COURSE MANUAL

LAW OF THE SEA

Course Instructor

Prof. Gudmundur Eiriksson

SEMESTER B
2019-2020
Information on Law of the Sea offered by Jindal Global Law School
Semester B in 2019/2020

The information provided herein is by the Course Coordinator. The following information contains the official record of the details of the course.

Part I

Course Title: Law of the Sea
Course Code: L-EL-0062
Course Duration: One Semester
No. of Credit Units: 4
Level: 
Medium of Instruction: English
Pre-requisites: Nil
Pre-cursors: Nil
Equivalent Courses: Nil
Exclusive Courses: Nil

The above information shall form part of the University database and may be uploaded to the KOHA Library system and catalogued and may be distributed amongst courses if necessary.
Part II

COURSE DESCRIPTION

The law of the sea is a discipline within the field of public international law which regulates the activities of States and persons at sea. Its rules are to a large extent laid down in the 1982 United Nations Convention on the Law of the Sea. The Convention, which has properly been called the “Constitution for the Oceans”, can be regarded as one of the major accomplishments of the United Nations, in that it deals in a comprehensive manner with all aspects of the uses of the seas which cover over 70% of the world’s surface. The course traces the provisions of the Convention and thus provides an overview of the prevailing legal regime.

The course will commence with a brief introduction of public international law, with special attention to the nature of public international law, the law of treaties and the system of the peaceful settlement of disputes.

The main cases in international courts dealing with the law of the sea will also be explored through presentations by the students, including in-depth consideration of the cases on the delimitation of the maritime areas in the Bay of Bengal between Bangladesh, India and Myanmar.

COURSE INTENDED LEARNING OUTCOMES

<table>
<thead>
<tr>
<th>Course Intending Learning Outcomes</th>
<th>Teaching and Learning Activities</th>
<th>Assessment Tasks/Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>By the end of the course students should be able to:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| ➢ Analyse and critically describe the main substantive rules of the law of the sea. | 40% Weight  
Reading of assigned material  
Lectures  
Class discussion | Viva voce (20%)  
Class attendance/participation (10%)  
Weekly reflections (10%)  
In-class final examination (40%) |
| ➢ Demonstrate an ability to analyse international treaties, through a study of the main instruments dealing with the law of the sea. | 30% Weight  
Reading of assigned material  
Lectures  
Class discussion | Viva voce (20%)  
Class attendance/participation (10%)  
Weekly reflections (10%)  
In-class final examination (40%) |
| ➢ Present orally results of legal research on the law of the sea. | 30% Weight  
Case/Special Project presentations | Case/Special Project presentations (20%) |
GRADING OF STUDENT ACHIEVEMENT

<table>
<thead>
<tr>
<th>Assessment Tasks/Activities</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class Attendance</td>
<td>5%</td>
<td>Attendance</td>
</tr>
<tr>
<td>Class Participation</td>
<td>5%</td>
<td>Active participation during the class</td>
</tr>
<tr>
<td>Weekly Reflections</td>
<td>10%</td>
<td>10 weekly reflections to be submitted</td>
</tr>
<tr>
<td>Case/Special Project Presentation</td>
<td>20%</td>
<td>Case/Special Project to be chosen from the list</td>
</tr>
<tr>
<td>Viva-Voce Examination</td>
<td>20%</td>
<td>Viva-Voce with Professor Eiriksson</td>
</tr>
<tr>
<td>In-Class Final Examination</td>
<td>40%</td>
<td></td>
</tr>
</tbody>
</table>

Part III

SYLLABUS AND READINGS

Syllabus

Introduction to the law of the sea
Internal waters
Baselines
Territorial sea
Contiguous zone
Straits
Archipelagic States
Exclusive economic zone
Continental shelf
Islands
Delimitation
High seas
Straddling fish stocks and highly migratory fish stocks
The prevention of marine pollution and protection of the marine environment
Enclosed or semi-enclosed seas
Landlocked and geographically disadvantaged States
Navigation
Marine scientific research and the transfer of technology
Military uses of the sea
International Seabed Area
Settlement of disputes
Readings

Basic instruments

Main texts

Further reading

Cases

Permanent Court of International Justice
The Case of the S.S. Lotus (France v. Turkey)
http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm

International Court of Justice
Corfu Channel (United Kingdom v. Albania)
Fisheries (United Kingdom v. Norway)
North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)
Fisheries Jurisdiction (United Kingdom v. Iceland)
Continental Shelf (Tunisia/Libyan Arab Jamahiriya)
Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)
Passage through the Great Belt (Finland v. Denmark)
Fisheries Jurisdiction (Spain v. Canada)
Maritime Delimitation in the Black Sea (Romania v. Ukraine)
Maritime Dispute (Peru v. Chile)
Whaling in the Antarctic (Australia v. Japan)
Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)
Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)
Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)
Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)
Guatemala’s Territorial, Insular and Maritime Claim (Guatemala/Belize)
International Tribunal for the Law of the Sea

