
The Regulatory Framework for protecting UK Military Wrecks outside the UK territorial Waters¹

'Wargraves': A Misnomer

A very common misconception is that the wrecks of UK military aircraft and vessels where loss of life has occurred are 'war graves' and that this alleged status confers some legal protection. Legally a 'war grave' in UK law is a burial by the Commonwealth War Graves Commission (CWC). The CWC maintains a number of cemeteries around the globe, in which fallen UK military personnel are buried. These are legally 'wargraves'. It is axiomatic that the site of a sunken UK military aircraft or vessel cannot therefore in law be a 'war grave', since it is not a burial by the CWC. It is for this reason that the Ministry of Defence (MOD) refers to such sunken sites as '*the last known resting place*' of lost military personnel. The legal framework protecting such sites is complex, fragmentary and contains multiple deficiencies. There is not even international agreement as to what that framework actually comprises.

UNESCO Convention on the Protection of Underwater Cultural Heritage 2001

This Convention protects Underwater Cultural Heritage 2001 (UCH) from unauthorised interference. However not all coastal States are signatories and the Convention only applies to UCH that has been submerged continuously or partially for 100 years. At the time of writing, any military remains post March 1918 fall outside the Convention. The Convention allows for regional agreements between coastal States to amend this but the UK is not a party to the Convention².

Sovereign Immunity & UK Crown Ownership

The UK asserts, as customary international law, the international legal principle of Sovereign Immunity in respect of such sites and thus that they are immune from salvage without UK consent in perpetuity. Additionally the UK asserts that Crown ownership (legal title) remains vested in such remains in perpetuity, unless expressly abandoned or disposed of by the Crown. It is very doubtful that in fact this application of the principle of Sovereign Immunity has acquired the status of customary international law. Many jurists argue that it has not. Some coastal States take the same view as the UK; others take the view that the principle of Sovereign Immunity only applies to functioning warships and military aircraft and not to the wrecks thereof. Other coastal States take the view that Sovereign Immunity only applies to

¹ UK Territorial Waters extend from the UK baselines to 12 nautical miles offshore or to the median line with other coastal States, such as France and the Republic of Ireland.

² The UK has adopted the principles set out in the annex to the Convention as best practice in the management of underwater cultural heritage. See further the statement made by John Glen, Minister for the Arts, Heritage and Tourism at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-10-31/HCWS208/>

such wreck sites for as long as it is necessary to protect technological secrets and that Sovereign Immunity lapses with time, as does any ownership (legal title) by the Crown. Clearly international law in this respect is very far from settled.

Article 4 (1) International Convention on Salvage 1989

This prohibits the salvage of warships or other non-commercial vessels owned or operated by a State which were entitled at the time of salvage operations to Sovereign Immunity unless the Flag State (here the UK) consents. Again not all States are party to this Convention.

Protection of Military Remains Act 1986

This Act has a number of provisions prohibiting unauthorised interference with the remains of military aircraft and vessels. All crashed military aircraft are automatically protected under the Act but vessels have to be expressly and individually afforded protection by a designation process. Within UK territorial waters the Act applies to all persons and vessels. Unusually the Act also has what is termed 'extra – territorial jurisdiction'. This means that it also applies beyond UK territorial waters, but only to British nationals or UK flagged vessels, which is obviously a substantial, but unavoidable, limitation. The Act also cannot apply within the territorial waters of another State.

Marine Licensing within the UK Marine Area

The UK Marine Area extends from mean high water springs to the edge of the UK Continental Shelf or any median line with another coastal State. This encompasses the UK's territorial waters, its EEZ and its Continental Shelf³. Within this UK marine area, marine licencing regulates a number of activities, including the removal of any object from the seabed. The exact meaning of this provision is not totally clear but it does impose a degree of control over unauthorised removal of military remains. The regulation will apply to anyone or any vessel undertaking such marine licensable activity within this UK marine area, irrespective of nationality or Flag registration.

Conclusion

From the above one may correctly conclude that the regulatory framework protecting sunken military remains and the last known resting places of UK military personnel at sea, beyond the UK marine area, is fragmentary and complex. Revision of the United Nations Law of the Sea Convention (LOSC)⁴ to provide a more cohesive regulatory framework would be highly desirable.

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³ See further s.42 Marine & Coastal Access Act 2009.

⁴ The Convention is often, but incorrectly, referred to as 'UNCLOS'.