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Honor Frost Foundation

Supporting Marine and Maritime Archeology in the Eastern Mediterranean

2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage

The case for UK ratification

British Academy / Honor Frost Foundation
Steering Committee on
Underwater Cultural Heritage

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This Briefing Note has been developed to support the British Academy and Honor Frost Foundation's call for the UK Government to ratify the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

The UK expressed its commitment to a global convention for the protection of underwater cultural heritage (UCH) during the negotiation of the draft Convention in 2001.

A new independent Impact Review has demonstrated that the UK's reservations about the 2001 UNESCO Convention, which prevented the UK from voting in favour of the draft in 2001, are no longer the concern they might once have appeared.

Rather than reviewing the legal aspects of ratification, set out in detail in the Impact Review, this briefing note sets out the positive reasons why the UK should ratify. This briefing note is intended to stimulate discussion and to encourage a broader debate about how the UK can engage more fully in taking care of underwater cultural heritage around the world.

The British Academy and Honor Frost Foundation look forward to working with the UK Government and others towards UK ratification of the 2001 UNESCO Convention.

Executive summary

This briefing note identifies five key reasons why the UK should ratify the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage:

1. Ratification will help protect historic wrecks of UK origin around the world, including the wrecks of warships, other state vessels, and ships with which the UK declares a 'verifiable link'.
2. Ratification will make it easier for the UK to manage underwater cultural heritage by making UK waters a 'no go area' for treasure hunters and by increasing international recognition of UK interests in wrecks that originated here.
3. Ratification is likely to generate savings and economic benefits by streamlining existing ad hoc arrangements and unlocking the dividend to be gained from recognising underwater cultural heritage as a valuable social and economic resource.
4. Ratification will help the UK to reinforce its interpretation of the international Law of the Sea, and enable the UK to make its case within the Convention's own institutions.
5. Ratification will enable the UK heritage sector to grow internationally, confirming its leading role in university education and research, and boosting sectors that can benefit from expanding global demand in this sphere.

The alternative to ratifying the 2001 Convention is for the UK's position to become increasingly isolated and irrelevant. Without ratification, the UK will be unable to influence how the new global standard is implemented; and the UK will remain largely incapable of offering effective protection to wrecks of UK origin lying beyond its own waters.

Background

The 2001 UNESCO Convention sets out a legal framework that requires underwater cultural heritage to be investigated according to a high standard – known as ‘the Rules’ – in the different maritime zones recognised by international law. As such, the 2001 UNESCO Convention elaborates the general duty to protect objects of an archaeological and historical nature found at sea – and to co-operate for this purpose – that is set out in the 1982 UN Convention on the Law of the Sea.

The UK entered negotiations for the drafting of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage in a positive spirit. The UK supported most of the articles of the draft, particularly the Rules. However, the negotiations were unable to meet all of the UK’s concerns, so it chose to abstain from voting on the draft. At the time, it was felt that the 2001 UNESCO Convention would not prove capable of attracting universal support.

Against this expectation, the 2001 UNESCO Convention gained sufficient ratifications to enter into force in January 2009. As of January 2014, the 2001 UNESCO Convention has 45 ratifications, including Spain, Portugal and France: countries with long seafaring traditions that initially shared the UK’s concerns. The Netherlands, another key maritime state, is actively reconsidering its position.

The 2001 UNESCO Convention has become firmly established as the international framework for the law relating to underwater cultural heritage. As well as the text of the Convention itself and the Rules set out in its Annex, Operational Guidelines and a Manual for Activities directed at Underwater Cultural Heritage have recently been produced.

01

Ratification will
safeguard UK
interests in historic
wrecks around
the world

Britain's maritime heritage extends throughout its own waters and widely across the world. This should be a treasured legacy. Unfortunately, underwater cultural heritage faces a range of threats. Simply being hidden in deep water no longer offers protection.

Although the 1982 UN Convention on the Law of the Sea includes a general duty to protect underwater cultural heritage, the legal basis for this protection was not made clear, especially in the different maritime zones that have been established.

