

9th October 2015 – International law of territories: Relationship between State and territory. Modes of territorial acquisition.

- I. **What are the territorial regimes recognized by international law ?**

- II. **What is the relationship between State and territory** (e.g. sovereignty, jurisdiction, protectorate, condominium, mandate, trusteeship, international administration of territories, lease, servitude)? **Describe their fundamental characteristics** (e.g. legal basis?, which State exercises sovereignty over the concerned territory? plausible extent of the powers enjoyed by administering State? What is the purpose of the established legal relationship?)
 - a. Portugal successfully argued before ICJ that she enjoyed a right of passage for civilians between her territories in India. The Court found that the right had been established by custom based on the practice of Portugal and Britain as well as by subsequent practice by India.
 - b. Relationship between Great Britain and Ionian Islands (1815-1864) – while the external sovereignty of the Ionian Islands was transferred to Great Britain, it was not exercised in the name of Great Britain, but always as on behalf of another, distinct State.
 - c. The joint control of Moresnet by Prussia and the United Netherlands (later Belgium) (1816 – 1920): The Final Act of the Vienna Congress (1815) gave this tiny territory of less than 4 square kilometers and fewer than 3,000 residents neutral status. It was governed by royal commissioners from the two countries, assisted by a local mayor, whom they appointed, and a locally chosen council. Products of the territory, primarily zinc from a mine located there, could be sent to either country free of customs duties.
 - d. Authority exercised by a State within its borders over persons and situations / events that occur there; encompasses the right to dispose of the territory concerned.
 - e. In Eritrea-Yemen arbitration, arbitral tribunal found that there was an obligation on Yemen to ensure ‘the traditional fishing regime of free access and enjoyment for the fishermen of both Eritrea and Yemen shall be preserved for the benefit of lives and livelihoods of this poor and industrious order of men’.
 - f. Great Britain and the King of Iraq entered into Treaty of Iraq (1922) to govern its relationship, and on 27 September 1924, the League Council approved the treaty as being consistent with League Covenant. The King became the head of the country, with the understanding that his government should be constitutional, representative, and democratic. Iraq was the first to achieve independence under League auspices. The treaty of 30 June 1930

terminated the British administration in Iraq and it took effect when Iraq was admitted as a member of the League in October 1932.

- g. In 1847 France and Great Britain concluded a treaty under which both of them agreed not to colonize the New Hebrides Islands (now Vanuatu), but they gradually found it in their mutual interest to exercise increasing colonial authority and to exclude other countries. By 1906 the Convention between United Kingdom and France concerning the New Hebrides had established a common regime for the government of the territory, under which the citizens of each of the signatories would be governed by their own authorities, but the indigenous inhabitants would be subject to joint control. In 1980 Vanuatu became independent.
- h. Memorandum of Understanding of the European Union Administration of Mostar signed on 5 July 1994 by the EU and Western European Union Member States and the different parties involved in the former conflict. It was a result of a decision of the EU Council under its Common Foreign and Security Policy. To ensure some limited accountability of the European Administrator, the Council set up the institution of an independent European Union Ombudsman for Mostar.
- i. By means of the Treaty Between the United States of America and Cuba (1934), US recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over Guantánamo, but shall exercise complete jurisdiction and control over mentioned part of territory. The purpose of the administration is limited to coaling and establishment of a naval station. The 1934 treaty remains in force ‘[s]o long as the United States of America shall not abandon the said naval station of Guantánamo or the two Governments shall not agree to a modification of its present limits’.
- j. African Union Mission in Somalia was authorized by the Security Council under Chapter VII UN Charter. One of the main functions of AMISOM is supporting dialogue and reconciliation in Somalia by assisting with the free movement, safe passage, and protection of people involved in the reconciliation process. It also provides protection to the Somali Transitional Federal Institutions to help them to carry out their government functions.

III. **What are the modes of territorial acquisition recognized by international law?**

IV. **Identify the mode of territorial acquisition. What are the conditions for their validity?**

- a. US bought Louisiana from France in 1803, Alaska from Russia in 1867, and the Philippines from Spain in 1898.
- b. Spanish galleon – privateer – accidentally encounters a foreign territory. Upon visual apprehension of the territory by a subject of a given sovereign, however without setting foot

on the new lands, Spain starts to acknowledge the mentioned part of territory as its own. Such behavior is not followed by public and open territorial claims.

- c. During 60 years, State A exercised sovereign powers with regard to territory formally belonging to State B. The possession has been openly conducted, however did not meet with any reactions raised by the international community.
- d. Iraq's annexation of Kuwait in 1990.
- e. In 1890, the UK exchanged Heligoland for Zanzibar (from Germany).
- f. Malaysia had original title to a granite island called Pedra Branca / Palau Batu Puteh on the basis of a continuous and peaceful display of sovereignty. However, the correspondence from 1950s, between Malaysia and Singapore, demonstrated that Malaysia did not itself view as sovereign over island. Thus, Singapore began handling shipwrecks that occurred at the island, granting permission to Malaysia to conduct surveys of the adjacent waters, flying Singapore ensign and installing military equipment on the island. Additionally, Singapore had flown the Singapore flag over the island. When certain Malaysian marine boats tried to dock on the island recently for some survey work, they were refused permission to land. In most cases, Malaysia failed to protest such acts.
- g. Dramatic change in the course of river or the creation of volcanic formation within State's territory.
- h. The territory in question was inhabited by people which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them. It may be said that the territory, at the time of its colonization, had a sparse population that, for the most part, consisted of nomadic tribes the members of which traversed the desert on more or less regular routes dictated by the seasons and the wells or water-holes available to them. The European colonial State proclaimed that it is taking the indigenous peoples under his protection on the basis of agreements which had been entered into with the chiefs of the local tribes. In fact, such protection allowed colonial powers to exercise jurisdiction and control over territory inhabited by tribal populations.
- i. Papal grant entrusting a European colonial power with the task of evangelizing the newly discovered territories. Simultaneously, from papal grant stems a right to colonization, opposable to other European colonial powers under penalty of excommunication. Additionally, territory cannot be under the actual possession of Christian Princes.
- j. In 1858, France discovered a small island on the Pacific Ocean. A French naval officer, commissioned for that purpose, formally proclaimed French sovereignty from the deck of a French merchant ship cruising off the island (a brief landing, no visible mark of French sovereignty). Additionally, the proclamation of French sovereignty was reported to the French consulate in Honolulu, notified to the government of Hawaii, and published in a local

Hawaiian newspaper. Meanwhile, the French government started to grant a concession to exploit the island's guano resources

16th October 2015 – International legal rules for deciding sovereignty disputes: title to territory v. effectivité, uti possidetis iuris principle, intertemporal law. Jurisdiction in international law.

