

**LAW OF THE SEA
(LAWS 2022.03)**

Winter Term 2019

INTRODUCTION

The Third United Nations Conference on the Law of the Sea 1973-1982, the world's longest multilateral law-making conference, led to the adoption of the *UN Convention on the Law of the Sea*, 1982 (UNCLOS). In force since 16 November 1994 (ratified by Canada on 7 November 2003), this treaty is generally regarded as both contract and constitution for the world's oceans. The Convention has already been "amended" twice through the *Agreement Relating to the Implementation of Part XI of the Convention*, 1994 (in force in 1996) and the *Agreement for the Implementation of the Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, 1996 (in force in 2001)(UN Straddling Stocks Agreement). A third international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction is currently under development under UN auspices. Moreover, the customary international law of the sea has continued to evolve.

The institutions created by UNCLOS, i.e., the International Seabed Authority (based in Kingston, Jamaica), International Tribunal for the Law of the Sea (based in Hamburg, Germany) and Commission on the Limits of the Continental Shelf (meets in New York), are fully operational. The Convention is being implemented on global, regional and national levels. Although several areas of the treaty are still contentious (passage of nuclear-powered ships through the territorial sea, jurisdiction on the high seas, full extent of the extended continental shelf, etc.), commercially or technology superseded (due to remote sensing in marine scientific research, advent of autonomous vehicles, etc.), or contradicted by state practice (baseline delineation, imprisonment for fisheries offences, etc.), it nonetheless continues to provide the basic framework for the pursuit of ocean development, management, conservation and security.

Law of the sea differences and disputes among States occur at global, regional and sub-regional levels and concern a broad range of issues, such as the exercise of extra-territorial jurisdiction (e.g., piracy and jurisdiction over foreign fishing vessels on the high seas), location of maritime boundaries, transboundary environmental damage, operations of regional fishery organizations, and so on. This treaty has now been supplemented by

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numerous global and regional instruments in the field of international environmental law and international maritime law covering issues such as sustainable development, shipping, fisheries, environmental management, biodiversity and security. However, impacts as a result of climate change, such as coastal erosion, acidification, ecosystemic and species shifts, sea level rise and submersion of low lying lands, etc., among other, are posing new challenges to the application of the various regimes established by UNCLOS. Thus, the law of the sea is a dynamic body of law that continues to grow and evolve in response to the changing ocean environment and international expectations.

Canada is a party UNCLOS and has fundamental interests protected by the Convention. Canada played an important role in the global negotiations of UNCLOS and played a critical role in the adoption of the UN Straddling Stocks Agreement which is considered an important instrument for the protection of Canada's fisheries interests in the Northwest Atlantic, in addition to other regions. Canada has had its share of maritime disputes, such as: the "Turbot War" with Spain and the EU in the early to mid-1990s and the subsequent jurisdiction case before the International Court of Justice; a Pacific salmon dispute with the US resolved through a treaty; a maritime boundary dispute in the Gulf of Maine resolved through the International Court; current boundary disputes in the Beaufort Sea and off the West Coast; maritime boundary and fisheries disputes with France (St. Pierre et Miquelon) in the past and a new one with regard to the extended continental shelf; differences with the United States and European States over the use of straight baselines and the legal status of the Northwest Passage in the Arctic; etc. Canada has made a partial submission regarding its extended continental shelf in the Northwest Atlantic following a submission to the Commission on the Limits of the Continental Shelf and is expected to make a further submission concerning the continental shelf in the Arctic.

The enactment of the *Oceans Act*, S.C. 1996 c. 31 in Canada may be viewed, in great part, as the legislative implementation of key rights and jurisdictions set out in UNCLOS and as a consolidation of Canadian ocean interests. Canada is but an example of the diverse law of the sea interests of states generally, and coastal states in particular. Other coastal states, small and large, face similar challenges with the implementation of the UNCLOS and related marine and environmental treaties, as well as managing complex marine neighbourly relations in their regions and sub-regions.

Seminars will explore the main regimes and issues in the modern law of the sea, both from treaty and customary law perspectives. State and judicial practice will be examined. The course will have international and Canadian perspectives. A number of seminars will include visiting speakers. The course will be conducted as a research course in seminar style. Students are warmly encouraged to participate actively. Seminar slides will be posted on Brightspace.

DAYS, TIMES, VENUE

Thursday, 4.30-6.20 pm, Room 308, Weldon Law Building

CREDIT AND ASSESSMENT

Three (3) credit major paper course, assessed as follows:

- 70% research paper
- 10% research paper proposal
- 10% presentation of research paper in class
- 10% class participation

Time line:

- 31 January: in class submission of a research paper proposal, consisting of: (1) provisional title, (2) abstract (200 words), (3) preliminary table of contents and (4) provisional bibliography (10% of course mark).
- 18 March: deadline for draft papers (optional).
- 21, 28 March: students present papers 'in progress' in class (schedule to be announced). Every student will have 15-20 minutes (max) to present and 5 minutes of Q&A. Students are free to use power point for their presentations (10% of course mark).
- 12 April, noon: deadline for digital and hard copy submission of final papers for assessment (minimum text of 25 pages (bibliography is additional), moderate margins, 1.5 line spacing) (70% of course mark). Papers must be footnoted using the McGill style. Papers must be submitted in hard copy to Shannon Langton (Graduate Studies Office, 4th Fl) and as an email attachment tom me (aldo.chircop@dal.ca) by the due date. Extensions without the permission of the Studies Committee will not be permitted. Please note that the School applies penalties for late submissions.

