

JUR-3052 Protection of the Marine Environment by International Law – 15 stp

The course is administered by

Faculty of Law

Place of study

Tromsø

Type of course

Master level students

The course is part of the Master of Laws programme in Law of the Sea and builds on JUR-3050 General Law of the Sea and JUR-3054 General Law of the Sea II.

The course is given during the spring term.

Admission requirements

Only students admitted to the Master of Laws programme in Law of the Sea may register for the exam of this course.

Obligatory prerequisites

JUR-3050 General Law of the Sea, JUR-3054 General Law of the Sea II.

Course contents

The course takes general principles of international environmental law as applicable in the marine context as a starting point. Permanent sovereignty over natural resources, the no-harm rule, prevention, precaution, common but differentiated responsibilities, sustainability and other concepts all play a role for enhanced protection of the marine environment although they have not specifically developed in the context of marine environmental protection. The course focuses on the international legal rules concerning the protection of the marine environment from adverse effects of different human uses and the sustainable use of marine resources. Scientific insights, new uses (e.g. geoengineering) and the dimension of overexploitation and degradation of the marine environment lead to rapid political and legal developments in this field of international law. This is reflected by the jurisprudence of international courts and tribunals. JUR-3050 General Law of the Sea already introduces some of these issues, this course deals with them more comprehensively and places them in a context that allows for an in-depth discussion of international law regulating different human uses of the oceans and their effects on the marine environment.

The course covers the following topics:

- General principles of international environmental law, their relevance and scope of application in the context of the marine environment and their interrelation with the general obligations under the UN Convention on the Law of the Sea and customary international law to protect and preserve the marine environment
- The comprehensive approach of the UN Convention on the Law of the Sea towards the prevention of pollution, the role of the Convention and the International Maritime Organization in regulating pollution by vessels and dumping, international rules and regulations on other forms of pollution of the marine environment
- Sustainable use of non-living marine resources in zones under national jurisdiction and the International Seabed Authority's role in regulating the protection of the marine environment in the context of exploration and exploitation activities of mineral resources in the Area

- Global and regional legal frameworks for the sustainable use of marine living resources with a focus on international law governing sustainable fisheries in areas under national jurisdiction and beyond and marine mammals
- Legal developments concerning marine genetic resources and marine biodiversity in areas beyond national jurisdiction including marine protected areas
- Overview on the challenges for international legal governance of the oceans in the context of climate change (e.g. carbon capture and storage in subsea formations, ocean fertilization, greenhouse gas emissions by vessels)

Objective of the course

Knowledge:

Having passed the exam, the student shall have acquired:

- Advanced knowledge on the general principles of international environmental law as applicable in the context of the conservation of the marine environment and the sustainable use of its resources
- Advanced knowledge on the legal regime under the LOSC for the protection of the marine environment
- Advanced knowledge on the comprehensive approach adopted by the LOSC to prevent pollution of the marine environment by different sources
- Advanced knowledge on States' obligations when engaging in seabed activities in areas under national jurisdiction and on the International Seabed Authority's role in regulating the use of mineral resources from the perspective of environmental protection
- Advanced knowledge on the different legal frameworks governing the conservation and sustainable use of marine living resources
- Advanced knowledge on the legal development concerning marine genetic resources and marine biological diversity in areas beyond national jurisdiction including marine protected areas
- Specialized knowledge on the different legal issues in the context of human uses of the marine environment related to climate change

Skills:

Having passed the exam the student is able to:

- use different sources of information to structure and formulate scholarly and practical arguments and to critically discuss a problem from different perspectives
- apply legal methodology to analyze a question of international environmental law in the marine context
- identify and analyze questions of a theoretical and practical nature concerning the applicability of principles of international environmental law to the protection and preservation of the marine environment
- identify and critically interpret the relevant sources of law for different aspects of marine environmental protection
- identify and analyze critically the structural and issue-specific shortcomings of the current legal frameworks
- contextualize new challenges to the existing legal frameworks

General competence:

Having passed the exam, the student:

- can apply and transfer the acquired knowledge to new legal questions and scenarios
- can communicate effectively, both orally and in writing about legal questions concerning the protection of the marine environment
- knows how to engage in a scholarly legal argument both in discussions and in written form

- knows how to find relevant academic sources and engages in independent desktop research
- knows how to formulate relevant research questions, structures and writes a scholarly paper and complies with standards of academic integrity
- is able to demonstrate the ability to cooperate and effectively work as part of a team
- master the English language and international legal terminology

Language of instruction

English

Teaching methods

This course uses interactive and dynamic teaching methods. The course will consist out of a combination of lectures, seminars, a colloquium on jurisprudences with student presentations/written coursework; comprising a total of 30 hours. Guest lectures can be included as an addition.

