International Law

Academic year 2019-2020

The Oceans: Law, Politics and the Future

DI020 - Printemps - 6 ECTS

Course Description

This course will offer an overview of selected topics relating to the law of the sea. After examining the spatial order consolidated by the 1982 UN Convention on the Law of the Sea in the context of the social, technological and politico-economic visions that informed its development, the course will turn its attention to some issues of contemporary significance, from among changing land/sea interfaces, fisheries, seabed minerals, biodiversity, submarine cables, and plastic pollution, to examine how these are addressed under international law (including regimes currently in formation.)

Professors

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Assistant

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Syllabus

The course aims to trigger critical reflection about the law of the sea, and the mutual shaping of the oceans and international law. We will explore select topics from a range of perspectives.

The classes will proceed in the seminar format. That is, they will be discussion-based, though interspersed with brief information-imparting lectures from time to time. It is expected that students will complete the core readings prior to each class. These have been kept brief; additional readings are included for those interested in reading further on particular topics.

There is no set textbook – rather, specific readings are indicated for each class. However, the following textbooks offer helpful overviews of various topics and chapters from them have been assigned for some sessions.

D Rothwell et al., The Oxford Handbook of the Law of the Sea (OUP 2015)

You may also wish to consult R Churchill and AV Lowe, The Law of the Sea (3rd edn, Manchester UP 1998). This is now dated in parts but incisive on fundamental issues.

You will find that the readings are drawn not just from law, but also politics, geography and history. I will include self-authored work whenever relevant in the hope that this laying of my cards on the table will encourage you to engage, reflect, and disagree with greater robustness.

The course will be assessed by way of a written assignment. You will have a choice between writing a paper (5000 words), a sequence of short essays (No less than 5, no more than 10; with the total not exceeding 5000 words), a review essay (of 2 or more books, or 3 or more articles; 5000 words), or designing a 'juriscape' (annotated map(s) or diagram(s) offering an analytical representation of the law/ocean relationship in some specific aspect).

Outline of lectures and readings

Seminar 1. Introduction: Seasteads and Trash Islands / Oceanic futures (Friday March 13th, 12h15-14h, Room S2)

We will begin the course with thinking about the future of the oceans, and of our engagements with it. This will set the stage for the remaining seminars which will think critically about the ways in which international law gives shape to these possible futures, as also how the ocean shapes international law.

Core reading/ browsing

- S Ranganathan, Interfaces of Land and Sea, Project on Visualising Climate and Loss, Centre for History and Economics, Harvard, [http://histecon.fas.harvard.edu/climate-loss/lawofthesea/lawofthesea.html](http://histecon.fas.harvard.edu/climate-loss/lawofthesea/lawofthesea.html)

- Have a look at some of the content on seasteading.org, such as the videos on the home page, or some of the blog posts.

- Also have a look at [https://www.ladbible.com/trashisles/welcome](https://www.ladbible.com/trashisles/welcome)

Additional Readings


- P Dauvergne, Why is the Global Governance of Plastic Failing the Oceans, (2018) 51 Global Environmental Change 22-51
You might enjoy watching
• Mission Blue, on Netflix

Seminar 2. History – mare liberum and the real battle of the books (Monday March 16th, 18h15 - 20h, Room S7)

Are there given ways of thinking about the sea? In this seminar, we will explore this question through the lens of the debate over the free sea (mare liberum) in the 17th century.

Core reading
  (Read the 2 essays by Grotius and the essay by Welwood. If you can’t manage all three, read at least 1 essay by Grotius and the essay by Welwood.)

Additional reading
• H Rozwadowski, Vast Expanses: A History of the Oceans (Reaktion Books 2019)
• P Steinberg, The Social Construction of the Ocean (CUP 2001)
• L Benton, A Search for Sovereignty: Law and Geography in European Empires 1400–1900 (CUP 2010), 104–61
• M van Ittersum, Mare Liberum versus the Propriety of the Seas? The Debate between Hugo Grotius (1583-1645) and William Welwood (1552-1624) and its Impact on Anglo-Scotto-Dutch Fishery Disputes in the Second Decade of the Seventeenth Century. Edinburgh Law Review, 10(2), 239-276

Seminar 3: The new law of the sea: between sovereignty and community  (Wednesday March 18th, 16h15 -18h, Room S7)

What does the ocean look like today? This seminar will explore the ways in which the law delineates the ocean. We will also think about what we mean when we talk about the ‘law of the sea’.

