



**NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM**

**PROGRAMME: LL.M.**

**DETAILS OF COURSE OFFERED**

**ODD SEMESTER – ACADEMIC YEAR 2022-23**

SL. No	COURSE CODE	COURSE TITLE	L	T	P	CR	CH
1.	1.6 (IL) SP-II	LAW OF THE SEA	2 PER WEEK			2	2

**A. CODE AND TITLE OF THE COURSE: 1.6 (IL) SP-II LAW OF THE SEA**

**B. COURSE CREDIT: 2 (TOTAL MARKS 100)**

**C. MEDIUM OF INSTRUCTION: ENGLISH**

**D. COURSE COMPILED BY: DR. GITANJALI GHOSH**

**E. COURSE INSTRUCTOR:**

## **1. COURSE OBJECTIVES**

Traditionally, international law was the law that governed the conduct of States in their relations with each other. Gradually, international law has also come to govern individuals, international organizations and even corporations. In today's globalizing world, it has emerged as one of the significant subjects for study. It is not an exaggeration to state that international law affects every person living on the globe. Law of sea is another important area in the study of international law.

In the light of the growing importance of international law, it is not only desirable but also imperative for students to have a thorough knowledge of the subject. Hence, the primary objective of this course is to generate and sustain an interest to study international law in the minds of the students.

As the students are already familiar with the basics of international law, this course will take their study one notch higher with the introduction of several important and contemporary areas of international law.

The objectives of the course, in particular, are as follows:

- Provide students with an understanding of the international law of sea
- Introduce students to UNCLOS and other international legal instruments
- Introduce students to the concepts of territorial sea, contiguous zone, continental shelf, EEZ, High Seas etc.
- Provide students with an understanding of the dispute settlement process under UNCLOS

## **2. TEACHING METHODOLOGY**

The teaching methodology shall aim at the generation of critical thinking among the students. The topic for a particular class shall be informed to the students before hand and readings shall be assigned to them for the said topic. They are expected to have a basic idea about the topic prior to the class. Subsequent to a brief lecture on the topic, there shall be class discussion on the same as well as on the readings assigned. Pursuant to the class discussion, the teacher shall substantiate the issues raised and answer any questions posed or left unanswered. Debates shall also be organized at regular intervals.

## **3. EXPECTED OUTCOMES OF THE COURSE**

At the completion of the course, it is expected that the students shall:

- Comprehend the subject matter of the course
- Be able to analyze contemporary law of the sea problems in the light of the concepts learnt
- Be able to articulate their ideas on the subject matter of the course
- Produce at least one research paper of publishable quality
- Desire to take up international law for further studies

## **4. COURSE EVALUATION METHOD**

The course shall be assessed for 100 marks. The students shall write a seminar paper for 70 marks followed by a presentation and viva voce for 30 marks.

## **5. DETAILED STRUCTURE OF THE COURSE (SPECIFYING COURSE MODULES AND SUB-MODULES)**

### **Module 1**

#### **1.1 Historical Development of the Law of the Sea**

- Mare Liberum
- Mare Clausum

#### **1.2 Codification of the Law of the Sea**

- The Hague Conference for the Codification of International Law (1930)
- The First UN Conference on the Law of the Sea (1958)
- The Second UN Conference on the Law of the Sea (1960)
- The Third UN Conference on the Law of the Sea (1973–1982)

#### **1.3 Development after UNLCOS III**

- General considerations
- Adoption of two Implementation Agreements
- De facto amendment of the UNCLOS through Meetings of States Parties
- Development of the law of the sea through international organisations

#### **1.4 Baselines**

- Normal baselines
- Straight baselines
- Juridical bays
- Historic bays
- Bays bordered by more than one State
- River mouths
- Ports
- Islands
- Reefs
- Low-tide elevations

