Professor Elizabeth Mendenhall

mendenhall@uri.edu

Coastal Institute 215

Office hours: Wednesday 2pm-4pm or by appointment

# Course Description

This course covers the development, content, and flaws of the modern ocean governance regime, including its principles, norms, rules, and decision-making procedures. Major institutions covered include the United Nations Convention on the Law of the Sea, the International Court of Justice, the International Maritime Organization, the International Whaling Commission, Regional Fisheries Management Organizations, and others. The first half of the course focuses on the development and implementation of the ocean governance regime, whereas the second half engages case studies of ocean problems that the regime has a mixed record of solving.

# Learning Outcomes

The purpose of this course is to provide students with an understanding of the basic features and functions of the international ocean governance regime. After taking this course, it is expected that you will be able to:

(1) Describe and distinguish features of the international system, including laws, institutions, organizations, norms, principles, rules and regimes

(2) Describe the basic elements of UNCLOS, especially its zone-based management structure and relationship with other governance institutions

(3) Explain the relationship between various components of the ocean governance regime, and identify gaps in coverage over ocean issues

(4) Explain prevailing conflicts and debates in contemporary ocean governance, including territorial disputes, competing interpretations of treaty text, and proposed reforms

(5) Understand in what areas, and for what reasons, international ocean management is succeeding or failing with regard to its fundamental goals

(6) Identify emerging environmental, economic, and security problems and challenges for ocean governance

# Academic Support Services

This is a challenging course. Success requires that you keep pace with the work, understand course concepts, and study effectively. The Academic Enhancement Center helps URI students succeed through three services: Academic Coaching and Tutoring. There is also a URI Writing Center specifically for graduate students. I suggest you utilize these resources.

# Required Texts and Materials

It should be possible for students to obtain all assigned readings without needing to purchase any materials. Assigned readings will be available through the library reserve system, and/or via PDF posted on Sakai. Students are expected to bring a copy of the text on the days assigned.

## Books available through the library:

Byers, Michael, and James Baker. *International Law and the Arctic*. Cambridge University

Press, 2013.

Harrison, James. *Making the Law of the Sea: A Study in the Development of International Law*.

Cambridge; New York: Cambridge University Press, 2011.

Rothwell, Donald R., Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens, eds. *The Oxford*

*Handbook of the Law of the Sea*. Oxford University Press, 2017.

Steinberg, Philip E. *The Social Construction of the Ocean*. Cambridge; New York: Cambridge

University Press, 2001.

Thomson, Janice E. *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial*

*Violence in Early Modern Europe*. Princeton Studies in International History and Politics. Princeton, N.J: Princeton University Press, 1994.

## Useful reference texts:

Mendenhall, Elizabeth. “The ocean governance regime: international conventions and institutions,” in *Climate Change and Ocean Governance: Politics and Policy for Threatened Seas*, ed. Paul Harris (11 pages)

DeSombre, Elizabeth R. “Ocean Governance.” In *A Research Agenda for Global Environmental Politics*, edited by Peter Dauvergne and Justin Alger, 114–25. Elgar Research Agendas. Cheltenham, UK ; Northampton, MA, USA: Edward Elgar Publishing, 2018.

**Grading scale**

A = 93-100

A- = 90-92

B+ = 87-89

B = 83-86

B- = 80-82

C+ = 77-79

C = 73-76

C- = 70-72

D+ = 67-69

D = 60-66

F = below 60

# Grading and Assignments

Participation 20%

Midterm examination 25%

Final examination 25%

Paper(s) 30%

Rubrics will be provided for all major assignments.

## Participation

Attendance is the bare minimum for participation. You should be prepared to participate in every class, which includes posing questions, answering questions, and engaging in open-ended discussion about the readings. This typically requires referencing your annotated readings during class, and actively choosing to participate. Students who regularly contribute to class, and demonstrate close engagement with the readings, will receive a full participation grade.

## Examinations

The exams will consist of 3 essay questions, and be taken in class and without notes or books. A week before each exam, I will distribute a list of 10 essay questions. The questions on the test will be chosen from this list. The final exam will be non-cumulative, meaning that it will only test the material reviewed after the midterm.

## Research Paper (1) OR Analysis papers (3)

Students are given the option of completing 1 of 2 writing assignment options. The purpose of the choice is to ensure that students can complete an assignment that most benefits them in their path to complete a degree or certificate program. Both of these assignments are **due by December 5th**.

Option 1 – three literature analysis papers, 4-6 pages each

Each paper should summarize, evaluate, and analyze three scholarly articles, and draw connections between them. The purpose of each paper is to consider what the articles contribute to our understanding of ocean governance issues, and what they suggest about necessary future research. The three articles can be chosen from the list at the end of this syllabus, but students can choose to use two articles from the list, and one scholarly article they select themselves. Each student is allowed to revise and resubmit one analysis paper for a re-grade.

Option 2 – one research paper, 15-20 pages

Research papers should and take a position on an issue related to international ocean governance. For example, a thesis could support a particular understanding of some feature of ocean governance, or propose an action to be taken by some actor. The paper should do more than summarize or describe; it should explain, suggest, and/or argue. The paper should show evidence of research capabilities and use of available literature and documentation, should be well written, and should indicate a considerable degree of thought by the student. Students can submit one outline or rough draft to the instructor and receive comments, but must provide the instructor a week to send back comments.

# Course Policies

## Accommodations

Any student with a documented disability is welcome to contact me as early in the semester as possible so that we may arrange reasonable accommodations. As part of this process, please be in touch with Disability Services for Students Office at 302 Memorial Union, Phone 401-874-2098.

## Attendance

Students are expected to attend class. Occasionally, students may miss class activities due to illness, severe weather, religious holidays, or sanctioned University events. Students must inform the instructor of expected excused absences in order to discuss options for missed classes or examinations.

## Late assignments

…are not accepted without special permission from the instructor, which typically comes with a grade reduction.

## Classroom conduct

Students are expected to treat faculty and fellow classmates with dignity and respect. Students are responsible for being familiar with and adhering to the published “Student Code of Conduct” which can be accessed in the University Student Handbook. If you must come in late, please do not disrupt the class.

