Montogue

Quiz OC101
Law of the Sea

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PROBLEMS

Problem 1

The following statements concern various aspects of the law of the sea. True or false?

1.( ) Published during a period of Portuguese-Spanish maritime dominance, Grotius's *Mare liberum* was one of the first works to advocate for broader rights over international waters. The work was well-received at the time, including a surprisingly positive response from Portuguese priest Serafim de Freitas and later from the British jurist John Selden.

2.( ) The first intergovernmental attempt to codify the law of the sea was the 1930 Hague Conference for the Codification of International Law. Although marked by contentious debate, the event ended with the adoption of the three-mile rule as a convention for marine jurisdiction at the international level.

3.( ) Although, in principle, the unilateral acts of a State cannot result in rights and obligations, these statements have had a formative effect on the development of international laws. One example is the 1945 Truman Proclamation on the Continental Shelf, which constituted the starting point of an international legal regime on the continental shelf.

4.( ) One of the main developments of the 1958 First UN Conference on the Law of the Sea was the development of mechanisms for peaceful settlement of international disputes related to naval authority. The instrument that regulates such conflicts is the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, which has since been signed by most countries.

Read the following passage, taken from Tan (2005), and evaluate statement 5.

> One pressing issue that lead up to the Third UN Conference on the Law of the Sea was the debate on the extent of coastal jurisdiction, especially when it came to marine pollution. The linchpin on this matter was Canada, which insisted, for instance, that compensations under the International Convention on Civil Liability for Oil Pollution Damage (CLC) be payable for pollution damage occasioned *beyond* the territorial sea. Canada was motivated by a pursuit of greater rights over adjacent waters for jurisdictional, resource conservation, and ecological purposes. Domestically, the Canadian federal government was seeking to establish its right to regulate Canada's continental shelf over that of the provincial governments. At the same time, Canada was concerned that the oil industry was proposing to transport oil from Alaska to the eastern coast of the US through the sensitive waters of the Canadian Northwest Passage. This combination of interests culminated in the institution of the 1970 Arctic Waters Pollution Prevention Act, whereby the Canadian government established a 100-mile pollution control zone in the Canadian Arctic regions and had the effect of extending the Canadian fisheries zone well beyond its territorial sea.

Under this backdrop, the Canadian government set forth attempting to legitimize its claim of extended coastal jurisdiction in the 1973 Inter-Governmental Maritime Consultative Organization (IMCO) Conference. The Canadians proposed that coastal States should be accorded full legislative (prescriptive) authority for marine environmental protection in waters under their jurisdiction. The Canadian proposal drew extensive support in the run-

up to the 1973 IMCO Conference, but maritime States were unimpressed and proposed instead to recognize *some* coastal State powers, provided such powers would not cause major navigational impediments. Specifically, coastal States would be allowed the power to set stricter discharge standards in waters under their jurisdiction, but *not* stricter construction, design, equipment or manning (CDEM) standards. The latter prohibition would apply in *any* area of the sea – even in internal waters and the territorial sea – except where the environment was 'exceptionally vulnerable.' The Canadians were suitably placated by the 'exceptionally vulnerable' exception which nicely addressed their Arctic concerns. Likewise, the more radical coastal States were galvanized by the perspective of seizing an extended area of marine jurisdiction, notwithstanding the extra restriction on CDEM rules.
5.( ) On the other hand, the US, ever a champion of freedom of navigation, moved to defeat the proposal. But on the side of the Canadians were the USSR and most of the Eastern Bloc, which mobilized *en masse* to promulgate the proposal at the plenary of the 1973 Conference. As a result, the Canadian proposal was adopted, prompting a jurisdictional revolution and setting the stage for the reform on coastal prescriptive jurisdiction beyond the territorial sea that would be instituted under UNCLOS III. ■ **(A black square indicates the end of a multi-paragraph statement.)**

6.( ) The Convention on the Law of the Sea was the culmination of the Third UN Conference on the Law of the Sea, a nearly decade-long (or even longer, accounting for the work of the Seabed Committee) effort to establish international norms for use of the planet's waters. Most developing countries voted for the Convention, but a number of western European nations and the United States either abstained or voted against it.

7.( ) The notion of Exclusive Economic Zone, an intermediate area with a specific legal regime that is neither *mare liberum* nor *mare clausum*, was introduced by the LOSC. The demarcation of EEZs is not without peculiarities, however. One important limitation, established in Article 47 of the Convention, is that the area of oceanic space over which an archipelagic State imposes EEZ status may not exceed the land area of that State, thereby preventing such territories from seizing authority over disproportionate regions of marine jurisdiction.

