

**William S. Richardson School of Law
UNIVERSITY OF HAWAII AT MANOA
International Ocean Law - Spring 2002
Jon M. Van Dyke**

**Final Examination
Friday, May 10, 2002
Time: 2 hours - 9 a.m. to 11. a.m.**

Instructions: This is an open-book examination. You are free to use any written material whatsoever. A 15-minute period for reading the question and preparing a preliminary outline will begin each hour, followed by 45 minutes during which you will be permitted to write the answer to the question in a blue book. The two questions are of equal weight, and you should devote equal time to them. The subsections within the questions are not necessarily of equal difficulty. Allocate your time to the various parts of the questions as appropriate in terms of the difficulty of the issues raised. If you need to make factual assumptions to provide a complete answer, make assumptions that seem reasonable, but please state your assumptions completely. If you are writing in blue books, please write on every other line and on every other page (*i.e.*, leave the back of each page blank). If you are typing, please double-space. Please avoid using abbreviations except those that are common in ordinary writing and are easily recognized, or are suggested in the question.

Please turn in your exam to the proctor when time is called. If you do not do so, you will be penalized one-third of a letter grade for each minute you continue to write after time is called (B+ to B; B to B-; etc.).

Question One

Imagine that on May 1, 2002, the U.S. Coast Guard spotted a 45-foot vessel located 75 nautical miles south of the southern coast of O`ahu. The vessel looked like a fishing vessel, but no nets, fishing poles, or other fishing gear could be seen on the deck of the vessel. It was impossible to identify the name of the vessel or to determine whether the vessel was flying the flag of any country. The vessel was moving at a high rate of speed directly toward downtown Honolulu. The Coast Guard attempted to make contact with the vessel by radio, but these efforts were unsuccessful. Finally, when the vessel was 50 nautical miles from the coast, the Coast Guard fired a warning shot across the bow of the mysterious vessel. A few minutes later, because the vessel continued in its movement toward the coast, the U.S. Coast Guard fired a missile into the engine room of the vessel, which destroyed the engine and also killed four members of the crew. When the mystery vessel started to sink, the Coast Guard assisted in rescuing 25 crew members, and brought them into Honolulu.

Immediately after this incident, the government of the Democratic People's Republic of Korea (also known as North Korea) filed a formal note of protest to the U.S. State Department in Washington, D.C. The note said that the vessel, named *The Investigator*, was in the North Korean Navy, had been flying the North Korean flag, was engaged in lawful military maneuvers and intelligence gathering, and was exercising its freedom of navigation in international waters. The note contended that the U.S. Coast Guard had acted in total violation of international law, demanded \$25,000,000 compensation, and said that the United States had no right to raise or salvage the sunken ship, which was exclusively North Korean government property.

Once the rescued North Korean crew members were brought into a U.S. military base on O`ahu, the U.S. Coast Guard proceeded to interrogate them. The Coast Guard learned from one crew member that the vessel had 1,000 shark fins in its hold and from another crew member that an attempted mutiny had occurred just prior to the firing of the Coast Guard missile and that two of the North Korean sailors had killed the North Korean captain of the vessel and were attempting to kill the other top officers when the vessel started to sink.

Imagine that the top U.S. Coast Guard officer in Hawai`i, Captain Durite, has contacted your law office in Honolulu for advice about these events. The Captain would like to find and raise the sunken ship to determine whether it was, in fact, a military vessel, to determine whether it had been engaged in illegal fishing, and to find clues regarding the alleged murder and attempted mutiny. Please prepare a memorandum identifying and analyzing all the international law issues raised by this sequence of events. Your memorandum should address the right of the United States to raise and salvage the sunken vessel, the legitimacy of the actions of the Coast Guard in attacking the mystery vessel, the right of the vessel to engage in military maneuvers and intelligence gathering off of the O`ahu coast, the implications and consequences of the shark fins in the vessel's hold, if any, and the appropriate jurisdiction that should be exercised over the attempted mutiny and murder that allegedly occurred on the vessel. Your memorandum should present the competing issues on each issue and offer recommendations to Captain Durite for appropriate action.

