</sup> This would go beyond the recommendation in *Heritage Law at Sea*, which recommended that disturbance to only historic wreck be introduced.

<sup>24</sup> *Calling the Curators: The Danger of Lists*. The Archaeologist. No.46 IFA. Autumn 2002.

Archaeological Areas Act 1979 and Protection of Military Remains Act 1986, which can require both authorisation and supervision by a competent person. Otherwise, there is no requirement for archaeological authorisation or supervision, although archaeological activity may require consent under other regulatory schemes or proprietary rights. However, archaeological considerations may not be material in determining any application for such consents.

**3.5 Attention is drawn to the following recommendations in *Heritage Law At Sea*:**

- That the transparency of procedures for designation and licensing be improved<sup>25</sup>.
- That activities which cause disturbance in restricted areas be prohibited<sup>26</sup>.
- That licensing procedures for the removal of human remains be extended to those found underwater<sup>27</sup>.

### **3.6 Recommendation**

This article raises important issues that require more specific consideration. In particular the introduction of a Code of Practice should be considered. Adherence to the Code would act as a deemed authorisation, except where specific authorisation was required.

### **3.7 Valletta: Article 3ii**

*This Article requires that excavations and other potentially destructive techniques should only be carried out by qualified, specially authorised persons.*

### **3.8 Comment**

The CBA Position Paper on the *Valletta Convention* notes that: “unlike terrestrial archaeology, the majority of underwater archaeology is undertaken outside any authorisation process.”<sup>28</sup> There is a requirement for a procedure to establish competency before any permission is granted for an excavation or other intrusive activity on an archaeological site. Such a requirement currently only operates in the United Kingdom in relation to specific sites<sup>29</sup>. Again the interpretation of this provision is difficult, in that it encompasses a wide range of possibilities from a requirement for a professional archaeological qualification to merely a requirement for avocational training or even explicit adherence to a Code of Practice that involves peer review of project proposals and personnel. However, it is important to emphasise that the *Explanatory Report* states that in relation to *Article 3ii* “This does not mean to say that members of the public cannot be engaged on excavations. It means that they must be under the control of a qualified person who is responsible for the excavation.”<sup>30</sup>.

<sup>25</sup> *Heritage Law at Sea Part 2: Protection of Wrecks Act / Licensing*

<sup>26</sup> *Heritage Law at Sea Part 2: Protection of Wrecks Act / Licensing*

<sup>27</sup> *Heritage Law at Sea Part 4: Miscellaneous / Licensing*

<sup>28</sup> ‘*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](http://www.britarch.ac.uk/valletta/valletta_final_cba_fullhtml)

<sup>29</sup> See further para. 3.2 above.

<sup>30</sup> *European Convention on the Protection of the Archaeological Heritage (revised) (ETS no. 143)*

*Explanatory Report* p.9. The full text of the Explanatory Report is available at

<http://convention.coe.int/Treaty/en/Treaties/Word/143.doc>

**3.9 Attention is drawn to the following recommendations in *Heritage Law At Sea*:**  
High standards of archaeological investigation and management should be promoted<sup>31</sup>.

Organisations with statutory powers should be required to adhere to best practice in respect of underwater cultural heritage<sup>32</sup>

**3.10 Recommendation**

The JNAPC is of the opinion that this requirement should be met by a system based upon a combination of demonstrable practical experience and theoretical knowledge of the principles of such techniques. A register of accepted qualifications and courses should also be created.<sup>33</sup> The appropriate level required for particular circumstances should be a matter of further research and consultation.

The JNAPC also proposes that the principles of the Annex to the *UNESCO Convention* should be adopted as a Code of Practice by all stakeholders engaged in activities on all maritime archaeological sites<sup>34</sup>. This would require further education of all maritime stakeholders and the JNAPC suggests that the sports diving associations could play a major role in this process.

**3.11 Valletta: Article 3 iii**

*This requires the State to subject to specific prior authorisation, whenever foreseen by the domestic law of the State, the use of metal detectors and any other detection equipment or process for archaeological investigation.*

**3.12 Comment**

In relation to the maritime environment this is the most difficult provision to interpret and requires substantial further consideration. Taken at its broadest the use of any equipment that could detect the presence of archaeological remains would need authorisation. However, in a maritime context, such equipment is routinely used for marine navigational and survey purposes, thereby making the presence of such equipment on a vessel perfectly legitimate.