8.( ) The LOSC was not designed to be immutable; rather, it contains mechanisms to be amended if a State Party so proposes in a written communication to the UN Secretary-General. The Secretary-General is to circulate such communication to all States Parties, and if not less than one-half of the States Parties reply favorably to the request within 12 months, the Secretary-General is to convene the Conference. An amendment requires ratification or accession by two-thirds of the States Parties or by 60 States Parties, whichever is greater.

9.( ) Coastal States' sovereignty over the territorial sea is limited by the right of innocent passage. Per the LOSC, 'subject to this convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.' Encompassed by this freedom are submarines, which may navigate foreign territorial sea while underwater and need not show their flag, pursuant to Article 20 of the LOSC.

10.( ) Ships in distress constitute an exception to State jurisdiction and have a right of entry to any foreign port under customary international law. The International Law Commission (ILC) has established that 'distress' should be limited to situations where human life is at stake.

11.( ) One important issue addressed in the high seas section of the LOSC is the extent of flag State jurisdiction over ships that have been involved in a collision. Article 97 deals with penal jurisdiction following a collision and other incident of navigation, providing that the institution of any proceeding against the master or any other person following an incident may be from the flag State, the State of nationality of the person involved, or the state which has suffered a demonstrable injury, such as the loss of a ship or its nationals.

12.( ) The right of transit passage in international straits as granted by Article 38(2) of the LOSC is different from the right of innocent passage in territorial sea in a number of respects. This includes, for instance, the fact that the right of transit in includes right of overflight by all aircraft, including military aircraft, whereas the right of innocent passage does not.

13.( ) In consonance with the UN Charter, Article 301 of the LOSC provides that all military activities in the oceans are governed by the proscriptions on the threat or use of force. Military acts prohibited at sea are therefore those that are either directed against the sovereignty, territorial integrity, or political independence of another State or constitute an attack on the sea forces or the marine fleets of another State. In this regard, LOSC simply prohibits acts that amount to a threat or use of force but allows for military activities that otherwise fall short of this characterization.

14.( ) With regard to the legality of military exercises in the EEZ of a third state, State practice is divided into two opposing groups. On the one hand, some – mostly developing – States are of the view that the LOSC does not allow States to carry out military exercises or maneuvers in the EEZ without the permission of the coastal State. On the other hand, a number of States argue that military operations, exercises and activities within the EEZ of a third State constitute internationally lawful uses of the sea. This view is espoused by developed nations such as Germany, the United Kingdom, and the United States.

15.( ) Article 101 of the LOSC provides a definition of piracy. Per the Convention, an act of piracy must be directed on the high seas or in a place outside the jurisdiction of any State, such as Antarctica. Illegal acts of violence committed in the territorial sea or internal waters of a coastal State cannot be regarded as acts of piracy.

The proliferation of weapons of mass destruction (WMDs) is an international concern, and limitations on the maritime transportation of such artifacts have recently began to creep into sea regulations, most recently by the 2003 Interdiction Principles for the Proliferation Security Initiative. Per this international act, participant States were called to

> take appropriate actions to (1) stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected of carrying such cargoes [WMDs] to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified; and (2) to enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas that are reasonably suspected of carrying such cargoes, such as requiring that such vessels be subject to boarding, search, and seizure of such cargoes prior to entry.

16.( ) This requirement is wholly compatible with the LOSC, which includes transportation of WMDs among activities that are not innocent, thereby constituting exceptions to the right of innocent passage. Also in accordance with the LOSC is the Interdiction Principles' guidance that the coastal State stop and search suspected vessels passing its contiguous zone without entering into its territorial sea. ■

17.( ) Claims to historic waters are some of the oldest topics in the international law of the sea. The jurisprudence of the International Court of Justice shows that, per international treaties, such claims must be restricted to bays, and must not refer to other coastal structures, including straits and the waters within archipelagoes.

18.( ) One important innovation of the LOSC in relation to the continental shelf was the establishment of a standing institution, the Commission on the Limits of the Continental Shelf. A technical institution, the CLCS has two functions, first to consider data that is submitted by coastal states and make recommendations, and second to provide scientific and technical advice to coastal states when requested to do so. Coastal States are required by Annex II of the LOSC to submit particulars of any outer continental shelf beyond 200 nm with supporting scientific and technical data as soon as possible, but in any case within 10 years of the entry into force of the LOSC for those States. Accordingly, the LOSC entered into force on 16 November 1994, and by November 2004 most submissions had been completed. As a method of incentivizing participation, the LOSC has chosen to refuse to provide technical guidance to States that have not submitted their data, a position safeguarded by Annex II of the LOSC.

