

OCEAN LAW & POLICY

2017-2018

Fall Term 2017

Ocean Law & Policy/2068.01
Thursday 9:00 - 10:50 pm
Classroom 308 / Weldon Law Building

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Course Theme: Law & Policy Relating to Sustainable Arctic Ocean Governance

Course Description

Throughout much of human history, the Arctic Ocean (the smallest of the world's five oceans in terms of spread), which is situated at the top of the world in the farthest North, has by and large remained in splendid isolation unspoiled by the human hand. Low levels of sunlight, extremely low water temperatures, presence of permanent sea-ice, shallowness, unwavering cold, increased proportion of continental shelves, and freshness of the waters – all render the Arctic Ocean distinctive in terms of its seascape. These in turn support a myriad range of unique marine mammals, fish, and plants. Unfortunately, anthropogenic climate change and global warming has emerged as the biggest threat to the serenity and pristineness of this marine environment. Already, the Arctic in most of its parts is warming at a very rapid pace wreaking havoc on this fragile ecosystem. The annual rate of mean warming in the Arctic exceeds the average global mean warming rates. The most profound impact of this intense warming is that the Arctic sea ice is decreasing in extent and thickness; each passing year surpasses earlier records for the lowest level of summer sea ice. This has had a cascading effect on the Arctic environment unleashing a series of other environmental perturbations. Clearly, the Arctic Ocean is on the cusp of far-reaching changes wrought by climate change, the impacts of which are not only difficult to fathom and adapt to, but, more importantly, these changes will resonate not only in the circumpolar North but also in areas that lie far beyond.

Despite this grim prognosis, at least for the five major Arctic States who more or less geographically circumscribe the Arctic Ocean, these changes could be a blessing in disguise as it may allow these countries to unlock new economic opportunities hitherto sheltered by the sea ice. It is believed that the Arctic shelves store large quantities of oil and gas and other valuable minerals. As the waters continue to warm, new opportunities may emerge in terms of access to new fishing grounds. But perhaps the most exciting of all is the possibility of transit shipping through previously unnavigable waters, which will effectively cut down on transit times, save fuel and other shipping costs, thereby facilitating greater trade and commerce.

Thus, on the one hand, while we talk about the need for stronger protective measures to curb climate change to decelerate the destruction of the Arctic, only if the big melt continues apace will it be more feasible to take advantage of the new economic opportunities. It is also possible that these new opportunities may bring with them a variety of other risks, which may further disrupt an already imperiled environment. All this highlights the need for effective policies and laws to protect Arctic marine environment and ensure that resource exploitation takes place only within sustainable parameters.

The **objective** of this course is to sensitize students to some of these emerging challenges in relation to the Law and Policy development on Arctic Ocean governance and sustainable management. The course will have an international and comparative law and policy approach, focusing primarily on Canada (Canadian Arctic waters), and will also draw on the practices of other States, including the non-Arctic ones. Specifically, some of the major questions that will be explored include: What does the legal and policy regime that applies to the different facets of Arctic Ocean governance look like? How does it work? Are there regulatory gaps? And if so, how can these be sorted out? How has law and policy developed with regard to the conservation and management of the Arctic marine environment and the sustainable use of its resources? Given the dynamic nature of the legal and policy regime, and the need for economic development, will economic interests be allowed to trump environmental concerns? These questions will guide the discussions throughout this course.

As this class is designed to be research intensive, it will be conducted in seminar format, emphasizing student participation.

Course Evaluation: Since this is a 3 credit major paper course, the mode of assessment is as follows:

- Research Paper 70%
- Research Paper Proposal 10%
- Class Presentation & Participation 20%

Course Outline

September 7, 2017	Introduction and Exploring the Broad Canvas Textbook Readings: Analytical Introduction
September 14, 2017	Climate Change, Sea Level Rise and Corroding Coastlines: The Problem of Climate Change Refugees & Diminishing Maritime Zones in the Arctic Textbook Readings: Part 3 Maritime Zones – Law of the Sea Related to Legislation of the Arctic Coastal States (Canada), pages 549-581
September 21, 2017	Maritime Disputes in the Arctic Textbook Readings: Part 10 Arctic Disputes
September 28, 2017	Regulation of International Shipping and Navigation through Arctic Icy Waters Textbook Readings: Part 6 Arctic Shipping, pages 903-934
October 5, 2017	Legal Issues Relating to Continental Shelf Determination and the Challenges and Prospects posed by Oil and Gas Exploration and Exploitation in the Arctic Offshore Textbook Readings: Part 8 National Submissions to the Commission on the Limits of the Continental Shelf Concerning Arctic Territorial Claims and Recommendations, pages 857-859
October 12, 2017	Law and Policy Framework for Protecting Arctic Marine Biodiversity & the Rights of Indigenous Communities in the Marine Arctic Textbook Readings: Part 7 Arctic Fisheries; Pages 953-1026; Part 8 Protection of the Marine Environment; Pages 1170-1241; Part 9 Protection of Arctic Indigenous Peoples, Pages 1345-1352
October 19, 2017	Law and Policy Framework for Protecting Arctic Marine Biodiversity – Constituting Marine Protected Areas Textbook Readings: Part 7 Arctic Fisheries, pages 953-1026; Part 8 Protection of the Marine Environment, pages 1170-1241; Part 9 Protection of Arctic Indigenous Peoples, pages 1345-1352
October 26, 2017	Conflict or Cooperation: The Work of the Arctic Council Readings: will be emailed later
November 2, 2017	Deciphering the Arctic Policies of Canada and Other Arctic and Non-Arctic States Textbook Readings: Part 1 Arctic Policy, pages 3-32; 307-309
November 16, 2017	Student Presentations
November 23, 2017	Student Presentations
November 30, 2017	Student Presentations