I. Describe the relationship between title to territory and effectivités in territorial disputes (on the basis of ICJ's reasoning):

Apart from the texts and maps listed above, the Parties have invoked in support of their respective contentions the "colonial *effectivités*", in other words, the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. For Burkina Faso, the *effectivités* can support an existing title, whether written or cartographical, but when their probative value has to be assessed they must be systematically compared with the title in question ; in no circumstances can they be substituted for the title. For its part, Mali admits that in principle the *effectivités* cannot be brought into operation where they are contrary to the text of a treaty, but argues that in a situation where there is no boundary described in conventional or legislative form, it is necessary to ascertain the boundary by other methods, and an investigation of the *effectivités* then becomes essential.

The role played in this case by such *effectivités* is complex, and the Chamber will have to weigh carefully the legal force of these in each particular instance. It must however state forthwith, in general terms, what legal relationship exists between such acts and the titles on which the implementation of the principle of *uti possidetis* is grounded. For this purpose, a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where effective administration is additional to the *uti possidetis iuris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the *effectivité* does not coexist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivité* can then play an essential role in showing how the title is interpreted in practice.

Frontier Dispute (Burkina Faso v. Republic of Mali), Judgment, I.C.J. Reports 1986, p. 554., par. 63

Some of these activities - the organization of public health and education facilities, policing, the administration of justice - could normally be considered to be acts *à titre de souverain*. The Court notes, however, that, as there was a pre-existing title held by Cameroon in this area of the lake, the pertinent legal

test is whether there was thus evidenced acquiescence by Cameroon in the passing of title from itself to Nigeria. (par. 67)

In this context the Court also observes that Cameroon's own activities in the Lake Chad area have only a limited bearing on the issue of title. The Court has already ruled on a number of occasions on the legal relationship between "*effectivités*" and titles. (...) Cameroon held the legal title to territory lying to the east of the boundary as fixed by the applicable instruments. Hence the conduct of Cameroon in that territory has pertinence only for the question of whether it acquiesced in the establishment of a change in treaty title, which cannot be wholly precluded as a possibility in law. (par. 68)

The Court finds that the above events, taken together, show that there was no acquiescence by Cameroon in the abandonment of its title in the area in favour of Nigeria. Accordingly, the Court concludes that the situation was essentially one where the *effectivités* adduced by Nigeria be given to the holder of the title". (par. 70)

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I. C. J. Reports 2002, p. 303

II. *Uti possidetis juris* principle – identify its purpose, legal character, scope of application, basic elements on the basis of ICJ's judgments.

Since the two Parties have, as noted above, expressly requested the Chamber to resolve their dispute on the basis, in particular, of the "principle of the intangibility of frontiers inherited from colonization", the Chamber cannot disregard the principle of *uti possidetis juris*, the application of which gives rise to this respect for intangibility of frontiers. Although there is no need, for the purposes of the present case, to show that this is a firmly established principle of international law where decolonization is concerned, the Chamber nonetheless wishes to emphasize its general scope, in view of its exceptional importance for the African continent and for the two Parties. In this connection it should be noted that the principle of *uti possidetis* seems to have been first invoked and applied in Spanish America, inasmuch as this was the continent which first witnessed the phenomenon of decolonization involving the formation of a number of sovereign States on territory formerly belonging to a single metropolitan State. Nevertheless the principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power. (par. 20)

It was for this reason that, as soon as the phenomenon of decolonization characteristic of the situation in Spanish America in the 19th century subsequently appeared in Africa in the 20th century, the principle of *uti*

possidetis, in the sense described above, fell to be applied. The fact that the new African States have respected the administrative boundaries and frontiers established by the colonial powers must be seen not as a mere practice contributing to the gradual emergence of a principle of customary international law, limited in its impact to the African continent as it had previously been to Spanish America, but as the application in Africa of a rule of general scope. (par. 21)

The elements of *uti possidetis* were latent in the many declarations made by African leaders in the dawn of independence. These declarations confirmed the maintenance of the territorial status quo at the time of independence, and stated the principle of respect both for the frontiers deriving from international agreements, and for those resulting from mere internal administrative divisions. (par. 22)

There are several different aspects to this principle, in its well known application in Spanish America. The first aspect, emphasized by the Latin genitive *juris*, is found in the pre-eminence accorded to legal title over effective possession as a basis of sovereignty. Its purpose, at the time of the achievement of independence by the former Spanish colonies of America, was to scotch any designs which non-American colonizing powers might have on regions which had been assigned by the former metropolitan State to one division or another, but which were still uninhabited or unexplored. However, there is more to the principle of *uti possidetis* than this particular aspect. The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term. This is true both of the States which took shape in the regions of South America which were dependent on the Spanish Crown, and of the States Parties to the present case, which took shape within the vast territories of French West Africa. *Uti possidetis*, as a principle which upgraded former administrative delimitations, established during the colonial period, to international frontiers, is therefore a principle of a general kind which is logically connected with this form of decolonization wherever it occurs. (par. 23)

At first sight this principle conflicts outright with another one, the right of peoples to self-determination. In fact, however, the maintenance of the territorial *status quo* in Africa is often seen as the wisest course, to preserve what has been achieved by peoples who have struggled for their independence, and to avoid a disruption which would deprive the continent of the gains achieved by much sacrifice. The essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self-determination of peoples. (par. 25)

Frontier Dispute (Burkina Faso v. Republic of Mali), Judgment, I.C.J. Reports 1986, p. 554.

As the Chamber has recalled, the Parties have expressly asked it to carry out its task on the basis of, in particular, the principle of the succession of States to the frontiers inherited from colonialism, namely the principle of the intangibility of such frontiers, also known as the principle of *uti possidetis juris*. (par. 45)

In the present case these territorial boundaries were no more than delimitations between different administrative divisions or colonies subject to the same colonial authority. Only at the moment of independence, also called the “critical date”, did these boundaries become international frontiers. Until that time the matter of delimitation was governed by French colonial law, known as “droit d’outre-mer”. As noted above (see paragraph 28), in the application of the principle of *uti possidetis juris*, French law does not play a role in itself but only as one factual element among others, or as evidence indicative of what has been called the “colonial heritage” at the critical date. (par. 46)

the Chamber would emphasize that the *uti possidetis juris* principle requires not only that reliance be placed on existing legal titles, but also that account be taken of the manner in which those titles were interpreted and applied by the competent public authorities of the colonial Power, in particular in the exercise of their law-making power. (par. 140)

