Law of the Sea — Class 1

Introduction and course goals (see Text, pgs. xix-xx)

Law of the Sea — Class 2 (Introduction, cont' d: Overview of law of the sea)

I. Traditional zones of the oceans (1700s to mid-20th century) — Baselines
   — Internal waters (e.g., rivers and ports — inside baselines) — Narrow territorial sea
   — High seas (open access; "freedoms" for all users)

II. Pressures for change (from mid-20th century)
   — Jurisdictional claims by developing and newly independent states; reactions by maritime powers
   — Technological developments; increasingly intensive uses of the oceans
   — Environmental concerns and responses

III. Expanded zones (consolidated in 1982 Law of the Sea Convention)
   — Still have internal waters and high seas
   — Expanded territorial sea (now a maximum 12 miles from baselines)
   — Contiguous zone (maximum 24 miles from baselines; beyond terr. sea; customs, fiscal, sanitary, immigration)
   — Continental shelf (minimum 200 miles from baselines; beyond terr. sea; seabed and subsoil)
   — Exclusive economic zone (maximum 200 miles from baselines; beyond terr. sea; natural resource issues)
   — Area (seabed beyond limits of national jurisdiction)

IV. Major current issues
   — International environmental concerns
   — Fishing depletion; in general, management of cross-boundary resources — Jurisdiction over vessels
   — Roles for global and regional institutions
   — United States and the 1982 Law of the Sea Convention

V. "Big picture" questions
   — Where do international law of the sea rules come from?
     — Hague codification movement (1930s)
     — UNCLOS I; role of International Law Commission; four 1958 conventions
     — UNCLOS III and the 1982 Law of the Sea Convention
     — More in Class 3 and throughout the term
   — Where are law of the sea rules interpreted and applied?
   — What promotes compliance with law of the sea rules? In what ways do law of the sea rules affect behavior of various actors?
Law of the Sea – Class 3  (Main focus: sources of international law)

I. Overview of sources — Article 38, ICJ Statute; other sources (see Note 1, page 16)

II. Sources and North Sea Continental Shelf Cases (1969)
   A. Issue: Does an equidistance rule exist in international law for purposes of delimiting the continental shelf?
   B. What are possible sources for a rule governing maritime delimitation?
      1. Treaty (here Article 6 of the 1958 Convention on the Continental Shelf)
         — How are treaties made, and how do they become binding?
         — What are reservations?
         — How else, instead of by acceptance via ratification or accession, may a state become bound by a treaty?
      2. Fundamental norm (the "natural law" of the continental shelf)
      3. Customary international law (traditionally viewed as (a) consistent state practice plus (b) opinio juris, i.e., the belief that states act in a certain way because legally bound to do so)
         — Note the possible relationships between custom and treaty: First, did the 1958 Convention "embody" customary international law? Second, did it "crystallize" emerging customary international law? Third, did the 1958 Convention (and subsequent practice) contribute to subsequent, post-Convention development of custom? Was the Court's conclusion under this third heading as persuasive as its conclusions that the Convention did not "embody" or help to "crystallize" custom?
         — Does the EEZ "fit" within any of these categories? (Pg. 551, Note 1)
      4. Equity
         — What was the Court's authority to use equity? Was there any evidence of consistent state practice indicating that equity was required as a matter of customary international law? Was this an ex aequo et bono case? —
         — What was the content of the principles of equity that the Court used?

III. Libya/Malta Case (1985)
   A. Did Article 83 of the Law of the Sea Convention state a rule of customary international law because of the process involved at UNCLOS III — a process involving lengthy negotiations, near-universal participation, and decision-making by consensus, and resulting in a treaty that did not permit reservations?
   B. Was the Libya-Malta Court right to rely on prior judicial decisions? Are judicial decisions a source of international law?

IV. Process and the North Sea Continental Shelf Cases
   A. What is the International Court of Justice?
   B. After concluding there was no treaty, fundamental, or customary rule, why did the ICJ resort to equity?
   C. Why did the states accept and rely on the Court's judgment?
I. Freedom of the High Seas
   — What does the concept of "freedom of the high seas" mean?
   — What reasons did Grotius articulate to support the freedom of the high seas, and which of these reasons remain persuasive today, if any?
   — What are the modern freedoms of the high seas, and what are the legal limits on their exercise? See LOS Convention Articles 87 and 89, Text pg. 44.
   — How are the high seas defined today? Are they waters outside the 12-mile territorial sea, or waters outside the 200-mile EEZ? How has international law dealt with the definitional ambiguity with respect, e.g., to waters between 12 and 200 miles from a state's baselines?