The 2001 UNESCO Convention systematically addresses underwater cultural heritage in each zone, clarifying the application of existing forms of jurisdiction and invoking the application of the Rules to ensure high standards.

Beyond the UK's own waters – on the international seabed (known as 'The Area') and in the waters of other countries – only the 2001 UNESCO Convention can provide any certainty that UK interests will be recognised.

Specifically, for the wrecks of UK warships and other 'state vessels and aircraft', the 2001 UNESCO Convention provides that even in their own Territorial Sea, coastal states should inform the UK of any discoveries with a view to cooperating on best methods of protection. On the Continental Shelf and in the Exclusive Economic Zone (EEZ), and in the Area, the Convention makes it plain that the agreement or consent of the UK would be required for any activity directed at the historic wreck of a UK warship.

The 2001 UNESCO Convention is clear that the UK's interests in its historic warships continue to apply irrespective of what might have happened to the wreck since it sank. Even if the wreck was sold at some time in the past, the UK's interests in its state vessels and aircraft are still the same.

This is important because the UK has previously sold the wrecks of some of its warships, removing the 'sovereign immunity' that might provide a degree of protection. As a result, the UK has no way of providing any international protection to many important wrecks unless it ratifies the 2001 UNESCO Convention.

The 2001 UNESCO Convention also provides protection for many other vessels in which the UK has interests. The UK's merchant fleet was the largest in the world and its shipyards were the most prolific. The UK spanned the globe with its cargoes, seafarers, ship owners and insurers. All of these provide what the Convention refers to as 'verifiable links'. On the Continental Shelf and in the EEZ of other countries, and in the Area, the Convention enables states to declare their interests on the basis of verifiable links. If it were to ratify the 2001 Convention and declare its interests, the UK would have to be consulted in respect of any discoveries or proposed investigations.

With the growth of family history and the centenary of the First World War, public interest in the treatment of UK wrecks around the world is increasing. The 2001 UNESCO Convention carefully balances peoples' desire that human remains should be properly respected with encouragement for responsible non-intrusive access to raise public awareness and appreciation. There are no fields of white headstones to commemorate the massed graves of those lost at sea, but ratification of the 2001 UNESCO Convention will show that the UK Government is doing all it can to safeguard the last resting places of so many.

1.



02

Ratification will make
it easier for the UK
to manage underwater
cultural heritage

The most controversial cases of underwater cultural heritage in the UK have been those where people have sought to exploit historic wrecks commercially because they think the wrecks contain artefacts that can be sold. The UK's position on the commercial exploitation of underwater cultural heritage has appeared ambiguous, attracting financial speculation.

Ratification will make it clear that the UK is not a place where treasure hunters can do business. Financial speculation in the past has never delivered the benefits to underwater cultural heritage that have been promised. Work is left unfinished or public authorities are left to pick up the pieces. Even the casework of dealing with treasure hunters is enormously demanding on public resources.

One of the general principles of the 2001 UNESCO Convention is that underwater cultural heritage is not to be commercially exploited. As is made plain in the Rules, which the UK already endorses, the commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with protection and proper management.

Ratifying the 2001 UNESCO Convention would make the territory and wrecks of the UK a 'no go area' for the misguided dreams of commercial speculators, whilst underlining the principle that responsible access is to be encouraged.

Where people wish to carry out explorations or investigations on underwater cultural heritage in UK waters or on underwater cultural heritage in which the UK has an interest around the world, the Convention provides a clear framework to which people can be directed. The Convention provides a standard for managing activities directed at underwater cultural heritage wherever it is located. The Convention does not prevent exploration or investigation – it simply ensures that work is properly planned and everyone's intentions are made clear.

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In comparison to many other states, the UK's management of underwater cultural heritage is already quite advanced. Some aspects of UK management are in fact world leading. However, the UK's system of management has developed organically and there are gaps and inconsistencies that can present problems. Day-to-day inefficiencies and challenges lead to cases where the UK Government's objectives for the marine historic environment are not met.

The 2001 UNESCO Convention sets out an international standard for the management of underwater cultural heritage. Ratification would provide the UK with an opportunity to attend to some acknowledged gaps in its domestic provision.