Case concerning the frontier dispute (Benin v. Niger), Judgment, I.C.J Reports 2002, p. 90

The Chamber has no doubt that the starting-point for the determination of sovereignty over the islands must be the *uti possidetis juris* of 1821. The islands of the Gulf of Fonseca were discovered in 1522 by Spain, and remained under the sovereignty of the Spanish Crown for three centuries. When the Central American States became independent in 1821, none of the islands were terra nullius; sovereignty over the islands could not therefore be acquired by occupation of territory. The matter was one of the succession of the newly-independent States to all former Spanish islands in the Gulf. The Chamber will therefore consider whether it is possible to establish the appurtenance in 1821 of each disputed island to one or the other of the various administrative units of the Spanish colonial structure in Central America. For this purpose, it may have regard not only to legislative and administrative texts of the colonial period, but also to “colonial effectivités” as defined by the Chamber in the Frontier Dispute case (see paragraph 45 above). In the case of the islands, there are no land titles of the kind which the Chamber has taken into account in order to reconstruct the limits of the *uti possidetis juris* on the mainland; and the legislative and administrative texts are confused and conflicting. The attribution of individual islands to the territorial administrative divisions of the Spanish colonial system, for the purposes of their allocation to the one or the other newly-independent State, may well have been a matter of some doubt and difficulty, judging by the evidence and information submitted. It should be recalled that when the principle of the *uti possidetis juris* is involved, the jus referred to is not international law but the constitutional or administrative law of the pre-independence sovereign, in this case Spanish colonial law; and it is perfectly possible that that law itself gave no clear and definite answer to the appurtenance of marginal areas, or sparsely populated areas of minimal economic significance.

For this reason, it is particularly appropriate to examine the conduct of the new States in relation to the islands during the period immediately after independence. Claims then made, and the reaction - or lack of reaction - to them may throw light on the contemporary appreciation of what the situation in 1821 had been, or should be taken to have been. In this light, it will first be appropriate to state briefly the conflicting claims of the Parties.

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992, p. 559, par. 333)

III. **Identify and explain the principle of jurisdiction applicable in presented case studies** (territorial principle: subjective, objective or effect doctrine; nationality principle: active or passive personality principles; protective principle; universal principle)

- a. On Wednesday 21 December 1988, at 6:04 pm, Pan Am Flight 103 pushed back from stand Kilo 14 at Terminal 3 of London Heathrow Airport and began taxiing to runway 27R for takeoff to JFK Airport, New York. On board the Boeing 747 were 243 passengers and a crew of 16, the majority of whom (189) were American citizens. The flight took off at 6:25 pm. Just under 38 minutes later, at about 7:03 pm, while the aircraft was flying at 31,000 feet over the border between England and Scotland, an improvised explosive device detonated in luggage in a container in one of the cargo holds. The aircraft broke up with debris falling over an area of about 845 square miles in and around the town of Lockerbie in southwest Scotland. All the passengers and crew on Pan Am 103 were killed, along with 11 residents of Lockerbie, all from the town's Sherwood Crescent. (...) The Sheriff Principal issued warrants for the arrest of Abdelbaset Ali Mohmed Al Megrahi ('Megrahi') and Al Amin Khalifa Fhimah ('Fhimah'), two Libyan nationals, on charges of conspiracy to murder, murder, and offences under the Aviation Security Act 1982 (UK). To the sequence of events determined by the Sheriff Principal, the petition added the names of the two accused, alleged to be agents of the Libyan intelligence services, and their introduction of the suitcase at Luqa Airport in Malta.
- b. The *Achille Lauro* hijacking occurred on 7 October 1985, when the Italian flagged cruise ship was seized by four armed members of the Palestinian Liberation Front posing as tourists. It is unclear whether the Achille Lauro was initially seized on the high seas; however, it was certainly held captive in international waters. The passengers and crew were taken hostage and the hijackers threatened to kill them unless Israel released fifty Palestinian prisoners. The hijackers killed one American passenger (Leon Klinghoffer, a Jew of US nationality who was

partly paralyzed and in a wheelchair, and threw his body and wheelchair overboard) before surrendering in exchange for safe conduct.

- c. In 1995, a federal grand jury handed up an indictment naming as a defendant Nippon Paper Industries Co., Ltd. (NPI), a Japanese manufacturer of facsimile paper. The indictment alleges that in 1990 NPI and certain unnamed coconspirators held a number of meetings in Japan which culminated in an agreement to fix the price of thermal fax paper throughout North America. NPI and other manufacturers who were privy to the scheme purportedly accomplished their objective by selling the paper in Japan to unaffiliated trading houses on condition that the latter charge specified (inflated) prices for the paper when they resold it in North America. The trading houses then shipped and sold the paper to their subsidiaries in the United States who in turn sold it to American consumers at swollen prices. (...) These activities had a substantial adverse effect on commerce in the United States and unreasonably restrained trade in violation of Section One of the Sherman Act, 15 U.S.C. § 1 (1994).
- d. This case is of interest because it brings before this Court for the first time the question of the jurisdiction of the District Court to indict and convict a foreign citizen of the crime of knowingly making a false statement under oath in a visa application to an American consular official located in a foreign country. (...) The utterance by an alien of a 'false statement with respect to a material fact' in a visa application constitutes an affront to the very sovereignty of the United States. These false statements must be said to have a deleterious influence on valid governmental interests. Therefore, 18 U.S.C. Section 1546, as applied to an alien's perjurious statements before a United States consular officer in a foreign country, represents a law which is 'necessary and proper for carrying into Execution,' U.S.Const. Art. I, Section 8, the Congressional power over the conduct of foreign relations.
- e. The affair originated in a collision on the high seas, between five and six nautical miles to the north of Cape Sigri (Mitylene), between the French mail steamer Lotus and the Turkish collier Boz-Kourt on 2 August 1926. As a result of the collision, the Boz-Kourt, which was cut in two, sank, and eight Turkish nationals on board the ship were killed. Upon the arrival of the Lotus in Constantinople (Istanbul), the Turkish authorities launched criminal proceedings in pursuance of Turkish law against, amongst others, the officer of the watch on board the Lotus at the time of the collision, Mr Demons, a French citizen, and the captain of the Boz-Kourt, Hassan Bey, who was one of ten saved from the wreck.
- f. In 1933 the appellant, an American citizen, who had resided in British territory for about twenty-four years, applied for and obtained a British passport, describing himself as a British subject by birth and stating that he required it for the purpose of holiday touring in Belgium, France, Germany, Switzerland, Italy and Austria. On its expiration, he obtained renewals on September 24, 1938 and on August 24, 1939, each for a period of one year, again describing

himself as a British subject. After the outbreak of war between Great Britain and Germany and before the expiration of the validity of the renewed passport, he was proved to have been employed by the German radio company and to have delivered from enemy territory broadcast talks in English hostile to Great Britain. The passport was not found in his possession when he was arrested.