## Children in the classroom

To the best of my knowledge, the university does not have a formal policy on children in the classroom. The policy for my classroom includes: (1) All exclusively breastfeeding babies are welcome in class as often as is necessary. (2) Unforeseen disruptions in childcare often put parents in the position of having to choose between missing class to stay home with a child and leaving him or her with someone you or the child does not feel comfortable with. While this is not meant to be a long-term childcare solution, occasionally bringing a child to class in order to cover gaps in care is perfectly acceptable. (3) I ask that all students work with me to create a welcoming environment that is respectful of all forms of diversity, including diversity in parenting status. (4) In all cases where babies and children come to class, I ask that you sit close to the door so that if your child needs special attention and is disrupting learning for other students, you may step outside until their need has been met. Non-parents in the class, please reserve seats near the door for your parenting classmates. (5) Finally, I understand that often the largest barrier to completing your coursework once you become a parent is the tiredness many parents feel in the evening once children have finally gone to sleep. While I maintain the same high expectations for all student in my classes regardless of parenting status, I am happy to problem solve with you in a way that makes you feel supported as you strive for school-parenting balance.

## Plagiarism

All submitted work must be your own. Students have an obligation to know how to quote, paraphrase, summarize, cite and reference the work of others with integrity. If you need more help understanding when to cite something or how to indicate your references, please ask. Outside sources must be properly documented, or you will be charged with plagiarism and will receive an F for the assignment. In some cases, this may result in a failure of the course as well. If you have any doubt about what constitutes plagiarism, visit the following: the URI Student Handbook, and Sections 8.27.10 – 8.27.21 of the University Manual.

# Assigned Legal Texts

\*\*In most cases, students are not required to read these texts word-for-word, but rather should familiarize themselves with the structure and content of each, focusing on substantive rights and duties.

\*\*Do bring UNCLOS I and III texts to class, as we will often refer to these directly and discuss in small groups

## UNCLOS I

1958 Convention on the Territorial Sea and the Contiguous Zone

1958 Convention on the High Seas

1958 Convention on the Continental Shelf

1958 Convention on Fishing and Conservation of the Living Resources of the High Seas

## UNCLOS III

UNCLOS Preamble

UNCLOS Articles 298, 309-311

UNCLOS Articles 1-7, 15, 17-21, 33-36, 55-60, 74, 76-78

UNCLOS Articles 312-313

UNCLOS Articles 136-144, 156-158, 279-283, 286-296

UNCLOS Annex II

UNCLOS Annex VI

UNCLOS Articles 91-96, 217

UNCLOS Articles 99-109

UNCLOS Articles 192-196, 207-222

UNCLOS Articles 116-120

UNCLOS Article 65

UNCLOS Article 234

UNCLOS Articles 60, 121, 286-288

UNCLOS Articles 86-90, 116-119

## UNCLOS Amendments

UNCLOS “Declarations and Statements”

Agreement on the Implementation of Part XI of the 1982 UN Convention on the Law of the Sea

1995 Agreement for the Implementation of the Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and High Migratory Fish Stocks

## Other Agreements

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

International Convention for the Prevention of Pollution from Ships 1973/1978

2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

International Convention for the Regulation of Whaling

2008 Illulissat Declaration

UN Resolution 69/292

# The International System

## 9/5 – Introduction

### Readings (39 pages)

Lewis, Martin W. “Dividing the Ocean Sea.” *The Geographical Review* 89, no. 2 (April 1999): 188–214.

Steinberg, Philip E. “Of Other Seas: Metaphors and Materialities in Maritime Regions.” *Atlantic Studies: Global Currents* 10, no. 2 (April 29, 2013): 156–169.

### Guiding Questions

What is Lewis trying to explain? Why does it matter?

What perspective does Steinberg identify as a foil (contrasting position)? What approach does he suggest, and what are its benefits?

## 9/10 – International Law – Hard, Soft, Customary

### Readings (60 pages)

Handout – International Relations theories

Handout – states and sovereignty

Abbott, Kenneth W., and Duncan Snidal. “Hard and Soft Law in International Governance.” *International Organization* 54, no. 3 (Summer 2000): 421–50.

Harrison, James. *Making the Law of the Sea: A Study in the Development of International Law*. (pgs. 1-26) Cambridge; New York: Cambridge University Press, 2011.

Glennon, Michael J. “Sometimes a Great Notion.” *Wilson Quarterly* 27, no. 4 (Autumn 2003). (5 pages)

### Guiding Questions

What is the difference between hard and soft law? What are the advantages of each?

What are the three systematic weaknesses of international law (Glennon)?

How do you know when ‘customary international law’ exists?

What is the difference between international law and customary international law? How are they related?

What is a treaty?

# Origins of Modern Ocean Governance

## 9/12 – Territorial Seas

### Readings (43 pages)

Thomas Fulton, “Introduction” (pgs. 1-22), *The Sovereignty of the Sea*. W. Blackwood, 1911

Philip E. Steinberg, “Ocean-space and Merchant Capitalism” (pgs. 68-89), *The Social Construction of the Ocean*. Cambridge University Press, 2001

### Guiding Questions

Who claimed ‘territorial seas’ and why?

What types of justifications were used to support territorial sea claims?

How expansive were early territorial seas?

What rights did non-nationals have in territorial seas?

## 9/17 – Freedom of the Seas

### Readings (62 pages)

Armitage, David. “Introduction” (pgs. xi-xx) in *The Free Sea*. Liberty Fund (2004)

Philip E. Steinberg, “Ocean-space and Merchant Capitalism” (pgs. 89-109), *The Social Construction of the Ocean*. Cambridge University Press, 2001

Anand, R. P., “Mare Liberum vs. Mare Clausum” (pgs. 72-89), *Origin and Development of the Law of the Sea: History of International Law Revisited*. The Hague: Martinus Nijhoff ; [distributed in the U.S. by] Kluwer Boston, 1983.

Oude Elferink, Alex. “De Groot – A Founding Father of the Law of the Sea, Not the Law of the Sea Convention.” *Grotiana* 30, no. 1 (November 1, 2009): 152–67.

### Guiding Questions

What events precipitated the writing and publication of *Mare Liberum*?

Where did the principle of ‘freedom of the seas’ originate?

How did Grotius justify the ‘freedom of the seas’ principle?

