

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

- United Nations Convention on the Law of the Sea, 1982: Arts. 86-120, 135, 210, 211, 216-218, 221, 222
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988: Arts. 1-4, 17 (Text: *International Legal Materials* 28 (1989), 493-526)
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 (Text: *International Legal Materials* 33 (1994), 968-980)
- Council of Europe Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1995 (Text: ETS No. 156 and <http://conventions.coe.int/Treaty/EN/Treaties/Html/156.htm>)

(b) Cases*(1) International Court of Justice*

Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgement of 4 December 1998: ICJ Rep. 1998, 432

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/iecframe.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)

R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel, 9 F Supp 2d 624 (E.D. Va. 1998)

(c) Literature

R.R. Churchill/V. Lowe, *The Law of the Sea* (3rd edn., Manchester: MUP, 1999), 203-222, 255-278

E.D. Brown, *The International Law of the Sea*, Vol. I: *Introductory Manual* (Aldershot: Dartmouth, 1994), 277-335

Specialist Material

Birnie, Patricia, New Approaches to Ensure Compliance at Sea: The FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, *Review of European Community and International Environmental Law* 8 (1999), 48-55

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

- Gilmore, William C., Hot Pursuit: The Case of *R. v. Mills and Others*, *International and Comparative Law Quarterly* 44 (1995), 949-958
- Gilmore, William C., Drug Trafficking by Sea: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *Marine Policy* 15 (1991), 183-192
- Reuland, Robert C., Interference with Non-National Ships on the High Seas: Peacetime Exceptions to the Exclusivity Rule of Flag-State Jurisdiction, *Vanderbilt Journal of Transnational Law* 22 (1989), 1161-1229
- Sorensen, Christina M., Drug Trafficking on the High Seas: A Move Toward Universal Jurisdiction under International Law, *Emory International Law Review* 4 (1990), 207-230
- Teece, David R., Global Overfishing and the Spanish-Canadian Turbot War: Can International Law Protect the High Seas Environment?, *Colorado Journal of International Environmental Law and Policy* 8 (1997), 89-125

Further Reading

- Bangert, Kaare, The Effective Enforcement of High Seas Fishing Regimes: The Case of the Convention for the Regulation of the Policing of the North Sea Fisheries of 6 May 1882, in: Guy S. Goodwin-Gill/Stefan Talmon (eds.), *The Reality of International Law* (Oxford: OUP, 1999), 1-20
- Gjerde, Kristina M., High Seas Marine Protected Areas, *International Journal of Marine and Coastal Law* 16 (2001), 515-528
- Kelly, Andrew J., The GATT Obstacle: International Trade as a Barrier to Enforcement of Environmental Conservation on the High Seas, *Florida Journal of International Law* 12 (1998), 153-165
- Poulantzas, Nicholas M., *The Right of Hot Pursuit in International Law* (2nd edn., The Hague: Martinus Nijhoff, 2002)
- Reuland, Robert C., The Customary Right of Hot Pursuit onto the High Seas: Annotations to Article 111 of the Law of the Sea Convention, *Virginia Journal of International Law* 33 (1993), 557-589
- Serdy, Andrew, See You in Port: Australia and New Zealand as Third Parties in the Dispute Between Chile and the European Community over Chile's Denial of Port Access to Spanish Vessels Fishing for Swordfish on the High Seas, *Melbourne Journal of International Law* 3 (2002), 79-119
- Warner, Robin, Jurisdictional Issues for Navies Involved in Enforcing Multilateral Regimes Beyond National Jurisdiction, *International Journal of Marine and Coastal Law* 14 (1999), 321-332

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)

and R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel, 9 F Supp 2d 624 (E.D. Va. 1998) violate international law?

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.
4. Draft instructions for the Naval Commander's Handbook on the right of hot pursuit.