23rd October 2015 Law of the sea Part I

Introduction

I What is jurisdiction?

- a. On basis of which principle does a coastal State exercise jurisdiction in its territorial sea, and
- b. Under which principle does a flag State exercise jurisdiction over its vessels?
- c. Is the Swedish penal code applicable to vessels flying its flag while navigating through the territorial seas of other states?
- d. May the coastal state apply its penal code to foreign flagged vessels in its Exclusive Economic Zone?
- e. Where may the flag state take enforcement measures in respect of its vessels violating its legislation?

II What are the maritime zones recognized by international law of the sea?

Coastal waters (Baselines and internal waters)

Baselines

III

- a. Are coastal States obligated to establish baselines?
- b. What are the functions of the baselines?
- c. Do other States have any legal interest in how they are drawn? Give examples of scenario in which baselines may be objected to.

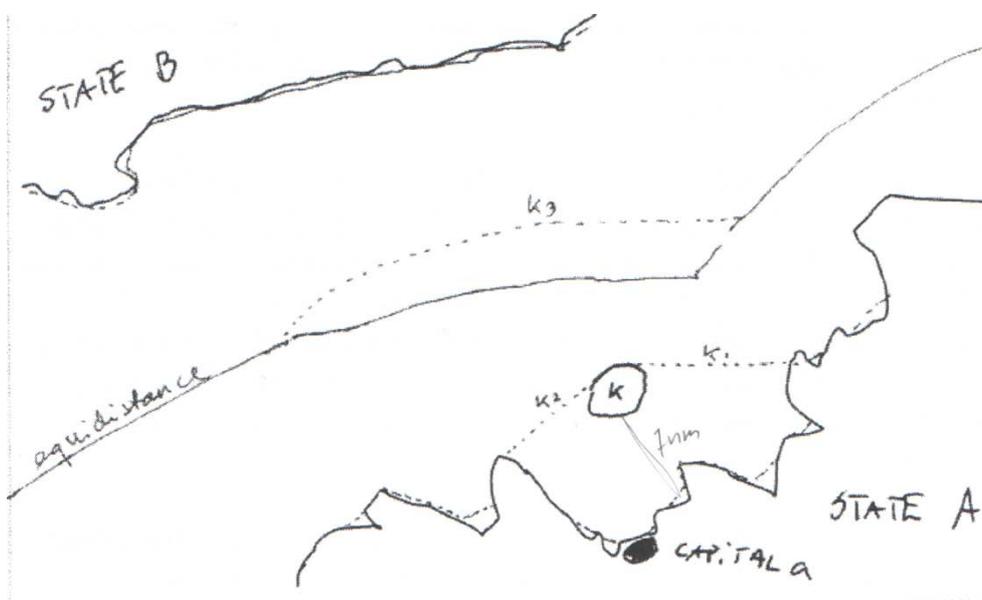
IV

Off the coast of State A there is an islet (K). K's port facilities are developed to cater for the growing petroleum industry of the country. The port is expanded inter alia to prevent further erosion. State A subsequently revises its baselines, drawing baselines across the bay, using as a basepoint island K. State A has been negotiating for some time with neighbouring State B on the delimitation of their EEZs. State A introduces a proposal for applying the equidistance method between their baselines, while taking account of the revised baselines (see map, k3). State B does not reject the proposal of using the equidistance method but argues that the revised baselines on which the delimitation are to be based are inconsistent with international law, referring to Article 60 of the LOS Convention. State B argues that K is an artificial island that cannot

have any maritime zones of its own and thus does not affect the delimitation of their EEZs. In any case, State A may not draw a straight baseline across the bay and thus move the equidistance line further towards its coastline. State A dismisses the argument that K is an artificial island and argues it may have its own maritime zones. It also argues that it may draw a straight baseline across the bay. In any case, K qualifies as a low-tide elevation located 7 nm from shore and may be used as a point for drawing the baselines.

Answer the following questions:

- Is K an artificial island?
- May State A draw a straight baseline across the bay?
- If K is not an island but a low tide elevation, may it be used as a basepoint for the baselines?



Internal waters

V

- What is the legal status of the internal waters?
- Under which circumstances are foreign flagged vessels entitled to navigate in the internal waters?
- Is the port state competent to deny a vessel from leaving its ports, and if yes under which circumstances?

VI

May, or could, the port state exercise jurisdiction over the vessel in the following cases:

- Two sailors from the HMS Suffolk (a British naval vessel) are suspected of being involved in a fight outside a pub. The police approach the commander of the vessel and request the sailors to be handed over for questioning.

- b. The Ukrainian flagged fishing vessel *Evgeniev* has sought refuge in Tromsø due to engine damage. After a tip, the local police board the ship and undertake a search finding large quantities of tobacco and alcohol. The captain is charged with inter alia illegal import. The Ukrainian authorities intervene and dismiss the charges arguing that the search of the vessel was done in contravention of international law.

Territorial sea

VII

- a. What is the status of the territorial sea under international law?
- b. Are States obliged to have a territorial sea, do they exist without any proclamation or do they have to be explicitly established?
- c. Is there any minimum breadth? Could a State X continue with a 4 nm territorial sea after becoming a party to the LOS Convention?
- d. What rights do other states have within the territorial sea? Is a neighbouring state entitled to lay a submarine cable through the territorial sea to ensure that its industry is provided with sufficient electricity, or is required to have the consent of the coastal state?

VIII

Does the following qualify as innocent passage?

- a. A Greek flagged cargo vessel is observed discharging waste while navigating through the territorial sea of Denmark;
- b. A Guinean trawler is passing through the Norwegian territorial sea en route to fishing grounds in the high seas area of the Loophole in the Barents Sea. What if it has engine failure and has to anchor in the territorial sea?
- c. A foreign vessel disembarking refugees to life rafts in the territorial sea;
- d. A foreign-flagged oil tanker does not comply with the sea lanes designated by the coastal State in its territorial sea.
- e. A foreign vessel sails through an area temporarily closed by the coastal State for navigation.