II. The U.S.-Soviet Cable Dispute
    The U.S.-Soviet cable dispute (Text pg. 53) illustrates high seas freedoms. It also highlights another forum or way in which international law may be interpreted and applied (in addition to the ICJ, the forum in the North Sea Cases and the Libya Malta Case).
    — What evidence, pre-boarding, led the United States to believe the Soviet vessel was interfering with the freedom to lay submarine cables on the high seas?
    — What steps may the United States legally take with respect to the Soviet vessel once it is suspected of illegal action? (Authority to interfere with foreign vessels on the high seas is addressed in detail in Chapter 4.)
    — Note a couple of issues the Soviet Union did not raise in objection to the U.S. action. First, the Soviet Union did not claim that it was not bound by the 1884 treaty that Czarist Russia concluded. Why not? Second, there was no claim that the Soviet vessel had immunity on the grounds it was a government vessel. Why not?
    — Is the practice of asserting international law claims via diplomatic protests "hollow"? What purposes could such protests serve? How else can international legal obligations concerning the protection of cables be made effective?
    — What steps could be taken, in advance of cables being cut by fishing vessels or fishing nets being damaged by cables, to help assure that the freedom of fishing and the freedom to lay submarine cables are conducted with "due regard" for each other? (See Note 1, Text pg. 58)

Law of the Sea — Class 5 (Prof. Lynch on negotiating Incidents at Sea Ag’t)

Law of the Sea — Class 6 (Main focus: high seas: due regard; peaceful purposes)

I. Due (Reasonable) Regard Principle
   — See the last question on the Class 4 handout.
   — Are military warning areas (Text pg. 58) permissible as an "inter alia" freedom? Are they established in a way that reasonably accommodates the exercise of other high seas freedoms?
   — Does the example of Australia's protest against French nuclear testing (Text, pg. 62) illustrate conflicting high seas freedoms? Australia was concerned with the freedoms of fishing and navigation. What freedom was France concerned with?
— Would Australia lack standing to complain of an interference with the freedom of navigation because no Australian vessel was sailing in the area of the French tests? On what grounds might Australia assert standing? What are obligations erga omnes?

II. Peaceful Purposes Principle
— What uses of force on the high seas, if any, are consistent with the peaceful purposes principle?
— What mechanisms could help ensure respect for the peaceful purposes principle? Consider examples related to the Falkland/Malvinas War.

III. More on Sources of International Law
— Review Class 2 materials on international law sources.
— Are General Assembly resolutions a source of international law? What are the arguments against that proposition? In favor?

IV. More on International Law Process
— Review Class 2 and Class 3 materials on the fora and mechanisms used to interpret and apply international law — the International Court of Justice (North Sea and Libya/Malta cases), diplomatic exchanges (U.S.-Soviet cable dispute), and the use of national legal procedures to implement international legal obligations (e.g., Notes 4-5, Text pg. 52).
— Compare why the parties went to the ICJ and their attitudes towards the Court's involvement in (a) the Nuclear Tests Case and (b) the North Sea Continental Shelf Cases

Law of the Sea — Class 7 (Main focus: vessel nationality; genuine link)

I. Vessel nationality
— How does a vessel become the "national" of a state?
— Why is vessel nationality significant?
— What is the relationship between vessel nationality and the juridical nature of the high seas? Related questions: Why are stateless vessels, vessels with dual nationality, and piracy disfavored at international law?

II. Flags of Convenience (Open Registry)
— What are "flags of convenience"? (See www.flagsofconvenience.com)
— What are the advantages of flags of convenience to shipowners and to flag of convenience states? Why don't all vessel owners seek flag of convenience nationality?
— What are the disadvantages of flags of convenience? Why don't all vessel owners seek flag of convenience nationality?

