

## International Law

Academic year 2021-2022

## Law of the Sea: Current Challenges

### DI134 - Autumn - 6 ECTS

Friday 10h15 - 12h00

## Course Description

This course addresses some of the most pressing issues facing the ocean (pollution from land based sources and shipping, acidification from increased CO2 and warming of the seas, illegal, unreported, unregulated and unsustainable fishing, loss of marine biodiversity) and those making a living from the ocean (the abusive treatment of seafarers, piracy). The context for these issues is provided by materials from a diverse range of sources (marine biology, oceanography, investigative journalism, economics, history). This task for this course is to assess whether these pressing issues are adequately addressed by the law. This will involve not only an assessment of the bespoke international treaties and regulations dealing with these various challenges but also an inquiry into the fundamental assumptions of the law of the sea (the ideas underlying the exercise of national jurisdiction over ocean spaces and shipping, the global commons, freedom on the high seas).

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## Syllabus

### INTRODUCTION TO THE COURSE

The course starts with a foundational inquiry into the evolution and history of the law of the sea before moving to a comprehensive assessment of prescriptive and enforcement jurisdiction over shipping. With this background, the course then addresses some of the most pressing issues facing the ocean (pollution from shipping, illegal, unreported, unregulated and unsustainable fishing, loss of marine biodiversity) and those seeking a passage across the ocean (refugees at sea, modern piracy). The context for these issues is provided by materials from a diverse range of sources (marine biology, oceanography, investigative journalism, economics, history). The task for this course is to assess whether these pressing issues are

adequately addressed by the law. This will involve not only an assessment of the bespoke international treaties and regulations dealing with these various challenges but also an inquiry into the fundamental assumptions of the law of the sea (the ideas underlying the exercise of national jurisdiction over ocean spaces and shipping, the global commons, freedom on the high seas).

### **COURSE MATERIALS**

Students should not be daunted by the length and breadth of the materials listed on the syllabus. Students will only be expected to read, ahead of each lecture, a selection of the writing listed as “essential reading”, as well as the key provisions identified from UNCLOS. The syllabus provides a list of the key conventions and other instruments as well as the leading cases to avoid providing full citations for them during the lectures.

Students are encouraged to keep up with developments in maritime affairs. The “Seascape” series in The Guardian newspaper is particularly valuable.

### **ASSESSMENT**

Students will have a choice between a supervised research paper or a take-home exam. Satisfactory attendance and participation at the lectures will also be required. Students undertaking the research paper will be provided an opportunity to give a brief presentation of their research during additional class sessions.

The research paper may relate to any topic that appears in the syllabus or to any other topic related to the law of the sea subject to prior authorization. The paper should be of approximately 8000-10000 words, written in Times New Roman, size 12, 1.5 spacing. Footnotes should be written in Times New Roman, size 10, single spacing. Any citation style is permitted so long as it is used consistently throughout the text.

The take-home exam will consist of questions on topics addressed during the course and students will be required to answer two of them. The answer to each question should not exceed 1200 words. The same formal requirements as per the research paper will apply. Students will have 48 hours to submit their exams.

### **LAW OF THE SEA CLINIC**

A law of the sea clinic is being organized for the spring semester and those students who have successfully completed this course will be given priority. Although the list of beneficiaries for the law of the sea clinic is still being finalized, it is certain that there will feature organisations involved in search and rescue operations in the Mediterranean. For this reason a new topic, “SAR Operations and Refugees” has been introduced to the syllabus this year.

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## **A THE EVOLUTION OF THE LAW OF THE SEA**

### *(i) Essential reading*

1. Y Tanaka, Ch 1 “The Law of the Sea in Perspective” in *The International Law of the Sea* (CUP: 2019, 3<sup>rd</sup> edn), especially 26-47.
2. R Churchill & V Lowe, Ch 1 “Introduction” in *The Law of the Sea* (3<sup>rd</sup> edn, 1999).

### *(ii) Supplemental reading*

3. D P O’Connell, Ch 2 “The General Principles of the Law of the Sea” in *The International Law of the Sea* (Vol. I, 1988), especially 29-49.