IX

A United States naval vessel entering the 12 nm territorial sea of Chile is requested not to navigate through these waters. The United States ambassador contacts the Chilean Ministry of Foreign Affairs protesting against this undue interference with international navigation. The Chilean authorities dismisses the United States protest, arguing that United States vessels do not enjoy any navigational rights as the United States is not a party to the LOS Convention and, in any case, military vessels are not included among vessels enjoying such right. Also, the vessel was in breach of a requirement of prior notice under Chilean legislation

which entitled the authorities to deny the vessel access. Under any circumstance the operation of the vessel must be considered "prejudicial to the peace, good order or security of the coastal State" and thus not innocent" as helicopters of the vessel was operating in the air during the passage.

Discuss these arguments:

- a. Navigational rights in the territorial sea exclusively treaty-based.
- b. Naval vessels do not enjoy this navigational right.
- c. Chile may require foreign vessels and naval vessels in particular to give prior notice to their navigation through the territorial sea.
- d. The passage of the vessel was "prejudicial" to the peace.

X

The Danish flagged fishing vessel Maria is caught fishing 10 nm off the coast of Finnmark. The vessel is boarded by the Norwegian Coast Guard and brought to a port in Finnmark. The captain is arrested and held in custody and is later sentenced to 4 months of imprisonment for violating Norwegian legislation. After the ship-owners have posted the bond for possible monetary penalties, the vessel is escorted out of Norwegian territorial sea.

Danish authorities recognise the right of Norway to take enforcement measures and prosecute such violations in its territorial sea. They argued that Norway was not competent to use imprisonment as penalty referring to LOS Convention Article 73. Further, they argued that the vessel was entitled to continue its passage through the territorial sea of Norway on its way southwards. By expelling Maria to the EEZ, the ship-owners incurred extra costs and time for its journey.

- a. Could Norway use imprisonment as penalty for violations of its legislation in the territorial sea in this case?
- b. Was the Maria entitled to continue its innocent passage through the territorial sea or could she be expelled?

XI

May or could the coastal State exercise the following jurisdiction over foreign flagged vessels in innocent passage:

- a. A Norwegian registered vessel navigating through the territorial sea of Sweden is suspected of smuggling narcotics destined for Denmark. May the Swedish Coast Guard board and inspect the vessel? What enforcement measures may be taken if the suspicions are confirmed? Is it of relevance that the vessel is not suspected of landing its cargo in Swedish waters?
- b. An oil spill is observed in the tracks of the Russian-flagged vessel Dmitry traversing through the British territorial sea. The oil spill does not amount to "serious pollution" but may be a violation of the Marine Pollution Act of the United Kingdom. A British Coast Guard vessel is directed to the area

to investigate the incident and, if necessary, board the vessel and take further enforcement action. When the Dmitry is approached and asked for inspection, the captain replies that it would amount to hampering the right of innocent passage and therefore violate Article 24 of the LOS Convention. Advise the commander of the Coast Guard vessel on whether he may proceed or stop.

30th October 2015 Law of the sea part III

Contiguous zone

XII

A Coastal Guard vessel of State K detects a foreign flagged vessel anchored approximately 2 nm outside its territorial sea. There is evidence that the vessel has transhipped weapons to smaller boats and smuggled weapons to a rebel group inside the coastal state. The flag state rejects a request to board and inspect the vessel. Nevertheless, the Coast Guard vessel is ordered to board the vessel. The vessel is taken to a port in the coastal state, the captain is prosecuted and the cargo confiscated. The flag State protests by claiming the arrest was in violation of the freedom of navigation and the exclusive flag State jurisdiction under international law and calls for the immediate release of the vessel, the crew and its cargo.

The coastal state responds that the vessel was located in its contiguous zone where it is entitled to take criminal actions against the vessel. The flag state argues that the right of the coastal state to take enforcement measures does not include the cargo this vessel. In any case the vessel had not operated within the territorial sea of the coastal state, another criterion for taking enforcement measure in the contiguous zone.

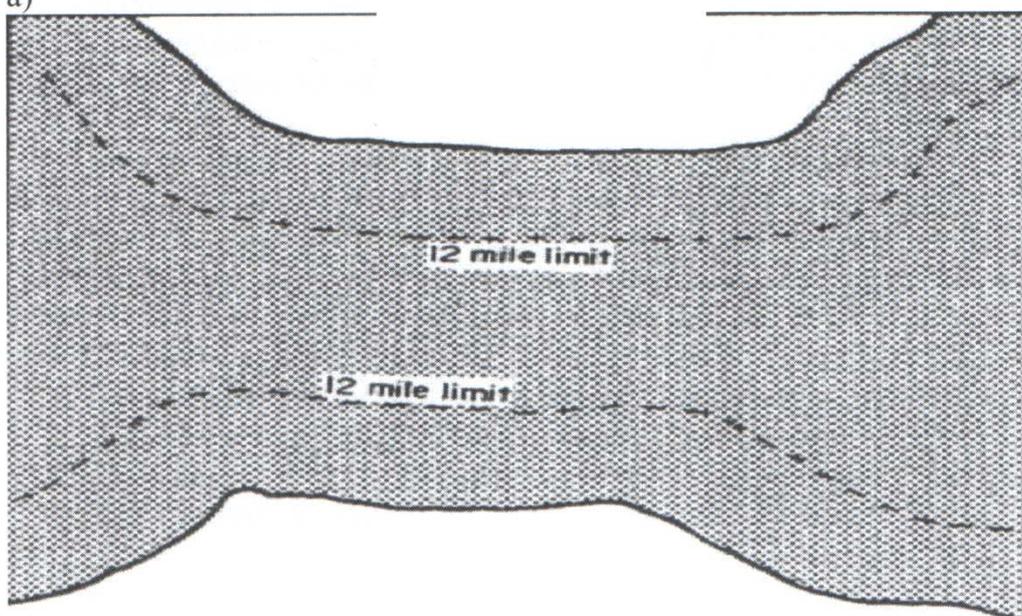
- a. Can the coastal State take enforcement measures in the contiguous zone in respect of weapons smuggling. On what legal basis?
- b. What are the legal implications if the vessel had not been present in the territorial sea?

