

# Introduction

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Ships sunk during the great war at sea were considered lost for good. They disappeared into the depths of the vast oceans of the world, often taking with them many souls. The fate of those lost is epitomised in the 'Naval Ode':

They have no grave but the cruel sea,  
No flower lay at their heads,  
A rusting hulk is their tombstone,  
Afast on the ocean bed.  
We will remember them<sup>1</sup>

This sentiment was shared by all those who went to sea. The U-boat Sailor's Song ('U-Bootsfahrer Lied'), reflects the fate of those most likely to be lost with their ship – submariners:

On a seaman's grave  
No roses bloom  
On a seaman's grave  
No flowers bloom  
The single greeting is the white seagulls  
And a tear which a small maiden cries<sup>2</sup>

Similar sentiments from the two primary belligerent nations of WWI. Both reflect on the ultimate fate of many of those who served at sea: the lack of a grave. Unlike the graves of soldiers in the vast cemeteries of Belgium and France, with flowers 'between the crosses, row on row',<sup>3</sup> those of sailors were largely ignored and left where they lay in the deep. But today that deep is no longer inaccessible and these maritime war graves lie spread right across the globe; a true reflection of the scale of the WWI.

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<sup>1</sup> The Naval Ode. While associated with Laurence Binyon's poem 'The Fallen', the actual authorship of the 'Naval Ode' remains obscure.

<sup>2</sup> U-Bootsfahrer Lied <<https://www.uboat.net/special/songs/#fahrer>>.

<sup>3</sup> John McCrae 'In Flanders Fields'.

Of course the scale of death was quite different. The war on the continent in particular was utterly devastating, killing millions of combatants and civilians and laying waste to vast swaths of lands. This has overshadowed the war at sea and the losses suffered by all the belligerent navies and merchant services. But the war at sea was pivotal to the victory as the navies of Britain and Germany sought to strangle each other's economy and war industry. This necessitated unrestricted naval warfare, spread across the oceans of the world and affecting more nations and people than the war on land. Nevertheless, the extent of this naval war is not well known and the scale of the losses often forgotten.

With the centenary of WWI, attention has been focussed on the iconic battles on land such as the Somme and Verdun; and the focus of commemoration often being at the battlefields themselves and their associated cemeteries and memorials. While less well known, the war at sea, too, has its iconic battles, such as Jutland, Heligoland Bight, Coronel and the Falklands. Unlike those on land, the battlefields at sea are too remote and inaccessible to be a focal point of commemoration for all but a very few. Even when much closer to land, the relatively shallow waters have shielded the war at sea from the same degree of attention, commemoration and respect.

The Gallipoli campaign, for example, is venerated through the battle sites on land, from the allied landings on the beaches of Anzac Cove and Suvla Bay to the highs of Achi Baba and the Turkish defences. But in the waters of Gallipoli lie a vast underwater battle site, littered with the remains of vessels, lighters and barges as well as army equipment, stores and most importantly men, who fell from their transports, and sank. The initial naval campaign to take the Dardanelles is oft ignored, despite there being significant naval losses and the remains of legacy wrecks strewn across the Dardanelles. Britain lost *HMS Irresistible* and *HMS Ocean*, France the *Bouvet*, Australia the *AE2*, and Turkey the *Mesudiye*.

Chapter 1 of this work, therefore, seeks to review these losses. The intent is not to repeat the history of the war at sea, nor to catalogue the naval losses, but merely to reflect on the scale and extent of the losses so as to reflect the stock of legacy wrecks that we have inherited of a shared past. That is not so easy a task as might be imagined. While the numbers and identity of most of the vessels lost in the war are known, the number (and identity) of many who lost their lives in their sinking is not. In many cases, different sources list differing numbers of lives lost, though in most cases the estimates do not differ substantially, and often are prefaced with the disclaimer that the number lost was 'about' a specific number. Moreover, some sources do not distinguish between those wounded and those killed, especially on warships. While different

sources are used where the detail on a specific sinking is likely to be most accurate, Wreck Site<sup>4</sup> has been used as the default source of crew losses. Where there is a significant difference in the numbers listed, alternatives are listed in the footnotes.

The term 'legacy wreck' is a term of art used in this work to neatly capture the wrecks of WWI. It includes both naval and auxiliary ships, but also merchant vessels, passenger liners, fishing boats and an assortment of small craft, all of which sank, due, in some part to the conflict, roughly between the outbreak of hostilities in August 1914 and the last scuttled German warship at Scapa Flow. The term reflects a presumption: that all these wrecks are left as a legacy of the war and are presumed to be of value; whether archaeologically, historically or as a 'maritime war grave'. Some may not be imbued with these values, but until such time as that is ascertained, each wreck ought to be treated as having a legacy value.