III. Genuine Link
— Why was the genuine link requirement adopted?
— What are arguments against having this requirement?
— In what senses is the genuine link requirement "soft law"? Does this requirement have any efficacy?
— How else may abuses associated with some flag of convenience states be addressed, if not through the "genuine link" requirement?
Law of the Sea — Class 8
(Main focus: vessel nationality; flag state jurisdiction)

I. International Legal Process
— Review the fora and mechanisms in which international law of the sea questions may arise. What forum is involved in the Grand Prince Case?
— In Grand Prince, who brings the claim? What relief is sought? Should an individual shipowner whose vessel has been detained in violation of the prompt release provisions of the LOS Convention be able to seek relief directly in an international tribunal?
— Must an international court or tribunal look exclusively at international law in reaching a decision?

II. Registration, Documentation, and Vessel Nationality
— Why is vessel nationality important in the Grand Prince Case?
— How does registration link to nationality? Documentation? Compare and contrast the following concepts from Class 7 and Class 8: vessel nationality; registration; documentation; flag; genuine link.
— What are the pros and cons of the Grand Prince decision? Is the Grand Prince tribunal implicitly penalizing Belize for having, and the vessel owner for taking advantage of, "loose" practices concerning registration? Could the tribunal's ruling let a flag state too easily escape liability in another case, where responsibility for the conduct of a "national" vessel is at issue?

III. What is a Ship/Vessel?
— Is it appropriate to by to have one definition for all purposes?

IV. Flag State Jurisdiction
— What are the obligations of a flag state with respect to its vessels? Article 94 of the 1982 Law of the Sea Convention is more detailed than Articles 5 and 10 of the 1958 High Seas Convention, but Article 94 is still fairly general. How can flag states become legally bound to apply more detailed international standards to their vessels, such as those found in IMO vessel safety convention?
— Why are many of the detailed IMO conventions so widely accepted? What promotes compliance with them?
— What mechanism quickly allows amendments to detailed technical treaties addressing maritime safety to become widely accepted? (This question is part of a broader concern: How does international law change?)

Law of the Sea — Class 9
(Main focus: flag state jurisdiction and exceptions to it)

I. Overview of Exceptions to Flag State Jurisdiction
— The jurisdiction of the flag state on the high seas is not always exclusive, but the exceptions to flag state jurisdiction traditionally have been regarded as narrow ones. Article 110 (Text pg. 158) provides an overview of these exceptions. In what ways does this Article suggest that the exercise of jurisdiction by non-flag states is limited?
— Note, though, the potentially broad "where acts of interference derive from powers conferred by treaty" exception in Article 110.
II. The Lotus Case and "Jurisdiction"
--- Jurisdiction in international law means authority to determine and affect the relationships of private parties.
--- What is the difference between enforcement jurisdiction and legislative jurisdiction? Which category was involved in Lotus?
--- Traditional bases of legislative jurisdiction are (1) territoriality and (2) nationality. Why didn't those bases for jurisdiction apply on the facts of Lotus? What other bases of legislative jurisdiction are raised in the opinion?
--- Would Turkey have had enforcement jurisdiction on the high seas over the French vessel?
--- The Lotus Court took a strongly state-centric positivist view of international law, finding that the rules of international law binding on states must depend on state consent to be bound. What sources of international law other than strictly consensual sources have we seen in this course? Did the Court's insistence on consensual international law leave a gap that could (and should?) have been filled by some non-consensual rule?
--- The narrow result in Lotus — allowing the non-flag state (Turkey) to apply its laws to the conduct of a foreign (French) officer on board the vessel of the flag state (France) in a collision case on the high seas — has been undone by treaty. Why was the Court's result (which allowed Turkey to exercise jurisdiction) undesirable?

Law of the Sea — Class 10  (Main focus: hot pursuit as exception to flag state jurisdiction on the high seas; discussion of handout problem)