What is the relationship between territorial sea claims and the ‘freedom of the seas’ principle?

How is the ‘freedom of the seas’ principle reflected in UNCLOS?

## 9/19 – Flag State Jurisdiction

### Readings (60 pages)

Thomson, Janice E. *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*. (pgs. 21-26, 43-54, 69-77, 107-118) Princeton, N.J: Princeton University Press, 1994.

Kempe, Michael. “‘Even in the Remotest Corners of the World’: Globalized Piracy and International Law, 1500–1900.” *Journal of Global History* 5, no. 03 (November 2010): 353–72.

US Department of State, “Milestones in the History of U.S. Foreign Relations”

Barbary Wars, 1801–1805 and 1815–1816

The Amistad Case, 1839

United States Maritime Expansion across the Pacific during the 19th Century

The Blockade of Confederate Ports, 1861–1865

Mahan’s The Influence of Sea Power upon History: Securing International Markets

### Guiding Questions

Why did maritime states tolerate, and even encourage, piracy?

What is a pirate? A privateer? A corsair?

How did the abolishment of privateering contribute to the norm of flag state jurisdiction?

When, why, and how was piracy eventually suppressed?

# Early 20th Century

## 9/24 – International Court of Justice

### Readings (40 pages)

Handout – ICJ cases

Sepúlveda Amor, Bernardo. “The International Court of Justice and the Law of the Sea.” *Anuario Mexicano de Derecho Internacional*, 2012, 3–25.

Green, L.C. “The Anglo-Norwegian Fisheries Case, 1951.” *The Modern Law Review* 15, no. 3 (July 1952): 373–77.

Wright, Quincy. “The Corfu Channel Case.” *The American Journal of International Law* 43, no. 3 (July 1949): 491–94.

Friedmann, Wolfgang. “The North Sea Continental Shelf Cases--A Critique.” *The American Journal of International Law* 64, no. 2 (April 1970): 229-240

### Guiding Questions

What role have ICJ rulings played in the development of the law of the sea?

What are the main contributions of each ruling?

Who are the primary state actors affecting the law of the sea during this era?

## 9/26 – UNCLOS I and II

### Readings (33 pages)

1958 Convention on the Territorial Sea and the Contiguous Zone

1958 Convention on the High Seas

1958 Convention on the Continental Shelf

1958 Convention on Fishing and Conservation of the Living Resources of the High Seas

Tommy Koh, “The Origins of the 1982 Convention on the Law of the Sea,” 29 Malaysian Law Review 1-17 (1987)

Treves, Tullio. “Historical Development of the Law of the Sea.” In *The Oxford Handbook of the Law of the Sea*, edited by Rothwell R. Donald and Alex G. Oude Elferink, 7–23. New York, NY: Oxford University Press, 2015.

### Guiding Questions

Why is the 1930 Hague Conference important to the development of the law of the sea?

Why did UNCLOS I produce four separate Conventions?

What explains the differing levels of adoption/accession between the four conventions?

What issues were left unresolved after UNCLOS I and II?

# UNCLOS III

## 10/1 – Negotiations and Treaty Text

### Readings

UNCLOS Preamble

UNCLOS Articles 298, 309-311

UNCLOS “Declarations and Statements” (google it – peruse)

Handout – UNCLOS

Harrison, James. *Making the Law of the Sea: A Study in the Development of International Law*. Cambridge; New York: Cambridge University Press, 2011. (pgs. 37-61)

Beesley, Alan. “The Negotiating Strategy of UNCLOS III: Developing and Developed Countries as Partners - A Pattern for Future Multilateral International Conferences?” *Law and Contemporary Problems* 46, no. 2 (1983): 183–94.

“A Constitution for the World’s Oceans,” Remarks by Ambassador Tommy T. B. Koh (5 pages)

The United Nations Convention on the Law of the Sea (A historical perspective)

### Guiding Questions

How did the international political context affect the negotiations?

How did domestic interest groups affect the US position?  
Why was the G77 so influential?  
Did the "package deal" requirement obstruct or facilitate agreement?

What was 'new' in UNCLOS III?  
What is the relationship between UNCLOS III and customary international law?  
Should UNCLOS be understood as the "Constitution" for the oceans?  
How was UNCLOS III received by the international community when opened for signature/ratification?

## 10/3 – Zonal Management

### Readings (34 pages)

UNCLOS Articles 1-7, 15, 17-21, 33-36, 55-60, 74, 76-78

Rembe, Nasila S. “The Exclusive Economic Zone Concept,” (pgs. 116-127) in *Africa and the International Law of the Sea: A Study of the Contribution of the African States to the Third United Nations Conference on the Law of the Sea*. Sijthoff Publications on Ocean Development; Netherlands ; Germantown, Md: Sijthoff & Noordhoff, 1980.

Schofield, Clive. “Departures from the Coast: Trends in the Application of Territorial Sea Baselines under the Law of the Sea Convention.” *The International Journal of Marine and Coastal Law* 27, no. 4 (January 1, 2012): 723–32.

Hakapaa, K. and E.J. Molennar, “Innocent Passage—Past and Present,” 23 Marine Policy 131-145 (1999)

### Guiding Questions

What are the different types of ocean space created by UNCLOS?

What are baselines and why do they matter?

What is the overall balance of duties and rights of the coastal state in each zone?

What are the rights of non-nationals in the EEZ, contiguous zone, and territorial sea?

How did UNCLOS affect the customary international law of 'freedom of navigation'?

What areas of international ocean law did UNCLOS leave open to interpretation?

## 10/8 – Institutions: ITLOS, CLCS

### Readings

UNCLOS Articles 279-283, 286-296

UNCLOS Annex II

UNCLOS Annex VI

Churchill, Robin. “The General Dispute Settlement System of the UN Convention on the Law of the Sea: Overview, Context, and Use.” *Ocean Development & International Law* 48, no. 3–4 (October 2, 2017): 216–38.

Jensen, Øystein. “The Commission on the Limits of the Continental Shelf: An Administrative, Scientific, or Judicial Institution?” *Ocean Development & International Law* 45, no. 2 (April 3, 2014): 171–85.