Legacy wrecks naturally overlap with other terms that reflect a value, many of which are also used in this work. 'Historic wreck', for example, is used in a general sense to refer to wrecks that have some archaeological and or historical character and are not necessarily associated with WWI. Legacy wrecks are therefore a sub-set of historic wrecks. Terms used by various authors include, for example, 'submarine antiquities'.<sup>5</sup> These may also be viewed as a sub-class of 'objects of an archaeological and historical nature', a term used in the international law of the sea to refer to objects (and not just wrecks), that have such a character. Conceptually similar is the phrase 'underwater cultural heritage'. The term is of relatively recent origin, having been first used by the Council of Europe in 1978<sup>6</sup> and then adopted in the Convention on the Protection of the Underwater Cultural Heritage (UCH Convention). In this work, legacy wrecks are a specific sub-class of underwater cultural heritage and are the two terms most commonly used.

That legacy wrecks indeed have value is considered in Chapter 2. But that value, be it archaeological, historical or as a maritime war grave, is shared by its economic value. Moreover, legacy wrecks may also have vices. How these values and vices relate to one another and should be managed is subject to a complex network of national and international

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<sup>4</sup> Wrecksite <[www.wrecksite.eu](http://www.wrecksite.eu)>.

<sup>5</sup> Lucius Caflish, 'Submarine Antiquities and the International Law of the Sea' (1982) 13 *Netherlands Yearbook of International Law* 3.

<sup>6</sup> Anastasia Strati *The Protection of the Underwater Cultural Heritage: An Emerging Objective of the Contemporary law of the Sea* (Martinus Nijhoff Publishers, 1995).

law, introduced in Chapter 3. National laws may exhibit similarities, but each is unique, and legacy wrecks may be dealt with differently in each one. This work does not seek to review the national laws of each State.<sup>7</sup> Indeed, the central argument in this work is that any major differences between the laws of States should be resolved by widespread ratification of the UCH Convention. But the national laws of one State are considered – the United Kingdom. The UK has (arguably) the greatest interest in legacy wrecks given the number and geographical spread of the wrecks of its warships and merchant fleet. The UK also has a particularly complex interpretation and view as to the implementation of the UCH Convention that has prevented it from becoming a party to the Convention. This work then uses legacy wrecks as a prism through which to consider the UK's position to the Convention, and to argue that the UK should ratify the UCH Convention. This argument is considered specifically in Chapter 8 and is premised on a consideration of the laws that have an impact on the values and vices of legacy wrecks as introduced in Chapter 2. As such, Chapters 4–7 address these in turn, reflecting roughly the chronology of the values, vices and laws. That is, at the time of the war, the wrecks were considered to have either an economic or some other practical value such that they should be recovered, or were a hazard such that they should be removed. The salvage law and other shipping laws such as the Merchant Shipping Act that apply to these issues are addressed in Chapters 4 and 5. The realisation, beginning in the 1950s, that many wrecks were archaeologically and historically important, and the more recent extension of this to include legacy wrecks, is considered in Chapter 6. And finally, and perhaps more importantly, the difficulty in recognising that many legacy wrecks are 'maritime war graves' and ought to be respected and protected as such, is considered in Chapter 7.

While this argument is made in the context of the UK and its national laws, reference is made to other States' laws by way of comparison in part, and to capture the position of all legacy wrecks in an international context. As such, the laws and position of those States that were at war, or geographically close to the war, are touched on, including Germany, France, Belgium, Italy, Russia, Japan, Austria-Hungary and the United States, as well as those from States that were then dominions, colonies

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<sup>7</sup> For a review of some States' laws see Sarah Dromgoole (ed) *Legal Protection of the Underwater Cultural Heritage: National and International Perspectives* (Kluwer Law International, 1999) and Sarah Dromgoole (ed) *The Protection of Underwater Cultural heritage: National Perspectives in Light of the UNESCO Convention 2001* (Martinus Nijhoff, 2006).

or had some other relation with Britain, but are now independent States, such as Australia, Canada, India, New Zealand and South Africa. Language, access to material and the focus of this work means that the laws and international legal position of all these States are not considered in any detail.

Finally, a note on ship prefixes. A ship prefix is an abbreviation used in front of the name of a civilian or naval ship to designate its type or its government ownership. Given the inconsistencies in the use of ship prefixes for merchant vessels, these have been omitted. For warships and commissioned auxiliary vessels, the ship prefixes used by Britain (*HMS*) and her dominions, such as Australia (*HMAS*) have been retained. The generalised United States prefix *USS* has been used, even where the relevant vessel is no longer in commission given its sinking. No prefixes are used for the vessels of the other belligerent navies, including German, French, Russian or Japanese given that they were not used consistently, if at all. The exception is with reference to submarines, where the British submarines are designated by number without using *HMS* as a prefix and thus consistent with reference to German and other nations' submarines (e.g., *E6*, *U20*, etc).