Students are encouraged to participate actively during the lectures and seminars. Students are expected to be prepared for lectures and seminars by studying the corresponding literature of the curriculum. Students should study independently in periods when there are no lectures or seminars.

Assessment

The course is assessed through a six hours closed book written exam. The exam may include theoretical and/or scenario questions.

Students is allowed to bring into the examination room a specific treaty collection identified in advance by the Faculty of Law. The treaty collection may only contain underlining etc. in accordance with the Faculty's regulations on that matter. Students may also bring a dictionary, as long as it merely provides translations and no definitions. The Faculty must approve each students examination supports (treaty collection and dictionary) prior to the examination.

The grading scale of A to F is applied, where F constitutes fail.

Students who fail their examination are entitled to re-sit the examination, cf. Regulations for examinations at the University of Tromsø Sec.22.

Date of examination

The date for the exam can be changed. Final date will be announced at your faculty early in May.

Schedule

See timeplan.uit.no

Recommended reading/syllabus

The students are required to buy, or otherwise have access to:

- Philippe Sands/Jacqueline Peel, *Principles of International Environmental Law* (3rd ed.), 2012

International environmental law in context

- Alan Boyle, "Relationship between International Environmental Law and Other Branches of International Law" in *Oxford Handbook of International Environmental Law*, Daniel Bodansky et al (eds.), (Oxford University Press, 2007), pp. 125-146 (21 pages)
- Catherine Redgwell, "International Environmental Law", in Malcolm D. Evans (ed.), *International Law* (Oxford University Press, 2014), pp. 688-726 (38 pages)

- Philippe Sands and Jacqueline Peel (eds.), *Principles of International Environmental Law* (3rd ed.) (Cambridge University Press, 2012), Chapter 6: pp. 187-237 (51 pages)

Protection and preservation of the marine environment (overview)

- Doris König, “Marine Environment, International Protection”, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2012), available in print and as an online resource (20 pages)
- Donald R. Rothwell and Tim Stephens, “Chapter 15: Marine Environmental Protection”, in *The International Law of the Sea* (2nd ed.) (Hart Publishing, 2016), pp. 338-382 (45 pages)

Pollution of the marine environment

- Thomas A. Mensah, “Marine Pollution from Ships, Prevention of and Responses to”, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2012), available in print and as an online resource (15 pages)
- Elizabeth Kirk, Science and the International Regulation of Marine Pollution, in: D. R. Rothwell, A. G. Oude Elferink, K. N. Scott and T. Stephens, *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015), pp. 516-535 (19 pages)
- Alexander Gillespie, “The Precautionary Principle in the 21st Century: A Case Study of Noise Pollution in the Ocean”, 22 *International Journal of Marine and Coastal Law* (2007) pp. 61-87 (15 pages)

Non-living resources

- Marissa Smith, “The Deepwater Horizon Disaster: An Examination of the Spill’s Impact on the Gap in International Regulation of Oil Pollution From Fixed Platforms”, 25 *Emory International Law Review* 2011, pp. 1477-1516 (38 pages)
- Aline Jaeckel, An Environmental Management Strategy for the International Seabed Authority: The Legal Basis, 30 *International Journal of Marine and Coastal Law* (2015), pp. 93-119 (26 pages)
- Tullio Scovazzi, The Exploitation of Resources of the Deep-Seabed and the Protection of the Environment, 57 *German Yearbook of International Law* (2014), pp. 181-207 (26 pages)

Living resources

- Nele Matz-Lück and Johannes Fuchs, “Marine Living Resources”, in: D. R. Rothwell, A. G. Oude Elferink, K. N. Scott and T. Stephens (eds.), in *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015), pp. 491-515 (24 pages)
- Ronald Barston, “The Law of the Sea and Regional Fisheries Organisations”, 14 *International Journal of Marine and Coastal Law* 1999, pp. 333-352 (19 pages)
- Yoshifumi Tanaka, “The Changing Approaches to Conservation of Marine Living Resources in International Law”, 71 *Heidelberg Journal of International Law* 2011, pp. 291-330 (38 pages)
- Nigel Bankes, The Conservation and Utilization of Marine Mammals in the Arctic Region, in Erik J. Molenaar, Alex G. Oude Elferink and Donald R. Rothwell (eds.), *The Law of the Sea and the Polar Regions: Interactions between Global and Regional Regimes* (Martinus Nijhoff Publishers, 2013), pp. 293-321 (29 pages)
- Thomas Ebben, The Implementation of the Precautionary Approach in International Fishery Law: a Move Towards “Green” Fishery, 15 *New Zealand Journal of Environmental Law* 2011, pp. 113-146 (33 pages)
- Kaare Bangert, “Fish Stocks”, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2012), available in print and as an online resource (13 pages)

