

Maritime Summary Note n°266 – December 2024

« The legal régimes governing maritime wrecks »

The end of a vessel's operational lifecycle can manifest through voluntary or involuntary abandonment, structural dismantling, or marine casualties resulting in shipwrecks. Both abandonment and shipwrecks frequently culminate in the legal status of vessel wrecks. These subsea assets can operate as highly coveted sources of financial profit, command an inestimable cultural and heritage value, or constitute a severe hazard to navigation. What explicit legal framework governs maritime wrecks?

Context and Environmental Oceanization Frameworks

The end of a vessel's lifecycle has been heavily regulated over recent years, driven by a profound integration of global environmental impacts. The London Convention of November 13, 1972, on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, alongside its 1996 Protocol, drastically tightened the international criteria governing subsea dumping. This 1996 Protocol strictly prohibits all marine dumping activities, except for a restricted registry of authorized wastes annexed to the text, which explicitly encompasses decommissioned vessels and offshore platforms.

Nevertheless, a draconian regulatory framework tightly governs this oceanization process: requiring rigorous waste prevention audits, a thorough evaluation of existing recycling and landside waste management alternatives, a comprehensive environmental impact assessment (EIA) of the dumping operations, precise hydrographic selection of the dumping site, long-term monitoring protocols, and the issuance of a formal sovereign permit. Consequently, the deliberate sinking of a vessel remains a heavy, capital-intensive administrative procedure, which is furthermore frequently misperceived by public opinion as a purely polluting act.

Conversely, throughout the 1990s, public authorities actively incentivized the deepwater dumping of cumbersome wrecks, notably those stemming from fishing fleet structural exit schemes. Indeed, dozens of vessels of all dimensions were systematically dumped within the Levy Deep located near Cherbourg in the English Channel.

Today, shipwrecks seldom sink with cargo holds packed with gold. Instead, they represent acute environmental and industrial threats based on the substances they contain, such as remaining bunker fuels, hazardous materials, or highly toxic cargo matrices. A prominent historical illustration remains the chemical tanker *levoli Sun*, which sank in 2000 across the Western English Channel, carrying 6,000 tonnes of industrial chemicals and 200 tonnes of bunker oil.

Subsea wrecks can constitute a severe hazard to navigation and occasionally penalize the optimal operations of port gateway infrastructures. They are liable to inflict operational constraints onto maritime sectors such as commercial fishing, subsea cable-laying, or offshore wind fields, a risk heavily compounded by imminent pollution threats. Within the French maritime space, the SHOM centrally recenses all shipwrecks and maps their precise positioning onto official nautical charts. Concurrently, the CEDRE classifies and maps the specific wrecks categorized as high-risk environmental threats. Statutorily, the number of potentially polluting wrecks remains exceptionally elevated.

This landscape is particularly alarming when evaluating the sunken fleets of the First and Second World War casualties. Functioning concurrently as sacred war graves and ticking ecological time bombs, multiple subsea hulls still contain unexploded ordnance and live munitions that pose a real, immediate danger. Executing the subsea extraction of trapped bunker fuels from these legacy wrecks remains an exceptionally complex and capital-intensive engineering challenge, which explains the relative inaction of coastal States.

The legal regime of non-cultural maritime wrecks

Under French domestic law

The legal status and terms of appropriation governing maritime wrecks are strictly codified under Articles L. 5142-1 et seq. of the French Transport Code, supplemented by Decree No. 61-1547 of December 26, 1961, which states: "the status of a wreck results from non-buoyancy, the absence of a crew on board, and the non-existence of watchkeeping and maneuvering measures." Two structural exceptions apply to this definition: cases of voluntary abandonment, and the presence of historic wrecks subject to the specific regime of underwater cultural heritage managed under the French Heritage Code.

The legal definition of a wreck applies indiscriminately to a vessel that has run aground or foundered, but encompasses as well alternative floating marine crafts, the cargo matrix, alongside aircraft wrecks discovered at sea or on the shoreline. Consequently, a simple shipping container fallen overboard legally constitutes a wreck. This architecture isolates the distinction between a vessel wreck and a maritime wreck, the former being a specific sub-category of the latter.

