



Proceedings of the ICLAFI – ICUCH Symposium

The UNESCO Convention on the Protection of Underwater Cultural Heritage: how do we make it work?

**29th June – 1st July 2017
Cultural Heritage Agency of the Netherlands**

Amersfoort, The Netherlands



Cultural Heritage Agency
Ministry of Education, Culture and Science

What an abstention might lead to: A critical analysis of Sweden's attitude to the Underwater Heritage Convention

Thomas Adlercreutz

Jur. Kand., Sweden

The case of The Sword

The first day of June 1676 was a bad – nay, disastrous - day for the Royal Swedish navy. The Danish King was eager to retake the provinces lost in the peace treaty of Roskilde in 1658. Sweden had made a very bad military show at the battle of Fehrbellin in Brandenburg in 1675. A combined Danish and Dutch fleet was approaching the Swedish Island of Öland in mid-Baltic, where they encountered the Swedes and their commanding men-of-war The Crown (Kronan) and The Sword (Svärdet), two of the most imposing military vessels of their time. The Crown was badly manoeuvred, got caught in sidewind and capsized. Its gunpowder supply exploded and the sinking was rapid.

The naval command was then taken over by the The Sword, which engaged in a violent two hour cannon fight with an overpowering array of Danish and Dutch ships. The Sword's rigging got smouldered and when in the end the main mast fell, the Sword surrendered. It would have made a great prize for the victors. However, an incendiary ship got too close, The Sword caught fire, its gunpowder deposit blew up taking all of the stern away. When the ship went down, it took the admiral and 600 of his crew to their graves at about 86 meters below sea level.

What was then a military disaster, has today turned into a showpiece for the Swedish maritime heritage. The Crown was discovered in 1980 by Anders Franzén, the man who many years ago had found The Vasa, today in Sweden's most visited museum. With The Crown there was no option to salvage hull or any vital part of it, but an enormously rich trove of what remained of the ship and its crew's belongings, well preserved at the seabed, are today exhibited at the County Museum of Kalmar.

The location of The Sword remained a mystery for a long time, but in November of 2011 news of its rediscovery by a private party of divers became public (Dagens Nyheter 4 April 2012). The divers, however, would not divulge where the wreck was situated. They claimed that if the location became known, there would be an imminent risk of looting. Not even the authorities got to know where it was. This led the National Heritage Board of Sweden to report the divers to a public prosecutor for a breach of the Cultural Monuments Act. The prosecutor, however, determined that no crime was involved (Barometern 26 June 2012).

How did this come about? It had seeped through that the wreck in all likelihood was situated some hundred meters outside of Sweden's territorial waters. The Cultural Monuments Act then proclaimed that shipwrecks more than one hundred years old were protected as ancient monuments and that finders of property accruing to the state were duty-bound to report the find. It expressly said that this also applied to discoveries "on or beneath the seabed beyond the limits of national jurisdiction". I'll come back to the legal questions later, but first a look at the Baltic and Sweden's maritime heritage.

The Baltic Sea

The Baltic Sea is unique: the largest body of brackish (low-salinity) body of water in the world, it is also distinguished by its division into a series of basins of varying depths, separated by shallow areas or sills. The many rivers flowing into the Sea are the reason for its brackish character. Furthermore, the link with the North Sea is very narrow, the shallowest sill being only 18 m deep. Thus inflows of salt water must be extremely forceful to penetrate and renew the deepest waters of the Baltic Proper.

Nine countries share the Baltic Sea coastline; Sweden and Finland to the north, Russia, Estonia, Latvia and Lithuania to the east, followed by Poland in the south, and Germany and Denmark in the west. About 16 million people live on the coast, and around 80 million in the entire catchment area of the Baltic Sea. The catchment area includes part of Belarus, the Czech Republic, Norway, the Slovak Republic and Ukraine, as some of the rivers find their sources here.

Most likely, it is the low salinity that has caused the absence of the shipworm (*teredo navalis*) from the Baltic. This absence is the usual explanation for the fact the Baltic contains an unmatched presence of well preserved wooden wrecks, i.e. wrecks dating mainly before the mid 19th century. (Recent reports, however, indicate that the mollusk has now entered the southern parts of the sea, <https://www.havochvatten.se/hav/fiske--fritid/arter/arter-och-naturtyper/skeppsmask.html>).