Question Two

Low Frequency Active Sonar (LFAS) is a new type of sonar used by the U.S. Navy and its allies in the North Atlantic Treaty Organization (NATO). This new technology utilizes extremely loud high-decibel, low-frequency sound waves to detect a new category of quiet nuclear and diesel-electric submarines being deployed by other countries that are potential enemies of ours. Unlike the more traditional “passive sonar,” which “listens” for the sounds that enemy submarines produce, “active sonar” sends out a sound wave over an extremely large area, encounters a target, and receives an echo that enables the system operator to locate the target spatially. The U.S. Navy claims that this new active sonar is necessary because the development of new “quieting” technology by potential enemy countries has reduced the ability of passive sonar to detect enemy submarines until they are only a few miles away, allowing only minutes to react.

Environmental groups are concerned that the new LFAS technology will interfere with the ability of whales and other marine mammals to function. These ocean creatures use sounds in the same low-frequency range to navigate their migratory paths, find food, avoid predators, care for their young, and locate potential mates over great distances in order to reproduce. It is feared that the loudness of the Navy’s sounds will block the ability of the whales to communicate and that the sounds will actually injure the whales’ hearing systems, which are crucial to their survival. Although the evidence of harm is incomplete and anecdotal at present, researchers believe that the active sonar transmissions have caused mass strandings of disoriented whales, the abandonment by whales of their usual habitats because of the sounds (including off of the Kona Coast of the Big Island), hearing losses by sea lions along the California coast, and interruptions of navigational patterns by various marine mammal species. The low-frequency sounds also appear to cause damage to the ears of human divers who experience them when operating in ocean waters.

Imagine that you have been contacted by an environmental organization called Save Marine Mammals (SMM) based in Sydney, Australia, and that this organization has asked you to prepare a memorandum analyzing whether the U.S. Navy’s use of LFAS violates international law, and, if so, what other countries can do to challenge these violations. Please prepare such a memorandum. Your memorandum should include an analysis of the principles of international law that govern this situation (including the sources and relative strength of these principles) and a description of the options that could be pursued to challenge the use of LFAS or to modify its use. Your memorandum should include the competing arguments on each issue that you identify and, after the various options for action are discussed, should include a recommendation about the best approach or combination of approaches that Save Marine Mammals should pursue.

**William S. Richardson School of Law
University of Hawai'i at Manoa
International Ocean Law - Spring 2000
Jon M. Van Dyke**

**Final Examination
Wednesday, May 10, 2000
Time: 1 1/2 hours - 1:30 - 3:00 p.m.**

Instructions: This is an open-book examination. You are free to use any written material whatsoever. A 10-minute period for reading the question and preparing a preliminary outline will begin each 45-minute segment, followed by 35 minutes during which you will be permitted to write the answers to each question in the blue books. The two questions are of equal weight, and you should devote equal time to them. The subsections within the questions are not necessarily of equal difficulty. Allocate your time to the various parts of the questions as appropriate in terms of the difficulty of the issues raised. If you need to make factual assumptions to provide a complete answer, make assumptions that seem reasonable, but please state your assumptions completely. If you are writing in blue books, please write on every other line and on every other page (i.e., leave the back of each page blank). If you are typing, please double-space.

Please turn in your exam to the proctor when time is called. If you do not do so, you will be penalized one-third of a letter grade for each minute you continue to write after time is called (B+ to B; B to B-; etc.).

Question One

Imagine that Minisculum is a coastal country situated between Gigantus and Emergem. Gigantus is a large, industrialized, wealthy country; Minisculum is a small, impoverished, agriculturally-based country; and Emergem is a rapidly industrializing nation. In order to increase its meager hard currency supply, Minisculum has established a ship registry, whereby it allows ships from around the world to fly the Minisculum flag for a fee. Minisculum and Emergem have ratified the 1982 United Nations Law of the Sea Convention. Gigantus has signed the Convention, but has not yet ratified it.