A wreck is by no means a *res nullius*, meaning that a wreck remains an object of property rights. Its beneficial owner retains the legal right to claim it, alongside any cargo property cargo properties remaining on board. The owner of the wreck can furthermore be held legally liable under Article 1242 of the French Civil Code if the asset causes damage to third parties; identically, if this damage strikes the marine environment, the owner's civil liability will be systematically engaged.

If the wreck is deemed hazardous, its removal by the owner operates as a mandatory statutory obligation. A formal injunction is then addressed to the owner, locking in a strict timeline for the execution of search, recovery, removal, or destruction operations. In the event of total inaction by the owner, or if the latter remains untraceable, the competent administrative authority can act *ex-officio* and substitute itself for the owner. These emergency operations are executed at the sole expense and risk of the owner. A fast-track expedited procedure can be triggered in emergency casualties if the wreck presents a "grave and imminent danger."

Under international maritime law

The Nairobi International Convention on the Removal of Wrecks of May 23, 2007, which entered into force in April 2015, applies to wrecks situated within the Exclusive Economic Zone (EEZ) of a Member State, or within a designated zone adjacent to its territorial sea if the State disposes of no EEZ. It endows coastal States with the explicit right to implement measures to facilitate removal operations and outlines their sovereign jurisdictions therein. The convention's baseline definition of a wreck stands significantly broader than the criteria outlined under French domestic law.

Within the EEZ, if the affected coastal State establishes that a wreck constitutes a hazard, it must instantly apprise the flag State and the shipowner. It concurrently proceeds to hold multilateral consultations with the flag State and alternative nations impacted by the casualty. The shipowner is then bound by a strict obligation to remove the wreck from the seabed. The owner must furthermore deliver to the competent authority of the affected coastal State verified proof of Protection and Indemnity (P&I) liability insurance or alternative adequate financial security.

The shipowner disposes of a reasonable timeline to execute the wreck removal face to the hazard it represents. In the event of owner default or an exceptionally severe danger, the coastal State is legally authorized to intervene directly at the owner's expense.

The Nairobi Convention remains completely silent on the question of third-party property damage and subsequent financial indemnification. This raises the question of whether the domestic civil liability law of the coastal State can be enforced. Within the EEZ, the coastal State merely commands sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources, and exercises jurisdiction restrictively regarding the establishment and use of artificial islands, installations, marine scientific research, and the protection of the marine environment.

Nevertheless, it appears legally logical to enforce the domestic civil liability law of the coastal State, following the formal referral to its courts, through the doctrine of *lex fori*—meaning the law of the jurisdiction in which the legal action is actively brought.

Parallel to this standard maritime legal framework, selected wrecks, by virtue of their exceptional historical significance, fall under a highly specialized legal regime: namely that of submerged cultural heritage.

The legal regime of submerged cultural heritage

For millennia, human societies have left behind enduring imprints of their existence. A substantial share of these testimonies from the past rests today at the bottom of oceans, seas, and lakes. Due to the chronic lack of oxygen characteristic of the marine environment, the preservation of underwater archaeological vestiges remains significantly superior to artifacts buried on land. For humanity, selected historic wrecks operate as formidable time capsules, presenting a first-rate historical, scientific, and tourist interest.

Underwater cultural heritage can be severely threatened by perils of both natural origin (bacteriological attacks, subsea earthquakes, alterations in marine currents, etc.) and human origin, driven by salvage divers, looters, or commercial fishing.

Technological advancements in deep-sea exploration facilitate unprecedented access to this underwater heritage, which is henceforth reachable regardless of its geographical localization. Within selected permissive regions of the world, lucrative and frequently perilous commercial exploitation has historically led to an irreversible loss of this shared heritage.

Furthermore, underwater heritage regularly suffers from involuntary destruction caused by human industrial activities unfolding on the seabed (including commercial fishing, the deployment of submarine cables and pipelines, or geological surveying). The destructive practice of bottom trawling (*le chalutage de fond*) proves exceptionally hazardous and devastating to subaquatic archaeological vestiges.