**3.13 Recommendation**

Consideration could be given to introducing 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.

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<sup>31</sup> *Heritage Law at Sea Part 2: Protection of Wrecks Act 1973*. Note also the commitment to this in ‘*Taking to the Water*’ (EH 2002). Adoption of the UNESCO Annex, even on a policy basis, would provide a template.

<sup>32</sup> *Heritage Law at Sea Part 3: Consultation, Advice and Information*.

<sup>33</sup> *Calling the Curators: The Danger of Lists*. The Archaeologist. No.46 IFA. Autumn 2002.

<sup>34</sup> The principles could be incorporated into a Code of Practice, as envisaged in para. 3.6 above.

#### 4.1 Valletta: Article 4

##### 4.2 Valletta: Article 4.iii

*This concerns the public provision of resources to acquire and conserve sites and monuments and to maintain properly curated conservation, archive and finds repositories.*

##### 4.3 Attention is drawn to the following recommendations in *Heritage Law At Sea*:

The Crown's right of ownership of unclaimed wreck should be extended to that recovered beyond territorial waters<sup>35</sup>.

A power for the Crown to re-purchase rights to wreck should be introduced<sup>36</sup>

Environmental degradation of protected wrecks should be reduced<sup>37</sup>.

Explicit management strategies for protected wrecks should be prepared<sup>38</sup>.

Long-term support for a diving team of professional archaeologists should be provided<sup>39</sup>.

#### 5.1 Valletta: Article 5

*This is concerned with integrating archaeology into the planning regime.*

##### 5.2 Recommendation

In stating its position with regard to the *Valletta Convention*, the CBA<sup>40</sup> has recognised the value of the principles of the current planning guidance contained within PPG15, 16 and 20 and has recommended their increased use. Furthermore, it is suggested that the planning regime should be extended below the Low Water Mark, out to the limit of the United Kingdom's territorial waters. In light of the ongoing ODPM/DFT *Review of Planning*<sup>41</sup> the JNAPC recommends in the strongest terms that, should this occur, archaeology should be made a material consideration. In any event particular attention should also be paid to the creation of a unified consent procedure<sup>42</sup> for development

<sup>35</sup> *Heritage Law at Sea Part 2: Merchant Shipping Act 1995*. This would reverse the decision in *The Lusitania* [1986] 1 Lloyd's Rep. 132 to the effect that title to wreck covered in international waters and landed in the United Kingdom, which remains unclaimed by an owner, reverts to the salvor.

<sup>36</sup> *Heritage Law at Sea Part 2: Merchant Shipping Act 1995*.

<sup>37</sup> *Heritage Law at Sea Part 2: Protection of Wrecks Act 1973*.

<sup>38</sup> *Heritage Law at Sea Part 2: Protection of Wrecks Act 1973*. Note the commitment to this in *Taking to the Water* (EH 2002).

<sup>39</sup> *Heritage Law at Sea Part 2: Protection of Wrecks Act 1973*. Note the commitment to this in *Taking to the Water* (EH 2002).

<sup>40</sup> '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.briarch.ac.uk/valletta/valletta\\_final\\_cba\\_fullhtml](http://www.briarch.ac.uk/valletta/valletta_final_cba_fullhtml)

<sup>41</sup> Office of the Deputy Prime Minister and Department for Transport.

<sup>42</sup> Some progress has been made towards establishing a less complicated consent procedure by the creation of the *Marine Consents and Environment Unit*. DEFRA/DFT at <http://www.mceu.gov.uk>

below the Low Water Mark, in which archaeology should be expressly made a material consideration, as identified in *Safeguarding our Seas*<sup>43</sup>.

### **6.1 Valletta: Article 6**

*Each State has undertaken to provide for public financial support for archaeological research and to increase the material resources for rescue archaeology by covering the costs, either from the private or public sectors, of any related archaeological operations, of preliminary archaeological study, and the collection and dissemination of scientific information.*

### **6.2 Comment**

In *Heritage Law At Sea* it was recommended that responsibility for underwater cultural heritage in England be transferred from the Department for Culture, Media and Sport to English Heritage and that funding be provided for the investigation and management of protected wrecks<sup>44</sup>. This has now been achieved in principle by the National Heritage Act 2002, although the resources that have been transferred by the Department for Culture, Media and Sport to English Heritage are inadequate for the management of underwater cultural heritage and to implement fully the provisions of the *Valletta Convention*.

