

UNIVERSITY OF HAWAII, RICHARDSON SCHOOL OF LAW

LWEV 593 -- International Ocean Law – Spring 2012

Syllabus – Alison Rieser (for Jon M. Van Dyke)

Overview

This course is an introduction to the principles that govern uses of the world's oceans. The topics addressed include the divisions of ocean space, environmental protection, navigational freedoms, fishing and other resource exploitation, and maritime boundary delimitation.

Course Objectives

The primary purpose of this course is to develop an understanding of the legal doctrines that have been used to resolve disputes regarding ocean resources. A second purpose is to further develop skills in the following areas – analysis of cases, treaties, and other legal documents; analytical thinking; problem solving, speaking; and writing. After successful completion of the course, students should be able to:

1. Articulate important doctrinal rules, standards and principles of international ocean law, and explain what they mean,
2. Recognize commonly encountered problems and issues in international ocean law when presented in hypothetical and unfamiliar fact patterns,
3. Identify relevant international standards, rules and principles for resolving commonly encountered issues,
4. Communicate, orally and in writing, appropriate legal and factual arguments in support of each side of controversies involving such issues, and
5. Articulate varying approaches to analyzing international issues.

Readings are from the scholarship of Prof. Jon Van Dyke, posted on the Lulima course web site (as “JVD and date”), the 1982 Law of the Sea Convention, and excerpts from INTERNATIONAL NAVIGATION: ROCKS AND SHOALS AHEAD? (J. M. Van Dyke, L. M. Alexander, and J. R. Morgan, eds., 1988). Students who would like a hard copy and guide to the Law of the Sea Convention may want to purchase the optional text, *Bernaert's Law of the Sea Convention*, which is available for purchase at the UH bookstore (on the shelves for LWEV 593).

Wed., Jan. 18

Introduction to the Law of the Sea and the 1982 United Nations Law of the Sea Convention (LOSC); Baselines, Internal Waters, Territorial Seas, Navigational Freedoms. Van Dyke, *The 1982 United Nations Convention on the Law of the Sea* (2008); INTERNATIONAL NAVIGATION 1-10, 70-101, 111-22, 189-93; Law of the Sea Convention, Articles 1-33, 235-36.

Wed., Jan. 25

Exclusive Economic Zone (EEZ). INTERNATIONAL NAVIGATION 305-25, 340-51, 373-79, 384-91; Van Dyke, *The Disappearing Right to Navigational Freedom in the Exclusive Economic Zone* (2005); Law of the Sea Convention, Articles 55-83, 88.

- Wed., Feb. 1** **International Straits and Archipelagic Waters.** INTERNATIONAL NAVIGATION 123-88, 194-236, 260-70, 405-14; Van Dyke, *Transit Passage Through International Straits* (2009); Van Dyke, *An Overview of the Jurisdictional Issues Affecting Hawaii's Ocean Waters* (1996); Law of the Sea Convention, Articles 34-54.
- Wed., Feb. 8** **Environmental Protection and Navigation Under the LOSC.** INTERNATIONAL NAVIGATION 271-282; Van Dyke, *Canada's Authority to Prohibit Transit of LNG Vessels Through Head Harbor Passage to U.S. Ports* (2008); Van Dyke, *Ocean Transport of Radioactive Fuel and Waste* (2010); Law of the Sea Convention, Articles 22-23, 192-236.
- Wed., Feb. 15** **The High Seas and Deep Sea-Bed Minerals.** Van Dyke and Yuen, *"Common Heritage" v. "Freedom of the High Seas": Which Governs the Seabed?* (1982) (excerpts); Law of the Sea Convention, Articles 136-91 (skim); Part XI Agreement (1994).
Guest Speaker: Dr. Philomene Verlaan, J.D., Ph.D., Marine Minerals Society and IMMAR, London, U.K.
- Wed., Feb. 22** **Fishing Issues.** Van Dyke, *Regionalism, Fisheries, and Environmental Challenges in the Pacific* (2004); Van Dyke, *Allocating Fish Across Jurisdictions* (2007); Straddling and Migratory Fish Stocks Agreement (1995), Honolulu Convention (2000); Satya Nandan, *The Goals and Accomplishments of the Western and Central Pacific Fisheries Commission*; General Assembly Resolution 61/105 (2006); Law of the Sea Convention, Articles 61-70, 87, 116-120.
Guest Speaker: Emily A. Gardner, M.S., Zoology, J.D., University of Hawaii at Manoa; Marine Protected Species Coordinator, State of Hawaii; private practice in animal law, Honolulu, HI.
- Wed., Feb. 29** **Debates 1-5.**
- Wed., Mar. 7** **Whales and Whaling.** Rieser, *Whales, Whaling and the Warming Oceans* (2009); Van Dyke, *Memorandum of Advice to Australians for Animals International* (2005); International Convention for the Regulation of Whaling, 1946; Law of the Sea Convention, Articles 65, 120; *Application Instituting Proceedings of the International Court of Justice Whaling in the Antarctic* (Australia v. Japan), May 2010; Costello et al., *A Market Approach to Saving Whales*, NATURE (12 Jan 2012).
- Wed., Mar. 14** **Law of the Sea and the US Navy.** Van Dyke, *Military Ships and Planes Operating in the Exclusive Economic Zones of Another Country* (2004);

Jonathan Odom, *The March 2009 Incident Between United States and Chinese Vessels in the South China Sea: A Perspective from the United States; Guidelines for Navigation and Overflight in the Exclusive Economic Zone*.