In addition to hot pursuit details, keep in mind some broader issues:
--- Why are hot pursuit rules as detailed as they are? What values cut against giving a broad scope to hot pursuit?
--- Note the Art. 111 linkage between the legality of coastal state control of specified activities in specified coastal zones and the legality of the pursuit — e.g., the requirement that the right of hot pursuit applies to violations in the EEZ "of the laws and regulations of the coastal State applicable in accordance with this Convention to" the EEZ. — In what forums are hot pursuit rules likely to be interpreted and applied? How might the forum affect interpretation of the legality of hot pursuit?
--- Should a treaty be interpreted in light of functional goals, even if that would ignore the meaning usually given to terms in the treaty? (Traditional treaty interpretation methodology looks for the intent of the treaty parties, as revealed primarily in the text and negotiating history of the treaty.) And how does international law embodied in a treaty change, absent a treaty amendment or a new substitute treaty? Consider these questions with respect to the meaning of the term "vessel" in Problem 1, and with respect to whether one need give a visual/auditory signal if the core reason for that requirement is that a foreign ship have the opportunity to heave to and allow boarding.
--- Is firing shots across the bow a reasonable way for the coastal state to cause a fleeing foreign flag vessel to stop? "Reasonableness" is highly contextual. Are there alternative, safer steps that could be taken? Is firing shots more reasonable if; say, the suspected violation is the illegal entry of suspected terrorists, as opposed to illegal coastal fishing?
--- Note the relevance of baselines to the analysis of hot pursuit issues.
I. Straight Baselines
   — Where are straight baselines permitted — bays, river mouths, and ...?
   — Assess the legality of Oman’s straight baselines under international law.
   — On the international level, why does the United States protest the straight baselines proclaimed by states such as Oman? On the domestic level, why does the U.S. federal government argue against straight baselines in cases involving states of the United States?
   — What global values are threatened by illegal straight baselines?
   — What mechanisms, other than U.S. diplomatic and operational protests, may be available to challenge illegal straight baselines?

II. Customary International Law and the Persistent Objector
   — May silence on the part of states give rise to an inference that the *opinio juris* element of customary international law has been satisfied?
   — What is a “persistent objector”? How did the ICJ use the concept in the *Anglo-Norwegian Fisheries Case*?

I. Concept of Internal Waters
   — Internal waters are located inside baselines.
   — Internal waters are subject to the coastal/port state's "sovereignty." Does international law ever limit the jurisdiction of a state in its own ports? (Question also applies to 1/22/08 readings)

II. Port Access
   — A port state may limit access for purposes of security. What else may a port state legally do to protect its ports against security threats from foreign flag vessels?
   — A port state may impose conditions on the entry of foreign flag vessels into its ports. But is there, in general, a right of access to ports under international law? Does such a right derive only from treaty or also from customary international law? Do any fundamental principles support a "right of port access" at international law? Do any fundamental principles support a "right of the port state to deny port access"?
   — If a state generally allows open access to its ports, may it discriminate against the vessels of one state, denying access only to the vessels of that state?

III. Peace of the Port Doctrine (example of port state jurisdiction over foreign ships in port)
   — In *Wildenhus’s Case* (p. 378; not assigned), the U.S. Supreme Court denied a habeas petition sought by the Belgian consul on behalf of a Belgian citizen, Wildenhus. U.S. authorities had arrested Wildenhus for killing another Belgian citizen below decks on board a Belgian vessel that was in port in New Jersey. The Belgian claim was based on an 1881 U.S.-Belgian treaty (p. 379) that gave consuls "exclusive charge of the internal order of
merchant vessels ... either at sea or in port." Under this treaty, "local authorities shall not interfere, except when the disorder that has arisen is of such a nature as to disturb tranquillity and public order ... or when a person of the [port state] or not belonging to the crew, shall be concerned."

** Note Chief Justice Waite's territorial sovereignty starting premise (p. 379, para. 1 of opinion): "It is part of the law of civilized nations ...

** Note carry-over para., pp. 379-380, emphasizing that "comity" generally would lead local governments not to interfere with the internal discipline of a foreign vessel in port, unless "crimes are committed on board of a character to disturb the peace and tranquility" of the port state.

** When will an act on board a foreign ship disrupt the "peace of the port"? See p. 381, lines 13-17: the test is not publicity or noise; rather, the concern is whether the act is "of a character to awaken public interest when it becomes known."

__Is the peace of the port doctrine established as a part of customary international law? See Note 1, p. 382.

__A process point: In *Wildenhus's Case* the Belgian consul based his claim directly on a U.S. treaty. The case is an example of a national court applying a "self-executing" treaty.

__Consider handout Problem 3.

Law of the Sea - Class 14 (Main focus: conflict of laws/private international law; internal waters)

I. Overview of Choice of Law Approaches: What are possible approaches to choosing among potentially applicable laws?
— Use law of the jurisdiction where there is one critical link to the parties or the events. Traditionally, for many types of cases, the link was territoriality.
— Use forum law, especially if the forum has an "interest" in having its law apply. A "forum interest" approach is consistent with reliance on "congressional intent."
— Apply some superior law — federal law with respect to conflicts between laws of U.S. states; international law with respect to conflicts between laws of different countries.
__Apply a multi-factor balancing approach — e.g., the approach used in *Rhoditis/Jones Act* cases. Should a court, in applying a multi-factor approach, "count contacts" or consider policies? Should policies necessarily be restricted to those expressed in conflicting national laws? E.g., should consideration be given, in an international conflicts case, to an "international" policy of promoting international commerce?
— Use some process approach — e.g., *forum non conveniens* dismissals.
__Rely on parties' choice-of-law contractual agreements.