Archaeological excavations must strictly be undertaken under optimal conditions, backed by a rigorous scientific methodology, custom subsea techniques, and adapted equipment, under pain of triggering irreversible structural damage. Indeed, systematic commercial recovery operations have historically resulted in the outright destruction of numerous cultural assets. Following a prolonged immersion at sea, their sudden exposure to ambient air accelerates rapid deterioration, and only highly specialized desalination and chemical conservation treatments can successfully preserve them over the long term. Today, subaquatic conservation techniques have profoundly evolved, standing far removed from the legacy thirty-year polyethylene glycol (PEG) spraying treatment utilized for the *Mary Rose* in Portsmouth.

Conversely to prior destructive practices, in-situ preservation is henceforth legally and scientifically prioritized as the premier option, whenever ad-hoc funding or scientific means are lacking to execute a comprehensive study. Maintaining cultural assets in situ successfully preserves the natural and archaeological context, even if this choice requires strictly prohibiting commercial exploitation or completely banning recreational scuba diving visits, as implemented for the wreck of the commerce raider *CSS Alabama*, which sank in 1864 in the English Channel. Each unique situation is evaluated through a customized framework.

In France, the DRASSM (Department of Underwater and Submarine Archaeological Research) operates as a specialized branch of the Ministry of Culture, solely in charge of protecting, surveying, and valorizing archaeological vestiges discovered underwater. It stands as the oldest specialized underwater archaeology service in the world. Engineered in 1966 by André Malraux, then Minister of Culture—who, paradoxically, had personally participated during the 1920s in the plundering of Khmer antiquities, marking a singular twist of historical irony—the department remains a global benchmark.

Ultimately, by virtue of its extreme diversity and its paramount importance for humanity, this submerged heritage must be rigidly protected and safeguarded for future generations.

National Legal Frameworks and Sovereign Protections

Engineering a robust legal framework requires strictly regulating all anthropogenic activities that exert a direct or indirect impact on subaquatic cultural heritage, while locking in the baseline conditions necessary for its long-term preservation.

Selected sovereign States enacted unilateral protective measures as early as the 1960s by drafting advanced domestic legislation protecting submerged cultural property. Pursuant to international maritime law, coastal States command more or less extensive sovereign prerogatives within maritime spaces adjacent to their shorelines, most notably across the territorial sea. In French domestic law, wrecks presenting a prehistoric, archaeological, or historical interest are strictly regulated under Articles L. 532-1 et seq. of the French Heritage Code.

Conversely, when States fail or refuse to actively intervene to shield underwater cultural heritage, private financial interests are systematically consecrated. The State plays a paramount role in underwriting the

protection of submerged cultural assets. Indeed, the absolute lack of a dedicated institutional structure specializing in underwater archaeology, coupled with the legal authorization to sell artifacts following excavations, directly incites large-scale plundering.

This tragic landscape materialized most notably in Portugal during the early 1990s. The submerged cultural heritage scattered across the Azores archipelago—which operated during the 16th century as a hyper-frequented port-of-call for Spanish and Portuguese treasure galleons returning from the New World and the Far East—became the target of intensive commercial exploitation for several years. It required profound political shifts in 1997 to finally overturn this permissive legislation and protect the sites.

Nevertheless, private wreck hunters command the historic merit of venturing in quest of these mythical, sunken artifacts. This life-long quest for selected individuals can be crowned with spectacular success or remain entirely vain, dissolving into the limbo of human history. It mobilizes colossal human and financial capital while leading to extraordinary discoveries.

In 1995, commercial salvage corporations like Blue Water, relying on the technical support of Ifremer through the engineering of a specialized ultra-deepwater hydraulic grab, successfully recovered the gold of the RMS Douro off the Spanish coastline with the formal agreement of the Iberian government. The steamship had foundered 110 years prior, carrying a monumental treasure composed of gold coins and bullion. More recently, in 2015, a spectacular treasure aggregating one hundred tonnes of silver coins was discovered and industrially exploited at a depth of over 5,000 meters within the subarctic wreck of the City of Cairo in Namibia.

Henceforth, any archaeological activity conducted within the Economic Exclusive Zone of the signatory nations of wreck conventions, and most specifically across French territorial waters, is pursued within a strictly scientific framework. Destructive practices or explorations liable to damage underwater cultural property, alongside surrounding areas, are strictly prohibited, thereby reducing any alternative discoveries that might have been achieved during these targeted explorations.

