

# Contents

<i>Preface</i>	page xv
<i>Acknowledgements</i>	xviii
<i>Table of cases</i>	xx
<i>Table of domestic legislation</i>	xxiii
<i>Table of treaties and other international instruments</i>	xxv
<i>List of abbreviations</i>	xxxi
General introduction	1
1 A brief historical overview	2
1.1 Early developments	2
1.2 1985: A turning point	4
1.3 More recent developments	5
2 Relevant branches of law	8
2.1 Admiralty/private maritime law	8
2.2 The law of the sea	9
2.2.1 UN Convention on the Law of the Sea 1982	10
2.2.2 Maritime zones and related terminology	12
2.3 Cultural heritage law	16
3 A few observations on international law	17
3.1 Sovereignty and jurisdiction	18
3.2 Sources of international law	19
3.2.1 Treaties	19
3.2.2 Customary international law	22
3.2.3 The relationship between customary international law and treaties	23
4 UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001	23
5 The approach and structure of this book	26

1	The evolution of international law on underwater cultural heritage	28
1	Introduction	28
2	Initiatives preceding the UNESCO Convention 2001	29
2.1	UN Convention on the Law of the Sea 1982 (LOSC)	29
2.1.1	Article 149	30
2.1.2	Article 303	32
2.1.3	An 'incomplete' regime	35
2.2	Developments within the Council of Europe	36
2.2.1	The Roper Report and Recommendation 848 (1978)	37
2.2.2	Draft European Convention 1985	40
2.2.3	Valletta Convention 1992	44
3	The UNESCO initiative	48
3.1	Background and process	49
3.1.1	Groundwork by the International Law Association	49
3.1.2	The UNESCO process	52
3.1.3	Development and status of the Annex	57
3.2	The UNESCO Convention 2001: overview	59
4	Concluding remarks	63
2	Defining underwater cultural heritage	65
1	Introduction	65
2	The approach of early domestic legislation	67
3	The approach of international initiatives preceding the UNESCO Convention 2001	71
3.1	The Law of the Sea Convention 1982	71
3.2	The Council of Europe initiatives	77
3.2.1	Recommendation 848 (1978)	77
3.2.2	Draft European Convention 1985	80
3.2.3	Valletta Convention 1992	83
4	The approach of the UNESCO Convention 2001	86
4.1	Definitional criteria	87
4.2	Selection criteria	90
4.2.1	The temporal criterion	90
4.2.2	The character criterion	91
5	Concluding remarks	94

3	Ownership and other interests in underwater cultural heritage	96
1	Introduction	96
2	Ownership	97
2.1	Acquisition of ownership rights	98
2.2	Establishment of ownership rights	102
2.3	Abandonment of ownership rights	106
2.4	The circumscription or expropriation of ownership rights by heritage legislation	111
3	Treatment of ownership rights by international law	113
3.1	Ownership and the Law of the Sea Convention 1982	114
3.2	Ownership and the UNESCO Convention 2001	115
3.2.1	Background	115
3.2.2	Approach of the UNESCO Convention and its implications	117
4	Other interests recognised by international law	119
4.1	Interests recognised by the Law of the Sea Convention 1982	119
4.1.1	Interests of mankind	119
4.1.2	Preferential rights of states (or countries) of origin	122
4.2	Interests recognised by the UNESCO Convention 2001	125
4.2.1	Interests of humanity	126
4.2.2	Interests of states with a verifiable link	127
4.2.3	Preferential rights of states of cultural, historical or archaeological origin	132
5	Concluding remarks	133
4	Sunken warships and other state vessels and aircraft	134
1	Introduction	134
2	Sunken state craft: general international law and state practice	136
2.1	Sunken state craft and the principle of sovereign immunity	136
2.2	State practice in respect of sunken state craft	139
2.3	Treatment of sunken state craft by the US federal admiralty courts	146
2.3.1	<i>The Juno and La Galga (Sea Hunt)</i> (2000)	147
2.3.2	<i>The Mercedes</i> (2011)	149