By way of example, UK law still encourages people to take archaeological objects from the seabed without thinking about the implications of properly caring for those objects in the longer term. Another example is the uneven provision for protecting prehistoric sites underwater even if they are of national importance. Although all discoveries of wreck must be reported by law, there is no such requirement to report discoveries of prehistoric artefacts.

Ratifying the 2001 UNESCO Convention would help ensure that the UK's systems for managing underwater cultural heritage are streamlined and effective in delivering historic environment objectives at home.

03

Ratification will
generate savings
and economic
benefits

The 2001 UNESCO Convention can be implemented without requiring significant additional resources. The UK is already compliant with many of the Convention's requirements and very few additions need to be made. The only further direct costs might be those necessary to cover the contingency costs of dealing with underwater cultural heritage that is seized because it is 'tainted' by not having been investigated in accordance with the Rules. Even in this case, costs could be recovered from the dishonest party.

The UK carries out various administrative actions and procedures ad hoc that would probably need to be rationalised to meet the requirements of the Convention. Streamlining existing ad hoc activities can be expected to reduce the UK's current costs of administering underwater cultural heritage.

The 2001 UNESCO Convention can also help reduce costs and encourage economic growth because it provides a comprehensive framework for underwater cultural heritage and increases certainty for sea-users. Specifically, the 2001 UNESCO Convention distinguishes between 'activities directed at underwater cultural heritage' – which are its main concern – and 'activities incidentally affecting underwater cultural heritage'. The latter category recognises that all sorts of activities – fishing, dredging, construction – can have impacts on underwater cultural heritage, but the Convention requires simply that the 'best practicable means' are used to prevent or mitigate adverse effects. The UK is already a global leader in developing such 'best practicable means'. Ratification would help reinforce the message to other sea-users that proper care for underwater cultural heritage does not mean excluding other economic activities.

Protection of underwater cultural heritage often seems like a cost and a constraint. The UK – like many other countries – has been slow to recognise how much underwater cultural heritage can contribute economically. Not by commercial exploitation whereby underwater cultural heritage is dissipated into private hands, but as a public resource that

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makes money through recreation, tourism, place-making and a knowledge economy.

Ratifying the 2001 UNESCO Convention will draw a line under the reactive way in which the UK has often dealt with underwater cultural heritage, and enable time and effort to be directed to using underwater cultural heritage positively. The Convention's unambiguous stand against commercial exploitation, coupled with its support for encouraging public access, provides a firm foundation for actively using underwater cultural heritage as a valuable social and economic resource.

The UK already has many strong maritime attractions – the SS Great Britain; the Mary Rose; the Cutty Sark; Chatham Historic Docks – which host thousands of visitors from the UK and abroad each year. This evident appetite for the UK's maritime past is worth pursuing.

Recent research on visitors diving on just one historic wreck site showed that it benefitted the local economy by over £40,000 in a year. Diving has been shown to have one of the highest per person per day expenditures of all marine sports. Tourism – in which heritage can play a key part – creates billions of pounds of income for coastal towns each year. This all suggests that the UK's marine heritage could yield a startling dividend if it were to be managed in accordance with the principles of the 2001 UNESCO Convention.

04

Ratification will help
the UK to reinforce
its interpretation
of the international
Law of the Sea

The UK has previously taken the view that some of the provisions of the 2001 UNESCO Convention are not consistent with the 1982 UN Convention on the Law of the Sea, especially in relation to ‘creeping jurisdiction’ over underwater cultural heritage on the Continental Shelf/EEZ, and the UK’s understanding of the sovereign immunity of sunken warships. The Impact Review shows that this is not the case. Moreover, by ratifying the 2001 UNESCO Convention the UK could add its weight to the interpretation of provisions that assert the primacy of the Law of the Sea.

Since it entered into force there have been no signs that the 2001 UNESCO Convention is contributing to ‘creeping jurisdiction’ by coastal states. Coastal state provision for underwater cultural heritage on the Continental Shelf/EEZ has been shown to be based on well-established jurisdictional principles relating to a country’s nationals and vessels that carry its flag. Also, the 2001 UNESCO Convention states explicitly that it does not alter international law and state practice on sovereign immunity, using instead the concept of ‘state vessels and aircraft’ to refer to sunken warships.