19.( ) The juridical definition of the continental margin and the methods and procedure for determining its outer extent are found in Article 76 of the LOSC, one of the lengthiest passages of the document. The key provision is Article 76(4), which gives States two options. States can either delineate a line by reference to the outermost fixed points at each of which the thickness of the sedimentary rocks is at least one percent of the shortest distance from the point to the foot of the continental slope. To support the location of a point 100 nm from the foot of the continental slope, the sedimentary rock on the continental rise must be at least 1 nm thick. Otherwise coastal States can apply a combined geomorphological and geographical criterion, delineating a line by reference to the fixed points not more than 60 nm from the foot of the continental slope. States may resort to one or other method in their entire continental margin, but selective use of both techniques to maximize the area of jurisdictional continental margin is explicitly forbidden in Article 76 and later understandings of the Commission on the Limits of the Continental Shelf.

20.( ) Per the LOSC, the continental shelf is affirmed as a resource zone that does not need to be claimed, unlike the EEZ.

21.( ) Per the LOSC, the land-locked States have no right to participate in the exploration and exploitation of natural resources on the continental shelf.

22.( ) The International Seabed Authority (ISBA) has its seat in Kingston, Jamaica, and consists of a tripartite constitutional structure as set out in the LOSC. The ISBA is constituted of the Assembly, the Council, and the Secretariat. The executive arm is the Council, a 36-member strong group endowed with the responsibility for supervising and coordinating the implementation of the deep seabed mining regime. Decision-making as a general rule in the organs of the ISBA is to be by vote; deliberation by consensus is not allowed.

23.( ) Much of the controversy at UNCLOS III in relation to the deep seabed turned on the nature and powers of the International Seabed Authority (ISBA). Developing states argued for an ISBA that would have far-reaching powers to regulate deep seabed mining and to engage in mining itself, whereas the industrialized countries sought a more skeletal institution that would operate essentially as a registry for concessions.

24.( ) Per the mining concession rules of the ISBA, the total deep-sea area allocated to a contractor under a contract is not to exceed 150,000 square kilometers. Further to this, if the area allocated is greater than 75,000 square kilometers, then the contractor is to relinquish a proportion of the area over time, which will revert back to become a part of the Area.

25.( ) In relation to non-living resources found in the seabed and the subsoil, the EEZ regime overlaps in its entirety with the continental shelf regime. Under both the EEZ and continental shelf regimes, coastal States enjoy essentially unrestricted rights of exploration and exploitation for non-living seabed resources such as hydrocarbons and minerals. This authority was later extended to shipwrecks and other cultural heritage eventually discovered within the EEZ, which are encompassed by the sovereign rights of the coastal State and, per the understanding of the UN's International Law Commission, are in essence no different from natural resources.

26.( ) Unlike the 1994 Agreement Relating to Implementation of Part XI of the UNCLOS, which was integrated with the LOSC, the 1995 Fish Stocks Agreement was devised as an independent treaty. Indeed, one may speak of different legal regimes pertaining to high seas fisheries: the regimes of the Fish Stocks Agreements, the LOSC, and customary international law.

27.( ) The 1995 Fish Stocks Agreement enshrines the State Parties' responsibility to protect biodiversity in the marine environment. While the treaty does not define 'biodiversity,' it is reasonable to understand that it refers to the UN Convention on Biological Diversity, wherein biodiversity is defined on three levels: diversity within species, diversity between species, and diversity of ecosystems. An obligation to protect marine diversity will include all the three components.

28.( ) Like much international environmental law, the 1995 Fish Stocks Agreement adopts a so-called precautionary approach to fish stocks conservation. However, in view of some States' fear that this principle could lead to moratoriums on fishing, the Agreement provides that States may use absence of adequate scientific information as a reason for postponing or failing to take conservation measures.

29.( ) The responsibilities of regional fisheries management organization/arrangements (RFMO/As) involve the whole process of fisheries conservation and management – from scientific research and provision of advice, adoption of conservation and management measures and other decisions, to the implementation of these decisions. A relevant question is the legal status, whether legally binding or advisory, of the deliberations of RFMO/As. Most scholars are of the view that, per the 1995 Fish Stocks Agreement, the management measures of RFMO/As are intended to be legally binding.