## **B DIFFERENT CONCEPTIONS OF THE OCEAN**

### *(i) Essential reading*

4. P Steinberg, Ch 1 “Territorial political economy and the construction of ocean-space” in P Steinberg, *The Social Construction of the Ocean* (CUP: 2001) 8-38.
5. H Grotius, Ch V “Neither the Indian Ocean nor the right of navigation thereon belongs to the Portuguese by title of occupation” in *Mare Liberum*; W Welwood, “Of the Community and Propriety of the Seas”; and H Grotius, “Defence of Chapter V of Mare Liberum”; in *The Free Sea* (Translated by R Haklyut, Liberty Fund: 2004).
6. R Anand, Ch 4 “Mare Liberum vs. Mare Clausum” in *Origin and Development of the Law of the Sea* (Martinus Nijhoff: 1982) 72-115, especially 77-107.

### *(ii) Supplemental reading*

7. C Alexandrowicz, “Freitas versus Grotius” (1959) 35 *British Yearbook of International Law* 162, especially 162-163, 170-175.
8. D P O’Connell, Ch 1 “The History of the Law of the Sea” in *The International Law of the Sea* (Vol. I, 1988) 1.

## **C UNCLOS AND THE COORDINATION OF STATE CLAIMS TO THE OCEAN**

### *(i) Essential reading*

9. E Mann Borgese, Ch 4 “Ocean Perspectives: Legal” in *The Oceanic Circle: Governing the Seas as a Global Resource* (UN University Press, 1998) 109, especially 109-124.
10. A Pardo, “Convention on the Law of the Sea: A Preliminary Appraisal” (1983) 20 *San Diego Law Review* 489-503.
11. P Allot, “Power Sharing in the Law of the Sea” (1983) 77 *AJIL* 1, especially 1-17, 24-27.

### *(ii) Supplementary reading*

12. M McDougal & W Burke, “Introduction to the Reissue” in *The Public Order of the Oceans: A Contemporary International Law of the Sea* (New Haven Press: 1985).
13. P Allot, “Mare Nostrum: A New International Law of the Sea” (1992) 86 *AJIL* 764.
14. R Churchill, Ch 2 “The 1982 United Nations Convention on the Law of the Sea” in D Rothwell et al (eds), *The Oxford Handbook of the Law of the Sea* (OUP: 2015) 2.
15. *The South China Sea Arbitration*, PCA Case No. 2013-19, Award of 12 July 2016, paras. 235-262; and Chinese Society of International Law, “The South China Sea Arbitration Awards: A Critical Study”, *Chinese Journal of International Law*, vol. 17 (2018), paras. 440-498.

## **D JURISDICTION OVER SHIPPING AND THE PROBLEM OF FLAGS OF CONVENIENCE**

### **D1 Background**

16. W Langewiesche, Ch 1 “An Ocean World” in *The Outlaw Sea* (Granta: 2004) 3-34.

### **D2 Nationality of ships and the requirement of a “genuine link”**

#### *(i) Essential reading*

17. D P O’Connell, Ch 20 “Jurisdiction over Shipping” in *The International Law of the Sea* (Vol. II, 1988) 747-762.

18. R Churchill, *The Meaning of the 'Genuine Link' Requirement in Relation to the Nationality of Ships: A Study Prepared for the International Transport Workers' Federation* (2000).

(ii) **Supplementary reading**

19. M McDougal et al, "The Maintenance of Public Order at Sea and the Nationality of Ships" (1960) 54 *AJIL* 28-43.

20. N Ready, Ch 2 "Nationality, Registration, and Ownership of Ships" in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume II: Shipping Law* (OUP: 2014) 19.

(iii) **Conventions**

21. UNCLOS, Arts 90, 91, 92, 93.

22. UN Convention on Conditions for Registration of Ships (not in force).

(iv) **Cases**

23. *Chartered Mercantile Bank of India v Netherland Steam Navigation Co Ltd* (1883) 10 QBD 521.

24. *The Muscat Dhows*, UN Rep Vol XI 83 (1905); Westlake (1907) 23 *LQR* 83.

25. *Naim Mohan v AG for Palestine* [1948] AC 351.

26. *Lauritzen v Larsen* 345 US 571 (1952).

27. *The Grand Prince Case (Belize v France)*, Prompt Release, ITLOS Reports 2001.

28. *The Tominaru Case (Japan v Russian Federation)*, Prompt Release, ITLOS Reports 2007.

29. *The Magda Maria Case* (1989) 20 *NYIL* 351.

30. *Advisory Opinion on Constitution of Maritime Safety Committee of the IMCO*, ICJ Reports 1960.

31. *R v Bolden and Dean (The 'Battlestar')* (1998) 2 Cr App R 171.

32. *M/V 'Saiga' (No 2)*, ITLOS Reports 1999.