Guest Speaker: Commander Jonathan Odum, Judge Advocate General's Corps, U.S. Navy, Pacific Command.

- Wed., Mar. 21** **Debates 6-10.**
- Wed., Mar. 28** **No Class, Spring Break**
- Wed., Apr. 4** **Dispute Resolution.** Van Dyke, *Louis B. Sohn and the Settlement of Ocean Disputes*, 33 G.W. Int'l L. Rev. 31-47 (2000)); *Blue-Fin Tuna Case (Australia and New Zealand v. Japan)*; Law of the Sea Convention, Articles 279-99.
- Wed., Apr. 11** **Environmental Decisions of ITLOS.** Van Dyke, *The Evolution and International Acceptance of the Precautionary Principle* (2004), *The MOX Plant Case (Ireland v. United Kingdom)*, Order of Dec. 3, 2001; *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)*, Order of Oct. 8, 2003.
- Wed., Apr. 18** **Marine Protected Areas (MPA) in the EEZ.** Van Dyke, *Protected Marine Areas and Low-Lying Atolls* (1991); Rieser, *The Papahānaumokuākea Precedent: Ecosystem-scale MPAs and the Law of the Sea* (2012); Law of the Sea Convention, Articles 192 & 194; Application for Arbitral Tribunal regarding the Chagos Protected Area (*Mauritius v. United Kingdom*, Mar. 2010).
- Wed., Apr. 25** **Continental Shelf Claims and the South China Sea Dispute.** Mark Valencia and J.M. Van Dyke, *Comprehensive Solutions to the South China Sea Dispute*, in SHARING THE RESOURCES OF THE SOUTH CHINA SEA (1997); Ted L. McDorman, *The International Legal Framework For and State Activities Regarding the Continental Shelf Beyond 200 Nautical Miles In and Adjacent to the East and South China Seas* (2009); Law of the Sea Convention, Articles 76-85 and Annex II on Continental Shelf Commission. Guest speaker: TBA.
- Wed., May 2** **Maritime Boundary Delimitation.** Van Dyke, *Disputes Over Islands and Maritime Boundaries in East Asia* (2009); Van Dyke, *The Romania-Ukraine Decision and Its Effect on East Asian Maritime Delimitations*;

INTERNATIONAL NAVIGATION 326-332, and review 173-93; Law of the Sea Convention, Articles 74, 83, 121.

Tues., May 8 **Final Exam. (1:30-3:30 pm)**

Grading: One-third of the grade for this course will be based on a class presentation described below (topic to be assigned) and two-thirds of the grade will be based on a two-hour final exam.

The student presentations will consist of ten-minute oral advocacy of a legal or policy argument designed to persuade the other students in the class. The presentations will be followed by questions from the instructor and students and a poll regarding the effectiveness of the presentation. Before class each student must upload to the course's Lulima web site a two-to-four page outline of the presentation and a short bibliography of sources used. Use of Powerpoint slides is optional; if using slides, however, a student must arrive at least 10 minutes early in order to load slides onto the computer, or else showing slides will not be permitted.

The final exam on May 8 will be closed-book, except that students will be permitted to bring in (a) one sheet of 8½ by 11 inch paper with one-inch margins on both sides and the top and bottom, containing writing only on one side using type or writing no smaller than 12-point type (b) plus a copy of the 1982 United Nations Law of the Sea Convention. The document containing the Convention should have no notes or writing on it, but provisions can be highlighted with underlining or other marks. The final exam will consist of two one-hour questions. Students will not be permitted to write in their blue books (or type) during the first 10 minutes of each hour, and this time should be used for preparing a preliminary outline of the answer to the question, thus leaving 50 minutes to write the answers to each of the two questions.

Attendance policy: Regular class attendance (attending at least 85% of all classes), preparation, and participation are required. Please give the instructor a note prior to class if you are not prepared (or are only partially prepared) to participate in the class discussion on that day. Students who miss more than two classes will have their grade lowered by one-third for each additional class missed (*i.e.*, B+ to B, B to B-, etc.).

Class rules: As a courtesy to other students and as a matter of professional conduct, please be in your seat punctually at the beginning of each class. Laptop computers may be brought to and used in class for note-taking, but any use of the laptop for activities unrelated to the class, such as surfing the web, playing games, or exchanging messages of any sort is strictly forbidden, and any such use will result in the loss of the right to bring the laptop to class for the remainder of the semester. Please locate the laptop in a manner that does not block the instructor's view of the student. Forming study groups is strongly advised. Old exams are provided in the handout materials to assist in reviewing the material and preparing for the exams.