30.( ) There has long been a debate on fishery subsidies and its many – mostly negative – effects on the environment and international trade. One forum for such discussions is the World Trade Organization (WTO). At the WTO High Level Symposium on Trade and Environment in March 1999, a number of Member States, including the United States, Iceland and New Zealand, submitted a statement on the need to eliminate environmentally damaging and trade-distorting subsidies in the fishery sector, and urged States to make an early commitment to steadily eliminate this kind of fisheries subsidies. New Zealand went one step further, calling for an overhaul of existing WTO regulations with the purpose of eliminating subsidies that distort trade in fish products and impact negatively on the conservation and sustainability of global fish stocks. Eager to join the group was Japan, which operated one of the world's most protective fishery-subsidy policies, but nonetheless joined the opposition to the practice as part of its effort to shift the Japanese workforce away from fishing.

31.( ) One landmark piece of domestic legislation on the conservation of marine biodiversity was the United States' Marine Mammal Protection Act (MMPA) of 1972. The MMPA prohibited the import of marine mammal products into the US and established a moratorium on the taking of endangered marine mammals in US waters and by US citizens on the high seas. Emphasis should be placed on the word 'endangered,' as the MMPA did not encompass cetaceans not under risk of extinction.

32.( ) In 1982, the International Whaling Commission adopted a moratorium on all whale stocks from the 1985/6 whaling season. The moratorium is still in force today, but was marked by an important loss in 2018 when Japan, a major whaling power, announced that it would withdraw from the IWC and resume commercial whaling in the following year.

33.( ) Catadromous species are species, such as eels, that spawn in the ocean and migrate to fresh water for most of their lives before returning to the ocean to reproduce. According to the LOSC, a State in whose waters catadromous species spend the greater part of their life cycle (the host State) has overall management responsibility for the management of these species and is required to ensure the ingress and egress of migrating fish. The host State is entitled to the right of harvesting its catadromous species on the high seas.

34.( ) Many international treaties regulating marine pollution have been established since the end of World War II. One way to classify such treaties is to identify them as *source-specific*, that is, instruments that seek to regulate a specified source of marine pollution or pollutant. Examples include MARPOL, which regulates pollution by a specific source, namely vessels, and the 1972 London Convention, which regulates another source of pollution, namely dumping.

35.( ) The LOSC is the only treaty that provides general obligations to prevent land-based pollution at the global level. The Convention demands, with no room for discretion, that Party States adopt laws and regulations to prevent, reduce, and control pollution of the marine environment from land-based sources, all the while following internationally agreed rules, standards, and recommended practices and procedures. It is beyond doubt that the

LOSC's regulation of land-based pollution is more stringent than its provisions on other forms of marine pollution, including, say, vessel-source pollution.

SOLUTIONS

P.1 ➡ *Solution*

1. False. *Mare Liberum* was broadly criticized by the jurists that represented each sea power at the time. The first reaction was Freitas's *De Iusto Imperio Lusitanorum Asiatico* (1625), which countered each of Grotius's arguments and advocated for a Portuguese dominance over international waters. Later, Selden published *Mare Clausum* (1635), asserting British dominance over waters around the British Isles and coining a term that became synonymous with restricted seafaring.

2. False. The three-mile rule was strongly opposed at the Hague Conference. While maritime powers, such as Great Britain and the United States, claimed that the breadth of the territorial sea belt was three miles, coastal States suggested various breadths beyond three miles, such as four or six miles. The challenge by those States considerably undermined the authority of the traditional three-mile rule, which favored the interest of strong maritime States. In light of the wide cleavage of opinion between States, no rule was formulated with regard to the breadth of the territorial sea, and the Hague Conference ended without the adoption of a convention on the territorial sea.

Reference: Tanaka (2015).

3. True. While the 1945 Truman Proclamation was an unilateral action, it prompted the beginning of an international debate on the regulation of the continental shelf.

4. False. At UNCLOS I, a compulsory mechanism of dispute settlement could be established only as a separate instrument owing to opposition by many States to the mechanism of settlement either by the ICJ or through arbitration. To date, less than 40 States have become parties to the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes.