33. Case C-221/89 *R v The Secretary of State for Transport, ex p Factortame Ltd and ors* [1991] ECR I-3905.

34. Case C-246/89 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1991] ECR I-4585.

35. *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, ITLOS Reports 2015.

36. *Elliniko Dimosio v Stroumpoulis*, ECJ, 2016.

### **D3 General introduction to jurisdiction over shipping**

#### *(i) Essential reading*

37. D P O'Connell, Ch 19 "Theory of Maritime Jurisdiction" in *The International Law of the Sea* (Vol. II, 1988) 733.

38. I Shearer, "Problems of jurisdiction and law enforcement against delinquent vessels" (1986) 35 *ICLQ* 320.

39. R Geib & C Tams, Ch 2 "Non-Flag States as Guardians of the Maritime Order: Creeping Jurisdiction of a Different Kind?" in H Ringbom (ed) *Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea* (2015) 19-49.

#### *(ii) Cases*

40. *The Case of the S.S. Lotus*, PCIJ, 1928 Series A/10.

41. *Chung Chi Cheung v R* [1939] AC 160.

### **D4 Jurisdiction over shipping on the high seas**

#### *(i) Essential reading*

42. D P O'Connell, Ch 21 "Jurisdiction on the High Seas" in *The International Law of the Sea* (Vol. II, 1988) 792-805.

43. D P O'Connell, Ch 24 "Criminal Jurisdiction" in *The International Law of the Sea* (Vol. II, 1988) 919-920, 935.

#### *(ii) Conventions*

44. UNCLOS, Arts 87-111.

45. Convention on the High Seas (1958).

46. Convention on Fishing and Conservation of the Living Resources of the High Seas (1958).

(iii) **Cases**

47. *Costa Rica Packet*, Moore, IA, 4948 (1897).
48. *Re Pulos* (1976) 77 ILR 587.
49. *The M/V 'Norstar' Case* (Panama v Italy), ITLOS, Judgment, 10 April 2019.

**D5 Jurisdiction over shipping in the EEZ**

(i) **Convention**

50. UNCLOS, Arts 55-59, 73.

(ii) **Cases**

51. *MV 'Saiga' (No. 2)*, ITLOS, Judgment, 1 July 1999; Judge Anderson (Separate Opinion).
52. *Volga* (Russian Federation v Australia) (2003) 42 ILM 159.
53. *M/V 'Virginia G'* (Panama v Guinea-Bissau), ITLOS Reports 2014.
54. *'Fast Independence' and 'Trans Artie' Cases*, Cour de cassation (France), 07-87362, 07-87931, 5 May 2009, (2009) Bull Crim No 85.
55. *Erika Case*, Cour de cassation (France), No 3439, 25 September 2012.

**D6 Jurisdiction over shipping in the territorial sea and contiguous zone and right of innocent passage**

(i) **Essential reading**

56. D P O'Connell, Ch 7 "Innocent Passage" in *The International Law of the Sea* (Vol. I, 1988) 259-275.
57. D P O'Connell, Ch 24 "Criminal Jurisdiction" in *The International Law of the Sea* (Vol. II, 1988) 936-937.

(ii) **Conventions**

58. UNCLOS, Arts 2, 17-33.
59. Convention on the Territorial Sea and the Contiguous Zone (1958).



(iii) **Cases**

60. *R v Keyn* (1876) 2 Ex D 63.
61. *Pianka v R* [1979] AC 107.
62. *Cunard Steamship Co v Mellon*, 262 US 100 (1923).
63. *US v Flores*, 289 US 137 (1932).

**D7 Jurisdiction over shipping in respect of access to ports**

(i) **Essential reading**

64. D P O'Connell, Ch 22 "Jurisdiction over Navigation and Port Access" in *The International Law of the Sea* (Vol. II, 1988) 848-858.

(ii) **Convention and other instruments**

65. Convention and Statute on the International Regime of Maritime Ports (1923).
66. Paris Memorandum of Understanding on Port State Control (1982).
67. Council Directive 95/21/EC of 19 June 1995 on Port State Control of Shipping.

(iii) **Cases**

68. *Hallett & Browne v Jenks* (1805) 3 Cranch 210.
69. *The May v R* [1931] 3 DLR 15.
70. *The Enterprise*, Moore, IA, Vol 4, 4363.