Another class is scheduled for Classroom 5 at 3:30 p.m. so prompt departure from the room will be appreciated. The instructor will hold office hours in a small seminar room immediately after class.

Contacting the instructor: Please contact the instructor whenever questions need answering or the materials need clarifying. Office: Dept of Geography, Saunders Hall 440. Phone: 956-8467 (office). E-mail: rieser@hawaii.edu. Office hours: Wed, from 3:30 to 4:30 pm; Friday 9 to 11 a.m., or by appointment. Please call or email before coming for Fri. office hours.

DEBATE TOPICS (##1-5 FOR FEB. 29 AND ##6-10 FOR MARCH 21)

1. (a) The United States should accede to the Law of the Sea Convention (LOSC) in order to claim extended continental shelf boundaries in the Arctic Ocean and to have access to the International Tribunal on the Law of the Sea (ITLOS) chamber on seabed disputes.

1. (b) The U.S. should not accede to the LOSC because the extended continental shelf regime is part of customary international law and because the ITLOS chamber on seabed disputes would likely decide against the U.S. in any dispute involving the Arctic.

2. (a) The regime of transit passage through international straits as stated in the Law of the Sea Convention Articles 34-45 is not a part of customary international law because the practice of some contracting parties is inconsistent with the language of these articles; therefore, the regime is not binding on countries that are not parties to the Convention.

2. (b) The regime of transit passage through international straits as stated in the Law of the Sea Convention Articles 34-45 is not a part of customary international law because the practice of some contracting parties is inconsistent with the language of these articles; therefore, the regime is not binding on countries that are not parties to the Convention.

3. The United Nations General Assembly should create an International Fisheries Authority (IFA) modeled after the International Seabed Authority to replace or oversee the regional fisheries management organizations and to control high seas fishing, to prevent illegal, unregulated and unreported fishing, and to create marine protected areas on the high seas. Vessels authorized to fish on the high seas by the Authority must fly the flag of the IFA and must purchase catch shares from geographically disadvantaged or land-locked countries or from countries whose populations depend upon the sea for protein.

4. (a) An unrestricted freedom of navigation does not exist for the transport of ultrahazardous cargoes.

4. (b) An unrestricted freedom of navigation exists for the transport of ultrahazardous cargoes but coastal States may subject such shipping to a prior notification requirement through their territorial sea.

5. Under the 1995 U.N. Straddling and Highly Migratory Fish Stocks Agreement, U.S. fishing vessels that do not maintain a home-port in a U.S. Pacific territory may not land bigeye tuna after the U.S. allocation of bigeye tuna set by the Western and Central Pacific Fisheries Commission has been taken in a given fishing year.

6. (a) China's position on the East China Sea maritime boundary delimitation should prevail.

6. (b) Japan's position on the East China Sea maritime boundary delimitation should prevail.

7. (a) The Philippines may establish a marine protected area and a “Particularly Sensitive Sea Area” around its entire archipelago and enact regulations banning ships carrying hazardous cargoes and requiring transiting foreign-flag fishing vessels to stow their fishing gear.

7. (b) The Philippines may neither establish a marine protected area and a “Particularly Sensitive Sea Area” around its entire archipelago nor enact regulations for ships engaged in archipelagic sea lanes passage banning transport of hazardous cargoes or requiring transiting foreign-flag fishing vessels to stow their fishing gear.

8. (a) The U.S. should accede to the Law of the Sea Convention in order to take advantage of the compulsory dispute settlement provisions of Part XV and to help shape the jurisprudence of the ITLOS and its arbitral tribunals.

8. (b) The U.S. should not accede to the LOSC because it would subject the nation to compulsory dispute settlement provisions on important questions of sovereignty and sovereign rights.

9. (a) Japan’s large-scale scientific whaling program (JARPA II) violates international law and is an abuse of rights under the Law of the Sea Convention. The ITLOS should order provisional measures to stop the 2011-12 JARPA II program currently underway in the Southern Ocean.

9. (b) Australia’s deployment of a customs vessel to the waters of the Southern Ocean to monitor the activities of Japanese-flag vessels engaged in JARPA II violates Japan’s rights under international law and is an unjustifiable exercise of sovereignty in violation of the Antarctic Treaty.

9. (c) The Parties to the International Convention for the Regulation of Whaling have an obligation to set a sustainable catch quota for populations of whales that are large enough to produce a maximum sustainable yield (MSY), and should allocate tradable catch quotas to nations based on their historical catches of great whales. Because of the precautionary principle, any quota must include a significant buffer to prevent irreversible damage to whale stocks and the ecosystems of which they are a part.

10. (a) Military activities in the Exclusive Economic Zone may not be subject to any restrictions by the coastal State.

10. (b) A coastal State may require military ships of a foreign country to give prior notice before engaging in any military exercises in its Exclusive Economic Zone and to submit an environmental impact assessment before deploying low-frequency active sonar.

-----fold and tear here and return to Prof. Rieser by Feb. 1-----

Name:

Choice #1

Choice #2

Choice #3

(give number and letter if applicable)