- Erik J. Molenaar, “International Regulation of Central Arctic Ocean Fisheries”, in M.H. Nordquist, J.N. Moore and R. Long (eds.), *Challenges of the Changing Arctic. Continental Shelf, Navigation, and Fisheries* (Brill Nijhoff, 2016), pp. 429-463 (35 pages)
- Jürgen Friedrich, “Legal Challenges of Nonbinding Instruments: the Case of the FAO Code of Conduct for Responsible Fisheries”, 9 *German Law Journal* 2008, pp. 1539-1564 (25 pages)

Genetic resources and marine biodiversity in areas beyond national jurisdiction

- Robin Warner, *Conserving Marine Biodiversity in Areas Beyond National Jurisdiction: Co-Evolution and Interaction with the Law of the Sea*, in D. R. Rothwell, A. G. Oude Elferink, K. N. Scott and T. Stephens (eds.), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015), pp. 752-776 (23 pages)
- Arianna Broggiato, “Fair and equitable sharing of benefits from the utilization of marine genetic resources in areas beyond national jurisdiction: bridging the gaps between science and policy”, 44 *Marine Policy* 2014, pp. 176-185 (9 pages)
- Joanna Mossop, “Marine Bioprospecting”, in D. R. Rothwell, A. G. Oude Elferink, K. N. Scott and T. Stephens (eds.), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015), pp. 825-842 (17 pages)
- Karen Scott, “Conservation on the High Seas: Developing the Concept of the High Seas Marine Protected Areas”, 29 *International Journal of Marine and Coastal Law* 2012, pp. 849-857 (8 pages)
- Nele Matz-Lück and Johannes Fuchs, “The impact of OSPAR on protected area management beyond national jurisdiction: Effective regional cooperation or a network of paper parks?”, 49 *Marine Policy* 2014, pp. 155-166 (11 pages)
- Robert Blasiak and Nobuyuki Yagi, “Shaping an international agreement on marine biodiversity beyond areas of national jurisdiction: Lessons from high seas fisheries”, 71 *Marine Policy* (2016), pp. 210-216 (5 pages)

Climate change in the context of the marine environment

- Rosemary Rayfuse, “Climate Change and the Law of the Sea,” in Rosemary Rayfuse and Shirley V. Scott (eds.), *International law in the Era of Climate Change* (Edward Edgar Publishing Limited, 2012), pp. 147-174 (28 pages)
- Alan Boyle, “Climate Change, Ocean Governance and UNCLOS”, in J. Barret and D. Barnes, *Law of the Sea: UNLCOS as a Living Treaty* (BICIL, 2016), pp. 211-230 (19 pages)
- Kerstin Güssow, “Ocean Iron Fertilization: Why Further Research is Needed”, 34 *Marine Policy* 2010, pp. 911-918 (7 pages)

International jurisprudence on marine environmental issues

- Tim Stephens, “The Limits of International Adjudication in International Environmental Law: Another Perspective on the Southern Bluefin Tuna Case”, 19 *International Journal of Marine and Coastal Law* 2004, pp. 177-197 (20 pages)
- Laura Pineschi, “The Duty of Environmental Impact Assessment in the First ITLOS Chamber’s Advisory Opinion: Towards the Supremacy of the General Rule to Protect and Preserve the Marine Environment as a Common Value?”, in N. Broschiero (ed.), *International Courts and the Development of International Law* (Asser Press, 2013), pp. 425-439 (14 pages)
- Michael Johnson, “The Consequences of the ICJ Decision in the Whaling Case for Antarctica and the Antarctic Treaty System”, 7 *Yearbook of Polar Law* (2015), pp. 168-187 (19 pages)
- Yuval Shani, “The First MOX Plant Award: the Need to Harmonize Competing Environmental Regimes and Dispute Settlement Procedures”, 17 *Leiden Journal of International Law* 2004, pp. 815-827 (11 pages)

- Tom Ruys and Anemoon Soete, “‘Creeping’ Advisory Jurisdiction of International Courts and Tribunals: The Case of the International Tribunal for the Law of the Sea”, 29 *Leiden Journal of International Law* 2016, 155-176 (20 pages)
- Lan N. Nguyen, *The Chagos Marine Protected Area Arbitration: Has the Scope of LOSC Compulsory Jurisdiction Been Clarified?*, 31 *The International Journal of Marine and Coastal Law* 2016, pp. 120-143 (22 pages)

Total: 763 pages