#### **1.5 Internal Waters**

- Spatial scope
- Legal status
- Jurisdiction of the coastal State over foreign vessels in internal waters
- Access to ports
- Ships in distress at sea

### **Module 2**

#### **2.1 Territorial Sea**

- Legal status
- The right of innocent passage
- Rights and obligations of the coastal State concerning innocent passage

## **2.2 International Straits**

- Legal framework for international straits prior to 1982
- Typology of international straits under the UNCLOS
- International straits under Part III of the UNCLOS
- International straits outside the scope of Part III of the UNCLOS
- The right of transit passage
- Rights and obligations of coastal States bordering straits
- Customary law character of the right of transit passage
- Non-suspendable innocent passage
- Legality of creation of bridges in international straits

## **2.3 Archipelagos**

- Definition of an archipelago, archipelagic States and archipelagic waters
- Archipelagic baselines
- Jurisdiction of archipelagic States over archipelagic waters
- The right of innocent passage through archipelagic waters
- The right of archipelagic sea lanes passage
- Rights and obligations of an archipelagic State

## **2.4 Contiguous zone**

- The concept of the contiguous zone
- Coastal State jurisdiction over the contiguous zone

## **2.5 Exclusive Economic Zone**

- Evolution of the concept
- Legal status
- Sovereign rights over the EEZ
- Jurisdiction of coastal States over the EEZ
- Freedoms of third States
- Residual rights

# **Module 3**

## **3.1 Continental Shelf**

- Evolution of the concept
- Spatial scope
- Criteria for determining the outer limits of the continental shelf beyond 200 nautical miles
- Commission on the Limits of the Continental Shelf

- Payments concerning the exploitation of the continental shelf beyond 200 nautical miles
- The sovereign rights of the coastal State over the continental shelf
- Freedoms of third States

### **3.2 High Seas**

- Spatial scope
- Principle of the freedom of the high seas
- Principle of the exclusive jurisdiction of the flag State
- The nationality of a ship
- Problems associated with flags of convenience
- Exceptions to the exclusive jurisdiction of the flag State: the right of visit and the right of hot pursuit

### **3.3 The Area**

- Spatial scope
- Principle of the common heritage of mankind
- International Seabed Authority
- System for the exploration and exploitation of resources of the Area
- The 1994 Implementation Agreement

### **3.4 Land-locked and geographically disadvantaged states**

- Land-locked States and access to the sea
- The navigational rights of land-locked States
- Land-locked and geographically disadvantaged States and uses of the oceans
  - Fishing rights
  - Exploitation of non-living resources in the oceans
  - Marine scientific research

### **3.5 Conservation of marine living resources**

- Conservation of marine living resources prior to 1982
- Conservation of marine living resources under the UNCLOS: the zonal management approach and the species specific approach
- Development after the UNCLOS

## **Module 4**

### **4.1 Protection of the marine environment**

- Typology of marine pollution
- Legal framework for marine environmental protection prior to 1982
- Protection of the marine environment in the UNCLOS
- Regulation of land-based marine pollution
- Regulation of vessel-source marine pollution

- Dumping at sea
- Regulation of pollution from seabed activities

#### **4.2 Conservation of marine biological diversity**

- Principal approaches to conservation of marine biological diversity
- Global legal frameworks for the conservation of marine biological diversity
- Marine Protected Areas

#### **4.3 Marine scientific research**

- The concept of marine scientific research
- Regulation of marine scientific research in the UNCLOS
- Legality of military and hydrographic surveys in the EEZ
- International cooperation in marine scientific research
- Transfer of technology

#### **4.4 Maintenance of international peace and security at sea**

- The suppression of piracy
- Regulation of unlawful offences and weapons of mass destruction at sea
- Military exercises in the EEZ
- Regulation of nuclear weapons at sea

#### **4.5 Dispute resolution under United Nations Convention on the Law of the Sea**

- Principle of Compulsory Settlement
- Exceptions to Principle of Compulsory Settlement
- Conciliation
- Arbitration
- Special Arbitration
- ITLOS
- Sea-Bed Disputes Chamber