### **6.3 Recommendation**

That the resources available to the heritage agencies for maritime archaeology should be reviewed as a matter of urgency.

In the light of the requirement in the *Valletta Convention* that the financing of rescue archaeology is a component of development schemes, further consideration is given to:

- (i) extending the planning regime below the Low Water Mark, out to the limit of United Kingdom's jurisdiction, as recommended in para. 5.2 above.
- (ii) the creation of a unified consent procedure, in which archaeology should be expressly made a material consideration, as identified in *Safeguarding our Seas*<sup>45</sup> and as recommended in para. 5.2 above.
- (iii) introducing a statutory duty upon all Government departments, agencies, statutory authorities and undertakers to protect and conserve the underwater cultural heritage when discharging their statutory functions.

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<sup>43</sup> DEFRA 2002.

<sup>44</sup> *Heritage Law at Sea* Part 2: Protection of Wrecks Act 1973. paras. 2.2 & 2.11.

<sup>45</sup> DEFRA 2002.

### **7.1 Valletta: Articles 7 and 8**

*These articles are important in promoting the case for better publication and dissemination of information. For instance, they require preliminary summary publication of the results of excavations (Article 7).*

#### **7.2 Comment**

Article 7, in conjunction with Articles 3 and 5, should be used to impose stronger requirements on excavators to publish.

#### **7.3 Attention is drawn to the following recommendation in *Heritage Law At Sea*:**

Annual Reports should be published in respect each of the protected wreck sites and relevant information should be made publicly accessible<sup>46</sup>.

#### **7.4 Recommendation**

That the above recommendation in *Heritage Law at Sea* be made a statutory obligation.

### **8.1 Valletta: Article 9**

#### **8.2 Valletta: Article 9.i**

*This requires the State to conduct educational actions to develop awareness in public opinion of the value of the archaeological heritage in terms of understanding the past and of threats to it.*

#### **8.3 Comment**

Government and the heritage agencies have already made funding available for diver training and education for the past twelve years and as a result the general public and the diving community are now more aware of the value of maritime archaeology than at any time in the past. The success of the NAS Training Programme and its associated Diving with a Purpose and Adopt a Wreck projects have initiated a cultural change in attitudes toward the underwater cultural heritage. Nevertheless, support for such educational initiatives should continue in order to ensure the United Kingdom's compliance with Article 9i.

#### **8.4 Recommendation**

- (i) Consideration should be given to increasing the resources available for public education in relation to all aspects of the maritime heritage.
- (ii) Support for such educational initiatives should continue in order to ensure the United Kingdom's compliance with Article 9i.

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<sup>46</sup> *Heritage Law at Sea* Part 2: Protection of Wrecks Act 1973 para. 2.3

### **8.5 Valletta: Article 9.ii**

*This requires the State to promote public access and displays of archaeological heritage.*

#### **8.6 Comment**

In relation to the Ancient Monuments and Archaeological Areas 1979 Act scheduled sites are accessible to the public. Sites designated under the Protection of Wrecks Act 1973 are not accessible to the public, unless a visitor licence is granted to named individuals. In relation to the Protection of Military Remains Act 1986 public access is freely available to the exterior of wrecks, which are designated as Protected Places, but is not available to sites designated as Controlled Sites, except by licence to named individuals.

#### **8.7 Recommendation**

- (i) Increasing the number of designations under the Ancient Monuments and Archaeological Areas Act 1979 could extend the principle of 'look but do not touch' and need not restrict access, unless a site was deemed to be fragile.
- (ii) In relation to the Protection of Wrecks Act 1973, the policy of the Advisory Committee on Historic Wrecks Sites has moved towards the granting of visitor licences and diver trails. Any subsequent management strategy should include extending the visitor schemes already established on suitably robust wrecks designated under the Protection of Wrecks Act 1973.
- (iii) The Ministry of Defence should be prepared to licence appropriate invasive activities where a sound archaeological case can be made for granting a licence. In relation to wrecks designated as Controlled Sites no public access is available but again a licence should be granted for appropriate archaeological activities and the Ministry of Defence is legally obliged to consider each case on its merits.