***Helpful graphic supplement:***

Schoolmeester, Tina, and Elaine Baker, eds. *Continental Shelf The Last Maritime Zone*. Norway: UNEP/GRID-Arendal, 2009. (28 low-density pages)

### Guiding Questions

Why did UNCLOS need to create three new institutions?

What is the jurisdiction of each of these institutions?

Do decisions of each of these institutions have the force of law?

How does dispute settlement work under UNCLOS?

## 10/10 – South China Sea

### Readings (46 pages)

UNCLOS Articles 60, 121, 286-288

Asia Maritime Transparency Initiative, “Maps of the Asia Pacific,” https://amti.csis.org/maps/

**[THESE READINGS SUBJECT TO CHANGE]**

Watkins, Derek. “What China Has Been Building in the South China Sea,” *The New York Times*, October 27, 2015. **(read online)**

Sison, Maximo Paulino T. “Universalizing the Law of the Sea in the South China Sea Dispute.” *Ocean Development & International Law* 49, no. 2 (April 3, 2018): 157–75.

Kraska, James. “Sovereignty at Sea.” *Survival* 51, no. 3 (July 2009): 13–18.

### Guiding Questions

Who are the major claimants in each dispute, and what is the basis of their claims?

What resources exist in the South and East China Seas?

Why is China building islands in the South China Sea?

What role does the US play in all this?

## 10/15 – NO CLASS (Monday Schedule)

# 10/17 – Midterm Examination

## 10/22 – UNCLOS Augmentations

### Readings (51 pages)

UNCLOS Articles 312-313

Agreement on the Implementation of Part XI of the 1982 UN Convention on the Law of the Sea

1995 Agreement for the Implementation of the Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and High Migratory Fish Stocks

Harrison, James. “Implementing Agreements” in *Making the Law of the Sea: A Study in the Development of International Law*. (pgs. 85-114) Cambridge; New York: Cambridge University Press, 2011.

Buga, Irina. “Between Stability and Change in the Law of the Sea Convention: Subsequent Practice, Treaty Modification, and Regime Interaction.” In *The Oxford Handbook of the Law of the Sea*, edited by Rothwell R. Donald and Alex G. Oude Elferink, 46–68. New York, NY: Oxford University Press, 2015.

### Guiding Questions

What are the various ways UNCLOS can be modified, and what are their relative (dis)advantages?

What is the legal relationship between the Part XI Implementing Agreement and Fish Stocks Agreement, and the original UNCLOS?

In what ways did the Part XI Implementing Agreement make UNCLOS more attractive to advanced industrial states?

In what ways did the Fish Stocks Agreement improve UNCLOS with regard to fisheries?

## 10/24 – International seabed mining

### Readings

UNCLOS Articles 136-144, 156-158,

Wolfrum, Rüdiger. “The Contribution of the Regulations of the International Seabed Authority to the Progressive Development of International Environmental Law.” In *Peaceful Order in the World’s Oceans: Essays in Honor of Satya N. Nandan*, edited by Satya N. Nandan, Michael Lodge, and Myron H. Nordquist, 241–48. Leiden ; Boston: Brill Nijhoff, 2014.

Lodge, Michael, David Johnson, Gwenaëlle Le Gurun, Markus Wengler, Phil Weaver, and Vikki Gunn. “Seabed Mining: International Seabed Authority Environmental Management Plan for the Clarion–Clipperton Zone. A Partnership Approach.” *Marine Policy* 49 (November 2014): 66–72.

Harrison, Rowland J. “Article 82 of UNCLOS: The Day of Reckoning Approaches.” *The Journal of World Energy Law & Business* 10, no. 6 (December 1, 2017): 488–504.

### Guiding Questions

What is the relationship between deep seabed mining and the ISA?

What does the ‘common heritage of mankind’ principle mean?

What is the ISA’s primary function? How does it make decisions?

Why are there different rules for seabed mining on the extended continental shelf?

# Managing Ships

## 10/29 – International Maritime Organization

### Readings (44 pages)

Reis, Jeanette, and Kyriaki Mitroussi. “Shipping and Navigation.” In *Routledge Handbook of Ocean Resources and Management*, edited by Hance D. Smith, Juan Luis Suárez de Vivero, and Tundi Agardy, 331–46. London ; New York: Routledge, Taylor & Francis Group, 2016.

Chircop, Aldo. “The International Maritime Organization.” In *The Oxford Handbook of the Law of the Sea*, edited by Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens, 416–38. Oxford University Press, 2017.

Steinberg, Philip E. “The Ocean and Transport/The Ocean in Transport/The Ocean as Transport; or, *Mobilis in Mobili*,” (pgs. 219-224) in *Tidalectics: Imagining an oceanic worldview through art and science*. Cambridge, MA: MIT Press, 2018

“UN body adopts climate change strategy for shipping,” IMO Press briefing, April 13, 2018

### Guiding Questions

How is the shipping industry organized?

What is the IMO’s jurisdiction? What is its relationship with industry like?

What is the relationship between the IMO and UNCLOS?

How does the IMO create new rules?

## 10/31 – NO CLASS

## 11/5 – Flags of Convenience

### Readings (60 pages)

UNCLOS Articles 91-96, 217

Negret, Carlos Felipe Llinás. “Pretending to Be Liberian and Panamanian; Flags of Convenience and the Weakening of the Nation State on the High Seas.” *Journal of Maritime Law and Commerce* 47, no. 1 (January 2016): 1–28.

DeSombre, Elizabeth R. “Fishing Under Flags of Convenience: Using Market Power to Increase Participation in International Regulation.” *Global Environmental Politics* 5, no. 4 (November 2005): 73–92.

Yu, Yaodong, Yue Zhao, and Yen-Chiang Chang. “Challenges to the Primary Jurisdiction of Flag States Over Ships.” *Ocean Development & International Law* 49, no. 1 (January 2, 2018): 85–98.

### Guiding Questions

What are ‘flags of convenience’ and why are they used?

What is the relationship between FOCs and UNCLOS?

What problems to FOCs cause?

What are some solutions to FOCs?

## 11/7 – Piracy

### Readings (66 pages)

UNCLOS Articles 99-109

Hallwood, Paul, and Thomas Miceli. “Piracy and Privateers in the Golden Age: Lessons for Today.” *Ocean Development & International Law* 49, no. 3 (July 3, 2018): 236–46.

