UNIVERSITY OF OXFORD

FACULTY OF LAW 2003-2004

LAW OF THE SEA: (6) HIGH SEAS

Outline:

The following is an outline of possible questions for enquiry and discussion:

I. Sources
II. Legal status of the high sea
III. Freedom of the high seas
IV. Nationality and flags of ships
V. Jurisdiction over vessels on the high seas
   1. Exclusive jurisdiction of the flag State
   2. Jurisdiction of other States
      a. Prescriptive jurisdiction
      b. Enforcement jurisdiction
         (i) Visit and search
         (ii) Hot pursuit
         (iii) Detention and seizure
         (iv) Measures to avoid pollution
      c. Immunity from jurisdiction
VI. Conservation and management of living resources
VII. Protection of the marine environment
VIII. Military activities on the high seas

Basic Reading:

(a) Treaties and Other Documents

(b) Cases

(1) International Court of Justice


The judgment mainly deals with questions of jurisdiction of the Court. More important for our topic are the separate and dissenting opinions, Spain’s application, and the written and oral pleadings of the parties. These are available on the Court’s website at http://www.icj-cij.org/icjwww/idocket/iec/ieframe.htm.

(2) International Tribunal for the Law of the Sea

M/V “Saiga” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Rep. 1999, 10; ILM 38 (1999), 1323

Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community), Order of 20 December 2000: ITLOS Rep. 2000, 148

(3) European Court of Justice

Case C-405/01 (Colegio de Oficiales de la Marina Mercante Española), Judgment of 30 September 2003: http://curia.eu.int/en/transitpage.htm

(4) National Courts

US v. McPhee, 336 F3d 1269 (11th Cir. 2003)
US v. De Leon, 270 F3d 90 (1st Cir. 2001)
Humane Society of US v. Clinton, 263 F3d 1320 (Fed. Cir. 2001)
R.M.S. Titanic, Inc. v. Haver, 171 F3d 943 (4th Cir. 1999)

(c) Literature


Specialist Material

Canty, Rachel, Limits of Coast Guard Authority to Board Foreign Flag Vessels on the High Seas, *Tulane Maritime Law Journal* 23 (1998), 123-137

**Further Reading**


**Questions for Discussion:**

1. Did Spain have a valid claim against Canada in the Fisheries Jurisdiction case? How would the International Court of Justice have decided the case on the merits, if it had found that it has jurisdiction?

2. Do the decisions of the US courts in *R.M.S. Titanic, Inc. v. Haver*, 171 F3d 943 (4th Cir. 1999)

3. What legal problems impede effective action against (a) the trafficking of narcotic drugs and (b) the proliferation of weapons of mass destruction on the high seas.