Case No. 2- The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)
Cases Nos 3 & 4- Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures
Case No. 10- The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures
Case No. 12- Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures
Case No. 14- The “Hoshinmaru” Case (Japan v. Russian Federation), Prompt Release
Case No. 15- The “Tomimaru” Case (Japan v. Russian Federation), Prompt Release
Case No. 16- Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)
Case No. 17- Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)
Case No. 18- The M/V “Louisa” Case (Saint Vincent and the Grenadines v. Kingdom of Spain)
Case No. 19- The M/V “Virginia G” Case (Panama/Guinea-Bissau)
Case No. 20- The “ARA Libertad” Case (Argentina v. Ghana), Provisional Measures
Case No. 21- Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)
Case No. 22- The “Arctic Sunrise” Case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures
Case No. 23- Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)
Case No. 24- The “Ensica Lexie” Incident (Italy v. India), Provisional Measures
Case No. 25- The M/V “Norstar” Case (Panama v. Italy)
Case No. 26- Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation, Provisional Measures
Case No. 27- The M/T “San Padre Pio” Case (Switzerland v. Nigeria), Provisional Measures
Case No. 28- Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)


In the Matter of the Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award 7 July 2014 http://www.pca-cpa.org/showpage.asp?pag_id=1376
In the Matter of the Arctic Sunrise Arbitration (Netherlands v. Russian Federation) http://www.pccases.com/web/sendAttach/1438
Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom) http://www.pca-cpa.org/MU-UK%202020150318%20Award4b1.pdf?fil_id=2899
The Arbitration concerning the “Enrica Lexie” Incident (Italy v. India), Provisional Measures https://pcacases.com/web/view/117
Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. Russian Federation) https://pca-cpa.org/en/cases/229/
Arbitral Tribunal Established under an Arbitration Agreement
In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, Signed on 4 November 2009 between the Republic of Croatia and the Republic of Slovenia, Final Award, 29 June 2017, PCA Case No. 2012-0
https://pcacases.com/web/sendAttach/2172

Conciliation
Conciliation between Timor-Leste and Australia, Decision on Australia’s Objections to Competence, 19 September 2016, PCA Case No. 2016-10 https://pcacases.com/web/sendAttach/1921

Special Projects

Protection and Preservation of the Marine Environment [Outside of the Convention regime. What has happened or could happen? Convention not enough for protection and preservation of marine environment?] – 3 people


Jurisdictional Question in Southern Bluefin Tuna – 2 people

Fragmentation of International Law, with Specific Reference to the Law of the Sea – 2 people

Subject-matter Jurisdiction under the Law of the Sea Convention: Mixed Disputes (Chagos Marine Protected Area Arbitration) / South China Sea Arbitration – 2 people

India’s Contiguous Zone – 2 people

The problem of Non-Appearing Respondent States – 2 people

Debates:
Session I – Bangladesh/ Myanmar Case – 2 people on each side, one Judge ad hoc
Session II – Bangladesh v. India – 2 people on each side, one Judge ad hoc
  * Relevant issues to be covered for Sessions I and II:
    o Jurisdiction Questions
    o Baselines [Movable/delta baselines]
    o Islands [different baselines for different purposes]
    o Decision to take the “Black Sea method” as the basis - Application of the method to the case
    o Relevance of “Natural prolongation”
    o Delimitation beyond 200 nm [different principles?]  
    o “Grey zone”
Session III – The “Enrica Lexie” Incident (Italy v. India), Provisional Measures – 2 people on each side, one Judge ad hoc
Part IV

LECTURE SCHEDULE AND READING ASSIGNMENTS

(Page references are to Churchill and Lowe, except where noted)

Cluster 1

Introduction to course
Selected aspects of public international law
  The nature of public international law
  The law of treaties
  The peaceful settlement of disputes
Assignment of cases/special projects
Introduction to the law of the sea, Akehurst
  Pre-1958 regime
  1958 Conference
    International Law Commission
  1960 Conference
    “Cod Wars” between Iceland and Great Britain (Germany)
  Third United Nations Conference on the Law of the Sea
    “All uses of the seas”
    “Package deal”
  1994 Implementation Agreement

Cluster 2

Internal waters, pp. 60-61
Baselines, pp. 31-35; 38-46; 49-51
  Straight baselines
  Bays
Territorial sea, pp. 81-100
  Innocent passage
  Passage of warships
Contiguous zone, pp. 137-139
Straits, pp. 104-110
  Transit passage
Archipelagic States, pp. 120-123
  Definition
  Archipelagic sealanes passage
Cluster 3