Bento, Lucas. “Toward an International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish.” *Berkeley Journal of International Law* 29, no. 2 (2011): 399–455.

### Guiding Questions

How has piracy changed since the 18th and 19th centuries?

How, if at all, has anti-piracy international law changed since then?

What are the impediments to combating piracy? Consider laws and political/economic incentives

What are some proposed solutions to redress piracy?

# Marine Pollution

## 11/12 – London Convention and MARPOL

### Readings (53 pages)

UNCLOS Articles 192-196, 207-222

Read descriptions of the following here: http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

International Convention for the Prevention of Pollution from Ships 1973/1978

Kirk. “Science and the International Regulation of Marine Pollution.” In *The Oxford Handbook of the Law of the Sea*, edited by Rothwell R. Donald and Alex G. Oude Elferink. New York, NY: Oxford University Press, 2015. (pgs. 516-535)

Hong, Gi Hoon, and Young Joo Lee. “Transitional Measures to Combine Two Global Ocean Dumping Treaties into a Single Treaty.” *Marine Policy* 55 (May 2015): 47–56.

Mitchell, Ronald. “Intentional Oil Pollution of the Oceans.” (pgs. 183-193, 222-247) In *Institutions for the Earth: Sources of Effective International Environmental Protection*, edited by Peter M. Haas, Robert O. Keohane, and Marc A. Levy. Cambridge, Mass: MIT Press, 1993.

### Guiding Questions

What does UNCLOS require with regard to marine pollution?

What role does marine science play in the regulation of marine pollution?

What types of marine pollution are regulated?

Why is there a London “Convention" and "Protocol"? What is the difference between the two?

Why was MARPOL so successful? What does complying with MARPOL require?

## 11/14 – Marine plastic debris

### Readings (17 pages; database search)

Mendenhall, Elizabeth. “Oceans of Plastic: A Research Agenda to Propel Policy Development.” *Marine Policy*, May 2018: 1-8

Dauvergne, Peter. “Why Is the Global Governance of Plastic Failing the Oceans?” *Global Environmental Change* 51 (July 2018): 22–31.

Do a database search for “marine plastic” in the journals *Marine Policy*, *Marine Pollution Bulletin*, and *Ocean & Coastal Management* – peruse the results.

### Guiding questions

How would you describe the problem of marine plastic debris?

Where does marine plastic debris come from?

What are the biggest obstacles to solving the problem?

What role do these groups play in solving the problem – public, government, researchers?

# Fishing

## 11/19 – RFMOs

### Readings (50 pages)

UNCLOS Articles 116-120

Handout – global fishing

Handout – RFMOs

DeSombre, Elizabeth R. “Ocean commons” (pgs. 90-93), *Global Environmental Institutions*. New York: Routledge, 2006.

Barkin, J. Samuel, and Elizabeth R. DeSombre. “International Regulation” (pgs. 13-36) *Saving Global Fisheries: Reducing Fishing Capacity to Promote Sustainability*. Cambridge, Massachusetts: The MIT Press, 2013.

Brooks, C. M., L. B. Crowder, L. M. Curran, R. B. Dunbar, D. G. Ainley, K. J. Dodds, K. M. Gjerde, and U. R. Sumaila. “Science-Based Management in Decline in the Southern Ocean.” *Science* 354, no. 6309 (October 14, 2016): 185–87.

Lobo, Rafaella, and Peter J. Jacques. “SOFIA’S Choices: Discourses, Values, and Norms of the World Ocean Regime.” *Marine Policy* 78 (April 2017): 26–33.

Sumaila, U. Rashid, and Daniel Pauly. “The ‘March of Folly’ in Global Fisheries.” In *Shifting Baselines: The Past and the Future of Ocean Fisheries*, edited by Jeremy B.C. Jackson, Karen E. Alexander, and Sala. (2011): 21–32

Sumaila, U. Rashid, Vicky W. Y. Lam, Dana D. Miller, Louise Teh, Reg A. Watson, Dirk Zeller, William W. L. Cheung, et al. “Winners and Losers in a World Where the High Seas Is Closed to Fishing.” *Scientific Reports* 5, no. 1 (July 2015).

### Guiding Questions

How did the creation of EEZs impact the sustainability of coastal fisheries?

How is the ‘freedom to fish’ represented in the prevailing system of fisheries governance?

Why are RFMOs generally ineffective at ensuring sustainable fishing?

What is required to ensure sustainable fishing on the high seas?

## 11/21 – IUU Fishing

### Readings (51 pages)

2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Peruse these websites:

Sea Around Us

Global Fishing Watch

Don Liddick, “The Dimensions of a Transnational Crime Problem: The Case of IUU Fishing,” *Trends in Organized Crime* 17, no. 4 (2014): 290-312

Blasiak, Robert. “Balloon Effects Reshaping Global Fisheries.” *Marine Policy* 57 (July 2015): 18–20.

Bellmann, Christophe, Alice Tipping, and U. Rashid Sumaila. “Global Trade in Fish and Fishery Products: An Overview.” *Marine Policy* 69 (July 2016): 181–88.

Poling and Cronin, “Illegal, Unreported, and Unregulated Fishing as a National Security Threat,” CSIS, (November 2017): 1-17

Christopher Pala, “Detective work uncovers under-reported overfishing,” *Nature* (April 2, 2013)

Flothmann, Stefan, Kristin von Kistowski, Emily Dolan, Elsa Lee, Frank Meere, and Gunnar Album. “Closing Loopholes: Getting Illegal Fishing Under Control.” *Science* 328, no. 5983 (June 4, 2010): 1235–36.

### Guiding Questions

What is IUU fishing, who does it, and where?

What conditions facilitate IUU fishing?

How can you tell when/how much fishing isn't being reported?

What are “high grading,” “product laundering,” and “balloon effects”?

Why is the fish trade increasingly international?

How do trade policies affect IUU fishing?

What does the PSMA add to global fisheries governance?

Why would anyone fish legitimately?