**D8 Exercise of enforcement powers generally against shipping**

(i) **Essential reading**

71. D P O'Connell, Ch 24 "Criminal Jurisdiction" in *The International Law of the Sea* (Vol. II, 1988) 953-966.
72. D P O'Connell, Ch 28 "Enforcement of the Law" in *The International Law of the Sea* (Vol. II, 1988) 1062-1075.

73. D P O'Connell, Ch 28 "Enforcement of the Law" in *The International Law of the Sea* (Vol. II, 1988) 1075-1093 (concerning hot pursuit).
- (ii) **Supplemental reading**
74. D Guilfoyle, Ch 10 "Interdiction: modalities and international standards" in *Shipping Interdiction and the Law of the Sea* (CUP: 2009) 263-294.
- (iii) **Convention**
75. UNCLOS, Art 225.
- (iv) **Cases**
76. *The King v The 'North'* (1905) 11 Ex Rep (Canada) 141; (1908) 2 AJIL 688-707.
77. *Tenya Maru* (1910) 4 Alaska 129.
78. *I'm Alone* (Canada v United States) (1935) 3 RIAA 1609.
79. *The Virginius*, Moore, Dig., Vol. 2, 895, 980.
80. *The Red Crusader* (1962) 35 ILR 485.
81. *R v Sunila and Soleyman* (1986) 28 DLR (4<sup>th</sup>) 450.
82. *R v Mills and Others* (Unreported Judgement of the Croydon Crown Court, Devonshire J) (1999); W Gilmore, (1995) 44 *ICLQ* 949.
83. *MV 'Saiga' Case (No. 2)* (1999) 38 ILM 1323.
84. *Artic Sunrise Arbitration* (The Netherlands v Russia), PCA, Award on the Merits, 14 August 2015.
85. *Duzgit Integrity Arbitration* (Malta v Republic of São Tomé and Príncipe), PCA, Award, 5 September 2016.
86. *The 'Enrica Lexie' Incident* (Italy v India) PCA, Award, 2 July 2020.

## **E MARINE COLLISIONS**

### **E1 General**

#### *(i) Background*

87. *The Andrea Doria* incident.

#### *(ii) Essential reading*

88. F Wiswall, Ch 17 'Law of Marine Collisions and other Casualties to Hull and Machinery' in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume II: Shipping Law* (OUP: 2016).

89. D P O'Connell, Ch 23 "Civil Jurisdiction" in *The International Law of the Sea* (Vol. II, 1988) 875-891.

#### *(iii) Cases*

90. *The Case of the S.S. Lotus*, PCIJ, 1928 Series A/10.

91. *The Waziristan* [1953] 1 WLR 1146.

92. *Armement R.C. Lenten et autres v Vigouroux et consorts*, Bull. civ., 1966, III, 118.

93. *The 'Enrica Lexie' Incident* (Italy v India) PCA, Award, 2 July 2020.

### **E2 Flag state's duty to investigate**

#### *(i) Conventions and other instruments*

94. UNCLOS, Art 97.

95. International Convention for the Safety of Life at Sea, Annex, Ch 1, Reg 21, Ch XI-1, Reg 6 (SOLAS Convention).

96. International Convention on Load Lines, Art 23.

97. Code of the International Standards and Recommended Practices for a Safety Investigation into a Maritime Casualty or Marine Incident (2010).

### **E3 Civil jurisdiction**

#### *(i) Conventions and other instruments*

98. International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision (1952).

99. Draft International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction, Choice of Law, and Recognition and Enforcement of Judgments in Matters of Collision (1977) (not in force).

100. International Convention for the Unification of Certain Rules of Law Relating to Collisions Between Vessels (1910).

(ii) **Cases**

101. *The Pennsylvania* 86 US (19 Wall) 125 (1873).

**E4 Criminal jurisdiction**

(i) **Conventions**

102. UNCLOS, Art 97.

103. International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation (1952).

104. *The 'Enrica Lexie' Incident* (Italy v India) PCA, Award, 2 July 2020, pp. 152-176, 181-186.

**E5 The Rules of the Road**

(i) **Essential reading**

105. D P O'Connell, Ch 20 "Jurisdiction over Shipping" in *The International Law of the Sea* (Vol. II, 1988) 770-775.

(ii) **Conventions**

106. UNCLOS, Art 98(1)(c).

107. Convention on the International Regulations for Preventing Collisions at Sea (1972) (COLREGS).

108. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1995 & 2010), Ch VII, Section A-VIII/2, Part 3-1, paras 13-15 (STCW).

(iii) **Cases**

109. *The Lady Gwendolyn* [1965] 1 Lloyd's Rep 335.