Sweden's maritime heritage

Students of Sweden's cultural heritage often take note of the fact that statutory measures for the general protection of ancient remains were adopted comparatively early. Provisions protecting historic wrecks, however, have been existence for merely fifty years. This may seem surprising in light of the spectacular salvage in 1961 of the 17th century man-of-war Vasa, and its subsequent careful restoration, now to be seen in Stockholm's most visited museum. So for a long time there was a striking discrepancy between a strict cultural heritage regime on land, and a total lack of protective rules for remains under water. For the history of protective rules pertaining to the underwater cultural heritage, see Thomas Adlercreutz, *The Protection of the Underwater Cultural Heritage, National Perspectives in light of the UNESCO Convention 2001*.

In the National Heritage Board's register of ancient remains there are now approximately 3,000 shipwrecks with an identified position and about 16,000 entries regarding wrecks lacking a known position. However, this register is far from complete. In 2013, the register contained 784 entries of shipwrecks protected under the Cultural Heritage Act (KLM. SFS 1988:950), where the prerequisite for protection was that the sinking could be assumed to have occurred more than one hundred years ago.

There is also a register at the National Maritime Museum in Stockholm. This register is the result of both archival and underwater research. In addition to protected wrecks, it also contains published notices and other excerpts from the press on averages from the 18th century and onwards. Furthermore, it contains excerpts as of 1745 from the reports of the diving companies which operated as state authorised monopolies until 1831, when their reports also ceased. There are some 3.500 entries under this part of the register. Also, there are excerpts from maritime inquiries. In its totality the register has notes on almost every known wreck, not just in the Swedish territorial sea, lakes and rivers, but also from adjacent waters. When the territorial seabed was thoroughly scanned in the

1980s and 90s in search of suspected foreign submarine activities, knowledge of wrecks also grew considerably. The collected knowledge on each wreck varies, of course, a great deal. Some entries can be classified as qualified guesswork.

The legislation does not apply just to maritime vestiges found now under water. It also protects wrecks and related items found on *terra firma*. Rivers may have changed course, old harbours may have been filled in, and landslides may have covered up what was once afloat. But in the case of Sweden, one need also take into consideration the tectonic process still at work of land emerging out of the sea after the last ice age. As of Neolithic times about one fifth of the present surface of the country has risen from under water. Where the vessels of yesterday found a resting place or one time harbour installations crumbled may today be a building site, in which archaeologists in the course of routine investigation find maritime debris of scientific importance.

To some extent, it is also the other way around. In the southernmost part of Sweden and in the Danish straits, the sea has submerged remains of Neolithic settlements.

As of 1 January 2014 the KML changed so that only wrecks dating from 1850 or before came under protection directly under the act. Before that date the time limit was set at one hundred years counted from the time of the loss. The National Maritime Museum estimated that of the 784, as few as 332 could with any certainty be dated to the year 1850 or before. 196 would lose their protection, and 256 ought to be further examined as to date of sinking.

There were provisions introduced in the Act, whereby an order of protection could be issued by the authorities. Such an order would therefore be required in order to protect legally the 196 + 256 wrecks which fell out of the scope of direct protection. How far this possibility of issuing orders regarding younger wrecks has been utilised has not been published. In all likelihood, this has happened in very few instances.

A closer look at the legislation

The KML originally gained legal force 1 January 1989, replacing several older acts of Parliament and Government regulations with similar contents. Preparatory works are to be found in the Government Bill and Parliament's committee report (Proposition 1987/88:104, Kulturutskottets betänkande 1987/88:KrU21). Preparatory comments play a considerable part in the construction of Swedish statutory provisions, but one should not be overoptimistic when it comes to guidance on the underwater cultural heritage..

The Act is divided into six chapters, out of which the second, on ancient monuments and finds, is of interest here.

Under the KML ancient remains are protected directly by law, i.e. no administrative decision will normally be issued in order to identify what is protected. The scope of protection is laid out in Chapter 2, Section 1: "Permanent ancient monuments are protected under this Act. Permanent ancient monuments are the following [remains] of human activity in past ages, having resulted from use in previous times and having been *permanently abandoned*: ... 7. routes and *bridges, harbour facilities, beacons, road markings, navigation marks* and similar transport arrangements, as well as boundary markings and labyrinths, 8. *remains of wrecks* (author's italics).

As has already been mentioned, on 1 January 2014 a precise age prerequisite was added: the remain must presumably have existed before the year 1850, or – in the case

of *remains of wrecks* – have been lost before that same year (Chapter 2, Section 1 a, Paragraph 1). The category is supposed to cover also wrecks of aircrafts (Proposition (Government Bill) 2012/13:96 p. 46) although the practicality of finding one from before the year 1850 seems slim. It was emphasised that this would also apply to wrecks found outside the border of national jurisdiction.

