
Sarah Dromgoole*
Institute of Maritime Law, University of Southampton, UK

As a result of their long, often treacherous nature and their geographical location at the sea approaches to Northern Europe, the coasts of the United Kingdom are particularly rich in shipwrecks. Amongst these wrecks are a large number which are of historical interest and value. The United Nations Law of the Sea Convention (UNCLOS) 1982 bears witness to international recognition of the importance of the underwater heritage and endorses that recognition by imposing (with certain provisos) a general duty upon states to protect objects of an archaeological and historical nature found at sea. The purpose of this article is to address the question: what legal protection does the United Kingdom afford to historic wreck located in its territorial waters? To fulfil this purpose, it is necessary to examine: the development of the statutory system, the statutory provisions themselves and the means by which they are put into practice. In doing so, attention will be drawn to the weaknesses and limitations of the present legal framework.

* The author would like to thank the following: A. Margetts, Marine Directorate, Department of Transport; Dr. D. Tomalin, County Archaeological Officer, Isle of Wight; P. Marsden, The Museum of London; Dr. M. Rule, Research Director, The Mary Rose Trust; A. Prince, The Salvage Association; N.J.J. Gaskell, Institute of Maritime Law, University of Southampton. The views expressed are, of course, her own.

1 Over 6,500 miles: H. Sheldon, "Crisis in Maritime Archaeology" (1988) 45 Rescue News 1.
2 It is not proposed to deal specifically with aircraft wreck, but it too may well be of historical interest: for example, the wreck of a flying boat lying in the Solent, or that of a Second World War RAF Wellington bomber found in a Scottish loch. For the application of the law of salvage and wreck to aircraft see Civil Aviation Act 1982, s. 87.
3 This term includes submerged settlements and other underwater archaeological finds outside the ambit of this article.
4 Art. 303(1).
5 Art. 303(3): "Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges."
6 The United Kingdom, although a signatory to the Convention, has neither ratified nor acceded to it, nor is the Convention yet part of international law.
7 In view of the inherent constraints of an article of this nature, private law questions relating to rights in wreck are dealt with in outline only.
8 Reform issues will be discussed in Part II, which will appear in the next issue of this Journal.

INTERNATIONAL JOURNAL OF ESTUARINE AND COASTAL LAW, VOL 4, NO 1, © Graham & Trotman Limited, 1989
A. Merchant Shipping Act 1894

The main body of statute law relating to the handling and disposal of wreck is to be found in Part IX of the Merchant Shipping Act 1894. Most of the provisions relate to times when the majority of vessels were still propelled by sail and there were only minimal aids to navigation. Casualties to ships on the coast were far more numerous than they are today and the 1894 provisions were passed to deal in particular with a pressing problem of the time: namely, the traditional plunder of distressed vessels by coastal communities. The provisions were therefore primarily concerned with the safe keeping and disposal of property from vessels in distress or recently wrecked and not from vessels which had been lying on the sea-bed for a considerable period of time, possibly for centuries.

The term “wreck” for the purposes of Part IX of this Act includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water. This definition is much wider than that at common law which defines wreck as property cast ashore within the ebb and flow of the tide after shipwreck and the Act seems to have been intended to include under one term rights pertaining to land and those constituting droits de admiralty.

1. The Receiver of Wreck Service

The Act establishes a Receiver of Wreck Service to administer the handling and disposal of wreck. Section 566 provides for the appointment of receivers by the Secretary of State from among officers of the Customs or Coastguard or Inland

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9 To these communities “a wreck was a natural dispensation of providence for the better redistribution of wealth”: P. Marsden, The Wreck of the Amsterdam (1974). An example of the type of incident that the law was framed to control is that of the Dutch East Indianman. Amsterdam, that foundered on the south coast of England in 1749. Troops sent to guard the vessel were unable to reach the scene until one low tide had passed and, with the coming of low water, a contemporary account estimated that 1,000 people were on the beach, many armed with long poles and hooks to assist their “wrecking” operations; Marsden, op. cit.

10 In the Cargo ex Schiller [1877] 2 PD 145 it was held, citing Att. Gen. v. Sir Henry Constable [1601] 5 Co Rep 106, that “flotsam, is when a ship is sunk or otherwise perished, and the goods float on the sea. Jetsam, is when the ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and afterwards, notwithstanding, the ship perishes. Lagan... is when the goods which are so cast into the sea, and afterwards the ship perishes, and such goods are so heavy that they sink to the bottom... ”.

11 The term “derelict” is sometimes used to mean simply the physical abandonment of a vessel in the face of imminent peril (see e.g. HMS Thetis [1835] 3 Hagg 229, 166 ER 390 per Sir John Nicholl), but sometimes it is also used to mean the abandonment of physical possession and of ownership rights (see e.g. Bradley v. Newsom [1919] AC 16 per Lord Finlay LC pp. 27, 28). In the context of Part IX, “derelict” presumably has the former meaning, because the Act gives owners a period in which to claim their property.

12 1894 Act, s. 510(1).


14 i.e. Wreck remaining at sea. See Halsbury’s Laws, 4th edn., Vol. 43, para. 1008 for discussion of droits de admiralty.

15 The Secretary of State for Transport. The administration of the Act, along with all other shipping functions, was transferred from the Secretary of State for Trade to the Secretary of State for Transport in 1983 (SI 1983, No. 1127). In practice, the Marine Directorate remained in the same offices and with the same officials and, therefore, the change was nominal only.