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. ‘Inter Alia’ 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
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 85
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 92

1. Introduction 92
2. History 94

Part I 97

3. Salvage Law 97
3.1. Introduction 97
3.2. The act of salvage 98
3.2.1. Maritime Lien 98
3.2.2. *In Rem* 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 122
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
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3.1. Commentary</td>
<td>149</td>
</tr>
<tr>
<td>4.4. No Commercial Incentives to Retrieve Underwater Cultural Heritage</td>
<td>149</td>
</tr>
<tr>
<td>– Article 2(7), Article 4</td>
<td></td>
</tr>
<tr>
<td>4.4.1. Commentary</td>
<td>152</td>
</tr>
<tr>
<td>4.5. Activities Directed at, and Activities Indirectly Affecting,</td>
<td>153</td>
</tr>
<tr>
<td>Underwater Cultural Heritage – Article 1, Article 5</td>
<td></td>
</tr>
<tr>
<td>4.5.1. Commentary</td>
<td>155</td>
</tr>
<tr>
<td>4.6. Regional Agreements – Article 6</td>
<td>156</td>
</tr>
<tr>
<td>4.6.1. Commentary</td>
<td>157</td>
</tr>
<tr>
<td>5. Jurisdictional Issues and Geographical Scope –</td>
<td>158</td>
</tr>
<tr>
<td>Articles 7, 8, 9, 10, 11, 12</td>
<td></td>
</tr>
<tr>
<td>5.1. Territorial Sea – Article 7</td>
<td>158</td>
</tr>
<tr>
<td>5.1.1. Commentary</td>
<td>160</td>
</tr>
<tr>
<td>5.2. Contiguous Zone – Article 8</td>
<td>160</td>
</tr>
<tr>
<td>5.2.1. Commentary</td>
<td>161</td>
</tr>
<tr>
<td>5.3. EEZ and Continental Shelf – Article 9, Article 10</td>
<td>161</td>
</tr>
<tr>
<td>5.3.1. Protection Scheme</td>
<td>166</td>
</tr>
<tr>
<td>5.3.2. Commentary</td>
<td>167</td>
</tr>
<tr>
<td>5.4. The Area – Article 11, Article 12</td>
<td>168</td>
</tr>
<tr>
<td>5.4.1. Protection – Scheme</td>
<td>170</td>
</tr>
<tr>
<td>5.4.2. Commentary</td>
<td>171</td>
</tr>
<tr>
<td>6. Permits, Seizure and Sanctions – Articles 14, 15, 16, 17, 18</td>
<td>171</td>
</tr>
<tr>
<td>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</td>
<td>172</td>
</tr>
<tr>
<td>6.1.1. Commentary</td>
<td>173</td>
</tr>
<tr>
<td>6.2. Seizure and Sanctions</td>
<td>175</td>
</tr>
<tr>
<td>6.2.1. Commentary</td>
<td>178</td>
</tr>
<tr>
<td>7. Information Sharing, Public Awareness and Training – Articles 19, 20, 21</td>
<td>179</td>
</tr>
<tr>
<td>7.1. Collaboration and Information Sharing – Article 19</td>
<td>179</td>
</tr>
<tr>
<td>7.1.1. Commentary</td>
<td>180</td>
</tr>
<tr>
<td>7.2. Public Awareness – Article 20</td>
<td>181</td>
</tr>
<tr>
<td>7.2.1. Commentary</td>
<td>181</td>
</tr>
<tr>
<td>7.3. Training – Article 21</td>
<td>182</td>
</tr>
<tr>
<td>7.3.1. Commentary</td>
<td>182</td>
</tr>
<tr>
<td>8. Institutional Structure – Articles 22, 23, 24, 25</td>
<td>183</td>
</tr>
<tr>
<td>8.1. Competent Authorities – Article 22</td>
<td>183</td>
</tr>
<tr>
<td>8.1.1. Commentary</td>
<td>184</td>
</tr>
<tr>
<td>8.2. Meeting of States Parties – Article 23</td>
<td>185</td>
</tr>
<tr>
<td>8.2.1. Commentary</td>
<td>186</td>
</tr>
<tr>
<td>8.3. Secretariat for This Convention – Article 24</td>
<td>186</td>
</tr>
</tbody>
</table>
8.3.1. Commentary 187
8.4. Dispute Settlement – Article 25 188
8.4.1. Commentary 189
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