II. Recap *Wildenhus 's Case*/Peace of the Port Doctrine: Territoriality; but (p. 379 end) "all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port," are left (by "comity," in U.S. view) to the law of the flag state.

III. *Spector v. Norwegian Cruise Line Ltd.* (U.S. Supreme Court, 2005)
__Issue: Does Title III ADA apply to a cruise ship, owned by a Bermuda corp., flagged in the Bahamas, with principal place of business in Fla., carrying mostly U.S. passengers?
— Limited holding: Title III applies to cruise ships (a type of public accommodation); but Title III does not apply to "internal affairs" of foreign flag ships since Congress did not so provide by "clear statement;" remand to consider internal affairs issue.
What analysis under the approach used in Wildenhus's Case?

What analysis under variations of a "congressional intent" approach?

— Kennedy's "internal affairs" test: Title III may often be construed to avoid applying to ship's internal affairs, but some structural changes to foreign flag vessels could violate the text of Title III yet be legal per internal affairs test.

— Ginsburg's version: apply "internal affairs" test only if there is an actual conflict between Title III and requirements of international law (e.g., SOLAS).

— Scalia's version: since there is no clear statement by Congress applying Title III to internal affairs of foreign flag vessels, and since internal affairs are implicated, none of Title III applies.

— Congress probably just did not consider at all whether Title III applies to foreign flag vessels; instead of applying a "clear statement/internal affairs" presumption about intent, U.S. courts should be free either to apply Title III or not apply it to foreign flag vessels, in order to effectuate reasonable policies.

What analysis under the Rhoditis/Jones Act multifactor test? Which of the various Rhoditis factors do you suspect later lower courts have found most significant?

**Law of the Sea - Class 15**  
(Main focus: territorial sea)

I. Basics. Note: the 12-mile maximum permissible breadth of the territorial sea (TS); the fact that TS must be proclaimed by a coastal state; coastal state "sovereignty" over TS, air space above it, and seabed below it; other states have a right of innocent passage through the TS.

II. Innocent Passage. Note especially:

— The importance of sea lanes, and the limits on coastal state discretion with respect to them. See LOS Convention Article 22.

— Note the effort in the to describe innocent passage "objectively," in terms of proscribed "activities." See Article 19 of the LOS Convention and Article 3 of the 1989 U.S.- U.S.S.R. Uniform Interpretation. Is Article 19 fully objective?

— Support for the view that military vessels in general have a right of innocent passage can be found in the Article 19 list of the types of activities that can render passage non-innocent, and in the fact that Article 19 appears in a Part of the LOS Convention stated to be applicable to "all ships." See also Article 20. But may a coastal state legally require advance notice of innocent passage of a military vessel?

— Note the possibility that the coastal state could suspend innocent passage in the TS, "temporarily" and "in specified areas," if "essential" for security purposes. See LOS Convention Article 25(3).

— Note the different remedies available to a coastal state vis-a-vis a military vessel as opposed to a merchant vessel when a violation occurs.

— What coastal state regulations relating to innocent passage are permissible, and when will they impermissibly "hamper" innocent passage? See LOS Convention Articles 21 and 24. What coastal state enforcement jurisdiction is permissible, with respect to foreign flag vessels in the TS and those on board? See LOS Convention Articles 27 and 28. In general, how does the Convention balance the right of innocent passage and coastal state rights to exercise legislative and enforcement jurisdiction?
III. Process. In what forums will limits on coastal state jurisdiction be tested?  
— International court cases (e.g., *Corfu Channel*) or arbitrations (e.g., *David*) will be rare. What other international mechanisms are available to challenge assertions of coastal state jurisdiction?  
— If most challenges to the exercise of coastal state jurisdiction over foreign merchant vessels and those on board will be heard in municipal courts, does the "wiggle room" in Articles 24, 25, 27, and 28 of the LOS Convention suggest that the exercise of coastal state jurisdiction will likely be upheld?

