
TABLE OF CONTENTS

Foreword	V
Preface and Acknowledgements	VII
List of Abbreviations	XV
Chapter I	
Introduction	1
1. A Legal Lacuna?	1
2. Instrumental Structures to Consider	3
3. Research Questions	7
4. Sources	7
5. International Waters	8
6. Activities Affecting Archaeological and/or Historic Valuable Shipwrecks	9
7. The Parties That Have an Interest	10
8. The Structure of the Chapters	13
9. Personal Note	14
Chapter II	
Scope; Concepts and Definitions	15
1. Introduction	15
2. A Regime for the High Seas	15
3. Codification of the High Seas Regime	17
4. The Regime for the High Seas under the LOSC 82 in Relation to Archaeological and/or Historic Shipwrecks	21
4.1. ' <i>Inter Alia</i> ' in Relation to Archaeological and/or Historic Shipwrecks	24
4.2. Due Regard Principle	26
4.3. Invalidity of Claims of Sovereignty over the High Seas	27
4.4. Jurisdiction and Archaeological and/or Historic Shipwrecks in International Waters	28
4.5. Straddling Stocks Agreement	31
5. A Regime for the Ocean Floor Comprising the Common Heritage of Mankind	32
5.1. The Concept of the Common Heritage of Mankind	32
5.2. The Regime of the Area under the LOSC 82 in Relation to Archaeological and/or Historic Shipwrecks	34
5.3. The Common Heritage of Mankind	34
5.4. Common Heritage and (Underwater) Cultural Heritage	37

5.5.	The Benefit of Mankind	38
5.6.	The Institutional Framework for the Area	40
5.6.1.	The International Seabed Authority and Articles 140 and 149	40
5.6.2.	The Deep Seabed Mining Agreement	41
6.	‘Archaeological and/or Historic Shipwrecks’ – What Does It Include?	43
7.	In Summary	46

Chapter III

The Law of the Sea Convention 82: The Legal Regime Concerning Objects of an Archaeological and Historical Nature 46

1.	Introduction	48
----	--------------	----

Part I – Articles 149 and 303 50

2.	Article 149 and What It Comprises	50
2.1.	Objects Shall Be Preserved or Disposed of for the Benefit of Mankind	51
2.2.	Preferential Rights	53
2.3.	Feasibility of Implementation	55
3.	The Contents of Article 303	55
3.1.	Duty to Protect and to Co-operate for That Purpose	57
3.2.	No Interference with the Rights of Identifiable Owners	60
3.3.	Maintaining Salvage and Admiralty Law	61
3.4.	An Opening for Other International Agreements	63
3.5.	Feasibility of Implementation	64
4.	In Summary	64

Part II – The Legal Regime of Marine Scientific Research 65

5.	Introduction	65
6.	The History of the Legal Regime of MSR	66
6.1.	The Applicability of the Legal Regime to Archaeological and/or Historic Shipwrecks	68
6.2.	Is There a Connection with the Legal Regime?	69
7.	In Summary	71
8.	Principles with the Potential to Develop	72
8.1.	Article 238: Right to Conduct Marine Scientific Research	73
8.1.1.	Commentary	74
8.2.	Article 240: General Principles for Conducting Marine Scientific Research	75
8.2.1.	Commentary	76

8.3.	Article 241: Non-recognition of Marine Scientific Research Activities as the Legal Basis for a Claim	77
8.3.1.	Commentary	78
8.4.	Article 243: Creation of Favourable Conditions	79
8.4.1.	Commentary	80
8.5.	Article 244: Publication and Dissemination of Information and Knowledge	82
8.5.1.	Commentary	82
8.6.	Articles 256, 257 and 143: The Principles Specifically Applicable to the High Seas and the Area	83
8.6.1.	Commentary	84
8.7.	Section 5, (Article 263): Responsibility and Liability	85
8.7.1.	Commentary	85
8.8.	Dispute Settlement within the LOSC	82
8.8.1.	Commentary	87
9.	Conclusion	88

Chapter IV

Admiralty Law: The Legal Regime of Admiralty Law as Applied to Archaeological and/or Historic Shipwrecks

1.	Introduction	92
2.	History	94

Part I

3.	Salvage Law	97
3.1.	Introduction	97
3.2.	The act of salvage	98
3.2.1.	Maritime Lien	98
3.2.2.	<i>In Rem</i> Procedure and the Right of First Salvor as Applied to Archaeological and/or Historic Shipwrecks	99
3.3.	The Salvage Claim in Order to Receive an Award	102
3.3.1.	Marine Peril	102
3.3.2.	Service Voluntarily Rendered When Not Required as an Existing Duty or from a Special Contract	104
3.3.3.	Success in Whole or in Part, or That the Service Rendered Contributed to Such Success	104
3.4.	Salvage Award	105
4.	The Law of Finds	108
4.1.	Abandonment	110
4.2.	Possession	113