As has already been mentioned, a new measure was introduced to the KML. The responsible government agency for the cultural heritage, the County Administrative Board, became empowered to list remains younger than from before 1850, provided there are “particular reasons with regard to cultural heritage value” (Chapter 2, Section 1 a, Para 2).

In Section 2 it is further stated: "An ancient monument includes a large enough area of ground or on the seabed to preserve the remains and to afford them adequate scope with regard to their nature and significance." - This protected area is normally not delimited in advance, but may be so by an order of the County Administration, the State agency responsible at the regional level for managing the KML.

In Section 6 is itemised what the word protection stands for: "It is prohibited, without permission under this Chapter, to displace, remove, excavate, cover or, by building development, planting or in any other way, to alter or damage an ancient monument."

Section 7 gives the state agencies, i.e. the National Heritage Board and the County Administration access to ancient monuments in order to take measures for their care. These powers are, of course, essential for the upkeep of monuments on land, but of less practical significance under water.

Section 8 empowers the National Heritage Board and the County Administration to "examine ancient monuments, salvage a wreck being an ancient monument and investigate a place where ancient finds have been discovered". It further provides that "[i]f a wreck constituting an ancient monument and having no owner is salvaged, it shall accrue to the State."

Section 9 further empowers the County Administration to "issue regulations for the protection of an ancient monument. - Regulations may also be issued for an area, which under Section 2 does not belong to the ancient monument, provided that this does not significantly impede current use of the land. - The ... County Administration may issue a protection order for a place where ancient finds have been discovered, if this can be done without causing any significant inconvenience. A protection order may apply until the place has been investigated as provided in Section 8."

All development projects should be preceded by investigation as to the existence of ancient monuments which might be affected, and, if this be the case, consultation with the County Administration. If an ancient monument is discovered in the course of works, these are to be immediately suspended (Section 10).

Under Section 12 all interference with ancient monuments is subject to permission by the County Administration. Such permission may not be granted unless the monument causes a hindrance or inconvenience out of all reasonable proportion to its significance, but "[i]n the case of the owner of a wreck or of an ancient find belonging to a wreck, permission may be granted unless there are special reasons to the contrary. - If any person other than the owner of the land or water area or the owner of the wreck applies

for permission the application is to be refused if the owner objects to the measure and if there are no particular reasons why the application should be allowed."

In granting permission the County Administration may make reasonable stipulations for special investigations to record the ancient monument, to conserve ancient finds or special measures to preserve the monument (Section 13). The cost for such measures are to be borne by the developer, unless certain special criteria are met, one of which being that the monument was previously unknown (Section 14).

"Any person refused permission under Section 12 with reference to an ancient monument which, when discovered, was completely unknown and without visible sign above ground, is entitled to reasonable compensation out of public funds if the ancient monument causes him substantial hindrance or inconvenience. ..." (Section 15).

The provisions related so far pertain to all ancient monuments, *inter alia* wrecks. It could be noted at this point that elements that in some countries would be considered underwater cultural heritage, e.g. subaqueous geomorphic or paleontological remains are not protected under the KML. Such remains may be protected specially by decisions on nature reserves under the Environmental Code (Svensk Författningssamling 1998:808) but this code will not be dealt with in this article.

Not just the sites and the more or less fixed remains, but also movables are protected as ancient finds. The definition of *ancient finds* is to be found in Chapter 2 Section 3 of the KML: objects which have no owner when found and which

1. are discovered in or near an ancient monument and are connected with it, or
2. are found in other circumstances and are presumably from before the year 1850.

Ancient finds under 1. accrue to the State. Other ancient finds accrue to the finder. He or she is, however, duty-bound to invite the State to redeem the find if it "contains objects partly or wholly of gold, silver, copper, bronze or any other copper alloy, or if the find consists of two or more objects which were presumably deposited together." (Section 4).

Anybody, who discovers ancient finds which either accrue to the State or must be offered for redemption, has to report to the County Administration or certain other authorities. Finds belonging to wrecks can be reported to the Coastguard Service. Upon request the finder must surrender the object in return for a receipt, and state where, when and how the find was discovered. (Section 5).

Decisions to redeem ancient finds are taken by the National Heritage Board. Payment shall be assessed at an amount which is reasonable with regard to the nature of the find. For objects of precious metals payment must not be less than the value of the metal by weight, augmented by one-eighth. In addition a special finder's reward may be paid (Section 16).