Papers are assessed according to major paper course guidelines and criteria, accessible at: <http://academicalendar.dal.ca/Catalog/ViewCatalog.aspx?pageid=viewcatalog&catalogid=3&chapterid=15&topicgroupid=300&loaduserredits=False>). Please consult these guidelines.

COURSE MATERIALS

The course materials consist of a textbook and primary legal instruments. The textbook is D. R. Rothwell & T. R. Stephens, *The International Law of the Sea* 2d (Hart Publishing, 2016), available for purchase from the Dalhousie Bookstore. One copy is kept on reserve at the Law Library. Readings are assigned for each class to serve as background for class

discussions. The instructor's power point slides will be available for download on the course website on Brightspace.

The course will be using the text of the *United Nations Convention on the Law of the Sea*, 1982 (UNCLOS) as required reading on a regular basis. The text can be downloaded for free from the following website: <<http://www.un.org/depts/los/index.htm>>. Students are strongly encouraged to familiarize themselves with this website and the materials available, as they are potentially very useful for research papers. The course will also consult Canada's *Oceans Act*, available for download at: <<http://laws-lois.justice.gc.ca/eng/acts/O-2.4/>>. Particular seminars have additional primary materials that need to be consulted and websites to be browsed.

Students who wish to further deepen their knowledge of the international law of the sea are advised to consult the following major reference texts:

- Brown, E.D., *The International Law of the Sea*, 2 vols. (Aldershot, Hants; Brookfield, Ut: Dartmouth, 1994)
- Churchill, R.R. and Lowe, A.V., *The Law of the Sea*, 3d (Manchester: Juris Publishing, Manchester University Press, 2002).
- Centre for Ocean Law and Policy, *United Nations Convention on the Law of the Sea 1982: A Commentary*, multiple vols. (Dordrecht; Boston; London: Martinus Nijhoff, 1985-)
- O'Connell, D.P., *The International Law of the Sea*, 2 vols., ed. By I.A. Shearer (Oxford: Clarendon Press, 1984)
- McDougal, M. and Burke, W., *The Public Order of the Oceans: A Contemporary Law of the Sea* (New Haven: Yale University Press, 1962)
- Sohn, L.B. et al., *Cases and Materials on the Law of the Sea*, 2d (Leiden: Brill Nijhoff, 2014)

POLICIES AND PROCEDURES

1. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center

(AASC) at the outset of the regular academic year. Please visit <www.dal.ca/access> for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

2. Submission of Major Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <<http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>>.

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

3. Plagiarism

All students must read the University policies on plagiarism and academic honesty <<http://academicintegrity.dal.ca/>> and the Law School policy on plagiarism <<http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

3. Assistance with writing

Dalhousie offers support services to assist students in their development of academic competencies. The Writing Centre, for instance, works to develop writing skills that meet university expectations in one-on-one sessions, in small groups, and in classes.

Contact information:

Dalhousie Writing Centre
Website:
<https://www.dal.ca/campus_life/academic-support/writing-and-study-skills.html>

CLASS SCHEDULE

10 January: Introduction

- Instructor & student introductions
- Course requirements and expectations
- History & sources of the international law of the sea
- Structure & processes of the international law of the sea

Reading: Textbook: Ch. 1, pp. 1-29
UNCLOS: Preamble
Browse: Oceans and the Law of the Sea - Report of the Secretary-General (2017):
<<http://undocs.org/A/72/70/Add.1>>
Browse: UN Division for Ocean Affairs and the Law of the Sea website:
<<http://www.un.org/depts/los/index.htm>>

17 January: Baselines, Territorial Sea and Contiguous Zone

Speaker: Dr. Tony George Puthucherril

- Baselines

Readings: Textbook: Ch. 1, pp. 30-59
UNCLOS: Articles 3-16, 46-54
Oceans Act: ss 5-7

- Territorial Sea

Readings: Textbook: Ch. 3, 60-78; Ch. 10, pp. 220-244; Ch. 11, 245-277
UNCLOS: Articles 2, 17-32, 34-45, 121
Oceans Act: ss 4, 8-9

- Contiguous Zone & Archaeological Jurisdiction

Readings: Textbook: Ch. 3, pp. 79-84

UNCLOS: Articles 33, 303
Oceans Act: ss 10-12

24 January: Continental Shelf, Exclusive Economic Zone & Marine Scientific Research

- Continental shelf

Readings: Textbook: Ch. 5, pp. 102-106
UNCLOS: Articles 76-85, Annex 2
Oceans Act: ss 17-21
Browse: Commission on the limits of the Continental Shelf at the DOALOS website:
<http://www.un.org/depts/los/clcs_new/clcs_home.htm>