**Law of the Sea - Class 16**  
(Main focus: straits)

I. The Geographical, Strategic, and Legal/Treaty-Making Context Concerning Straits  
__Note the legal background heading into UNCLOS III, notably the *Corfu Channel Case* and Article 16 of the Territorial Sea Convention (Note 2, pg. 455), which referred to innocent passage.  
__What change in the regime of the territorial sea made the issue of passage through straits so critically important for the major maritime powers?  
— How did the treaty-making process at UNCLOS III differ from the treaty-making process at UNCLOS I, which led to the 1958 Conventions? What are the strengths and weaknesses of each process?  
— With respect to straits issues, what were the attitudes of states with different political and geographic characteristics at UNCLOS III? Were each of the states surveyed in the readings satisfied with the outcome of the negotiations concerning straits? Why would a dissatisfied state accept the Law of the Sea Convention?

II. Substantive Rules Concerning Passage Through Straits  
__The regime of transit passage through straits, as set out in the Law of the Sea Convention, did not guarantee the high seas freedom of navigation and overflight through straits. However, the transit passage regime certainly differed from the regime of innocent passage. How, precisely?  
— The regime of transit passage applies only to certain straits. Which ones? What other types of straits are there, and what international law regimes apply to passage through them?

**Law of the Sea - Class 17**  
(Main focus: continental shelf)

I. Evolution of the Legal Continental Shelf  
__Much of the law of the continental shelf has now been developed in treaties. But more the occasional significance of unilateral acts — here, a U.S. unilateral assertion of jurisdiction in response to changes in technology and the perceived imperative of strategic oil reserves — in shaping this area of international law. Was this act illegal at international law? After the Truman Proclamation, did the U.S. have a principled basis for objecting to other states’ assertions of coastal state authority over coastal zones?
— How could a state that was not consulted about unilateral proclamations on the continental shelf, and that was concerned about the expansion of the continental shelf, have challenged or tried to influence legal developments in this area of law? How did treaty law concerning the continental shelf develop?

II. Substantive Rules Governing the Continental Shelf
— How far did the continental shelf extend, per the International Law Commission and the 1958 Continental Shelf Convention? Was this limit sensible?
— What rights does a coastal state have with respect to its continental shelf? What rights do other states or international actors have? May a coastal state legally preclude me from building an island on its continental shelf? Why or why not?

III. U.S. Law and Process
— What is the relationship between, or relative priority accorded, self-executing treaties and federal statutes in U.S. court? See Note 1, page 518.

Law of the Sea - Class 18 (Main focus: continental shelf, cont’d; introduction to EEZ)

I. The Continental Shelf Under the 1982 Law of the Sea Convention
— What are the rights and duties of coastal states and other states concerning the continental shelf under the 1982 Convention? Compare the 1958 Convention.
— What are the outer limits of the continental shelf under the 1982 Law of the Sea Convention? What explains the formulation in Article 76 of the Convention?
— Is the United States, a nonparty to the 1982 Convention, entitled to any legal continental shelf beyond 200 miles from baselines?

II. The Commission on the Limits of the Continental Shelf
— What is the CLCS, and what are its roles? Are the CLCS’s determinations exclusively technical or scientific? To get at this last question, consider, for example, whether islands sitting on ridges are entitled to a continental shelf extending beyond 200 nautical miles from baselines.
— How can effective access to the CLCS be assured? Is such access necessary, if important legal rights are to depend on CLCS recommendations?

III. The Exclusive Economic Zone
— Development of the EEZ related in large part to coastal state efforts to secure more control over coastal state fisheries.
— Since Article 56(1) of the LOS Convention provides for coastal state rights with respect to nonliving as well as living resources, are the Convention's provisions concerning the continental shelf superfluous?
— In the *Saiga Case*, why did Guinea not have jurisdiction over the activities of the foreign flag MN *Saiga* in Guinea's customs radius? Why were the *Saiga*'s activities not the sort of "economic" activities subject to coastal state sovereign rights or jurisdiction in the EEZ?
— In general, what rights does the coastal state have in its EEZ? What rights do other states have? Is it appropriate to characterize the EEZ either as high seas or as territorial sea?

**Law of the Sea Classes 19 and 20**  (Main focus: the Area)

I. Overview: To what geographical region does the deep seabed mining regime apply? What resources are subject to international regulation in the "Area" via Part XI of the LOS Convention as modified by the 1994 Part XI Agreement?