The National Heritage Board may transfer ancient finds to museums, which undertake to care for the objects in the future. It is said specifically that this applies to wrecks (Section 17). If the museum is a non-State entity, then ownership is also considered as being transferred.

Of importance to the protection of both ancient monuments and ancient finds are the following provisions.

There is a general ban on the use of metal detectors in Sweden, not just on archaeological sites but everywhere, unless provisions exempting certain usages conducted by authorities apply, or an individual permission issued by the County Administration has been given (Chapter 2 Sections 18 – 20 of the KML).

A penalty of fines or prison may follow upon deliberate and negligent offences against the protective rules for ancient monuments and ancient finds (Sections 21 and 21 a). In aggravated cases with intent imprisonment may be imposed up to four years.

Under Section 22 measures of enforcement can be imposed upon offenders against the protective provisions, in order to rectify unauthorised infringements.

Section 22 a makes it possible to forfeit ancient finds which do not already accrue to the State, the value or proceeds of such finds, and metal detectors and other equipment used in offences, or the value of such equipment.

Section 23 empowers the County Administration to order its provisions to apply pending final determination of the matter.

Sections 24 and 25 have procedural rules on appeal and judicial review of decisions. Depending on the matter, the Government, an administrative court of law or an environmental court of law is competent to try appeals or review.

Related civil law

Under Swedish civil law, finds in general made on land are treated somewhat differently from finds made in water. In both cases wilfully discarded objects (*res derelicta*) become ownerless, and free for anyone to take possession of (provided the object is to be legally held, unlike e.g. unlicensed arms or drugs).

Objects which have been lost inadvertently or by accident do not lose their owners; ownership is not considered to be time limited. Such objects, if found on land, have to be reported by the finder to the police under provisions of the Act on Finds (Svensk författningssamling 1938:121). If no owner turns up within certain time limits, then the goods accrue to the finder, provided he pays police procedural costs.

Under the Act concerning Certain Finds from the Waters (Svensk Författningssamling 1918:163), the same principles also apply to goods found in lakes, rivers, canals, harbours, bays and incisions and other water areas between islands, bordering on the territorial sea. The definition here given coincides for practical purposes with the definition of internal waters in the Act on Sweden's Territorial Sea (Svensk författningssamling 1966:374). Finds which have to be reported include deserted vessels, shipwrecks, tools and goods from vessels, regardless of taken from the bed, the shore or found floating. One difference in relation to what applies to finds on land is that the police have to put on public notice reported finds from the waters. Finds claimed are returned to the owner subject to payment of costs for publication, care of the object and a salvor's reward. Finds not claimed become property of the salvor upon payment of police costs. The salvor may acquire exclusive salvage rights under the Act on Exclusive Rights of Salvage (Svensk författningssamling 1984:983).

Neither the Act on Finds, nor the Act concerning Certain Finds from the Waters is applicable to finds which meet the requirements of ancient finds under the KML. As an ancient find in some instances becomes property of the finder instantly, this implies that

a one-time owner's title expires more quickly than if the time limit requirements of the two first mentioned acts are to be met.

Another aspect of civil law that should be considered with respect to finds are the provisions of the Act on Acquisition of Movable Objects in Good Faith (Svensk författningssamling 1986:796). Whereas ownership in principle does not become void when an object has been lost, the opposite occurs if an object has been *transferred* to a person who acquires *bona fide*. Title passes regardless of whether the transferor was lawfully in possession of it. By good faith is meant that the acquirer in all probability ought not to have suspected that the unlawful transferor lacked title, taking into account what kind of property that was offered, the circumstances under which it was offered and other circumstances. The former owner, however, has a right to reclaim the object within three months of when he came to know, or ought to have known, from whom to recover, on condition he reimburses the acquirer his costs (Sections 3 and 4 of the last-mentioned act).

As of 1 July 2003 bona fide acquisition of stolen or forcibly taken goods is not possible. Ownership remains with the robbed person, unless he fails to reclaim the goods within six months from knowledge or presumed knowledge of who the holder is. No compensation needs to be issued to the holder (who may seek redress from the previous holder). However, after having held the property for ten consecutive years in good faith (without grounds for suspecting lack of title) the holder of stolen or forcibly taken goods does acquire ownership.

Ancient finds are *not* exempted from this legislation. As a breach of the KML provisions prohibiting unlicensed excavation is not legally equated with a theft, it is possible for someone who has acquired such an object in good faith to keep it – or at least receive compensation for surrendering it to the State. This will be dealt with further later in this article.

