

## International Law

Academic year 2019-2020

## The Law of Maritime Delimitation

### DI058 - Autumn - 6 ECTS

Wednesday 16h15 - 18h00

## Course Description

The establishment of the jurisdictional limits of the riparian States has become one of the major challenges of the international law of the sea. The delimitation of the maritime areas holds a privileged place in international jurisprudence. The number of delimitation treaties is also considerable. The seminar will offer to discuss the most important issues in this area as well as the relevant case law. Particular attention will be paid to the role of equidistance, equitable principles and equitable result, the determination of the relevant circumstances for maritime delimitation, the impact of islands and other maritime features, the existence of regional rules, the establishment of a single maritime boundary for different areas and other issues currently under discussion. The final questioning will focus on the possibility of reaching a general method of delimitation of maritime areas in the light of recent case law. A moot court on a contemporary delimitation dispute will be organised for the participants.

## > PROFESSOR

[Marcelo Kohen](#)

[Office hours](#)

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## > ASSISTANT

Francesca Dal Poggetto

[Office hours](#)

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## Syllabus

This course is limited to 20 participants and is only accessible to students (Master and PhD) of the International Law Department. The course will be taught in English, but students can use the two working languages of the Graduate Institute.

The course is divided in three stages:

- (1) The first sessions will be given by the Professor and are intended to provide the theoretical framework required for the proper understanding of the course. For each of the five sessions, students will read primary sources and doctrinal contributions. The sessions will be taught so as to enable students to participate by raising questions and comments.

- (2) The second part of the course will be organised in the form of seminars during which the students will analyse the jurisprudence on the law of maritime delimitation in depth. Participants are expected to read the judgments and awards that will be discussed in class before coming to the relevant sessions.
- (3) The third, and last stage, of the course will be devoted to the oral hearings of this academic year's moot court. The real dispute that will be addressed, as if it were brought before the International Court of Justice, is the *Case concerning the Continental Shelf (Italy / Malta)*. At the beginning of the semester the students will be divided in teams (two groups of Counsel for the respective Parties to the dispute and one group of judges). From the commencement of the course, the Counsel for the two States will have to work on the written pleadings that will have to be deposited on 4 December 2019. Oral pleadings will then be held during the penultimate session of the course, on 11 December 2019. The students that are part of the team of judges will have to draft their personal opinions by 17 December 2019, and present orally their reasoned conclusions on the day of the delivery of the judgment during the last session of the course, on 18 December 2019.

The teaching method of this course allows students first to acquire basic knowledge of the law of maritime delimitation, then to apply this knowledge during the analysis of the relevant case studies and, finally, to practice their knowledge in a real unsettled dispute.

The students will be evaluated primarily on the basis of their written and oral presentations during the Moot Court: 1) Counsel will be examined based upon the chapters that they have written in the Memorials and their oral pleadings; 2) the members of the bench will be examined on the basis of their respective written notes drafted in view of the judgment and their oral presentations. Class participation during the first and second stage of the course will also be taken into account.

The readings for the course will be made available on Moodle.

**NB: the following programme is provisional and subject to adjustments.**

<b>Session 1</b>	<b>18 September 2019</b>
<b>Class</b>	
<p><b>A. <u>Introduction</u></b></p> <p><b>B. <u>Territorial Frontiers and Maritime Boundaries</u></b></p> <ul style="list-style-type: none"> <li>• [1] BARDONNET, D., « Frontières terrestres et frontières maritimes », <i>A.F.D.I.</i>, 1989, Vol. XXXV, pp. 1-64 (en part. pp. 1-6 et 38-64)</li> </ul> <p>and/or</p> <ul style="list-style-type: none"> <li>• [2] CHURCHILL, R.R. &amp; LOWE, A.V., <i>The Law of the Sea</i>, 3<sup>rd</sup> ed., Manchester, Manchester University Press, 1988, Chapter 10: Delimitation of Maritime Boundaries, pp. 181-202</li> </ul> <p><b>C. <u>Maritime Spaces</u></b></p> <ul style="list-style-type: none"> <li>• [3] <i>United Nations Convention on the Law of the Sea</i>: Articles 1, 2, 8, 33, 49, 55, 56, 57, 76, 77, 86 to 90, 136, 137, 140</li> </ul>	
<b>Moot Court</b>	
I. <u>Presentation of the Case concerning the Continental Shelf (Italy / Malta)</u>	