Straits and Archipelagic waters

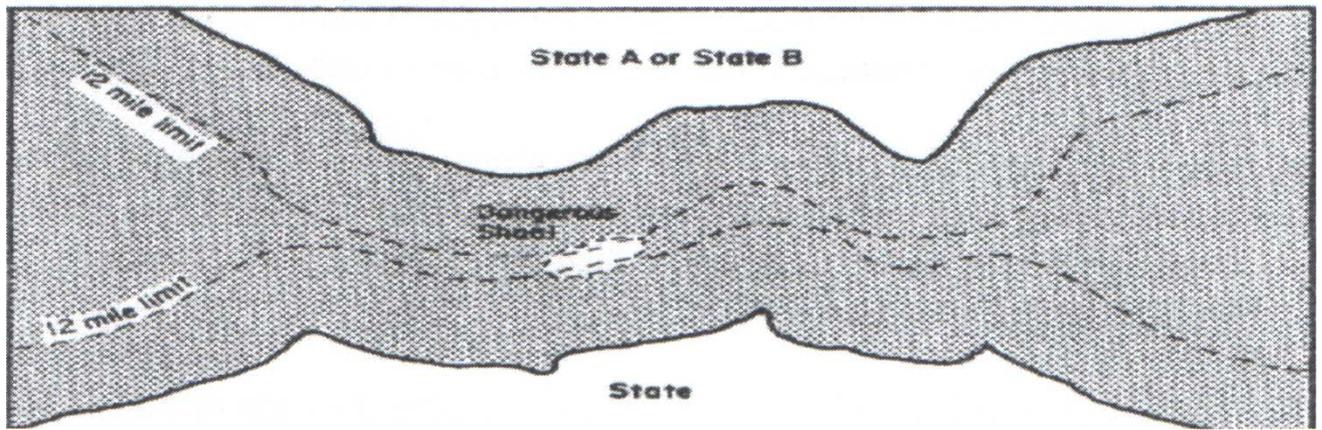
XIII

Does a foreign flagged vessel enjoy right of transit passage in the following cases? If not, why?

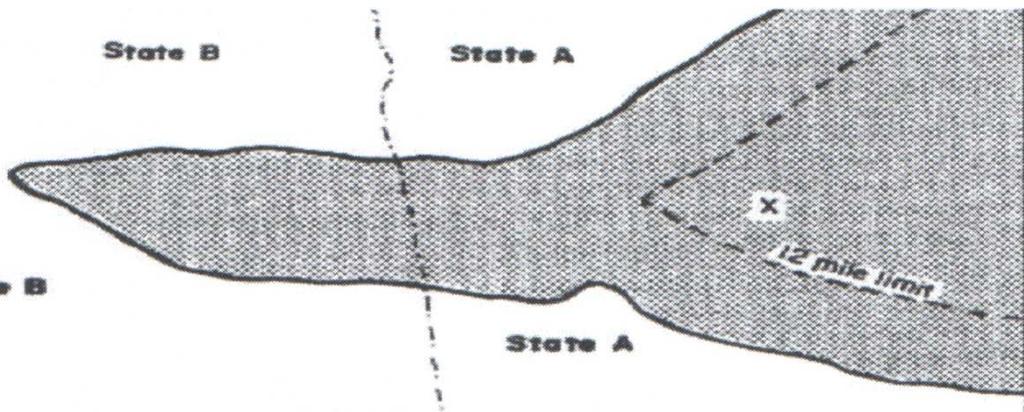
a)



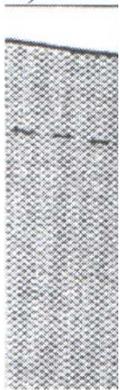
b)



c)



d)



XIV

International straits and archipelagic waters:

- a. What are the main differences between the right of innocent passage and the right of transit passage under the LOS Convention?
- b. A fishing vessel is caught fishing while exercising the right of transit passage. May the relevant coastal State take enforcement measures and, if yes, on what legal basis?
- c. Compare rights of the coastal state in the territorial sea with its rights in archipelagic waters.
- d. An archipelagic State has established sea lanes through its archipelagic waters and adjacent territorial sea consistent with Article 53 of the LOS Convention. Are foreign-flagged vessels obligated to use these lanes navigating through these waters?

Continental shelf

XV

A foreign flagged vessel has anchored in an area adjacent to the territorial sea of an African state and has started to drill into the subsoil. The African state protests to the flag state arguing that the drilling is illegal without the consent of the coastal state. The flag state responds arguing that since the coastal state has not established any EEZ all states are free to undertake such activities.

- a. Is the vessel entitled to undertake these activities?
- b. If not, what is the legal basis in the LOS Convention for the coastal state to undertake enforcement measures to stop the drilling?

XVI

What distinguishes the rights and obligations of the coastal State with respect to the part of its continental shelf within 200 nm and the part that extends beyond?

XVII

A coastal State is planning to develop an oil field in an area traditionally used for international maritime traffic. With the establishment of safety zones around the oil platforms, vessels navigating the area will be excluded from certain areas. Several flag States protest and claim that this would impede on their rights to navigate in the EEZ and the high seas under Articles 58 and 90 of the LOS Convention. Is the coastal State entitled to establish such installations and does it have any obligations towards States exercising the freedom of navigation?

XVIII

A Russian/German joint venture company is building a submarine pipeline through the Baltic Sea for transport of gas from Russia to Germany

- a) What rights do States have to lay submarine pipelines on the seabed of another coastal State, and
- b) May the coastal State regulate the laying of such pipelines and/or their operation?

XIX

A drilling rig of Dutch nationality is operating on the Norwegian continental shelf. What State has jurisdiction over the rig? E.g. if there is a murder onboard? Or chemicals are discharged from the rig?

XX

A foreign flagged vessel is starting a research project intended to map the geological structures of the continental shelf off Iceland. Does it need a license from the coastal State (Iceland) to undertake the research?

6th November 2015 Law of the sea part III

Exclusive Economic Zone

XXI

A Spanish flagged vessel is fishing approx. 60 nm off the coast of Benin when it is boarded and arrested by a Beninese patrol vessel for illegal fishing. When the master of the vessel protests and asks for the legal basis for the arrest, it is referred to the sovereign rights of coastal States to the living marine resources within 200 nm and subsequently the competence to enforce such rights under the LOS Convention. Spanish authorities protest and ask for the immediate release of the vessel and its crew. The sovereign rights do not come automatically and the vessel was merely exercising the right to fish on the high seas.

The arguments are somewhat cryptic but what do you think may be the legal basis of the Spanish position?

XXII

The French flagged research vessel *Sarkozy* is planning to undertake research on the biodiversity of the coldwater coral reefs in the Norwegian EEZ.

- a) Are foreign vessels entitled to undertake marine scientific research in the EEZ and on the continental shelf of the coastal state?
- b) What requirements may the research be subjected to; e.g. may the Norwegian ask to be represented on board during the cruise?

XXIII

A state has launched a naval exercise in its EEZ and the EEZ of the neighbouring state. The neighbouring state protests and asks it to keep its naval vessels outside its EEZ since they are not exercising any right of navigation. Also the activities are contrary to the requirement of the LOS Convention that the oceans are to be reserved for peaceful purposes only.