110. *The Queen Mary* [1949] 82 Lloyd's Rep 303.

111. *Evergreen Marine (UK) Ltd v Nautical Challenge Ltd* [2021] UKSC 6.

112. *The Mount Apo* [2019] SGHC 57.

## **F ENFORCEMENT OF MARITIME CLAIMS**

### ***(i) Essential Reading***

113. F Berlingieri, Ch 21 “Enforcement of Maritime Claims” in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume II: Shipping Law* (OUP: 2016).

114. D P O’Connell, Ch 23 “Civil Jurisdiction” in *The International Law of the Sea* (Vol. II, 1988) 859-875.

### ***(ii) Conventions***

115. Arrest Convention (1952).

116. Arrest Convention (1999).

### ***(iii) Cases***

117. *Compania de Navegacion Nacional (Panama) v United States (The David)* UN Rep Vol VI 382.

## **G MARINE POLLUTION FROM SHIPPING**

### ***(i) Background***

118. W Langewiesche, Ch 3 “To the Ramparts” in *The Outlaw Sea* (Granta: 2004) 85-99.

### ***(ii) Essential reading***

119. J Harrison, Ch 5 “Dumping of Waste at Sea” in *Saving the Oceans through Law: The International Legal Framework for the Protection of the Marine Environment* (OUP: 2017) 92.

120. J Harrison, Ch 6 “Marine Environmental Threats from Shipping” in *Saving the Oceans through Law: The International Legal Framework for the Protection of the Marine Environment* (OUP: 2017) 114.

121. M Jacobson, Ch 9 “Liability and Compensation for Ship-Source Pollution” in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume III: Marine Environmental Law and Marine Security Law* (OUP: 2016) 285.

(iii) **Supplemental reading**

122. M Fitzmaurice, Ch 2 “The International Convention for the Prevention of Pollution from Ships (MARPOL)” in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume III: Marine Environmental Law and Marine Security Law* (OUP: 2016) 33.
123. H Esmaceli and B Grigg, Ch 3 “Pollution from Dumping” in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume III: Marine Environmental Law and Marine Security Law* (OUP: 2016) 78.
124. A Blanco-Bazán, Ch 8 “Intervention on the High Seas in Cases of Pollution Casualties” in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume III: Marine Environmental Law and Marine Security Law* (OUP: 2016) 261.

(iv) **Conventions**

125. UNCLOS, Art 1 “pollution of the marine environment” and “dumping”.
126. UNCLOS, Arts 192-237.
127. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969)
  - 127.1. Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (1973)
128. Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (1972)
  - 128.1. Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1996)
129. International Convention for the Prevention of Pollution from Ships (1973) (MARPOL)
  - 129.1. Protocol of 1978
  - 129.2. Guidelines for the Designation of Special Areas under MARPOL (2001)
130. Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on Ship-Source Pollution and on the Introduction of Penalties for Infringements (2005)
131. Ballast Water Management Convention (2017)

(v) **Cases**

132. *The Amoco Cadiz*, 1979 AMC 245 (ND III. 1979) (US District Court in Admiralty).
133. *Bosphorus Queen Shipping Ltd Corp v Rajavartiolaitos*, CJEU, Case C-15-17, Judgment, 11 July 2018.

## **H OVERFISHING AND ILLEGAL FISHING**

### **H1 General**

(i) **Background**

134. C Roberts, Ch 3 “Fewer Fish in the Sea”, *The Ocean of Life* (Penguin: 2012) 42-57.
135. C Roberts, Ch 15 “The Downfall of King Cod”, *The Unnatural History of the Sea* (Gaia Thinking, 2007) 207-222.
136. J Hamilton-Paterson, “Fishing and Loss”, *Seven Tenths: The Sea and its Thresholds* (Faber & Faber, 2007) 208-247.
137. I Urbina, Ch 1 “Storming the *Thunder*” in I Urbina, *The Outlaw Oceans* (A Knopf: 2019) 3-46.

(ii) **Essential reading**

138. J Harrison, Ch 7 “Fishing and the Conservation of Marine Living Resources” in *Saving the Oceans through Law: The International Legal Framework for the Protection of the Marine Environment* (OUP: 2017) 166.
139. D Guilfoyle, Ch 6 “Fisheries management” in *Shipping Interdiction and the Law of the Sea* (CUP: 2009).

