

## **UNIVERSITY OF OXFORD**

### **FACULTY OF LAW 2003-2004**

#### **LAW OF THE SEA: (2) INTERNAL WATERS**

##### **Outline:**

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

- I. Sources, terminology
- II. Baselines, closing lines, delimitation lines
  - 1. Importance of baselines for the delimitation of maritime zones
  - 2. Normal baselines
  - 3. Straight baselines
  - 4. Special cases of straight baselines: mouths of rivers, entrance to ports and atolls, bays
  - 5. Archipelagic baselines and closing lines
  - 6. Delimitation of internal waters and inland waters
  - 7. Delimitation of internal waters between States with adjacent coasts
- III. The legal status of internal waters
  - 1. "Aqua-territorial" sovereignty
  - 2. Access to internal waters (with particular reference to ships in distress)
  - 3. No right of innocent passage
  - 4. Restrictions on maritime cabotage and coastal fisheries versus the principle of non-discrimination in EC law
  - 5. Possible restrictions on the use of internal waters by the coastal States
  - 6. Archaeological and historical objects
  - 7. Military activities in internal waters
- IV. The legal status of foreign vessels in internal waters
  - 1. Warships and other government ships operated for non-commercial purposes
  - 2. Ships operated for commercial purposes
- V. Protection of the marine environment
  - 1. Inclusion of internal waters in marine environmental treaties
  - 2. Jurisdiction of the coastal State to prescribe and enforce
  - 3. Extra-territorial enforcement powers of the coastal State in internal waters

##### **Basic Reading:**

###### **(a) Treaties and Other Documents**

United Nations Convention on the Law of the Sea, 1982: Arts. 5-16, 17-32, 49-52, 192, 207-222  
Geneva Convention and Statute on the International Regime of Maritime Ports, 1923

Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom

to provide services to maritime transport within Member States (maritime cabotage), OJ 1992 L 364, 7-10

European Commission, Fourth report on the implementation of Council regulation 3577/92 applying the principle of freedom to provide services to maritime cabotage (1999-2000), COM (2002 ) 203

## **(b) Cases**

### *(1) International Court of Justice*

Anglo-Norwegian Fisheries Case (United Kingdom v. Norway), ICJ Rep. 1951, 116

Continental Shelf Case (Tunisia/Libya), ICJ Rep. 1982, 18

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras, Nicaragua intervening), ICJ Rep. 1992, 351

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), ICJ Rep. 2001, available from: <http://www.icj-cij.org/icjwww/idocket/iqb/iqbframe.htm>

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA), ICJ Rep. 1986, 14

### *(2) Arbitral Tribunals*

Eritrea-Yemen Arbitration, Award, Phase II: Maritime Delimitation (1999), available from: <http://pca-cpa.org/PDF/EY%20Phase%20II.PDF>

### *(3) European Court of Justice*

Case C-136/89 (Commission v. United Kingdom), ECR 1991, I-3533

Case C-286/90 (Anklagemyndigheden v. Poulsen and Diva Navigation Corp.), ECR 1992, I-6019

### *(4) National Courts*

United States v. Alaska, US Supreme Court, 422 U.S. 184 (1975)

United States v. Alaska, US Supreme Court, 117 S. Ct. 1888 (1997); AJIL 92 (1998), 82-87

Japan v. Kim Sun-Ki, Matsue District Court, Japan (1997), AJIL 92 (1998), 301-305

## **(c) Literature**

R.R. Churchill/V. Lowe, *The Law of the Sea* (3<sup>rd</sup> edn., Manchester: MUP, 1999), 31-70, 123-129  
E.D. Brown, *The International Law of the Sea*, Vol. I: *Introductory Manual* (Aldershot: Dartmouth, 1994), 22-42, 112-115

## **Specialist Material**

Bardin, A., Coastal State's Jurisdiction over Foreign Vessels, *Pace Int'l LR* 14 (2002), 27-76

- Beazley, P. B., Territorial sea baselines, *International Hydrographic Review* 48 (1971), 143-154
- Charney, J., Rocks that cannot sustain human habitation, *AJIL* 93 (1999), 863-877
- Devine, D.J., Ships in distress – a judicial contribution from the South Atlantic, *Marine Policy* 20 (1996), 229-234
- Francioni, F., Criminal jurisdiction over foreign merchant vessels in territorial waters, *Italian YIL* 1 (1975), 27-41
- La Fayette, L. De, Access to ports in international law, *Int'l J. of Maritime & Coastal L.* 11 (1996), 1-22
- Llanos, H.I., Low-tide elevations: reassessing their impact on maritime delimitation, *Pace Int'l LR* 14 (2002), 255-272
- Lowe, V., The right to entry into maritime ports in international law, *San Diego LR* 14 (1977), 597-622
- Reisman, W.M., Maritime delimitation between opposite states – traditional “artisanal” fishing regimes – transboundary non-living resources – interpretation of prior award – straight baselines – effect of costal and midsea islands, *AJIL* 94 (2000), 721-736
- Reisman, W.M./Westerman, G.S., Straight Baselines in International Law: A Call for Reconsideration, *ASIL Proc.* 82 (1988), 260-277
- Zimmermann, J.M., The doctrine of historic bays: applying an anachronism in the Alabama and Mississippi boundary case, *San Diego LR* 23 (1986), 763-790

### Further Reading

- Beazley, P. B., *Maritime Limits and Baselines* (3<sup>rd</sup> edn., London: The Hydrographic Society, 1987)
- Francalanci, G./Romanò, D./Scovazzi, T. (eds.), *Atlas of the Straight Baselines* (Milano: Giuffrè, 1986)
- Reisman, W.M./Westerman, G.S., *Straight Baselines in International Maritime Boundary Delimitation* (Basingstoke: Macmillan, 1992)
- Vitzthum, W. Graf/Talmon, S., *Alles fließt. Kulturgüterschutz und innere Gewässer im Neuen Seerecht* (Baden-Baden: Nomos, 1998)
- United Nations, Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Baselines, an Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea* (New York: United Nations, 1989)
- United Nations, Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: Baselines, National Legislation with Illustrative Maps* (New York: United Nations, 1989)
- United States, Department of State, *Limits in the Sea* No. 106: Developing Standard Guidelines for Evaluating Straight Baselines (Washington, D.C., 1987)
- Westerman, G.S., *The Juridical Bay* (Oxford: Clarendon Press, 1987)

### Presentations:

After a general introduction to the question of baselines, two student presentations of about 10 to 15 minutes on the legal status of internal waters, and the protection of the marine environment will introduce the topics and will open the discussion of the topics by the group as a whole.