Provisions relating to international law

As of 1979 the breadth of Sweden's territorial sea is twelve nautical miles.

Under the 1958 Geneva Convention on the Continental Shelf, Sweden entered into bilateral agreements with other states regarding borderlines of the shelf, and has adopted national legislation for the application of the convention and bilateral agreements. (Continental Shelf Act, Svensk författningssamling 1966:314, and Continental Shelf Regulation, Svensk författningssamling 1966:315). This legislation allows for State control of mineral and other non-living natural resources as well as living resources on the seabed or subsoil thereof. Unlike the situation in e.g. Australia, Ireland, Jamaica, Portugal and Spain, (Patrick J. O'Keefe, 'Protection of the underwater cultural heritage: developments at UNESCO', *The International Journal of Nautical Archaeology*, (1996) 25.3 and 4, p. 171), Sweden has not interpreted the legislation as covering also cultural resources.

In 1992 an Act on Sweden's Economic Zone was adopted (Svensk författningssamling 1992:1140). The state authority upheld under this act does not stretch as far as giving ground for measures to protect specifically the cultural heritage. Other related acts regarding pollution from ships and the dumping of environmentally hazardous waste do, of course, contribute to better conditions for the preservation of subaqueous cultural vestiges (Svensk författningssamling 1980:424, 1971:1154).

Sweden ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS) in 1996. Of interest here are the parts of the convention which apply to the Area, particularly article 149. The concept of the Area goes back to a UN General Assembly Resolution 2749/XXV of 1970, which declared the seabed and the subsoil thereof beyond national jurisdiction to be "the common heritage of mankind". Article 149 obliges the State parties to preserve and dispose of all objects of an archaeological and historical nature found in the Area with particular regard to preferential rights of States or countries of origin. Although Sweden is far from the deep-sea beds constituting the Area, certain provisions were added to the KML (Government Bill 1995/96:140 p. 174).

Chapter 4, Section 4 has been amended to stipulate that ancient finds and wrecks found on the seabed or its subsoil *outside the bounds of national jurisdiction* (author's italics) and salvaged by a Swedish vessel or brought to Sweden accrue to the State, provided the loss presumably occurred more than one hundred years ago, as the time limit was then set. The present time limit, as we have seen, has been defined so that the loss presumably occurred before 1850.

So how, then, might *outside the bounds of national jurisdiction* be interpreted? There are no comments on the meaning of this rather blatant expansion of the Swedish jurisdiction to be found in the Government Bill. Certainly, UNCLOS provides for state intervention with regard to objects emanating from the Area, but as Sweden is far from the Area, that kind of intervention seems a rather remote occurrence.

Furthermore, Chapter 2, Section 17 has been supplemented with a paragraph to the effect that the National Heritage Board may assign State rights to salvaged wrecks to museums, undertaking their care for the future.

At the time of Swedish accession to the Convention it was announced (Proposition (Government Bill) 1995/96:140 p. 158) that Sweden would adopt a contiguous zone according to Article 303 with its provisions on control of objects of an archaeological and historical nature. Preparations have been slow. In 2015, however, a government inquiry launched proposals for the implementation of a Swedish contiguous zone (Sweden's Public Inquiries, SOU 2015:10). So far, no timetable has been announced for the necessary legislative measures for such an implementation.

It could also be mentioned that, with backing from the respective ministers of culture, the Baltic Sea Heritage Co-operation started in 1997, with Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Norway; Poland, Russia and Sweden as participants. The work is mainly informal with seminars and workshops for civil servants and museum officials as mainstay. There is a working group for the underwater heritage, which has among other things legal protection of the Baltic Sea heritage on its agenda. Apparently, the working group has not achieved much along that road.

Sweden and the Underwater Heritage Convention

Sweden took part in the preparatory conferences for the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage without any enthusiasm, and abstained when the UNESCO General Conference adopted the convention. The official reason was given in an explanation of vote, referring to the fact that consensus had not been reached and criticising that the convention had been put to adoption prematurely. However, no objection was raised as to substance of the convention. It is, however, the understanding of this author that Foreign Ministry officials were indeed opposed to the extension of national jurisdiction into the Economic Zone and the Continental Shelf which

is inherent in the convention. No alternative solution has, however, been outlined from the Swedish side. Even though there seems to be little political pressure on the Swedish government to be more active in trying to protect wrecks within what can be considered a Swedish zone of interest, the question of accession to the convention has been broached several times in Parliament. The government has not been supportive. One reason given is that it is not out of the question that Sweden may one day join (Betänkande(Committee Report) 2001/02:KrU2).