<b>Session 2</b>	<b>25 September 2019</b>
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Class
<p><b>A. <u>Unilateralism and Bi(multi)lateralism in the Maritime Delimitation Process</u></b></p> <ul style="list-style-type: none"> <li>- <b>Baselines and maritime delimitations</b> <ul style="list-style-type: none"> <li>• [1] <i>United Nations Convention on the Law of the Sea</i>: Articles 3 to 16, 47, 48, 50, 74 et 83</li> </ul> </li> <li>- <b>Outer limits of the continental shelf</b> <ul style="list-style-type: none"> <li>• [2] <i>United Nations Convention on the Law of the Sea</i>: Article 76, Annex II</li> </ul> </li> <li>- <b>Uti possidetis and maritime delimitations</b> <ul style="list-style-type: none"> <li>• [3] KOHEN, Marcelo G., “L’<i>uti possidetis</i> et les délimitations maritimes”, in: <i>Liber Amicorum Jean-Pierre Cot</i>, Bruxelles, Bruylant, 2009, pp. 155-170</li> </ul> </li> <li>- <b>Historic rights and maritime areas</b> <ul style="list-style-type: none"> <li>• [4] <i>The South China Sea Arbitration, Award of 12 July 2016</i>, pp. 67-117, paras 169-278</li> </ul> </li> </ul>
Moot Court
<p>II. <u>Allocation of the students in their respective teams (two teams for the Parties to the case and one team of judges)</u></p>

Session 3	2 October 2019
Class	
<p><b>A. <u>Territorial Allocation Lines And Maritime Delimitation Lines</u></b></p> <ul style="list-style-type: none"> <li>• [1] <i>Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau</i>, Decision of 14 February 1985, <i>R.I.A.A.</i>, vol. XIX, pp. 166-175, paras 44-67</li> </ul> <p><b>B. <u>Islands and Low-Tide Elevations</u></b></p> <ul style="list-style-type: none"> <li>• [2] <i>United Nations Convention on the Law of the Sea</i>: Articles 13 et 121</li> <li>• [3] <i>The South China Sea Arbitration, Award of 12 July 2016</i>, pp. 119-260 (<b>a selection of the most relevant paragraphs will be indicated</b>).</li> </ul> <p><b>Two out of the three following readings:</b></p> <ul style="list-style-type: none"> <li>• [4] BOWETT, D., “Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations”, in: Charney, J.I. &amp; Alexander, L.M. (ed.), <i>International Maritime Boundaries</i>, Dordrecht, M. Nijhoff, 193, vol. 1, pp. 131-151</li> <li>• [5] DOUSSIS, E., « Iles, îlots, rochers et haut-fonds découvrants », in : INDEMER, Le processus de délimitation maritime. Etude d’un cas fictif. Colloque international. Monaco, 27-29 mars 2003, Paris, Pedone, 2004, pp. 134-166</li> <li>• [6] TANAKA, Y., <i>Predictability and Flexibility in the Law of Maritime Delimitation</i>, Oxford, Hart, 2006, pp. 183-218</li> </ul>	