Imagine also that you are one of the foremost ocean-law attorneys in Gigantus, and that you had dinner with the President of Gigantus last night. During the course of the evening, the President spoke privately with you about some of his ideas and concerns:

“We would like to lay some fiber-optic cables underwater about 35 miles out from the coast of Minisculum to provide better connections between our phones and those in Emergem – would there be any problem with that? Do we have to get permission or anything? Also, my military leaders would like to engage in some joint naval maneuvers with the Emergem military, whereby we would be launching missiles and dropping bombs on stationary targets that we would set up about 25 miles offshore from the capital city of Minisculum – sort of like artificial islands – is that OK under existing international law? We know that the Minisculum fishing boats don’t come close to bringing in all the fish in their adjacent waters – do our fishing vessels have the right to catch the fish that they are not harvesting? But we also know that they are letting everybody under the sun fly their flag, and that a lot of these so-called Minisculum boats are smuggling drugs and other contraband into our cities. Is it OK for our coast guard to intercept these boats when they are still 50 or 100 miles from our coast, or do we have to wait until they are closer? Finally, there is an old historic Gigantus ship lying on the bottom of the ocean about 175 miles off the Minisculum coast – they may not even know it’s there – which we would like to retrieve (using recently developed technology) to put in our maritime museum. Can we retrieve it? It would be great if you could send me a memo answering these questions tomorrow afternoon.”

Please prepare a memorandum answering the President’s questions. Your memorandum should identify all issues raised by these questions, present the competing arguments on each issue, and explain your conclusion on how each dispute should be resolved.

Question Two

Imagine that on May 1, 2000, explorers from the U.S. Geological Survey discovered a large mineral-rich undersea seamount directly north of Nihoa Island, which it named the "Richardson Seamount." (Nihoa is a presently-uninhabited small rocky island in the Northwestern Hawaiian Island chain, about 150 nautical miles northwest of Kauai, and is part of the State of Hawai'i.) The Richardson Seamount rises to a level of 1,000 feet below the surface of the ocean, and its large circular plateau surface is 175 nautical miles due north of Nihoa at its closest point and 250 nautical miles due north of Nihoa at its most distant point.

Imagine also that President Clinton immediately issued Presidential Proclamation 7575 in which he claimed on behalf of the United States "the Richardson Seamount, all the nonliving resources on this Seamount, and all the living and nonliving resources within 200 nautical miles of this Seamount." Other countries, however, objected to this claim, arguing that the resources on and adjacent to the Richardson Seamount should belong to the common heritage of humankind and that the mineral resources should be under the jurisdiction of the International Sea-Bed Authority. Indonesia issued a statement, for instance, saying that unless the United States renounced Presidential Proclamation 7575, Indonesia would henceforth prohibit all U.S. vessels from entering into or passing through Indonesia's archipelagic waters and the Strait of Malacca. (The Strait of Malacca, which is the main passageway for vessels going from the Indian Ocean to East Asia and the Pacific, passes between Indonesia and Malaysia and is less than 24 nautical miles wide.) China also issued a statement supporting the Indonesian position, adding that unless the United States renounced its claim over the Richardson Seamount China would no longer permit any U.S. vessels from entering into or passing through China's territorial sea or exclusive economic zone.

Imagine that you are an attorney working in the White House, and President Clinton has asked you to prepare a memorandum explaining the legal issues raised by these events. The memorandum should identify and analyze the arguments that could be presented to defend Proclamation 7575 as well as the legal basis for the protests issued by Indonesia and China and the legitimacy of the limitations on navigational freedoms they are threatening to impose on U.S. vessels. The memorandum should present the competing arguments on each issue, the probable resolution of each dispute, and the procedural mechanisms that might be invoked to resolve the conflicts raised by the Proclamation. (Both China and Indonesia have ratified the 1982 United Nations Law of the Sea Convention.) Please prepare the memorandum requested by the President.

**William S. Richardson School of Law
University of Hawai'i at Manoa
International Ocean Law - Spring 1998
Jon M. Van Dyke**

**Final Examination
Friday, May 8, 1998
Time: 2 hours = 9-11 a.m.**

Instructions:

This is an open-book examination. You are free to use any written material whatsoever. A 15-minute period for reading the question and preparing a preliminary outline will begin each hour, followed by 45 minutes during which you will be permitted to write the answers to each question in the blue books. The two questions are of equal weight, and you should devote equal time to them. The subsections within the questions are not necessarily of equal difficulty. Allocate your time to the various parts of the questions as appropriate in terms of the difficulty of the issues raised. If you need to make factual assumptions to provide a complete answer, make assumptions that seem reasonable, but please state your assumptions completely.