5. False. The Canadian proposal was defeated at the 1973 Conference. Six of the proposal's original supporters withdrew their support at the plenary vote, including two key maritime States – the UK and the Netherlands – and three major coastal States – Brazil, Iran, and Uruguay. The USSR, which had originally supported the Canadians on the compromise, abstained during the primary vote. The Soviet abstention, although surprising, was generally viewed as a deferential gesture to US-USSR détente. Further debate on breadth of coastal jurisdiction had to wait until UNCLOS III.

6. True. While it is true that most developing countries voted for the UNCLOS, the same cannot be said of western European nations such as West Germany and the UK, which abstained, and the United States, which voted against the Convention. The US objected to Part XI of the Convention, which dealt with deep seabed and mining of its resources, claiming that such provisions were not free-market friendly and unduly favored Communist nations.

7. False. The LOSC has no device preventing archipelagic States from seizing EEZs larger than their land area. This is why some Pacific microstates have acquired economic sovereignty over areas of ocean space vastly greater in area than their land masses; one extreme example is Tuvalu, which has a land area of a mere 26 square kilometers and an EEZ of 900,000 square kilometers.

8. True. The amendment procedure in question is set out in Articles 312 – 316. Article 313 establishes a simplified amendment procedure in which changes are proposed without convening the Convention, but such a process can be deterred by even a single objection.

9. False. Article 20 of the LOSC actually requires foreign submarines and other underwater vehicles to navigate at surface level while inside a State's territorial sea. While it seems that a submerged submarine in the territorial sea is not considered an innocent passage, use of force against such a vehicle

is not immediately justified. Above all, every measure should be taken short of armed might to require the submarine to leave.

10. True. Article 24 of the ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts establishes that a ship in distress should be so considered only in 'cases where human life is at stake.' The right of ships in distress to access to ports of foreign States constitutes an exception to the coastal State's jurisdiction and the exception should be interpreted in a restrictive manner in order to prevent the abuse of the claim of distress. It may go too far to include ships which need assistance only to protect economic interests, i.e. the ship and its cargo, within the scope of ships in distress.

Reference: Tanaka (2015).

11. False. Per Article 97, only the flag State or the State of nationality of the individuals involved in the collision are given the penal jurisdiction to institute proceedings against those involved. A related procedural provision is that only the flag State can issue a request for arrest or detention of a ship following such an incident. The International Law Commission (ILC) has justified its support for the provision on the grounds that it was seeking to protect 'ships and their crews from the risk of penal proceedings before foreign courts in the event of collision on the high seas, since such proceedings may constitute an intolerable interference with international navigation.' The consequence of this provision is that the State which has suffered an injury, either through the loss of a ship or its nationals, is effectively barred from instituting criminal proceedings against those who have been responsible. One available option in this instance is for the aggrieved State to seek to request that the flag State properly exercise its jurisdiction following such an incident, including the conduct of an inquiry.

Reference: Rothwell and Stephens (2016).

12. True. Indeed, overflight by aircraft is allowed per the right of transit passage through straits. Two other noteworthy differences are (1) the fact that the right of transit encompasses warships, whereas the right of innocent passage through territorial sea may not include such vessels, and (2) concerning submarines, the LOSC establishes no explicit obligation to navigate on the surface or show their flag.

13. True. Military activities not precluded by Article 301 of the LOSC and not contrary to the UN Charter's prohibition on the unjustified use of force are, in principle, legitimate. Chapter 2 of a volume on maritime security (see reference below) offers an excellent rundown of permissible military activities during times of peace.

Reference: Klein (2011).

14. True. Indeed, the legality of military operations in the EEZ of a third State is an issue that has fractured international opinion much in the same lines that separate industrialized and developing States. Brazil, India, Pakistan, Malaysia and Bangladesh have opposed this right in their ratifications of the Convention; the latter country, for instance, has said that

> The Government of the People's Republic of Bangladesh understands that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf military exercises or maneuvers, in particular, those involving the use of weapons or explosives, without the consent of the Coastal state.

In contrast, Germany, Italy, the Netherlands, the United Kingdom, and the United States have the opposite view. In a declaration on 8 March 1983, the US pronounced that

> Military operations, exercises and activities have always been regarded as internationally lawful uses of the sea. The right to conduct such activities will continue to be enjoyed by all States in the exclusive economic zone. This is the import of Article 58 of the Convention. Moreover, Parts XII and XIII of the Convention have no bearing on such activities.

The LOSC provides no specific right for the coastal State to prohibit or regulate military activities within their EEZs, nor is there an explicit provision which confers on States a right to carry out such activities within foreign

EEZs. Thus one has to accept that the legality of military activities in the EEZ of a third State is not clear-cut under the LOSC.