Core reading
• UN Convention on the Law of the Sea (skim, get a sense of how it zones the ocean)

Additional reading
• Ranganathan, Sea Change, in Brett, Donaldson and Koskenniemi (eds.), History, Politics, Law
Seminar 4: The Law of the Sea and International Law I – Codification and its discontents (Friday March 20th, 12h15- 14h, Room S5)

This seminar – the first of three – will examine political and epistemic battles that have shaped the law as well as the ocean. This seminar will reflect on the idea of codification of international law, and its rise and fall with respect to the law of the sea.

Core reading

- Art 1, Convention on the Continental Shelf, 1958 and Arts 1-6, Convention on the Territorial Sea and the Contiguous Zone, 1958 (what is missing in both?)
- R Jennings, ‘Recent Developments in the International Law Commission: Its Relation to the Sources of International Law’ (1964) 13 ICLQ 385-397

Additional reading

- C Hurst, ‘A Plea for the Codification of International Law on New Lines’ (1946) 32 Transactions of the Grotius Society 135
- H Lauterpacht, ‘Codification and Development of International Law’ (1955) 49 AJIL 16-43
- FL Bordin, Reflections of customary international law: The authority of codification conventions and ILC draft articles in international law (2014) 63 ICLQ 535-567
Core reading
- Charter of Economic Rights and Duties of States, GA Res 3281 (XXIX), 13 December 1974

Additional Reading

Seminar 6: The Law of the Sea and International Law III – Contests over Commons (Wednesday March 25th, Room S7)

This seminar will explore the enduring idea of the tragedy of the commons – and of the ocean as a classic example of the same. We will think about the ways in which international law has embraced – or not – that idea.

Core readings
- G Hardin, ‘The Tragedy of the Commons’ (1968) 162 Science 1243-1248

Additional reading
- S Ranganathan, Global Commons, (2016) 27(3) EJIL 693-717
- G Mann, The Book That Incited a Worldwide Fear of Overpopulation, Smithsonian Magazine, January 2018

MacLellan, The Drama of Limitless Growth: Re-Interpreting the Tragedy of the Commons for a Century of Climate Change, Environmental Humanities (2016) 7 (1): 41-58


Seminar 7: Regulating fishing in the oceans (Friday March 27th, 12h15- 14h, Room S5)

This seminar, the first of two on fishing, will explore the legal strategies employed to regulate fishing in the oceans, thinking about how fish are classified, how approaches to regulation may have changed over time, and about the roads suggested but not taken.

Core reading

- C Finley and N Oreskes, Maximum sustained yield: a policy disguised as science, (2013) 70(2) 245-250

Additional reading

- U Rashid Sumaila et al., Winners and losers in a world where the high seas is closed to fishing, (5015) 5 Scientific Reports, article number: 8481
- D Zeller and D Pauly, ‘Viewpoint: Back to the future for fisheries, where will we choose to go?’ (2019) 2 e11 Global Sustainability 1–8
- E Sala, S Giakoumi, ‘No-take marine reserves are the most effective protected areas in the ocean’ (2018) 75(3) ICES Journal of Marine Science 1166–1168

Seminar 8: The strange case of IUU fishing (Monday March 30th, Room S7)

Continuing the discussion from the previous session, this seminar will debate the concept of illegal, unreported, and unregulated fishing which is the focus of much regulatory effort today.

Core reading
Seminar 9: Discovery of the seafloor (Wednesday April 1, Room S7)

In this seminar we will explore the emergence of the seafloor as a key area of law-making. We will look at the division of the seafloor into zones of national and international jurisdiction, and the development of regimes for resource extraction in both zones.