Observations on scope and application

Two schools of thought

In a comparative perspective, legislations for protection of the cultural heritage can be seen to oscillate between two basic conceptions. One is State or public claims to property rights in monuments, fixed or movable. The heritage is seen as a kind of *domain*, to which private possessors may have more or less extensive rights, but a controlling power rests with an ultimate owner: the monarch, the republic, or nowadays the State through its representation: government or a government agency. Legislations dominated by this view may find it consequential to control also the transfer of cultural property.

The other approach, which seems to be the more modern one, is that the State, in which much authority has been vested under principles of democratic government, has a duty to control the use of property in the interest of the common good. It need not claim property rights to do so, democracy permits restrictions to be imposed in *public law* on owners and those who derive their rights from owners. This approach is very evident in §14 of the German Federal Constitution.

With either basic view a delegation of State powers to local levels of government may also be consistent. In a federal society the origin of power may, instead, be considered to rest at regional state level. In practice, of course, there may not be dramatic differences between the two conceptions.

In Sweden, as we have seen above, both the public law and the domain concepts are being used. Restrictions are imposed on ancient monuments *in situ*, among them old shipwrecks, but ownership is not claimed by the State, not even if - as may often be the case with wrecks, but very rarely with monuments on *terra firma* - there is no other owner. Section 8, giving the State ownership, applies only after salvage.

When it comes to ancient finds of a movable nature, then for historic reasons the Crown prerogative rights are still exerted. This applies to ancient finds only; other movable heritage items may be under export restrictions without any State claims to ownership. The State claims ownership to anything that derives from a protected ancient monument, regardless of the fact that the State does not own the monument, and the State also claims a right of redemption, comparable to forced preemption, to many other finds, which under civil law normally would accrue to the finder. It may be noted that landowners, under Swedish law, have a self-evident right only to fixtures to real property, and very limited rights to ownerless movables found on or in their real property.

The importance of age and ownership

Swedish law poses two important questions when a new underwater discovery is being made, or when someone wants to investigate or salvage vestiges already known. If it is a wreck, the first question would be: since how long?

If the wreck is younger than 1850, the Act concerning Certain Finds from the Waters is applicable, unless the wreck comes under special protection under the KML following an *in casu* decision of County Administration. The find will have to be publicly announced, and the further issues of salvage would depend on whether an owner appears. So this would lead to the second question: is there an owner? If not, the finder may file for sole rights of salvage under the Act on sole rights of salvage (Svensk författningssamling 1984:983).

If, however, the wreckage occurred before 1850 the KLM alone applies. With regard to the wreck in itself the question of ownership becomes if not unimportant, so at least of limited significance. Under Section 12 there is a presumption that an owner of a wreck, or an ancient find belonging to it, should be given permission to salvage or take other measures which may disturb the remains, unless there are special reasons against. This is a position more favourable to owners of wrecks than to other owners of ancient monuments, but it is not an unconditional green light to take any measures. It is difficult to predict how strong the owners position is in practice, as there has - to the knowledge of this author - not been a case.

The reason for this would seem to be that there seldom are any known owners to wrecks dating before 1850. When commercial interests in salvaging hull and cargo have ceased, then ownership is rarely claimed. Even if that should happen, ownership may still be presumed to have been abandoned earlier. Although modern techniques of salvage may sometimes revive a commercial interest in more than a hundred and fifty years old wrecks, claims to ownership of wrecks of that age so far do not seem to have occurred in Swedish waters. The few claims to ownership of movables that have been made all seem to have been settled amicably. And even when ownership in itself seems undisputable, as for instance with wrecks of Danish men-of-war capsized in Swedish waters, the Kingdom of Denmark has refrained from making any claims and have - informally - rather pointed to the Swedish authorities as responsible for further investigation. Thus there is little to report from a point of case law.

However, it would still seem likely that claims could one day convincingly be made by legal successors of a one time charterer or ship-owner, or by descendants of passengers whose belongings can be traced. If the claim is for the wreck the question of ownership will be relevant for the County Administration in trying an application for salvage or investigation of the wreck under Section 12, as just mentioned above. The County Administration's first hand duty would not be to solve the civil law questions involved, particularly not if there are several conflicting claims. It would still need to take a position on ownership if it considers it detrimental to heritage interests to grant the application, because if it finds that the application is being made by an owner it would also have to find special reasons for refusing it.