(iii) **Supplemental reading**

140. S Borg, Ch 12 “The Conservation of Marine Living Resources Under International Law: The 1982 United Nations Convention on the Law of the Sea and Beyond” in D Attard (ed) *The IMLI Manual on International Maritime Law. Volume I: The Law of the Sea* (OUP: 2014) 342.

(iv) **Conventions and instruments**

141. UNCLOS, Arts 61-72 (EEZ), Arts 116-120 (High Seas).
142. International Convention for the Conservation of Atlantic Tunas (1966).
143. Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (1979).

144. UN General Assembly Resolution 46/215 (1991): Large-Scale Pelagic Drift-Net Fishing and Its Impact on the Living Marine Resources of the World's Oceans and Seas (1991).
145. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993).
146. Agreement for the Implementation of the Provisions of [UNCLOS] Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995).
147. Fisheries Committee of FAO, Code of Conduct for Responsible Fisheries (1995).
148. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001).
149. FAO Voluntary Guidelines on Flag State Performance (2014).
150. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2016).
151. Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (2018).

(v) **Cases**

152. ITLOS, Case No. 21, Advisory Opinion in response to request from the Sub-Regional Fisheries Commission (SRFC), 2 April 2015.
153. *Icelandic Fisheries Cases* (UK and Germany v Iceland) [1974] ICJ Rep.
154. *Fisheries Jurisdiction Case* (Spain v Canada) [1998] ICJ Rep 432.
155. *Southern Blue Fin Tuna Case* (2000) 39 ILM 1388.
156. *Brownsville-Port Isabel Shrimp Producers Assoc. v Calio* (Texas, June 1985).
157. *US v 144,774 pounds of Blue King Crab*, 410 F.3d 1131 (2005).

**H2 The economic theory underlying fisheries management**

(i) **Essential reading**

158. G Hardin, "The Tragedy of the Commons" (1968) 162 *Science* 1243-1248.



(ii) **Supplemental reading**

159. H S Gordon, “The Economic Theory of a Common-Property Resource: The Fishery” (1954) 62 *Journal of Political Economy* 124-142.
160. F Locher, “Neo-Malthusian Environmentalism, World Fisheries Crisis, and the Global Commons, 1950s-1970s” (2020) 63(1) *The Historical Journal* 187-207

**H3 The perverse outcomes of fisheries management**

(i) **Essential reading**

161. C Roberts, Ch 23 “Barbecued Jellyfish or Swordfish Steaks” in *The Unnatural History of the Sea* (Gaia Thinking, 2007) 327-344.
162. S Earle, “Taking Wildlife II—The Fish” in *The World is Blue: How Our Fate and the Ocean’s Fate Are One* (National Geographic: 2009) 53-78.

**H4 The concept of maximum sustainable yield**

(i) **Supplementary reading**

163. UNCLOS, Art 119.
164. UN Fish Stocks Agreement, Art 5(b).
165. C Finley and N Oreskes, ‘Maximum Sustainable Yield: a policy disguised as science’ (2013) 70(2) *ICES Journal of Marine Science* 245
166. E Hey, ‘The Persistence of a Concept: Maximum Sustainable Yield’ in D Freestone (ed) *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas* (Brill: 2013) 89-97.

**H5 New approaches to fisheries management**

(i) **Supplementary reading**

167. C Roberts, Ch 24 “Reinventing Fishery Management”, *The Unnatural History of the Sea* (Gaia Thinking, 2007) 345-358.
168. R Rafuse, Ch 20 “Regional Fisheries Management Organization” in D Rothwell et al (eds), *The Oxford Handbook of the Law of the Sea* (OUP: 2015) 439.

## **I BIODIVERSITY, MARINE PROTECTED AREAS AND THE FUTURE OF THE OCEAN**

### ***(i) Essential reading***

169. Draft text of an agreement 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 (2019).
170. C Roberts, Ch 19 “A New Deal for the Oceans”, *The Ocean of Life* (Penguin: 2012) 287-306.
171. J Harrison, Ch 3 “Mainstreaming Marine Biological Diversity Conservation in the Law of the Sea” in *Saving the Oceans through Law: The International Legal Framework for the Protection of the Marine Environment* (OUP: 2017) 43.

### ***(ii) Supplemental reading***

172. C Roberts, Ch 20 “Hunting on the High Plains of the Open Sea”, *The Unnatural History of the Sea* (Gaia Thinking, 2007) 283-296.
173. C. Duarte et al, “Rebuilding Marine Life” (2020) 580 *Nature* 39-51.
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