Session 4	9 October 2019
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Class	
<p><b>A. <u>Evolution of the Rules Relating to Maritime Delimitation</u></b></p> <ul style="list-style-type: none"> <li>• [1] <i>Convention on the Territorial Sea and the Contiguous Zone</i>, Geneva, 1958: Article 12</li> <li>• [2] <i>Convention on the Continental Shelf</i>, Geneva, 1958: Article 6</li> <li>• [3] <i>United Nations Convention on the Law of the Sea</i>: Articles 15, 74 et 83</li> <li>• [4] WEIL, P., <i>Perspectives du droit de la délimitation maritime</i>, Paris, Pedone, 1988, pp. 155-169</li> </ul> <p><b>B. <u>Starting Point: Equidistance</u></b></p> <ul style="list-style-type: none"> <li>• [5] WEIL, P., <i>Perspectives du droit de la délimitation maritime</i>, Paris, Pedone, 1988, pp. 213-221</li> <li>• [6] TANAKA, Y., <i>Predictability and Flexibility in the Law of Maritime Delimitation</i>, Oxford, Hart, 2006, pp. 129-149</li> </ul> <p><b>C. <u>“Equitable Principles”</u></b></p> <ul style="list-style-type: none"> <li>• [7] WEIL, P., <i>Perspectives du droit de la délimitation maritime</i>, Paris, Pedone, 1988, pp. 173-200</li> </ul>	

Session 5	16 October 2019
Class	
<p><b>A. <u>Relevant Circumstances</u></b></p> <ul style="list-style-type: none"> <li>• [1] WEIL, P., <i>Perspectives du droit de la délimitation maritime</i>, Paris, Pedone, 1988, pp. 223-285</li> <li>• [2] TANAKA, Y., <i>Predictability and Flexibility in the Law of Maritime Delimitation</i>, Oxford, hart, 2006, pp. 331-348</li> </ul> <p><b>B. <u>Equitable Result</u></b></p> <ul style="list-style-type: none"> <li>• [3] WEIL, P., <i>Perspectives du droit de la délimitation maritime</i>, Paris, Pedone, 1988, pp. 285-307</li> <li>• [4] TANAKA, Y., <i>Predictability and Flexibility in the Law of Maritime Delimitation</i>, Oxford, hart, 2006, pp. 349-355</li> </ul>	

Session 6	23 October 2019
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<b>Seminar</b>	
<p><b>A. <u>North Sea Continental Shelf</u></b></p> <ul style="list-style-type: none"> <li>• [1] <i>North Sea Continental Shelf, Judgment, I.C.J. Reports 1969</i>, p. 3</li> <li>• [2] FRIEDMANN, W., “The North Sea continental shelf cases: a critique”, <i>A.J.I.L.</i>, 1970, vol. 64, pp. 229-240</li> </ul>	

<b>Session 7</b>	<b>30 October 2019</b>
<b>Seminar</b>	
<p><b>A. <u>Continental Shelf between the United Kingdom and France</u></b></p> <ul style="list-style-type: none"> <li>• [1] <i>Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, Decision of 30 June 1977, R.I.A.A., vol. XVIII</i>, pp. 3-269</li> <li>• [2] McRAE, D.M., “Delimitation of the Continental shelf between the United Kingdom and France: the Channel arbitration”, <i>The Canadian Yearbook of International Law</i>, 1977, vol. 15, pp. 173-197</li> </ul>	

<b>Session 8</b>	<b>6 November 2019</b>
<b>Seminar</b>	
<p><b>A. <u>Continental Shelf (Tunisia / Libya)</u></b></p> <ul style="list-style-type: none"> <li>• [1] <i>Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application to Intervene, Judgment, I.C.J. Reports 1981</i>, p. 3</li> <li>• [2] <i>Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982</i>, p. 18</li> <li>• [3] FELDMAN, M.B., “The Tunisia-Libya continental shelf case: geographic justice or judicial compromise”, <i>A.J.I.L.</i>, 1983, vol. 77, pp. 219-238</li> </ul> <p><b>B. <u>Continental Shelf (Libya / Malta)</u></b></p> <ul style="list-style-type: none"> <li>• [4] <i>Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984</i>, p. 3</li> <li>• [5] <i>Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985</i>, p. 13</li> <li>• [6] CONFORTI, B., « L'arrêt de la Cour internationale de Justice dans l'affaire de la délimitation du plateau continental entre la Libye et Malte », <i>R.G.D.I.P.</i>, 1986, vol. 90, pp. 313-343</li> </ul>	