If the application is refused, the applicant may appeal to the regionally relevant administrative court of law and from thence to the two higher echelons of the Administrative judicature.

If the claims are for ancient finds from a wreck, Section 16 makes it a task for the National Heritage Board to determine whether there is evidence to substantiate these claims. If the Board does not accept them, an appeal could be filed with the Administrative Court of Stockholm County, and further.

As mentioned under 'Related civil law', ancient finds are not exempted from the Act on Acquisition of Movable Objects in Good Faith. One implication of this is that a find which accrues to the State, still may be hard for the State to recover if the finder has turned it over to someone who received in good faith. Whether the acquirer would pass the good faith test, is, of course, a question in itself, but if so, then the State will have to negotiate a settlement if it wants the object secured. Many finds from shipwrecks in Swedish waters are pieces of china of a kind normally traded with, so the prospects of making a *bona fide* acquisition stick are not slim. With regard to the rather recent introduction of an exception for stolen property to the general *bona fide* acquisition principle- related briefly under 'Related civil law' above - it should be pointed out that the taking of ancient finds is not considered theft under Swedish law for the simple reason that ancient finds by definition are ownerless. This also implies that good faith acquisitions of once illegally excavated items seem quite possible.

A case where no good faith could be presumed is the following. In 1991 the Norwegian museum for defence history received an anonymous offer to buy two bronze cannons. Accompanying photographs showed the cannons bearing the monogram of Christian II (King of Denmark 1513-1523, of Sweden 1520-1521). These cannons had presumably been taken as prize and subsequently mounted on a Swedish man-of-war, foundered in the 1520s at an unknown location. Another, later theory is that the cannons had remained on a Danish war ship till it foundered in 1566 off the Swedish island of Gotland in the Baltic. The offer to the museum was thought to have been made from Sweden, but the police could not find either the cannons or anyone to whom they could be firmly linked. In 1996, however, indications showed that these two cannons were located in a port on the Swedish west coast. They were not found there, but two years later the police arrested a man who in his car had newspaper articles on the cannons and the earlier investigations. In a barn belonging to this man two cannons were, indeed, retrieved which could be identified as the ones previously offered for sale. The man was charged and convicted for having kept and concealed ancient finds, which should have been reported to the State. The circumstances were considered to be aggravating and he received a suspended sentence combined with a heavy fine. The cannons were declared forfeited to the State (Skövde tingsrätt (District Court), Verdict 18 February 2002 in case no. B 1001-00).

The case is rather straightforward and shows that the legislation properly applied works well. However, more disconcerting is the fact that a third cannon, belonging to the same series was returned to the person from whom it had been impounded, following a decision not to bring charges against him (another than in the reported case). The suspect claimed that he had found the cannon before 1989 and consequently before the date when ancient finds of bronze had been reinstated as being redeemable by the State.

In another case a man was charged with having violated the KML in that he had taken a bronze ship's bell from a ship wrecked in Swedish waters in 1884. This crime was considered to have fallen beyond the statutes of limitation, but the act nevertheless fell within the bounds of illegitimate disposition under the Penal Code and judged as such not time barred. The man was at the same time charged with having taken two ship's bells off another wreck, not old enough to be protected under the KML. He was convicted on both charges (but on the second count just for one of the bells) to a heavy fine. The first bell was declared forfeited to the State, and the second was awarded to the relevant insurance company (Tierps tingsrätt (District Court), Verdict 2 December 2004 in case no. B 441-03).

Especially when cannons are salvaged from an old shipwreck, one must assume that the wreck itself must have been damaged. This, of course, is also a crime. However, investigation of a crime of that nature is much more difficult. First, as illustrated in the case of the cannons, it may not be sufficiently known what and where the wreck is. If outside of Swedish territorial waters, and not found in the Area in the sense of UNCLOS, it is doubtful whether Swedish jurisdiction applies at all. At least, the prosecutor that would not investigate the refusal of the divers who found the Sword seemed to find so.

If beyond penal action, there still might be civil law questions to consider. The first one would typically be who has title? Even a one century old shipwreck may have an owner, who has not relinquished his right to hull and cargo; that owner might be an insurance company. Ownership makes special provision regarding salvage applicable. The wreck may be that of a state vessel. Then questions of immunity come into the picture.