Reference: Tanaka (2015).

15. True. Indeed, Article 101 of the LOSC establishes that piracy consists of illegal acts of violence directed 'on the high seas, against another ship or aircraft' or 'against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.' Illegal acts of violence in the territorial sea and the internal waters of a coastal State are outside the scope of the LOSC's definition of piracy; such acts are often called 'armed robbery.'

16. False. For starters, the LOSC makes no mention of transportation of WMDs as an example of activity not classified as innocent. It is debatable whether the transport of WMDs can be regarded as an action which is 'prejudicial to the peace, good order or security of the coastal State' under Article 19(1) of the LOSC. Moreover, it appears to be questionable whether the coastal State may stop and search suspected vessels passing its contiguous zone without entering into its territorial sea. Simply put, while commendable in terms of their goals, some of the provisions of the Interdiction Principles may be in direct conflict with the law of the sea.

17. False. Although the 1958 Convention on the Territorial Sea and the Contiguous Zone (TSC) only refers specifically to an historic claim being made in respect of an 'historic bay,' there is no reason why an historic claim may not, in appropriate circumstances, be made to other coastal waters where there is at least some evidence of geographical enclosure, or connection with, the adjacent landmass, such as in respect of the waters (as now encloseable) within a coastal archipelago on the basis of Article 4 of the TSC (now Article 7 of the LOSC).

Reference: Symmons (2008).

18. False. The November 2004 deadline was actually not met by most States, as it became clear that such a limit would not be realistic given the considerable volume of data that they needed to collect to substantiate the establishment of an outer continental shelf. Accordingly, in 2001 a meeting of State Parties to the Convention resolved that for those States for which the LOSC entered into force prior to 13 May 1999 the ten-year period would begin to run from that date. By May 2009 many States had not yet delivered their submissions and it was apparent that the new timeframe was likewise too demanding, especially for developing States. Accordingly there was a further decision of the States Parties to LOSC in 2008 that the ten-year time period referred to in Article 4 of Annex II to UNCLOS may be satisfied by submitting 'preliminary information' including an intended date for making a submission. In any event it may be questioned whether the procedural requirement to meet the original or extended deadline affects a coastal State's substantive and inherent right to a continental shelf as accorded by Article 77(3) of the LOSC, which provides that 'the rights of the coastal State … do not depend on occupation, effective or notional, or on any express proclamation.' In contrast to what is said in statement 18, there is no penalty stipulated for failing to meet the deadline, although it is true that technical advice on part of the CLCS is hindered in the absence of pertaining data.

Reference: Rothwell and Stephens (2016).

19. False. States are free to apply either of the two formulas for their entire continental margin to achieve the outcome that is most advantageous to them. Nevertheless, Article 76 sets out some granular provisions on the demarcation of the continental margin. For one, in terms of the actual drawing of the delineation line for the outer limits of the continental shelf beyond 200 nm, states are to draw straight lines not exceeding 60 nm in length connecting fixed points that are defined by geographical coordinates. Further to this, Article 76(5) provides that the outer limit of the continental shelf set by either of the two approaches shall not exceed 350 nm from the territorial sea base lines or 100 nm from the 2500 meter isobath (which in some cases will exceed 350 nm).

Reference: Rothwell and Stephens (2016).

20. True. Indeed, jurisdiction over the continental shelf requires no claim on part of the coastal State. With the operation of the Commission on the Limits of the Continental Shelf, there has been a tendency for the language of claim to creep in, but strictly speaking such submissions constitute not a

claim as such, but rather the establishment of the legal limits of the continental shelf by reference to physical characteristics of the seabed.

Reference: Rothwell and Stephens (2016).

21. True. Indeed, land-locked States are given no rights to participate in the exploration of the continental shelf. The only counterbalance is Article 82 of the LOSC, which sets out obligations in payments and contributions with regard to the exploitation of the continental shelf beyond 200 nautical miles. In this regard, it must be recalled that payments or contributions shall be made through the International Seabed Authority 'on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.'

Reference: Tanaka (2015).

22. False. Deliberations on part of the ISBA's Council and other structures are to be reached by consensus, but where efforts towards this objective have been exhausted decisions on most questions of substance are to be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers.