## 11/26 – International Whaling Commission

### Readings

International Convention for the Regulation of Whaling

UNCLOS Article 65

Mckinnon, J. B. “It’s Tough Being a Right Whale These Days.” *The Atlantic*, July 30, 2018. (12 pages)

Andresen, Steinar. “Science and Policy in the International Whaling Commission.” In *Contesting Global Environmental Knowledge, Norms, and Governance*, edited by M. J. Peterson, 110–23. Transforming Environmental Politics and Policy. Abingdon, Oxon ; New York: Routledge, 2019.

DiCenso, Matt. “Trouble on the High Seas: A Need for Change in the Wake of Australia v. Japan.” *Boston College International and Comparative Law Review* 39, no. 3 (2016): 13–27.

### Guiding Questions

What is the current status of global whale populations?

How has the International Whaling Commission changed since its formation?

Who is still whaling, and why?

What options exist for reforming the IWC?

## 11/28 – NO CLASS (thanksgiving break)

# Emerging Challenges

## 12/3 – Arctic

### Readings (58 pages)

2008 Illulissat Declaration

UNCLOS Article 234

Handout – Arctic

Van Pelt, T.I., H.P. Huntington, O.V. Romanenko, and F.J. Mueter. “The Missing Middle: Central Arctic Ocean Gaps in Fishery Research and Science Coordination.” *Marine Policy* 85 (November 2017): 79–86.

Michael Byers. “Introduction” (pgs. 1-10) and “Arctic Straits” (pgs. 128-157), *International Law and the Arctic.* Cambridge University Press (2013)

Dodds, Klaus. “Flag Planting and Finger Pointing: The Law of the Sea, the Arctic and the Political Geographies of the Outer Continental Shelf.” *Political Geography* 29, no. 2 (February 2010): 63–73.

### Guiding Questions

What are the major competing claims in the Arctic? Who is making them, and what types of claims are they making? What resources are at stake?

What is the relationship between the Arctic Council and UNCLOS?

How does the melting ice cap affect Arctic issues?

What might the Arctic be like in 50 years?

## 12/5 – Climate Change

### Final study guide handed out

### Readings (28 pages)

Houghton, Katherine J., Athanasios T. Vafeidis, Barbara Neumann, and Alexander Proelss. “Maritime Boundaries in a Rising Sea.” *Nature Geoscience* 3, no. 12 (November 30, 2010): 813–16..

“International Law and Sea Level Rise: Law of the Sea Issues,” 2018 Report of the International Law Association Committee on International Law and Sea Level Rise, pgs. 8-16

Comaroff, Joshua. “Built on Sand: Singapore and the New State of Risk.” *Harvard Design Magazine*, Fall/Winter 2014. (5 pages)

Pinsky, Malin L., Gabriel Reygondeau, Richard Caddell, Juliano Palacios-Abrantes, Jessica Spijkers, and William W. L. Cheung. “Preparing Ocean Governance for Species on the Move.” *Science* 360, no. 6394 (June 15, 2018): 1189–91.

Harrould-Kolieb, Ellycia R., and Ove Hoegh-Guldberg. “A Governing Framework for International Ocean Acidification Policy.” *Marine Policy* 102 (April 2019): 10–20.

### Guiding Questions

In what ways is UNCLOS unprepared for climate change?

How will sea level rise affect global coastlines?

What are the advantages and disadvantages of 'ambulatory' baselines?

Why has sand acquired strategic importance?

What risks are created by movement of fish populations, and how can they be assuaged?

## 12/10 – BBNJ

### Readings (15 pages)

UNCLOS Articles 86-90, 116-119

UN Resolution 69/292

“The Road to High Seas Conservation: A timeline of the United Nations’ work to protect marine biodiversity in areas beyond national jurisdiction,” Pew Charitcable Trusts

Blasiak, Robert, Jean-Baptiste Jouffray, Colette C. C. Wabnitz, Emma Sundström, and Henrik Österblom. “Corporate Control and Global Governance of Marine Genetic Resources.” *Science Advances* 4, no. 6 (June 2018) (6 pages)

Mendenhall, Elizabeth, Elizabeth De Santo, Elizabeth Nyman, and Rachel Tiller. “A Soft Treaty, Hard to Reach: The Second Inter-Governmental Conference for Biodiversity beyond National Jurisdiction.” *Marine Policy* 108 (October 2019): 1-7.

### Guiding Questions

What do the BBNJ negotiations entail – what is on the agenda?

What/whose interests are at stake?

What outcome is preferred by the United States?

What is the relationship between the BBNJ agenda and existing governance institutions?

# 12/12 – Final exam @ 11:30am

# Articles for analysis papers

**Technological innovation:**

Svanberg, Martin, Vendela Santén, Axel Hörteborn, Henrik Holm, and Christian Finnsgård.

“AIS in Maritime Research.” *Marine Policy* 106 (August 2019): 103520.

Ringbom, Henrik. “Regulating Autonomous Ships—Concepts, Challenges and Precedents.” *Ocean Development & International Law* 50, no. 2–3 (July 3, 2019): 141–69.

Hofmann, Tobias, and Alexander Proelss. “The Operation of Gliders Under the International Law of the Sea.” *Ocean Development & International Law* 46, no. 3 (July 3, 2015): 167–87.

**Stakeholders:**

Wabnitz, Colette C.C., and Robert Blasiak. “The Rapidly Changing World of Ocean Finance.” *Marine Policy*, May 2019, 103526.

Barbesgaard, Mads. “Blue Growth: Savior or Ocean Grabbing?” *The Journal of Peasant Studies* 45, no. 1 (January 2, 2018): 130–49.

Quesada-Silva, Michele, Alejandro Iglesias-Campos, Alexander Turra, and Juan L. Suárez-de Vivero. “Stakeholder Participation Assessment Framework (SPAF): A Theory-Based Strategy to Plan and Evaluate Marine Spatial Planning Participatory Processes.” *Marine Policy* 108 (October 2019): 103619.

Young, Oran. (poorly titled – about ‘tragedy of the commons’ framing) “Land Use, Environmental Change, and Sustainable Development: The Role of Institutional Diagnostics.” *International Journal of the Commons* 5, no. 1 (February 24, 2011): 66.

**Governance principles:**

Kirkfeldt, Trine Skovgaard. “An Ocean of Concepts: Why Choosing between Ecosystem-Based Management, Ecosystem-Based Approach and Ecosystem Approach Makes a Difference.” Marine Policy 106 (August 2019): 103541.