The state rejects the arguments and claims that naval exercises are part of international navigation and that the requirement of peaceful purposes does not apply to EEZs. In any case, the naval exercise is aimed at developing its ability to defend itself and therefore cannot be regarded as contrary to peaceful purposes.

- a) May a naval exercise be regarded as exercise of the freedom of navigation in the EEZ?

b) Does the requirement that activities on the high seas shall have a peaceful purpose apply to EEZs?

c) Does such requirement exclude naval exercises?

6th November 2015 Law of the sea part III

XXIV The Miranda Case

The Miranda, a small freighter flying the flag of State A was observed by the naval vessel Jupiter of State B navigating through the EEZ of State C. Intelligence reports received by the Jupiter indicated that the Miranda was carrying illegal immigrants to be set ashore in State B or in one of its neighbouring countries. Earlier the same week, a surveillance aircraft of State B sighted the Miranda while flying the flag of another State. The authorities of State B were not successful in their attempts to verify the nationality of Miranda. The Jupiter was subsequently ordered by the authorities of State B to board the Miranda and to bring the vessel to a port in State B if the suspicions were confirmed that illegal immigrants were on board. The Miranda was approached and asked to prepare for boarding and inspection. As the vessel did not comply with the request, a warning shot was fired. The Miranda stopped and a boarding party of the Jupiter went aboard. The boarding party was not able to verify the nationality of the vessel. When questioned, the captain of the Miranda explained that it had been granted the right to fly the flag of State A some days earlier. But he could not provide any proof of registration other than a flag of State A. A decision was then taken to carry out further examination of the vessel. This led to the finding of 50 refugees aboard.

Subsequently, the Miranda was taken to a port in State B, where the Miranda's captain and crew were arrested and charged with violating the immigration legislation of State B. The Foreign Ministry of State A sent a note verbale to the Ministry of Foreign Affairs of State B stating that the boarding and subsequent seizure of the vessel and the arrest of its captain and crew were in violation of international law and demanding the immediate release of both vessel, captain and crew. The note verbale also stated that State B had unjustifiably interfered with State A's freedom of navigation and its exclusive jurisdiction as a flag State under Articles 58 and 92 of the LOS Convention to which both were States Parties.

State B rejected the views of State A, arguing that it had not violated international law by boarding the vessel in the EEZ of State C, bringing it to State B's port, seizing it and arresting its captain and crew. As the vessel was not registered in State A or any other State at the time of boarding, it was to be regarded as stateless. All States are entitled to subject stateless vessels to their jurisdiction. State A responded with the argument that the Miranda held its nationality at the time of the boarding and seizure and that it was therefore not stateless. Under its legislation it is not required that the vessel is listed in its registry.

According to Article 91 of the LOS Convention, each individual State has exclusive competence in granting nationality to vessels and there is no requirement of registration: A vessel has the nationality of the flag it is entitled to fly. The nationality of Miranda was in any way clarified at the arrival in the port of State B.

State B disagreed with the arguments of State A, referring to Article 94 (2). In any case the vessel had to be regarded as stateless as it had not been able to provide any documentation of its right to fly the flag of State A. This was a clear indication that the change of flag during the voyage was not real but had been done out of convenience. State B had also taken all reasonable steps to ascertain the nationality of the *Miranda*. Information provided by State A when the vessel was in port had no relevance for the assessment of the nationality of the vessel when the prior enforcement measures were taken. State A argued that even if the *Miranda* could be regarded as stateless at the time of the boarding, Article 110 of the LOS Convention does not provide a sufficient basis in the scenario at hand as State A was not entitled to take measures other than checking the documents of the vessel and a very limited examination of the vessel. But the seizure of the *Miranda* and the arrest of its captain and crew could not be justified under Article 110 or any other provision of Part VII of the LOS Convention, which is also applicable to the EEZ. State B repeated its initial response. It argued that the LOS Convention does not exhaustively stipulate the rights of States, referring to Article 58 (2). Since the vessel was not subject to the jurisdiction of any State and thus does not enjoy the protection of any state, all States are entitled under international law to exercise jurisdiction.

State A finally requested that the *Miranda* and its crew be promptly released. If not, it would initiate the procedures under Article 292 of the LOS Convention. State B dismissed the request, arguing that the procedures were not applicable in this case. State C, the coastal state in whose EEZ the boarding and inspection of the *Miranda* occurred, also issued a protest against State B. It argued that State B's at-sea enforcement measures violated State C's jurisdiction under Article 56 of the LOS Convention. It did not dispute that the vessel was stateless or that stateless vessels may be subjected to the jurisdiction of other States. However, other than the flag State, only the coastal State can take any enforcement measures in that coastal State's EEZ. State B rejected the view that the jurisdiction of the coastal State is that extensive

Discuss all legal question raised.

XXV High seas and Area

Compare the concepts of the 'common heritage of mankind' and the 'freedom of the high seas' as incorporated in the United Nations Convention on the Law of the Sea (LOS Convention). What are the similarities and differences between them?

XXVI

VI Jessup Compromis 2014 (extract)

41. On 13 February 2011, at approximately 1500 hours local time, the *Rosehill*, an Amalean-registered cruise ship carrying 556 passengers, 70% of whom were Amaleans, and 215 crew members of various nationalities, departed from Amalea and headed towards Ritania. Helios was to be the *Rosehill*'s first port of

call on its regular 20-day voyage around the region. Because construction of Excelsior Island's hydroelectric plant¹ was complete and final steps were being taken to develop the wind farm, in response to customers' requests the *Rosehill*'s owners had obtained permission for the vessel to navigate close to the Island.

42. As the *Rosehill* approached Excelsior Island, the *Daedalus*, a stolen Ritanian-flagged yacht under the control of Oscar de Luz, a Ritanian citizen, carrying a crew of 10 and with an undetermined number of others on board, was speeding towards the Island. The captain of the *Rosehill*, saw that his ship was on a collision course with the fast-approaching *Daedalus*, and tried to maneuver the *Rosehill* away. He was forced to veer toward the Island and to accelerate in order to avoid what seemed an imminent collision. Despite what later investigations described as the heroic efforts of the captain and crew of the *Rosehill*, the ship struck the Island with significant force. The *Rosehill*'s captain immediately radioed the Amalean authorities about the incident.

43. The impact caused ruptures to three oxy-fuel storage tanks on the island, in turn leading to a series of explosions that killed five of the Ritanian nationals working on Excelsior Island. The explosions also tore large holes in the hull of the *Rosehill* and caused fires that spread through parts of the ship, which began to sink. Before nightfall, 127 passengers and crew of the *Rosehill* had died from the explosions, burns, smoke inhalation, or drowning, and 150 others were injured. 89 of the dead were Amalean nationals.