23. True. Indeed, the developing States advocated a powerful ISBA, while developed nations, being where most large mining companies are based, pushed for a more limited institution. Underlying industrial State concerns about the ISBA was the fear that it would act against their interests because developing States would have a substantial numerical advantage in the institution's governing bodies.

24. True. The area attributed to the contractor may not exceed 150,000 km^2, and, in the case of concessions larger than 75,000 km^2, the proportion of the area is to be gradually relinquished and restored to Area status. A plan of work for exploration is to be approved for a period of 15 years, after which time the contractor must renounce its rights in the area, apply for a five-year extension for exploration, or apply for a plan of work for exploitation.

25. False. In its commentary on draft Article 68 of the LOSC, which dealt with jurisdiction over the continental shelf, the ILC declared that

> It is clearly understood that the rights in question do not cover objects such as wrecked ships and other cargoes (including bullion) lying on the seabed or covered by the sand of the subsoil.

This statement made it clear that the ILC was firmly of the view that shipwrecks were not encompassed within the sovereign rights of the coastal State and therefore should not be regarded as natural resources in this context. Accordingly, to ascertain the authority over such cultural artifacts and ensure their preservation whenever they were found, in 1993 the United Nations Educational, Scientific and Cultural Organization (UNESCO) initiated negotiations on what was to become the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage. Under this convention, coastal States were designated as 'Co-Ordinating States' for the purposes of protecting underwater cultural heritage 'on behalf of the States Parties as a whole and not in [their] own interest.' The coastal State is then empowered not only to lead the coordination of cooperative measures to protect underwater cultural heritage, but also to take immediate action to prevent the looting of a shipwreck found in its EEZ and ensure its *in situ* conservation for the international community as a whole.

Reference: Rothwell and Stephens (2016).

26. True. While the Fish Stocks Agreement was devised as an independent treaty, its objective and very title indicate that the agreement aimed at an effective implementation of the LOSC. This signals something about the relationship between the two; the Fish Stocks Agreement is not meant to break entirely new ground. There may be several reasons why States did not want to integrate the Agreement into the LOSC. First, there were formal obstacles through the amendment procedures in Articles 312 – 314, restricting the possibilities for revising the LOSC prior to a 10-year period from the entry into force of the LOSC. Secondly, there may also have been political resistance to taking such steps; it could be interpreted that the LOSC could be up for amendments.

27. True. Such is the understanding of Henriksen *et al.* (see reference below). The duty to protect biodiversity introduces qualitative norms into fisheries management. States are not only required to maintain sustainable target stocks; they shall also protect diversity of genes, species and ecosystems – a requirement of a holistic fisheries management. As the Agreement does not mention the specific action to be taken, States have some discretion in deciding how to protect biodiversity and which measures to take.

Reference: Henriksen, Honneland and Sydnes (2006).

28. False. A traditional approach in fisheries management has been to delay adoption of conservation measures until there is adequate information available from surveys and research to assess at what level the fish stock may be sustainably harvested. Meanwhile there is a risk of overexploitation of fish stocks. Such an approach will be in conflict with the duty not 'to use absence of scientific information ... as a reason for postponing or failing to take conservation measures,' as posited in Article 6(2) of the Agreement.

Reference: Henriksen, Honneland and Sydnes (2006).

29. False. As to the legal status of decisions, the definition of "conservation and management measures" given in Article 1(1)(b) does not provide any clear answers. These measures are defined as those adopted in consistency with relevant rules of international law as reflected in the LOSC and the Fish Stocks Agreement. In the provisions regulating the functions of RFMO/As, States are required to 'agree on and comply on conservation and management measures.' Further, States shall 'agree ... on participatory rights' and 'establish appropriate measures for monitoring, control, surveillance and enforcement.' That States are obligated to agree and establish may indicate that these decisions are legally binding. On the other hand, States may also enter into non-binding agreements. However, it is not likely that this is an option in a treaty unless it is clearly stated. Non-members of an RFMO/A are required to undertake to apply its conservation and management measures, in order to be entitled to fish on the stocks, as set out in Article 8(3) and Article 17(2). When the measures are binding on non-members, there is no reason why they should not be binding on the States adopting them.