By ratifying the 2001 UNESCO Convention the UK could keep these points of contact with the Law of the Sea high on the agenda with States Parties, and use the Convention’s own institutions to argue against any States Parties trying to expand its interpretation.

The 2001 UNESCO Convention introduced mechanisms that enable States Parties to share and develop state practice through the Meetings of States Parties (MSP) and the Scientific and Technical Advisory Board (STAB). As the Convention has entered force, the work of the MSP and STAB is already underway, as shown by publication of the Manual for Activities Directed at Underwater Cultural Heritage and the development of Operational Guidelines.

As the UK is not a State Party it currently has no direct role in the MSP or STAB. The UK remains outside the arena within which state practice relating to the Convention will emerge. It is therefore possible that state practice – itself a source of international law – could develop along lines that are not consistent with UK interpretation of the 2001 UNESCO Convention and the Law of the Sea.

Ratification of the 2001 UNESCO Convention would enable the UK to take an active role in the MSP and STAB. This would place the UK in a much stronger position to encourage the development of state practice in directions that accord with the UK's interpretation of international law.

Positive, active engagement by the UK in the MSP and STAB would also help refine other key aspects of implementation. In particular, the UK could bring to bear its extensive practical experience of managing underwater cultural heritage to achieve pragmatic interpretation of important definitions: especially those relating to the scope and character of underwater cultural heritage and of activities directed at – or incidentally affecting – underwater cultural heritage.

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05

Ratification will
enable the UK
heritage sector to
grow internationally

The UK has played a significant role in the development of the discipline of underwater archaeology. Equally, many aspects of the UK's current management and investigation of underwater cultural heritage are regarded as world-leading. Other countries have shown that they are keen to learn from UK experience and perspectives.

The absence of the UK from the MSP and STAB – and the UK's apparent ambivalence to commercial exploitation of underwater cultural heritage – is detrimental to the UK's ability to project its influence in this sphere. It may also be inhibiting other countries from seeking the UK's assistance. In the meantime, other countries with strong capabilities in underwater cultural heritage are now operating within the 2001 UNESCO Convention and are consequently better placed to extend their influence and satisfy the demand for experience.

As well as being an avenue through which influence can be exerted, underwater cultural heritage is a potential source of international growth for the UK. Several UK sectors linked to heritage have a good standing internationally, but potential for growth is inhibited by isolation.

The UK offers some of the best university-based teaching and research in fields relating to underwater cultural heritage, and has long been successful in attracting foreign students to gain qualifications that are accepted internationally. The UK's standing cannot be taken for granted and there are other programmes around the world that are gaining ground. It is essential that UK university programmes are able to become fully engaged with the 2001 UNESCO Convention as it becomes the dominant framework for underwater cultural heritage practice around the globe. Such engagement by UK universities will be impaired if the UK Government favours isolation.

The UK has several business sectors that have much to gain internationally if the UK Government provides the right platform. For example, the UK has world-leading conservation facilities for artefacts and structures recovered from underwater. The UK also has innovative technological capabilities, including specialist

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survey companies and a thriving professional services sector. An unambiguous commitment by the UK Government to good management of underwater cultural heritage through ratification of the 2001 UNESCO Convention would provide a huge boost to these sectors' scope for growth.

Underwater cultural heritage has grown as an economic sector in the UK in response to domestic demand from marine developments such as ports, marine aggregate dredging and offshore renewables. The UK has a good reputation internationally for its experience of enabling 'activities incidentally affecting underwater cultural heritage' to be developed sustainably. As the global economy recovers and the 2001 UNESCO Convention is increasingly incorporated into domestic regulation, there is very great potential for the UK to build a robust export market for its underwater cultural heritage expertise and services.

The international stakes are high for the UK. In its overall influence and in underwater cultural heritage research, teaching, conservation, technology, survey and professional services, the UK could build a very strong presence internationally. Equally, if the UK does not ratify it could become a backwater, serving only its domestic markets – perhaps even surrendering those – as others press their international advantage within the framework of the Convention.