Core reading

- Truman Proclamation on the Continental Shelf, 1945
- Art 1, Geneva Convention on the Continental Shelf, 1958
- Art 76, UN Convention on the Law of the Sea, 1982
- Arvid Pardo, Speech to the First Committee of the UN General Assembly, UN Doc. A/C.1/PV.1515-1516, 1 November 1967 [10 pp]

Additional reading

- H Lauterpacht, ‘Sovereignty over Submerged Areas’ (1950) 27 BYIL 376
- H Waldock, ‘The Legal Basis of Claims to the Continental Shelf ’ (1950) 36 TGS 115-148
- A Pardo, ‘Before and After’ (1983) 46 LC&P 95-105
Seminar 10: Seabed mining today (Friday April 3rd, 12h15 - 14h, Room S5)

In this second seminar on the seabed we will discuss ongoing debates on framing a seabed mining regime – asking also whether it is necessary to make law on seabed mining.

Core reading


Additional reading

- Responsibilities and Obligations of States sponsoring persons and entities with respect to activities in the Area, ITLOS Seabed Disputes Chamber, Advisory Opinion, 1 February 2011
- K Mickelson, ‘Common Heritage of Mankind as a Limit to the Exploitation of the Global Commons’ (2019) 30 EJIL 635-663


Seminar 11: Protecting marine biodiversity (Monday, April 6th, Room S7)

In this seminar we will look at the development of the law relating to the conservation and exploitation of marine biodiversity, focusing on the ongoing negotiations on a new treaty on biodiversity beyond national jurisdiction.

Core reading


Additional Reading

- Vito de Lucia, Rethinking the Conservation of Marine Biodiversity beyond National Jurisdiction – From ‘Not Undermine’ to Ecosystem-Based Governance, ESIL Reflection, Vol 8, Issue 4, 2019
- M A Young and A Friedman, Biodiversity Beyond National Jurisdiction: Regimes and Their Interaction, (2018) 112 AJIL Unbound 123-128
- G Wright et al., Marine spatial planning in areas beyond national jurisdiction, Marine Policy, https://doi.org/10.1016/j.marpol.2018.12.003

Seminar 12: Hidden arteries – undersea cables (Wednesday, April 8th, Room S7)
In this seminar we will explore the regulatory issues arising in respect of the most long-standing users of the deep ocean: submarine cables

Core reading

- N Starosielski, The Undersea Network (Duke University Press 2015), Introduction, Chapter 6

Additional reading

- International Seabed Authority, Technical Study No 14: Submarine Cables and Deep Seabed Mining. Advancing Common Interests and Addressing UNCLOS "Due Regard" Obligations

Seminar 13: Wicked problems (Monday April 20th, Room S7 )

In this seminar we will explore the current pressures on the ocean, from the changing climate, pollution and acidification, and our own seemingly unending need for its resources. We will think about the possibilities of protecting the ocean through both law and technology, and think about those ‘othered’ by both.

- T Stephens, Warming Waters and Sourcing Seas: Climate Change and Ocean Acidification, in D Rothwell et al. (eds), The Oxford Handbook of the Law of the Sea (OUP 2015) 777-798
- J Ertor and M Hadjmichael, Blue degrowth and the politics of the sea: rethinking the blue economy, (2020) 15 Sustainability Science 1-10
- C Ryngaert, Climate Change Mitigation Techniques and International Law: Assessing the Externalities of Reforestation and Geoengineering (2017) 30(3) Ratio Juris 273-289
Additional readings

- Z Brent et al., The Blue Fix: What’s driving blue growth?, (2020) 15 Sustainability Science 31-43

Seminar 14: News of the World and Taking stock (Friday April 24th, 12:15-14h, Room S5)

In this seminar we will catch up on recent developments at the BBNJ negotiations and the International Seabed Authority; talk about other issues confronting the ocean that were not covered in the preceding lectures; review the approach taken in SDG 14, and – circling back to the first lecture – think collectively about ways of imagining oceanic futures. Any readings will be advertised closer to the date of the seminar.