This supposition does not appear contradicted by a seemingly rather opposite verdict by the Swedish Supreme Court. Two fishermen held as security for damage caused to their trawl, marine research equipment belonging to the Federal Republic of Germany. The State of Sweden intervened, seeking restitution to West Germany. The Supreme Court did not support the Swedish State's position that it could exercise immunity *ex parte* the Federal Republic. (*Nytt Juridiskt Arkiv* 1965 p. 145).

Concluding remarks on the importance of the Underwater Heritage Convention

Returning now to The Sword and the divers refusal to disclose to the heritage authorities where the find was made, the public prosecutor found that there was no criminal charge to bring before the courts. Yet – as we have seen - the KML holds that wrecks and ancient finds from wrecks found on the seabed or the subsoil thereof *outside the bounds of national jurisdiction* accrue to the state, if salvaged or brought to a Swedish port. Why would the prosecutor not take heed of such *verba clara*?

One immediate reason might have been that in this case neither wreck nor any movables from it had been salvaged or brought to port. There is a duty to report finds of ancient monuments – in this case the wreck – but that duty is dependent on the find being made in the course of digging or other works, and it could not have seemed evident that any such works had been performed. The duty to report ancient finds is also connected to the nature of the find, and though theoretically Swedish criminal law under certain conditions applies outside of the area of national jurisdiction (Chapter 2 Section 2 of the Criminal Code), it must have seemed obscure to the prosecutor what ancient finds should have been reported when no object had been retrieved.

To the prosecutor's decision might also have contributed the fact that there was no clear evidence that the find of The Sword was made on Swedish territorial waters. In fact, the divers themselves claimed that it was situated on international waters, which in this case must have meant the Swedish Continental Shelf. International law (UNCLOS) supports protection of the cultural heritage only with regard to finds made in the contiguous zone or in the Area, and neither possibility was at hand. Given the fact that in international law there are no universally recognised rules protecting items of Cultural Heritage importance in the Continental Shelf or the Exclusive Economic Zone one may ask oneself what support could be found for any stretching of Sweden's legal powers in this regard? This question was asked already at the time of the implementation by this author, but more importantly by one of the leading experts in Sweden on the Law of the Sea, professor Hugo Tiberg (*Swedish Journal of Jurisprudence, SvJT* 2000, p. 977 note 13).

The situation would have been different if Sweden had been quicker in introducing a contiguous zone or if the Underwater Heritage Convention had been acceded to. The relevant provisions in UNCLOS for the contiguous zone have been mentioned before. In the Underwater Convention one would have found support for Swedish intervention in Article 9.1 (a): "A State Party shall require that when its national, or a vessel flying its flag, discovers or intends to engage in activities directed at underwater cultural heritage located in its exclusive economic zone or on its continental shelf, the national or the master of the vessel shall report such discovery or activity to it".

Furthermore, Article 10 would have given support to Swedish claims for protection of the wreck and made Sweden the Coordinating State in the consultations which may have resulted from the discovery, if such consultations at all would have been requested. The fact that *The Sword* by most definitions would be considered a Swedish state vessel would probably have made such consultations superfluous.

As said before, there are no indications that Sweden in the foreseeable future will take any steps in the direction of joining the Underwater Heritage Convention. In fact, by moving the time limit for the protection of ancient monuments, including wrecks, back to the year 1850, Sweden has instead taken a step away from the Convention's Article 1.1 (a) stipulating limit of one hundred years.

The thought has been offered that the Baltic Sea co-operation described above would provide an alternative to the Convention. Whereas the Convention in Article 6 welcomes regional or multilateral agreements, these must be seen in the framework of the Convention and not outside of it. Those who think that a Baltic regional agreement would be a workable alternative, cannot fully have pondered the limited effectiveness of regional agreements on Sea Law, amply demonstrated in the agreement between Estonia, Finland and Sweden proclaiming the 1994 wreck of the *M/S Estonia* a "final place of rest" for the 852 victims, and undertaking to punish anybody disturbing that place of rest (Agreement Between the Republic of Estonia, the Republic of Finland and the Kingdom of Sweden regarding the *M/S Estonia*, done at Tallinn 23 February 1995). This treaty has not prevented German and US nationals from extensive diving and filming on the wreck.

The responsible heritage authorities, the National Heritage Board and in this case also the National Maritime Museum, do not seem to have pressed for any accession to the Underwater Heritage Convention. They have pleaded for Swedish adoption of a contiguous zone, something which may happen before too long. That measure would charge Sweden with heritage monitoring and protection another 12 nautical miles outside of its territorial sea border. But the Baltic is much bigger and contains many wrecks and other heritage vestiges that would deserve the better protection resulting from a more universal accession to the Convention.