Origins and purpose of the BA/HFF Steering Committee on Underwater Cultural Heritage

In 2012 the British Academy (BA) and the newly established Honor Frost Foundation (HFF) set up a committee to work on projects related to underwater cultural heritage (UCH) and maritime archaeology. The BA/HFF Steering Committee on Underwater Cultural Heritage was formally established in March 2013.

The Steering Committee's primary purpose is to advise on and help to shape policy, and to develop programmes in relation to the safeguarding of underwater cultural heritage for the British Academy and the Honor Frost Foundation.

Committee Members:

Professor Sir Barry Cunliffe CBE, FBA (Chair)

Dr John Curtis OBE, FBA

Professor Sarah Dromgoole

Jane Maddocks

Joan Porter Maclver

Dr Adrian Olivier

Peter Wolrich

Robert Yorke

In January 2013 the BA and HFF jointly sponsored an event 'Managing Maritime Heritage in International Waters' to discuss UK government policy on the protection of underwater heritage. This served as an important forum for policymakers and academics to exchange knowledge and discuss solutions to the protection of UCH, and prompted the preparation of this Briefing Note.

About the British Academy

The British Academy is the UK's independent national academy representing the humanities and social sciences. For over a century it has supported and celebrated the best in UK and international research and helped connect the expertise of those working in these disciplines with the wider public.

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The Academy represents the UK's research excellence worldwide in a fast changing global environment. It promotes UK research in international arenas, fosters a global approach across UK research, and provides leadership in developing global links and expertise.

About the Honor Frost Foundation

The Honor Frost Foundation's mission is to promote the advancement and research, including publication, of marine and maritime archaeology with particular but not exclusive focus on the Eastern Mediterranean with an emphasis on Lebanon, Syria and Cyprus. The Foundation also seeks to foster and promote the protection of underwater cultural heritage (UCH).

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The Foundation was founded in 2011 with a legacy from the pioneering underwater archaeologist Honor Frost.

References

BA/HFF Steering Committee on Underwater Cultural Heritage, [January] 2014, Statement on UK Ratification of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

HM Government, March 2011, UK Marine Policy Statement.
www.gov.uk/government/publications/uk-marine-policy-statement

Maarleveld, T.J., Guérin, U., and Egger, B. (eds), 2013, Manual for Activities directed at Underwater Cultural Heritage: guidelines to the Annex of the UNESCO 2001 Convention. UNESCO.

UK UNESCO 2001 Convention Review Group, 2014, The UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001: An Impact Review for the United Kingdom, [January] 2014.

UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001. www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/

UNESCO, August 2013, Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage. CLT/CEH/CHP/2013/OG/H/1. <http://unesdoc.unesco.org/images/0022/002226/222670E.pdf>

UN Convention on the Law of the Sea, 1982. www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

Image citations

1. Original mound of amphorae before excavation. Claude Duthuit positions a magnetometer atop the wreck in a 1967 survey looking for the presence of iron. © M.L.Katzv / Kyrenia Project.
2. Jane Maddocks uses callipers to measure guns on the seabed near St Malo in 2011. Photograph by Teddy Seguin.
3. Starboard railing near the bow of the Titanic photographed on June 1, 2004, by the ROV Hercules. © NOAA-IFE/URI.
4. Using a tape and board to record amphora fragments in the Adriatic in 2011. Photograph by Trevor Lee.
5. Part of a two cylinder compound engine on SS Spyros off the Isle of Wight in 2012. Photograph by Barry Jarvis.
6. Part of a winch on the SS Spyros off the Isle of Wight in 2012. Photograph by Barry Jarvis.
7. Judy Jarvis using a scale on the rudder post of the SS Spyros off the Isle of Wight in 2012. Photograph by Barry Jarvis.
8. Amphora pile recording in the Adriatic in 2011. Photograph by Roger Wallace.

The views expressed in this report are not necessarily shared by each individual Fellow of the British Academy or the Trustees of the Honor Frost Foundation.

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