### **9.1 Valletta: Articles 10 and 11**

*These relate to the control of illicit trade in antiquities.*

#### **9.2 Comment**

This trade is also subject to the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership in Cultural Property 1970*, which the United Kingdom has ratified. Section 245(1) Merchant Shipping Act 1995 is also of relevance. This makes it an offence to take wreck from within United Kingdom tidal waters to a foreign port for sale. In relation to interference with protected or scheduled underwater sites, experience has shown that the police and other State agencies do not always regard this as a serious matter, mainly due to an ignorance of the law or the evidentiary difficulties confronting prosecution. An exception to this has been the proactive efforts of the Maritime and Coastguard Agency.

### 9.3 Recommendation

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.

### 9.4 The following recommendations in *Heritage Law at Sea* would improve the protection of the UCH, thereby assisting the implementation of *Valletta Convention*:

- (i) Provision should be made 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<sup>47</sup>.
- (ii) Formalise consultation between the Receiver of Wreck and local and national curatorial authorities<sup>48</sup>.
- (iii) Formalise consultation between the relevant Secretary of State and local and national curatorial authorities<sup>49</sup>.
- (iv) Formalise consultation with the Secretary of State in all consent procedures applicable to works and activities affecting the seabed<sup>50</sup>.
- (v) Formalise consultation between Government departments and heritage agencies prior to the salvage or sale of government owned vessels<sup>51</sup>.

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<sup>47</sup> *Heritage Law at Sea* Part 4:Miscellaneous para. 4.2

<sup>48</sup> *Heritage Law at Sea* Part 3: Consultation, Advice and Information para. 3.1.

<sup>49</sup> *Heritage Law at Sea* Part 3: Consultation, Advice and Information para. 3.2

<sup>50</sup> *Heritage Law at Sea* Part 3: Consultation, Advice and Information para. 3.3

<sup>51</sup> *Heritage Law at Sea* Part 3: Consultation, Advice and Information para. 3.6

## **Conclusion**

It is accepted that some of the proposals for change made in *Heritage Law at Sea* have been addressed since its publication in 2000, but many of the issues raised in that report remain to be addressed. More importantly, it should be emphasised that the adoption of the *Valletta Convention* by the United Kingdom has added a further imperative for amendment to the legal framework surrounding the underwater cultural heritage. The debate has now moved considerably beyond the issues raised in *Heritage Law at Sea*. This progression is underlined by the fact that even if all the proposals made in *Heritage Law at Sea* were implemented this would still not fully satisfy the United Kingdom's obligations under the *Valletta Convention*.

This report has identified those areas that require further substantial research and deliberation to determine what amendments are needed to the United Kingdom's legal framework relating to underwater cultural heritage legislation to ensure that it meets fully its obligations under the *Valletta Convention*.

The JNAPC recommends that such research should be undertaken as a matter of urgency. The objective should be that any legislative reforms enjoy a high degree of consensus within the marine constituency.

## Appendix

### Members of the Joint Nautical Archaeology Policy Committee

<b>Chairman</b>	Robert Yorke
<b>Organisations</b>	
Association of Local Government Archaeological Officers	Paul Gilman
British Sub-Aqua Club	Jane Maddocks
Council for British Archaeology	George Lambrick, Alex Hunt
Hampshire & Wight Trust for Maritime Archaeology	Garry Momber
Institute of Field Archaeologists	David Parham
ICOMOS	Christopher Dobbs
National Maritime Museum	Gillian Hutchison
National Museum & Galleries of Wales	Mark Redknap
National Trust	Rob Woodside
Nautical Archaeology Society	Lucy Blue
Nautical Archaeology Society / Training	Chris Underwood & Amanda Bowens
Professional Association of Diving Instructors	Suzanne Pleydell
Shipwreck Heritage Centre	Peter Marsden
Society for Nautical Research	Alan Aberg
Sub-Aqua Association	Stuart Bryan
UK Institute for Conservation	Amanda Sutherland
Wessex Archaeology	Antony Firth
<b>Individual representation</b>	
Sarah Dromgoole	University of Leicester
Valerie Fenwick	previously CBA
David Tomalin	previously County Archaeologist, Isle of Wight
Michael Williams	University of Wolverhampton
<b>Observers</b>	
Archaeological Diving Unit	Martin Dean
CADW	Sian Rees
English Heritage	Ian Oxley
English Heritage	Steve Waring
Environment Service, Northern Ireland	Brian Williams
Historic Scotland	Olwyn Owen
Maritime and Coastguard Agency, Receiver of Wreck	Sophia Exelby
Ministry of Defence	Peter MacDonald
Royal Commission on the Ancient and Historical Monuments of Scotland	Robert Mowat

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