Kirk, Elizabeth A. “The Ecosystem Approach and the Search for An Objective and Content for the Concept of Holistic Ocean Governance.” *Ocean Development & International Law* 46, no. 1 (January 2, 2015): 33–49.

Wang, Runyu. “The Precautionary Principle in Maritime Affairs.” *WMU Journal of Maritime Affairs* 10, no. 2 (October 2011): 143–65.

Friedman, K., S.M. Garcia, and J. Rice. “Mainstreaming Biodiversity in Fisheries.” *Marine Policy* 95 (September 2018): 209–20.

Millicay, F. “Common Heritage of Mankind: 21st Century Challenges of a Revolutionary Concept” in *Law of the Sea, From Grotius to the International Tribunal for the Law of the Sea* (2015)

**Navigation:**

Young, Michaela. “Then and Now: Reappraising Freedom of the Seas in Modern Law of the Sea.” *Ocean Development & International Law* 47, no. 2 (April 2, 2016): 165–85.

Schatz, Valentin J., and Dmytro Koval. “Russia’s Annexation of Crimea and the Passage of Ships Through Kerch Strait: A Law of the Sea Perspective.” *Ocean Development & International Law* 50, no. 2–3 (July 3, 2019): 275–97.

Tran, Truong Thuy, John Welfield, and Thuy Trang Le, eds. “Maritime Claims in the South China Sea and Freedom of Navigation Operations.” In *Building a Normative Order in the South China Sea: Evolving Disputes, Expanding Options*, 171–95. Cheltenham, UK ; Northampton, MA: Edward Elgar Publishing, 2019.

Perry, Timothy. “The PSI as a Shared Good: How the Proliferation Security Initiative Both Challenges and Reinforces a Prevailingly *Mare Liberum* Regime.” *Ocean Development & International Law* 49, no. 4 (October 2, 2018): 335–67.

Odom, Jonathan G. “Navigating Between Treaties and Tweets: How to Ensure Discourse about Maritime Freedom Is Meaningful.” *Ocean Development & International Law* 49, no. 1 (January 2, 2018): 1–51.

Norris, Andrew. “Fishy Business: The High Seas Boarding and Inspection Regime in the Western and Central Pacific Ocean.” *Ocean Development & International Law* 46, no. 4 (October 2, 2015): 331–44.

**Fisheries:**

Haas, Bianca, Aysha Fleming, Marcus Haward, and Jeffrey McGee. “Big Fishing: The Role of the Large-Scale Commercial Fishing Industry in Achieving Sustainable Development Goal 14.” *Reviews in Fish Biology and Fisheries* 29, no. 1 (March 2019): 161–75.

Spijkers, Jessica, Gerald Singh, Robert Blasiak, Tiffany H. Morrison, Philippe Le Billon, and Henrik Österblom. “Global Patterns of Fisheries Conflict: Forty Years of Data.” *Global Environmental Change* 57 (July 2019): 1-9

Jacques, Peter J., and Rafaella Lobo. “The Shifting Context of Sustainability: Growth and the World Ocean Regime.” *Global Environmental Politics*, October 9, 2018, 85–106.

Sumaila, U. Rashid, and William W L Cheung. “Boom or Bust: The Future of Fish in the South China Sea.” OceanAsia, November 5, 2015.

Van Pelt, T.I., H.P. Huntington, O.V. Romanenko, and F.J. Mueter. “The Missing Middle: Central Arctic Ocean Gaps in Fishery Research and Science Coordination.” *Marine Policy* 85 (November 2017): 79–86.

Ojea, Elena, Isaac Pearlman, Steven D. Gaines, and Sarah E. Lester. “Fisheries Regulatory Regimes and Resilience to Climate Change.” *Ambio* 46, no. 4 (May 2017): 399–412.

Pentz, Brian, Nicole Klenk, Sharron Ogle, and Jonathan A.D. Fisher. “Can Regional Fisheries Management Organizations (RFMOs) Manage Resources Effectively during Climate Change?” *Marine Policy* 92 (June 2018): 13–20.

**Maritime boundaries:**

Árnadóttir, Snjólaug. “Ecological Changes Justifying Termination or Revision of EEZ and EFZ Boundaries.” *Marine Policy* 84 (October 2017): 287–92.

Bautista, Lowell B. “The Implications of Recent Decisions on the Territorial and Maritime Boundary Disputes in East and Southeast Asia.” #37. Maritime Energy Resources in Asia: Legal Regimes and Cooperation. The National Bureau of Asian Research, February 2012.

Anderson, David. “Negotiating Maritime Boundary Agreements.” In *Modern Law of the Sea: Selected Essays*, 417–35. Publications on Ocean Development, v. 59. Leiden ; Boston: Martinus Nijhoff Publishers, 2008.

**Shipping:**

Shi, Yubing, and Warwick Gullett. “International Regulation on Low-Carbon Shipping for Climate Change Mitigation: Development, Challenges, and Prospects.” *Ocean Development & International Law* 49, no. 2 (April 3, 2018): 134–56.

Hartmann, Jacques. “Regulating Shipping in the Arctic Ocean: An Analysis of State Practice.” *Ocean Development & International Law* 49, no. 3 (July 3, 2018): 276–99.

Akamangwa, Ngwatung. “Regulatory Influences on Environmental Protection: Why Shipping Companies Comply and When They Don’t.” *Ocean Development & International Law* 48, no. 2 (April 3, 2017): 158–80.

Bodansky, Daniel. “Regulating Greenhouse Gas Emissions from Ships: The Role of the International Maritime Organization.” In *Ocean Law Debates: The 50-Year Legacy and Emerging Issues for the Years Ahead*, edited by Harry N. Scheiber, Nilufer Oral, and Moon-Sang Kwon, 478–501. Leiden: Brill, 2018.

**Arctic:**

Rayfuse, Rosemary. “The Role of Law in the Regulation of Fishing Activities in the Central Arctic Ocean.” *Marine Policy*, June 2019, 103562.

Gavrilov, Viatcheslav, Roman Dremliuga, and Rustambek Nurimbetov. “Article 234 of the 1982 United Nations Convention on the Law of the Sea and Reduction of Ice Cover in the Arctic Ocean.” *Marine Policy* 106 (August 2019): 103518.