II. The Early Legal Status of Deep Seabed Mining
— What were the early positions of the U.S. and the ILC on the law of deep seabed mining?
— What is the difference between the Moratorium Resolution and Principles Resolution? Why was the latter more widely supported? What were the legal implications of these UN General Assembly resolutions?

III. Part XI of the LOS Convention
__Note the political context in the 1970s, when Part XI was being negotiated (in connection, of course, with Convention provisions on many other different topics)__
__The core notion underlying Part XI is the common heritage (CH) principle, rather than freedom of the seas. What is the CH principle? Does it have any concrete meaning?__
__What is the "parallel system" in the Part XI regime?__
__Was it wise to specify various regulations in Part XI in such great detail? What international procedural alternatives to such detailed regulations were possible?__
__How does Article 82 of the LOS Convention — an article located in Part VI on the continental shelf— relate to Part XI and the Area? What exactly does Article 82 mean?__

IV. The Debate Over the U.S. (Reagan Administration) Opposition to Part XI

V. Three Alternative Tracks Concerning Modifications in Part XI
__(1) Unilateral national licensing legislation (e.g., the DSHMRA) and reciprocating states treaties. Did the DSHMRA completely repudiate the Convention approach?__
__(2) Prepcom activities (resulting in the resolution of some mining claim overlaps, and some minor adjustments to the LOS Convention's requirements).__
__(3) The Secretary-General's consultations and the 1994 Agreement. What prompted the Agreement, which led to widespread acceptance of the Convention? How did the Agreement modify Part XI? How could the 1994 Agreement become universally accepted? Is the Agreement a new way to make or change international law?__

VI. The Current Status of Deep Seabed Mining and the International Seabed Authority
Law of the Sea - Class 21 (Main Focus: Dispute Settlement)

I. The Efficacy of International Law
__Note the great significance of societal attitudes, in various societies and groups, in determining the efficacy of law and legal institutions. __Does the international law of the sea ever involve a concrete process leading to a legally binding, enforceable determination of legal rights by a third-party decision maker? In what ways could international law have effects if such a process is not available? Why should international law have any effects absent such a process?

II. Third-Party Dispute Settlement of Law of the Sea Disputes
__In what different third-party forums may the international law of the sea be interpreted and applied? __Courts and tribunals determine the legal rights of the parties before it in particular disputes. What additional functions may courts and tribunals perform? __When an international court or tribunal hears a contentious interstate case, what is the essential prerequisite for the jurisdiction of the court or tribunal?

III. The Law of the Sea Convention and Third-Party Dispute Settlement
__The LOS Convention provides for obligatory ("compulsory") recourse to third-party dispute settlement by states, and also provides much flexibility in states' choice of forums. If two states do not agree on the same forum, how can third-party dispute settlement be compulsory? __Why did states negotiating the LOS Convention seek to subject so many disputes to compulsory third-party dispute settlement?__Note the issues that may be exempt from suit before international courts or arbitral tribunals. Are disputes concerning such issues necessarily left to interstate negotiation? __In what types of cases does the ITLOS have jurisdiction? What is the basis for its jurisdiction in each type of case? __What is the issue in the Southern Bluefin Tuna Case? Does the arbitral tribunal's majority or dissent have the better of the argument concerning whether Article 16 of the CCSBT excludes the compulsory dispute settlement provisions of Part XV of the LOS Convention? If you agree with the reasoning of the majority in this case, should the majority's approach be extended to issue areas other than high seas fisheries? __Should individuals/businesses be authorized to be parties in any ITLOS cases? Could the ITLOS currently hear cases involving private parties, or would the LOS Convention or the Tribunal's Statute have to be amended in order for the ITLOS to be able to hear such cases?
Law of the Sea - Class 22

For the portion of class that relates to U.S. policy and the law of the sea, please look at:


Law of the Sea - Class 23

Please prepare:


Law of the Sea - Class 24

For the presentations on salvage and 'underwater cultural heritage, please prepare:

1. Text pp.515-519, 635-648 (through Article 2), 654 (Note 1).

Law of the Sea - Class 25

For the presentations, please prepare:

1. Here is an article regarding the sinking of the Ehime Maru: http://archives.cnn.com/2001/US/02/09/sub.accident.02/