44. Luz steered the *Daedalus* away from the Island to the northwest. Within minutes of the *Rosehill*'s distress call, the Amalean Coastal Protection Service (ACPS) issued an alert describing the *Rosehill* collision as apparently caused by a yacht that had hurriedly left the scene. The alert noted that the yacht had been seen speeding away bearing west northwest, creating a danger for other vessels.

45. As the *Daedalus* drew within about 23 nautical miles of Amalea's coastline, it was picked up on radar by the *Icarus*, an Amalean Navy Fast Response Cutter, under the command of Captain Walter Haddock. Captain Haddock, who had followed the ACPS alerts, set out at full speed to intercept the *Daedalus*. When the *Icarus* was within visual range, Captain Haddock issued an order over several different radio frequencies commonly used by vessels in the Strait of Malachi, ordering the *Daedalus* to stop.

46. Instead, Luz turned the *Daedalus* and sped due east, towards Ritania. Haddock pursued the *Daedalus*, crossing into Ritania's uncontested EEZ north of the Erebus Gas Field. In an attempt to get the *Icarus* to veer away, Luz suddenly steered the *Daedalus* straight towards the *Icarus*. Captain Haddock kept his vessel on course, expecting that the *Daedalus* would turn at the last moment, but it did not. The ships collided at high speed. The *Icarus* suffered some minor damage, but the *Daedalus* began to sink rapidly. Luz leapt overboard into a dinghy. Captain Haddock's crew captured Luz in the dinghy, where they declared him under arrest, then brought him on board the *Icarus*. The crew and passengers of the *Daedalus* were also taken on board,

¹ built just off the coast of Excelsior Island, wholly within Ritania's uncontested EEZ

but it was quickly determined that they had committed no criminal acts, and they were released when the *Icarus* reached port.

47. Since 1995, Amalea's Penal Code has specifically included offenses committed in Amalea's uncontested EEZ and the Malachi Gap. Amalea's Attorney General concluded that under that Code her country's courts had jurisdiction to try Luz for violations of Amalean criminal laws, and he was charged with 127 counts of murder, as well as reckless endangerment, negligent operation of a seagoing vessel, and various property crimes.

48. Ritania immediately filed a formal protest with the Amalean Embassy, claiming that the arrest and prosecution of Luz, a Ritanian citizen, were illegal under international law. Ritania argued that it had exclusive jurisdiction over the alleged offenses, and demanded that Luz immediately be returned to Ritania for investigation into whether there was a basis to prosecute him for the *Rosehill* accident. Ritania also noted that it expected the full cooperation of Amalea, as a signatory to UNCLOS, in resolving the situation regarding Oscar de Luz.

49. Amalea declined to repatriate Luz, noting that Ritanian criminal law did not expressly provide for prosecution of offenses committed outside the country's territorial waters, and therefore Luz might never be required to answer for his crimes. Instead, Amalea put him on trial. Luz was ultimately convicted of nearly all of the charges against him, and his convictions were affirmed by the Court of Criminal Appeals in June 2012, and by Amalea's Supreme Court in January 2013. Luz is currently serving a life sentence in a medium-security prison in Amalea, and will not be eligible for parole until 2032.

Amalea requests the Court to adjudge and declare that:

- a. The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were in compliance with international law.
- b. Amalea had jurisdiction to try and convict Luz for criminal actions related to the *Rosehill* incident, and has no obligation to return him to Ritania.

Ritania requests the Court to adjudge and declare that:

- a. The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were illegal.
- b. Amalea was without jurisdiction to try Luz in connection with the *Rosehill* collision, and must return him to Ritania immediately.

Both States are parties to the LOS Convention.

Malachi Gap – Between 1988 and 1992, Amalea and Ritania engaged in extensive negotiations about the demarcation of their EEZ claims in the Strait of Malachi, resulting in a treaty dated 30 March 1992. With

respect to an area of approximately 1,200 square nautical miles, known as the Malachi Gap, the parties agreed to apportion their respective rights:

(a) the First Party [Amalea] may explore, exploit, and protect the natural resources of the waters superjacent to the seabed;

(b) the Second Party [Ritania] may explore, exploit, and protect the natural resources of the seabed and subsoil;

The areas previously claimed by each state as its Exclusive Economic Zone outside of the Malachi Gap were stipulated to constitute that state's "uncontested EEZ."

Excelsior Island – large, donut-shaped artificial island made of oceanic sand and rock dredged from the Malachi Gap area. According to the detailed engineering plans for Excelsior Island, the reclaimed land area itself would be located just outside the Malachi Gap, entirely within Ritania's uncontested EEZ

20th November 2015 & 27th November 2015 Law of the sea revision. Students presentations.

LAW OF THE SEA

1. Name the maritime zones subject to coastal sovereignty and / or jurisdiction?
2. How a State is referred to / described in the law of the sea?
3. Name the maritime zones which are claimable (in order to establish them the express proclamation is required) and which inherently belong to coastal state?
4. Baselines: functions? categories?
5. Which maritime zones may be named as 'resource-oriented'? How are the coastal states rights described (named) with regard to them?
6. What are the communication rights / freedoms recognized by international law of the sea? In which maritime zones do they apply?
7. Describe the coastal state rights with regard to living marine resources in each maritime zone?
8. Describe the relationship between the high seas and other maritime zones?
9. What are the obligations imposed on coastal state in relation to mineral resources exploitation within the limits of its continental shelf?
10. What are the principles of States jurisdiction envisaged in the LOSC? Give an example.

11. What are the exceptions to the flag State jurisdiction on the high seas? What is their legal basis?
12. Describe the legal regime of artificial islands (with reference to particular maritime zone)
13. What are the basic characteristics of the common heritage of mankind principle? To which maritime zone it applies?

Students' presentations on Air and Outer space regime; Arctic and Antarctic – List of topics:

1. Identify and describe why the acquisition of sovereignty over polar regions is complicated / exposed to a great challenge. What was the legal basis of the States' claims with regard to them?
2. Identify and describe the legal regime applicable to the Arctic and Antarctic resources exploitation (take into account not only land / ice-covered area, but also sea & ocean)
3. Describe the legal regime governing the Antarctic, is it effective in relation to entire international community? If yes, what is legal basis of its erga omnes effects?
4. Describe the legal regime of the Moon and other Celestial Bodies (can it be qualified as a common heritage of mankind ?)
5. Describe the legal regime of the Outer Space (especially: legal basis, differences with the air space, delimitation of the outer space)
6. Describe the liability for damage in the Outer Space.