4.3.	The Merger of Salvage Law and Finds Law	113
5.	In Summary	114
Part II		115
6.	The International Convention on Salvage of 1989	115
6.1.	Introduction	115
7.	The Articles	116
7.1.	Article 1 – Definitions	116
7.1.1.	Commentary	118
7.2.	Article 5 – Salvage Operations Controlled by Public Authorities	119
7.2.1.	Commentary	119
7.3.	Article 11 – Co-operation	120
7.3.1.	Commentary	121
7.4.	Article 13 – Criteria for Fixing the Reward	121
7.4.1.	Commentary	122
7.5.	Article 18 – The Effect of a Salvor’s Misconduct	122
7.5.1.	Commentary	123
7.6.	Article 20 – Maritime Lien	123
7.6.1.	Commentary	124
7.7.	Article 30 – Reservations	124
7.7.1.	Commentary	126
8.	Conclusion	126
Chapter V		
The UNESCO Convention on the Protection of the Underwater Cultural Heritage		129
1.	Introduction	129
2.	The UNESCO Convention on the Protection of the Underwater Cultural Heritage	130
2.1.	Background	130
2.2.	The Annex	132
2.3.	Analysis of the Convention and the Subjects It Covers	133
3.	Object, Purpose and General Principles of the Convention’s Preamble and Article 2	134
4.	Scope and Definitions	137
4.1.	Underwater Cultural Heritage – Article 1	137
4.1.1.	Commentary	140
4.2.	War Wrecks – Article 2(8), Article 13	141
4.2.1.	Commentary	144
4.3.	Relationship with LOSC 82 – Article 3	148

4.3.1. Commentary	149
4.4. No Commercial Incentives to Retrieve Underwater Cultural Heritage – Article 2(7), Article 4	149
4.4.1. Commentary	152
4.5. Activities Directed at, and Activities Indirectly Affecting, Underwater Cultural Heritage – Article 1, Article 5	153
4.5.1. Commentary	155
4.6. Regional Agreements – Article 6	156
4.6.1. Commentary	157
5. Jurisdictional Issues and Geographical Scope – Articles 7, 8, 9, 10, 11, 12	158
5.1. Territorial Sea – Article 7	158
5.1.1. Commentary	160
5.2. Contiguous Zone – Article 8	160
5.2.1. Commentary	161
5.3. EEZ and Continental Shelf – Article 9, Article 10	161
5.3.1. Protection Scheme	166
5.3.2. Commentary	167
5.4. The Area – Article 11, Article 12	168
5.4.1. Protection – Scheme	170
5.4.2. Commentary	171
6. Permits, Seizure and Sanctions – Articles 14, 15, 16, 17, 18	171
6.1. Permits and Non-use of Areas under the Jurisdiction of the Coastal State and Measures Relating to Nationals and Vessels – Articles 14, 15 and 16	172
6.1.1. Commentary	173
6.2. Seizure and Sanctions	175
6.2.1. Commentary	178
7. Information Sharing, Public Awareness and Training – Articles 19, 20, 21	179
7.1. Collaboration and Information Sharing – Article 19	179
7.1.1. Commentary	180
7.2. Public Awareness – Article 20	181
7.2.1. Commentary	181
7.3. Training – Article 21	182
7.3.1. Commentary	182
8. Institutional Structure – Articles 22, 23, 24, 25	183
8.1. Competent Authorities – Article 22	183
8.1.1. Commentary	184
8.2. Meeting of States Parties – Article 23	185
8.2.1. Commentary	186
8.3. Secretariat for This Convention – Article 24	186

8.3.1. Commentary	187
8.4. Dispute Settlement – Article 25	188
8.4.1. Commentary	189
9. Formal Treaty Provisions	191
10. Conclusion	194
Chapter VI	
Conclusion	198
1. Introduction	198
2. The Optional Frameworks	200
2.1. The Regime of the LOSC 82	200
2.2. The Admiralty System Including the International Convention on Salvage 1989	200
2.3. The Regime as Proposed by UNESCO	201
2.4. Compound Option	201
3. An Interpretative Implementation Agreement to the LOSC 82?	202
3.1. The Proposed Legal Framework	202
3.1.1. Beneficiaries	203
3.1.2. Definition of Underwater Cultural Heritage	204
3.1.3. Identification of Relevant Interests	204
3.1.4. Accessing the Underwater Cultural Heritage	206
3.2. The Institutional Framework	206
3.2.1. Services to Be Provided by an International Authority	207
3.2.2. Services to Be Provided by States	207
3.2.3. Mechanism for Resolving Disputes	208
3.3. Compatibility with Pre-existing Law	208
Bibliography	211
Annex:	
Convention on the Protection of the Underwater Cultural Heritage	227
Index	249
Curriculum Vitae	256