2.4	Assessment of position under customary international law	152
3	Sunken state craft and the UNESCO Convention 2001	154
3.1	Background	154
3.2	The Convention's regime for sunken state craft	155
3.2.1	Specific regime for each maritime zone	156
3.2.2	Preservation of existing international law	159
3.3	Potential for resolving concerns	160
4	Concluding remarks	165
5	Application of salvage law and the law of finds	167
1	Introduction	167
2	Introduction to salvage law and the law of finds	168
2.1	Basic principles of the law of salvage	168
2.2	Basic principles of the law of finds	171
2.3	International regulation of salvage law	172
3	Application of the law of salvage and the law of finds to underwater cultural heritage	173
3.1	Approach of the Law of the Sea Convention 1982	176
3.2	Approach of the Salvage Convention 1989	177
3.3	Domestic law approaches	179
3.4	US federal admiralty law	184
3.4.1	Early treasure salvage cases	185
3.4.2	Introduction of the Abandoned Shipwreck Act	187
3.4.3	Modification of US federal salvage law to accommodate archaeological value	189
3.4.4	Relationship between US federal law and the Salvage Convention 1989	194
3.4.5	A void to be filled	197
4	Treatment of the laws of salvage and finds by the UNESCO Convention 2001	200
4.1	Background	200
4.2	Approach of the UNESCO Convention and its implications	202
4.3	Relationship between the UNESCO Convention and the Salvage Convention 1989	204
4.4	Response of the international maritime community	206
5	Concluding remarks	208

6	Commercial exploitation of underwater cultural heritage	210
1	Introduction	210
2	Commercial exploitation: some models	212
2.1	Commercial exploitation <i>excluding</i> sale of artefacts	213
2.2	Commercial exploitation <i>including</i> sale of artefacts	213
2.2.1	ProSEA model	214
2.2.2	'Partnering agreements'	216
3	Commercial exploitation: the debate	218
3.1	The case against commercial exploitation	219
3.2	The case in favour of commercial exploitation	220
3.3	Room for compromise?	221
3.4	Government participation in commercial exploitation	224
4	Commercial exploitation and the UNESCO Convention 2001	226
4.1	Background	226
4.2	The Convention's approach to commercial exploitation	230
4.2.1	Basic principle: UCH shall not be commercially exploited	231
4.2.2	Proviso (a): provision of professional archaeological services	233
4.2.3	Proviso (b): deposition of UCH	234
4.3	Implications of the Convention's regime	236
5	Concluding remarks	239
7	Rights, jurisdiction and duties under general international law	241
1	Introduction	241
2	Use of general principles of international jurisdiction in the context of underwater cultural heritage	242
2.1	Territorial principle	242
2.2	Nationality principle	244
3	Rights, jurisdiction and duties under the Law of the Sea Convention	245
3.1	Duties under Article 303(1)	246
3.2	Maritime spaces subject to coastal state sovereignty	248
3.3	The contiguous zone	249
3.4	The continental shelf and the exclusive economic zone	256
3.5	Beyond the limits of national jurisdiction	260

4	Plugging the gap(s)	263
4.1	Unilateral extensions	264
4.2	Making full use of the Law of the Sea Convention provisions	267
4.2.1	Protection of sovereign rights	267
4.2.2	Utilisation of jurisdictional rights	269
4.3	Making full use of the territorial and nationality principles of international jurisdiction	273
5	Concluding remarks	275
8	UNESCO Convention 2001: jurisdictional mechanisms	276
1	Introduction	276
2	Relationship with the Law of the Sea Convention	277
3	Control mechanisms	281
3.1	General mechanisms	283
3.2	Maritime spaces subject to coastal state sovereignty	285
3.3	The contiguous zone	287
3.4	The continental shelf and the exclusive economic zone	288
3.5	The Area	294
3.6	Compliance with the Law of the Sea Convention: a matter of interpretation	298
4	Potential effectiveness of the regime	303
5	Concluding remarks	305
9	UNESCO Convention 2001: implementation issues	307
1	Introduction	307
2	The role of competent national authorities	308
3	Authorisation of activities directed at underwater cultural heritage	312
3.1	Authorisation scheme	313
3.2	Preservation <i>in situ</i>	314
3.3	Treatment of recovered artefacts	319
4	Access	320
4.1	Impact on recreational divers	321
4.2	Impact on avocational archaeologists	323
4.3	Impact on the general public	325
4.4	Maritime memorials	326

5	Sanctions and deterrents	329
5.1	Seizure	330
5.2	Related deterrents	334
6	Concluding remarks	337
<b>10</b>	<b>UNESCO Convention 2001: further matters</b>	<b>338</b>
1	Introduction	338
2	Inter-state agreements furthering the Convention's objectives	338
3	Impact of the Convention on activities 'incidentally affecting' underwater cultural heritage	344
3.1	The continental shelf and the exclusive economic zone	348
3.2	The Area	350
4	Dispute settlement	354
5	Technical implementation	358
5.1	Meeting of States Parties	359
5.2	Scientific and Technical Advisory Body	361
5.3	UNESCO Secretariat	362
6	Amendment	363
7	Reservations	364
	Final reflections	366
	<i>Bibliography</i>	375
	<i>Index</i>	388