<b>Session 9</b>	<b>13 November 2019</b>
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Seminar	
<p><b>A. <u>Maritime Delimitation between Greenland and Jan Mayen (Denmark v. Norway)</u></b></p> <ul style="list-style-type: none"> <li>[1] <i>Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993</i>, p. 38</li> <li>[2] EVANS, M. D., “Maritime delimitation after Denmark v. Norway: back to the future?”, in: <i>The reality of international law: essays in honour of Ian Brownlie</i>, Guy S. Goodwin-Gill and Stefan Talmon (eds), 1999, pp. 153-176</li> </ul>	

Session 10	20 November 2019
Seminar	
<p><b>A. <u>Maritime Delimitation in the Gulf of Guinea (Cameroon v. Nigeria; Equatorial Guinea intervening)</u></b></p> <ul style="list-style-type: none"> <li>[1] <i>Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002</i>, p. 303, at pp. 416-458, paras 226-325</li> <li>[2] TANAKA, Y., “Reflections on maritime delimitation in the Cameroon/Nigeria case”, <i>I.C.L.Q.</i>, 2004, vol. 53, No 2, pp. 369-406</li> </ul> <p><b>B. <u>Maritime Delimitation in the Black Sea (Romania v. Ukraine)</u></b></p> <ul style="list-style-type: none"> <li>[3] <i>Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009</i>, p. 61</li> <li>[4] TANAKA, Y., “Reflections on Maritime Delimitation in the Romania/Ukraine Case before the International Court of Justice”, <i>Netherlands International Law Review</i>, 2009, vol. 56, No 3, pp. 397-425</li> </ul>	

Session 11	27 November 2019
Seminar	
<p><b>A. <u>Maritime Delimitation in the Caribbean Sea (Nicaragua v. Colombia)</u></b></p> <ul style="list-style-type: none"> <li>[1] <i>Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene [Costa Rica], Judgment, I.C.J. Reports 2011</i>, p. 348</li> <li>[2] <i>Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene [Honduras], Judgment, I.C.J. Reports 2011</i>, p. 420</li> </ul>	

Session 12	4 December 2019
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<b>Seminar</b>	
<p><b>A. <u>Maritime Delimitation in the Caribbean Sea (Nicaragua v. Colombia)</u></b></p> <ul style="list-style-type: none"> <li>• [1] <i>Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012</i>, p. 624, at pp. 662-720, paras 104-251</li> </ul> <p><b>A. <u>Maritime Dispute (Peru v. Chile)</u></b></p> <ul style="list-style-type: none"> <li>• [2] <i>Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014</i>, p. 3.</li> <li>• [3] <i>Joint Dissenting Opinion of Judges Xue, Gaja, Bhandari and judge ad hoc Orrego Vicuña</i>, p. 100.</li> </ul>	
<b>Moot Court</b>	
III.	<u>Time limit for the filing of the Memorials to the Registrar of the Court (Francesca Dal Poggetto, teaching assistant) 11.59 pm</u>
IV.	<u>Handover of the Memorials by the Registrar to the judges and the respective Parties, 5 December 2019 at 12.00 am</u>

<b>Session 13</b>	<b>11 December 2019</b>
<b>Moot Court</b>	
V.	<u>Oral Pleadings by the legal teams representing the two States before the team of judges</u>

	<b>17 December 2019</b> <b>12:00 am</b>
<b>Moot Court</b>	
VI.	<u>Time limit for the judges to send their respective notes on the case to the Registrar and the President of the Court (Prof. Kohen)</u>

<b>Session 14</b>	<b>18 December 2019</b>
<b>Class</b>	
<b>A. <u>Conclusions</u></b>	
<b>Moot Court</b>	
VII.	<u>Statement by each judge of the Court of his or her reasoned vote</u>
VIII.	<u>Reading of the Judgment by the President of the Court</u>