Course Materials

The textbook for this course is *The Arctic in International Law and Policy* (edited by Kristina Schönfeldt Hart Publishing, 2017). This book is a collection of some of the primary legal instruments applicable to the Arctic region. It is available for purchase from the Dalhousie Bookstore. One copy will be kept on reserve at the Law Library. Readings will be assigned for each class to serve as background for class discussions.

Apart from this textbook, the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) is a 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>.

Additional readings, materials and seminar slides will be either posted online or emailed.

Possible Research Topics

Students are encouraged to choose a research topic related to the Arctic for the major paper course requirement. However, given the overall flexibility of this course, and the need to promote creativity and independent thinking in terms of legal research, you are free to choose any topic of your choice even if it may NOT be linked to the Arctic; however, the only condition is that it should be related to the broader rubric of Ocean Law and Policy. Please find below a list of possible research topics:

- 1) The Problem of Ocean Acidification in the Arctic Ocean and Possible Solutions
- 2) Protecting Rights of Sea Farers involved in Arctic Navigation
- 3) Climate Change Refugees in the Arctic
- 4) The Dispute Over the Northwest Passage - Possible Solutions
- 5) What must Canada do to strengthen its claims over the Northwest Passage?
- 6) Analysis of the IMO Polar Shipping Code
- 7) Canada's maritime boundary disputes with the United States in the Pacific
- 8) Canadian Approach to LOSC implementation
- 9) Canadian Federalism and Ocean Management
- 10) Canada as a Coastal State in the Arctic
- 11) Illegal, Unreported and Unregulated Fishing as a Transnational Crime in the Arctic
- 12) Arctic Offshore Hydrocarbon Exploration: Policies by Member States
- 13) Maritime Security Concerns in the Arctic
- 14) Delimitation of the Continental Shelf in the Arctic Ocean
- 15) FAO and sustainable fisheries in the Arctic
- 16) The legal Status of Svalbard
- 17) Managing Biodiversity in Areas Beyond National Jurisdiction: Measures to Protect the Central Arctic Ocean
- 18) LOSC and the Northern Passage
- 19) Bioprospecting and related Legal Issues with reference to the Arctic
- 20) Ships in distress in Arctic waters
- 21) Disposal of radioactive wastes in Arctic waters
- 22) Do we need an Arctic specific treaty?
- 23) Securing the rights of the Arctic indigenous in harvesting marine resources
- 24) Comparing and Contrasting the two Polar legal regimes
- 25) Marine research in Arctic waters: Legal Challenges
- 26) Legal issues related to the introduction of marine invasive species in Arctic Waters
- 27) The Barents Euro-Arctic Council
- 28) Interpreting article 234 of UNCLOS
- 29) Protecting the Polar Bear
- 30) Migratory Birds in the Arctic
- 31) The Ramsar Convention & Arctic Wetlands
- 32) Black Carbon Emissions and their Impact on the Arctic Environment

Timelines

September: Students will individually meet with the course instructor to discuss their research topics.
September 28 (in class): submission of a research paper proposal, consisting of: (1) provisional title, (2) one paragraph abstract (200 words), (3) preliminary table of contents and (4) provisional bibliography.
October 5 (in class): The instructor will return the research paper proposals with comments.
October-November: course instructor is available to discuss individual students' research and writing under way and planned presentations.
November 16, 23 & 30: students present papers in class (schedule to be announced). Students will have 20 minutes (max) for presentation of the research paper in progress. Each presentation will be followed by 10 minutes of Q&A. Students are free to use or not to use PowerPoint for their presentations.
December 20: deadline for submission of papers for assessment (minimum text of 25 pages, moderate margins, 1.25 line spacing). Papers must be submitted in hard copy to the Reception Desk before 12:00 noon . Students must ensure they are dated and time stamped. Students are required to provide an identical electronic copy of their paper to the instructor 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, please consult these guidelines: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>.

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: <https://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

Assistance with writing

Dalhousie offers a number of support services that 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: www.writingcentre.dal.ca (for appointments write to writingcentre@dal.ca or call 494-1963).

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.

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.

Penalties

Please note that late submission of papers at the Schulich School of Law is subject to penalty as determined by the Studies Committee for undergraduate students and the Graduate Studies Committee for graduate students. Failure to present a summary in class of your research paper will result in the grade of F for that component unless there is a valid excuse as determined by the relevant Law School committee.