Dremliuga, Roman. “A Note on the Application of Article 234 of the Law of the Sea Convention in Light of Climate Change: Views from Russia.” *Ocean Development & International Law* 48, no. 2 (April 3, 2017): 128–35.

Dodds, Klaus. “Flag Planting and Finger Pointing: The Law of the Sea, the Arctic and the Political Geographies of the Outer Continental Shelf.” *Political Geography* 29, no. 2 (February 2010): 63–73.

**South/East China Seas:**

Costa, Anna. “Contested Territory,” in *The China-Japan Conflict over the Senkaku/Diaoyu Islands: Useful Rivalry* (2018): 1-18

Berkofsky, Axel. “US Freedom of Navigation Operations (FONOPs) in the South China Sea—Able to Keep Chinese Territorial Expansionism in Check?” In *US Foreign Policy in a Challenging World*, edited by Marco Clementi, Matteo Dian, and Barbara Pisciotta, 339–56. Cham: Springer International Publishing, 2018.

Stephens, Dale. “The Legal Efficacy of Freedom of Navigation Assertions.” In *International Law Studies: Issues in International Law and Military Operations*, edited by Richard B. Jacques, 80:235–56, 2006.

Kopela, Sophia. “Historic Titles and Historic Rights in the Law of the Sea in the Light of the South China Sea Arbitration.” *Ocean Development & International Law* 48, no. 2 (April 3, 2017): 181–207.

**Conservation:**

Da Ros, Zaira, Antonio Dell’Anno, Telmo Morato, Andrew K. Sweetman, Marina Carreiro-Silva, Chris J. Smith, Nadia Papadopoulou, et al. “The Deep Sea: The New Frontier for Ecological Restoration.” *Marine Policy* 108 (October 2019): 103642.

Oral, Nilufer. “Freedom of the Seas or Protection of the Marine Environment? A False Dichotomy.” In *Ocean Law Debates: The 50-Year Legacy and Emerging Issues for the Years Ahead*, edited by Harry N. Scheiber, Nilufer Oral, and Moon-Sang Kwon, 331–53. Leiden: Brill, 2018.

Caron, David D., and Stephen Minas. “Conservation or Claim? The Motivations for Recent Marine Protected Areas.” In *Ocean Law Debates: The 50-Year Legacy and Emerging Issues for the Years Ahead*, edited by Harry N. Scheiber, Nilufer Oral, and Moon-Sang Kwon, 529–52. Leiden: Brill, 2018.

**Labor and security issues:**

Mileski, Joan P., Cassia Bomer Galvao, and Zaida Denise Forester. “Human Trafficking in the Commercial Fishing Industry: A Multiple Case Study Analysis.” *Marine Policy*, July 2019, 103616.

Terry, W. C. “Flags of Convenience and the Global Cruise Labour Market.” In *Cruise Ship Tourism*, edited by R. Dowling and C. Weeden, 2nd ed., 72–85. Wallingford: CABI, 2017.

Jin, Mengjie, Wenming Shi, K.-C. Lin, and Kevin X. Li. “Marine Piracy Prediction and Prevention: Policy Implications.” *Marine Policy*, May 2019, 103528.

Boot, Max. “How Piracy Was Defeated in the Past and Can Be Again.” *Foreign Affairs*, July 2009.

**Shipwrecks/archaeology:**

Lin, Zhen. “Jurisdiction Over Underwater Cultural Heritage in the EEZ and on the Continental Shelf: A Perspective From the Practice of States Bordering the South China Sea.” *Ocean Development & International Law* 50, no. 2–3 (July 3, 2019): 170–89.

Losier, M.M. “The Conflict between Sovereign Immunity and the Cargo of Sunken Colonial Vessels.” *The International Journal of Marine and Coastal Law* 33, no. 3 (August 22, 2018): 528–57.

Martin, Josh B. “Protecting Outstanding Underwater Cultural Heritage through the World Heritage Convention: The Titanic and Lusitania as World Heritage Sites.” *The International Journal of Marine and Coastal Law* 33, no. 1 (March 12, 2018): 116–65.

**Submarine cables:**

Davenport, Tara. “The High Seas Freedom to Lay Submarine Cables and the Protection of the Marine Environment: Challenges in High Seas Governance.” *AJIL Unbound* 112 (2018): 139–43.

Sun, Zhen. “Protection of Cable Ships Engaged in Operations for Submarine Telecommunication Cables.” *Ocean Development & International Law* 49, no. 2 (April 3, 2018): 118–33.

Treves, Tullio. “‘Due Regard’ Obligations under the 1982 UN Convention on the Law of the Sea: The Laying of Cables and Activities in the Area.” *The International Journal of Marine and Coastal Law* 34, no. 2 (April 29, 2019): 167–94.

**Islands:**

Gau, Michael Sheng-ti. “The Interpretation of Article 121(3) of UNCLOS by the Tribunal for the South China Sea Arbitration: A Critique.” *Ocean Development & International Law* 50, no. 1 (January 2, 2019): 49–69.

Song, Yann-huei. “The July 2016 Arbitral Award, Interpretation of Article 121(3) of the UNCLOS, and Selecting Examples of Inconsistent State Practices.” *Ocean Development & International Law* 49, no. 3 (July 3, 2018): 247–61.

Mendenhall, Elizabeth. “Interpreting the Law of the Sea ‘Regime of Islands’: An Opportunity for Productive US Leadership.” *Marine Policy* 99 (January 2019): 213–15.

Schofield, Clive, and David Freestone. “Islands Awash Amidst Rising Seas: Sea Level Rise and Insular Status under the Law of the Sea.” *The International Journal of Marine and Coastal Law*, July 10, 2019, 1–24.

Chee, Su Yin, Abdul Ghapar Othman, Yee Kwang Sim, Amni Nabilah Mat Adam, and Louise B. Firth. “Land Reclamation and Artificial Islands: Walking the Tightrope between Development and Conservation.” *Global Ecology and Conservation* 12 (October 2017): 80–95.

Jaschik, Kevin. “Small States and International Politics: Climate Change, the Maldives and Tuvalu.” *International Politics* 51, no. 2 (March 2014): 272–93.