States are not only to agree on the measures, they shall also comply with them. The obligations of flag States to implement conservation and management measures are further developed in Articles 18 and 19, supporting the interpretation that the conservation and management measures are intended to be legally binding. That inspectors from other member States are deemed competent to board and inspect a fishing vessel to control whether it is in compliance with the conservation measures provides further confirmation of this interpretation (Art. 21(1)). A serious violation of conservation and management measures also includes fishing without or after the attainment of quotas set by the RFMO/A, according to Article 21(11)(c). Consequently the adoption of quotas or other types of participatory rights is also required to be legally binding on the member States. Through the RFMO/As, States are to establish procedures for boarding and inspecting consistent with the Fish Stocks Agreement (Art. 21(2)). The RFMO/A therefore is assumed to make binding decisions on these matters.

Thus, it seems safe to conclude that the decisions on conservation and management measures, allocation of participatory rights and control and enforcement schemes adopted by the RFMO/A are to be legally binding.

Reference: Henriksen, Honneland and Sydnes (2006).

30. False. From the outset, Japan was a vigorous opponent of any international regulation on fishery subsidies. When several members of the WTO urged the elimination of fishery subsidies in a 2000 meeting of several Member States, a group of participants, led by Japan and South Korea, implied that discussions on the WTO's Committee on Trade and the Environment (CTE) should await results of the work in other organizations, including the Asia-Pacific Economic Cooperation (APEC), the FAO and the OECD. Later in the same year, Japan indicated that there were other different factors for fishery depletion and suggested that the FAO should be requested to undertake technical work which the CTE could use on a case-by-case basis to examine under which circumstances certain subsidies have negative impact on fishery subsidies. The Japanese have since maintained a steady opposition to any significant move on the part of the WTO to regulate fishery subsidies.

Reference: Chen (2010).

31. False. In contrast to the closely related Endangered Species Act, the MMPA prohibits taking of all species of marine mammals regardless of their risk of extinction. (To "take," in this law, means "to harass, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.")

32. True. On December 26, 2018, Japan withdrew from the IWC and announced that it would resume commercial whaling in 2019. In fact, the international agreement had never completely stopped Japanese whaling, as the country continued to kill whales for scientific research while selling the meat. Japan was also partly exempt from the prohibition on whaling in the so-called Southern Ocean Sanctuary, enjoying an annual quota for the hunt of Antarctic minke whales.

33. False. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of the EEZs, pursuant to Article 67(2) of the LOSC. It follows that the fishing of catadromous species on the high seas is prohibited. Fishing of catadromous species on the high seas means the capture of juveniles, which is contrary to conservation policy. Hence, there is a good reason to prohibit fishing of these species on the high seas.
Reference: Tanaka (2015).

34. True. Indeed, the International Convention for the Prevention of Pollution from Ships, or MARPOL, targets a specific source of marine pollution – vessels – while the 1972 London Dumping Convention takes aim at another – dumping. A second approach to classify international marine pollution treaties is the *regional approach*, which encompasses instruments designed to regulate pollution on a certain region; examples of this category include the 1974 Convention on the Protection of the Environment of the Baltic Sea Area and the 1976 Convention for the Protection of the Mediterranean Sea against Pollution. A third typology of marine pollution treaties is the *regional source-specific approach*, which combines the source-specific approach with the regional approach. A case in point is the 1974 Convention for the Prevention of Marine Pollution from Land-Based Sources; this instrument sought to prevent marine pollution from a specific, land-based source, in the North-East Atlantic area.

35. False. According to Article 207(1), States are called to adopt laws and regulations on land-based pollution 'taking into account internationally agreed rules, standards, and recommended practices and procedures.' The choice of words 'taking into account' is crucial, and would seem to indicate that States may adopt measures which are either more or less stringent than those embodied in international law. Also open to interpretation is Article 194(3)(a), which calls for States to take measures to minimize 'the release of toxic, harmful, or noxious substances, especially those which are persistent, from land-based sources,' but offers no examples of such substances. These two Articles illustrate the LOSC's rather loose approach to the regulation of land-based pollution, which, as noted by Tanaka (see reference below), is nonetheless understandable for at least two reasons, namely:

(1) Activities which may cause land-based pollution are within the territorial sovereignty of each State, and such activities are closely bound up with crucial national programmes for economic, industrial and social development of these countries. The economic costs of measures to regulate land-based pollution are seen as high and inevitably affect economic development.

(2) The regulation of land-based pollution is more complex than that of pollution from other sources. In the case of vessel-source pollution, for instance, sources and substances to be regulated – mainly oil and oily mixtures – can be clearly identified. However, the regulation of land-based pollution involves more substances than oil and oily mixtures. Land-based sources are variable in their nature over time, and each source requires different measures to prevent environmental damage. This requirement makes regulatory measures complex.

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