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Question One

The Multinational Poison Company (MPC) is a large conglomerate corporation incorporated in Indonesia; its stock is owned by individuals throughout the world. During the 1990-91 Gulf War, MPC received a contract from the government of Iraq to develop the highly toxic herbicide called Agent Pink, and MPC produced many tons of this product in one of its factories in Indonesia. This poison did not prove to be an effective weapon of war, however, and at the conclusion of the Gulf War, MPC retained custody of more than 200 tons of Agent Pink, which it has been unable to sell or otherwise dispose of.

On May 1, 1998, the President of MPC announced that on May 22, 1998, the company plans to dispose of its remaining stocks of Agent Pink by dumping it into the Pacific Ocean at a point 175 nautical miles due north of Necker Island in the Northwestern Hawaiian Islands. The President announced that this site was chosen because of its great depth and because the prevailing currents would transport leakage away from populated areas. The herbicide will be transported on the S.S. Liberia, a freighter that is registered in Panama and is staffed by crewmembers from Vietnam; its officers and captain are from North Korea. The vessel is scheduled first to come into the Port of Honolulu on May 17 for refueling and final arrangements. The herbicide has been packaged into 400 55-gallon steel barrels, which will be pushed over the side of the vessel when it reaches the designated location. According to the statements issued by MPC, these barrels are expected to survive at the bottom of the deep ocean for 100 years before starting to leak. This disposal plan was formally approved by the Indonesian government, which examined and filed the four-page "Environmental Report" prepared by MPC.

Your law office in Honolulu has been contacted by the U.S. State Department, the Governor of Hawai'i, and private environmental groups that are concerned about the effect that this dumping of Agent Pink might have on the resources of the sea and on land areas in the Pacific Basin. Please prepare a memorandum analyzing the principles of international law that apply to this situation and evaluating the actions that might be taken to stop this plan.

[Necker is a rocky islet 1.7 miles long and 0.2 miles wide (see attached picture); it is part of the State of Hawai'i. It is about 400 nautical miles from Honolulu and is about 300 nautical miles northwest of Kaua'i (see attached map). It is treeless and is covered with bird dung, but contains some ceremonial terraces and house sites indicating that some habitation occurred there during some earlier period, probably for only a short time.]

[The International Maritime Organization has included 50-mile radii around each of the Northwestern Hawaiian Islands in its list of "Areas to be Avoided by large vessels carrying oil and other hazardous material," in order to protect the unique sea birds, the endangered monk seal and green sea turtle, and the insects endemic to these small islets.]

[Neither Iraq nor Indonesia are parties to the London Convention 1972 nor to the 1996 Protocol to the London Convention. Iraq ratified the Law of the Sea Convention in 1985 and Indonesia ratified this Convention in 1986.]

Question Two

In 1996, Canada issued a permit to the Inuit people in the Canadian Arctic allowing these aboriginal (or indigenous) people to harvest two bowhead whales, an endangered species. Canada was one of the founding parties to the 1946 International Convention for the Regulation of Whaling (ICRW), but Canada ceased commercial whaling in 1972 and withdrew from the convention and from the International Whaling Commission (IWC) in 1982. Even though Canada is no longer a member of the IWC, Canadian scientists continue to contribute to the work of the IWC Scientific Committee and a Canadian observer delegation attends the annual IWC meetings. Canada has not yet ratified the 1982 Law of the Sea Convention, although in March 1994, the Canadian Foreign Minister announced to the Canadian House of Commons that Canada "will soon" ratify the Convention.

In February 1997, President Clinton sent a message to the U.S. Congress stating that the harvesting of whales by Canadian Inuit in these circumstances violates international law.

Imagine that you are working in the legal office of the Canadian Foreign Ministry, and that you have been asked to prepare a memorandum analyzing the legal issues raised by this fact situation. Your memorandum should (A) identify the issues raised by Canada's actions, the arguments supporting Canada's right to take this action and the arguments that the United States could make that Canada's actions violate international law. (B) If this action is in violation of international law, what options are open to the United States to enforce its position and force Canada to reverse its action or otherwise pay compensation for its violation. (C) Canada has argued vigorously that nations that harvest fish outside Canada's exclusive economic zone (EEZ) off of Canada's East Coast are violating international law unless they are members of the Northwest Atlantic Fisheries Organization (NAFO), the regional organization that manages these fisheries. Is Canada's position correct on this issue, and is it consistent with Canada's unilateral action authorizing the Canadian Inuit to harvest two bowhead whales each year?