Settlement of disputes, pp. 453-459; Eiriksson, pp. 1-10

Exclusive economic zone, pp. 160-162; 165-176; 279-283; 289-296; 304-323; 433-434; 437-440

- Fishing zone?
- \textit{Sui generis} character
- Conservation and management of living resources
  - Duty to prevent over-exploitation
  - Maximum sustainable yield, as qualified by relevant environmental and economic factors
  - Optimum utilization
- Straddling stocks
- Highly migratory species (Annex I)
- Marine mammals
- Anadromous stocks
- Catadromous species
- Sedentary species
- Land-locked and geographically disadvantaged States
  - “Iceland clause”
- Penalties for infringement of fisheries provisions

Cluster 4

Continental shelf, pp. 141-142; 145-150

- Definition
- Sharing of resources

Islands, LOSC, art. 121

Delimitation, pp. 181-197

- Equidistance v. equitable principles
- Adjacent v. opposite States

\textit{International Court of Justice}

Corfu Channel (United Kingdom v. Albania)

\textit{Permanent Court of International Justice}

The Case of the S.S. Lotus (France v. Turkey)

http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm

\textit{International Court of Justice}

Fisheries (United Kingdom v. Norway)

Passage through the Great Belt (Finland v. Denmark)
Cluster 5

**High seas**, pp. 203-208; 214-216
- Freedom of the high seas
- Fishing on the high seas

**Straddling fish stocks and highly migratory fish stocks**

**The prevention of marine pollution and protection of the marine environment**, pp. 328-396

*International Tribunal for the Law of the Sea*
- Case No. 2 *The M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*
- Case No. 18 *The M/V “Louisa” Case (Saint Vincent and the Grenadines v. Kingdom of Spain)*
- Case No. 19 *The M/V “Virginia G” Case (Panama/Guinea-Bissau)*
- Case No. 20 *The “ARA Libertad” Case (Argentina v. Ghana), Provisional Measures*
- Case No. 22 *The “Arctic Sunrise” Case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures*

- *In the Matter of the Arctic Sunrise Arbitration (Netherlands v. Russian Federation)*
- *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*

Cluster 6

**Enclosed or semi-enclosed seas**, LOSC, art. 122

**Right of access of land-locked States to and from the sea**, pp. 440-445
- *Navigation*, pp. 255-277

**Marine scientific research and the transfer of technology**, LOSC, art. 246

**Military uses of the sea**

*International Court of Justice*
- Fisheries Jurisdiction (United Kingdom v. Iceland)
- Fisheries Jurisdiction (Spain v. Canada)
- Whaling in the Antarctic (Australia v. Japan)

Cluster 7

**International Seabed Area**, pp. 223-224; 248-253
- Common Heritage of Mankind
- International Seabed Authority; The Enterprise

*International Tribunal for the Law of the Sea*
- Cases Nos 3 & 4 *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures*
- Case No. 14 *The “Hoshinmaru” Case (Japan v. Russian Federation), Prompt Release*
- Case No. 15 *The “Tomimaru” Case (Japan v. Russian Federation), Prompt Release*
- Case No. 17 *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)*
- Case No. 21 *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*

*Conciliation*
- *Conciliation between Timor-Leste and Australia*
Cluster 8

Settlement of disputes, pp. 453-459; Eiriksson, pp. 1-10 (review readings)

International Court of Justice

North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)
Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)
Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)
Maritime Delimitation in the Black Sea (Romania v. Ukraine)
Maritime Dispute (Peru v. Chile)
Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)
Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)
Guatemala’s Territorial, Insular and Maritime Claim (Guatemala/Belize)

Cluster 9

Straits, pp. 104-110 (review readings)

International Tribunal for the Law of the Sea

Case No. 16 Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)
Case No. 23 Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)
Case No. 28- Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)


In the Matter of the Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award 7 July 2014 http://www.pca-cpa.org/showpage.asp?pag_id=1376


Arbitral Tribunal Established under an Arbitration Agreement

Cluster 10

**Exclusive economic zone.** pp. 160-162; 165-176; 279-283; 289-296; 304-323; 433-434; 437-440 (review readings)

*International Court of Justice*

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)

Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)

*International Tribunal for the Law of the Sea*

Case No. 10 *The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures*

Case No. 12 *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures*

Case No. 24 *The M/V “Norstar” Case (Panama v. Italy)*

Case No. 25 *The “Enrica Lexie” Incident (Italy v. India), Provisional Measures*

Case No. 26- *Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures*

Case No. 27- *The M/T “San Padre Pio” Case (Switzerland v. Nigeria), Provisional Measures*


The Arbitration concerning the “Enrica Lexie” Incident (Italy v. India), Provisional Measures

[https://pcacases.com/web/view/117](https://pcacases.com/web/view/117)

Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. Russian Federation) [https://pca-cpa.org/en/cases/229/](https://pca-cpa.org/en/cases/229/)