The widespread presence of shipwrecks on the high seas, combined by its very nature with this extraterritoriality, rendered it mandatory to address underwater protection at a global echelon. A fraction of the international community mobilized from the 1980s onward, deploying an approach geared toward the international law of the sea on one hand, and another tied to international cultural heritage law on the other—approaches that were subsequently tempered by the sovereign rights of States within their waters under national jurisdiction.

International Legal Instruments and Global Governance Frameworks

The 1982 United Nations Convention on the Law of the Sea (UNCLOS — *CNUMD*) lays down the baseline foundations of a general protection regime for underwater cultural heritage, binding States with the statutory obligation “*to protect objects of an archaeological and historical nature found at sea and cooperate for this purpose (...)*”. Nonetheless, the few isolated articles encoded within UNCLOS remained largely insufficient, characterized by provisions that were far too general and lacunaires, hence the urgent necessity for a greenfield juridical instrument.

Crucially, UNCLOS remains entirely silent regarding cultural property resting on the continental shelf, leaving these assets at the absolute mercy of the freedom of the seas doctrine. Consequently, any person, whether physical or corporate, can explore the deep ocean floor without any binding constraints, retrieve objects of an archaeological or historical nature, and commercialize them on the market after importing them into a nation completely stripped of any historical ties to that heritage.

To bridge this loophole, the General Conference of the UNESCO decreed in 1997 that this submerged heritage must be subject to a dedicated international regulation in the form of a binding convention. This UNESCO Convention on the Protection of the Underwater Cultural Heritage was officially adopted on November 2, 2001, and entered into permanent legal force in 2009. At the very core of this convention, the baseline interest of humanity is pre-engineered to strictly prevail over the individual interests of sovereign States or private corporate actors. This philosophical foundation carries heavy consequences regarding the strategic orientations dictated by the text. The 2001 Convention focuses heavily on precisely defining the object of protection: namely, underwater cultural heritage.

Pursuant to Article 1, it encompasses “*all traces of human existence having a cultural, historical or archaeological character which have been partially or totally, periodically or continuously submerged for at least 100 years*”. Establishing this clear chronological and structural definition constitutes a paramount

advancement. Indeed, within Articles 149 and 303 of UNCLOS, zero precision was delivered regarding what explicitly constituted an object of an archaeological or historical nature.

Article 1 of the UNESCO Convention outlines a non-exhaustive registry list of the diverse elements composing underwater cultural heritage, integrating both movable and immovable assets. Accordingly, the convention is tailored to apply to “*sites, structures, buildings*”, “*vessels, aircraft, other vehicles*”, alongside “*objects of a prehistoric character*”. Each distinct category is furthermore detailed to eliminate any statutory uncertainty; regarding shipwrecks, for instance, the text encompasses, beyond the vehicle hulls, “*any part thereof, their cargo or other contents*”.

The spatial and geographic scope of the 2001 Convention remains extensively broad, designed to shield cultural heritage across the entirety of aquatic spaces. Regarding submerged heritage located within territorial seas, the convention is identically applicable, although specific statutory reservations can be formally presented by contracting parties. The convention rigidly prohibits the commercial exploitation of cultural heritage, actively repressing the illicit trafficking of cultural property, while incentivizing public data-sharing by mankind and for mankind. It furthermore institutes the binding principle according to which “*each State Party undertakes to share with other States Parties the information it disposes of*”.

Nevertheless, like all normative frameworks stemming from public international law, these rules are occasionally difficult to enforce and encounter severe sovereign limitations. They violently collide with the raw sovereignty of States and/or their chronic internal political instability; consequently, no international authority prevented the commercial organization of deepwater tourist expeditions down to the wreck of the *Titanic*—even though the liner foundered in 1912—and if one transposes this to terrestrial cultural heritage, no global mechanism successfully prevented the catastrophic destruction of the *Buddhas of Bamiyan* by the Taliban in 2001, or the near-total obliteration of the ancient site of *Palmyra* in Syria by ISIS in 2015, despite its status as a protected UNESCO World Heritage site since 1980.

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English translation generated by Gemini AI