- EEZ

Readings: Textbook: Ch. 4, 85-101; Ch. 13, pp. 308-345.
UNCLOS: Articles 55-75
Oceans Act: ss 13-16

- Marine scientific research

Readings: Textbook: Ch. 14, pp. 346-364
UNCLOS: Articles 238-265

31 January: Delimitation of Maritime Boundaries

Reading: Textbook: Ch. 16, pp. 412-444
UNCLOS: Articles 15, 74, 83

7 February: The High Seas and Areas Beyond National Jurisdiction

Speaker: Dr. Desai Shan

- High Seas

Readings: Textbook: Ch. 7, pp. 154-179; Ch. 10, 224-229;
UNCLOS: Articles 86-120, Annex 1

- Areas beyond national jurisdiction

Reading: Intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the

conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Statement by the President (20 September 2018): <Statement by the President of the conference at the closing of the first session >

Browse: Intergovernmental Oceanographic Commission website: <<http://ioc-unesco.org/>>

14 February: International Seabed Area

- International Seabed Area

Readings: Textbook, Ch. 6, pp. 127-153
UNCLOS: Articles 133-148, 159-160, 161-165, 176
Browse the Part XI Implementation Agreement:
<http://www.un.org/depts/los/convention_agreements/convention_overview_part_xi.htm>
Browse the website of the International Seabed Authority: <<https://www.isa.org.jm/>>

18-22 FEBRUARY: STUDY BREAK

28 February: The Northwest Atlantic Fisheries Organization (NAFO)

Speaker: Mr. Fred Kingston
Executive Secretary
NAFO

Readings: UN Straddling Stocks Agreement:
<http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm>
FAO Compliance Agreement:
<http://www.fao.org/fileadmin/user_upload/legal/docs/012t-e.pdf>
Browse the NAFO website: <<http://www.nafo.int/>>
Browse the following FAO website pages:
(1) <<http://www.fao.org/fishery/topic/12373/en>>
(2) <<http://www.fao.org/fishery/iuu-fishing/en>>

7 March: Protection and Preservation of the Marine Environment

Speaker: Dr. Desai Shan

Readings: Textbook: Ch. 15, pp. 365-411
UNCLOS: Articles 122-123, 192-237
Browse: IPCC website: <<https://www.ipcc.ch/>>
Browse: GESAMP website: <<http://www.gesamp.org/>>
Browse: UNEP Regional Seas Programme: <<http://www.unep.org/regionalseas/>>
Browse: IMO website: <<http://www.imo.org/en/Pages/Default.aspx>>
Browse: Convention on Biological Diversity website: <<http://www.cbd.int/convention/>>
Browse: Arctic Council website: <<http://www.arctic-council.org/index.php/en/>>

14 March: Dispute Settlement

Readings: Textbook: Ch. 18, pp. 473-505
UNCLOS: Articles 279-299, Annex 5, 7-8
Browse: International Tribunal for the Law of the Sea website: <<https://www.itlos.org/>>
Browse: International Court of Justice website: <<http://www.icj-cij.org/homepage/>>
Browse: Permanent Court of Arbitration website: <http://www.pca-cpa.org/showpage.asp?pag_id=363>

21 March: Student research paper presentations

28 March: Student research paper presentations

IDEAS FOR RESEARCH TOPICS

Here are some ideas to get you thinking about your research papers. You may come up with other ideas for papers in discussion with the course instructor.

The Arctic: is sea ice protected by the law of the sea and climate law?

Traffic corridors through the Northwest Passage: what are the legal issues and how might they be resolved?

Analysis of Canada's maritime boundary disputes with the United States: continuing to agree to disagree or are the agreements resolvable?

High seas fishing: how effective are the law of the sea and international fisheries law in combating IUU fishing?

Canada's extended continental shelf submissions in the Northwest Atlantic and Arctic (future): how will they impact on existing and future maritime boundaries with neighbouring States?

Are indigenous rights protected under the law of the sea?

Analysis of a recent law of the sea case of the ICJ, ITLOS or other international arbitration tribunal.

International negotiations on the proposed international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction: where are they heading?

What are the law of the sea issues for states whose territory might disappear or become uninhabitable as a result of sea level rise?

Impact of ocean acidification on the duty to protect and preserve the marine environment in UNCLOS.

How might shifting ecosystem boundaries and species affect regional fishery arrangements and the mandates of overseeing Regional Fishery Management Organizations?

How do the law of the sea, international maritime law and international human rights law interact in addressing the problem of the migration and movement of refugees at sea?

The regime of scientific research: how can Canada maximise benefits from permitting foreign MSR?

The law of the sea, piracy and international development: is law obsolete?

The freedom to protest at sea: how do the law of the sea and international law generally address the activities of protest vessels on the high seas (e.g., Greenpeace and Sea Shepherd)?