### **6. PRESCRIBED READINGS**

#### **BOOKS**

- YOSHIFUMI TANAKA, *THE INTERNATIONAL LAW OF THE SEA* (Cambridge University Press 2012).
- R.R. CHURCHILL AND A.V. LOWE, *LAW OF THE SEA* (3d ed. Manchester University Press 1999).
- R.P. ANAND, *ORIGIN AND DEVELOPMENT OF THE LAW OF THE SEA* (Martinus Nijhoff Publishers 1983).
- JAMES HARRISON, *MAKING THE LAW OF THE SEA* (Cambridge University Press 2011).
- Malcolm Evans, *The law of the sea*, in *INTERNATIONAL LAW* (Malcom D. Evans ed. 2014).
- MARTIN DIXON, *TEXTBOOK ON INTERNATIONAL LAW* (7th ed. OUP 2013).
- V.K. AHUJA, *PUBLIC INTERNATIONAL LAW* (Lexis Nexis 2016).

- LOUIS B. SOHN, *LAW OF THE SEA IN A NUTSHELL* (Thomson Reuters, 2006).
- Robin Churchill, *Trends in Dispute Settlement in the Law of the Sea: Towards the Increasing Availability of Compulsory Means*, in *INTERNATIONAL LAW AND DISPUTE SETTLEMENT* (Duncan French et al eds. 2010).

## **INTERNATIONAL INSTRUMENTS**

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) (SUA Convention)
- Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas (1958)
- Geneva Convention on the Continental Shelf (1958)
- Geneva Convention on the High Seas (1958)
- Geneva Convention on the Territorial Sea and Contiguous Zone (1958)
- International Convention for the Prevention of Pollution from Ships of 1973, as modified by the 1978 Protocol (MARPOL 73/78)
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1992)
- Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005) (2005 SUA Convention)
- United Nations Convention on the Law of the Sea (1982)

## **CASES**

### **ITLOS CASES**

- The M/V "Norstar" Case (Panama v. Italy)
- The "Enrica Lexie" Incident (Italy v. India), Provisional Measures
- Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)
- The "Arctic Sunrise" Case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures
- Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)
- The "ARA Libertad" Case (Argentina v. Ghana), Provisional Measures
- The M/V "Virginia G" Case (Panama/Guinea-Bissau)
- The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)
- Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)
- Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)
- The "Tomimaru" Case (Japan v. Russian Federation), Prompt Release
- The "Hoshinmaru" Case (Japan v. Russian Federation), Prompt Release
- The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release

- Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures
- The "Volga" Case (Russian Federation v. Australia), Prompt Release
- The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures
- The "Chaisiri Reefer 2" Case (Panama v. Yemen), Prompt Release
- The "Grand Prince" Case (Belize v. France), Prompt Release
- Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)
- The "Monte Confurco" Case (Seychelles v. France), Prompt Release
- The "Camouco" Case (Panama v. France), Prompt Release
- Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures
- The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)
- The M/V "SAIGA" Case (Saint Vincent and the Grenadines v. Guinea), Prompt Release

### **ICJ CASES**

- Territorial and Maritime Dispute (Nicaragua v. Colombia)
- Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)
- Maritime Delimitation in the Black Sea (Romania v. Ukraine)
- Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)
- Oil Platforms (Islamic Republic of Iran v. United States of America)
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)
- Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)
- Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)
- Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)
- Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)
- Continental Shelf (Libyan Arab Jamahiriya/Malta)
- Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)
- Continental Shelf (Tunisia/Libyan Arab Jamahiriya)
- Aegean Sea Continental Shelf (Greece v. Turkey)
- Territorial Dispute (Libyan Arab Jamahiriya v. Chad)
- Frontier Dispute (Burkina Faso v. Republic of Mali)