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**THIS EXAMINATION CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – APRIL 2019

**LAW 316
International Law**

**Section 1
Professor Karin Mickelson**

TOTAL MARKS: 100

**TIME ALLOWED: 2 1/2 HOURS (PLUS 30 MINUTES READING TIME,
DURING WHICH YOU ARE ALLOWED TO WRITE)**

NOTE:

1. This is a limited open book examination. You may use the required course readings (the casebook, documentary supplement and any other assigned supplementary materials), any material provided by the instructor (PowerPoint slides, outlines and other handouts), your own notes and summaries, and notes or CANs prepared by other Allard students. You may also bring a dictionary. The use of textbooks or other sources beyond those listed above is not permitted.
2. The exam is made up of 3 parts.

Part A consists of a hypothetical. Marks: 40; suggested time allocation: 1 hour.

Part B gives you a choice between four (short answer) questions. Answer two. Marks: 20 (10 per question); suggested time allocation: 30 minutes (15 minutes per question).

Part C gives you a choice between two essay questions. Answer one. Marks: 40; suggested time allocation: 1 hour.
3. Please make sure to take time to think through and outline your answers. Coherence and structure will be taken into account in evaluation.

PART A**MARKS**

40 The States of Corona and Spinola have close political and economic ties, and Spinolian vessels have a long history of fishing off the coast of Corona. Both States were signatories to the 1982 United Nations Convention on the Law of the Sea; each ratified the Convention in the mid-1980s, well before its entry into force in 1994. In 1988, Corona claimed a 200 nautical mile exclusive economic zone. Shortly before that claim was made, Corona and Spinola entered into an “Agreement on Friendly Fisheries Relations”, Article 1 of which specified that the Agreement was intended to clarify the respective rights and obligations of the two states under Article 62(2) of the UN Convention on the Law of the Sea (reproduced below). Article 2 of the Agreement stated:

The Government of Corona undertakes, upon the extension of the area under Coronian fisheries jurisdiction, to permit Spinolian vessels to fish within this area for allotments, as appropriate, of parts of total allowable catches surplus to Coronian harvesting capacity.

Other parts of the agreement deal with the factors to be taken into account by the Government of Corona in determining total allowable catch, Coronian harvesting capacity, and specific Spinolian allotments covering the first six years of the Agreement, with subsequent allotments to be negotiated every three years.

Commercial fish stocks off the coast of Corona remained relatively stable until five years ago. Since then, there has been mounting evidence of significant declines, not only in commercially valuable species but others as well. An area of particular concern is the “Pando-Aguirre Zone”, which is located partly within the Coronian exclusive economic zone, and partly beyond it. At least part of the problem in the Zone seems to stem from overfishing by Spinolian vessels. The Coronian government, unwilling to jeopardize relations with Spinola, has taken no action other than lowering the total allowable catch.

This past year's catch was the worst ever recorded. This has led to massive public protests in the province of Malibrán, which lies along the eastern coast of Corona. Malibrán's economy has traditionally been heavily dependent upon fishing, and there is also a very strong environmental movement within the province. The protesters have called for an end to foreign fishing in Coronian waters but also for urgent measures to protect the fish, within the Pando-Aguirre Zone in particular. They have pointed out that the United Nations has launched negotiations for “an international legally binding instrument on the conservation and

sustainable use of marine biological diversity of areas beyond national jurisdiction”, to be concluded by 2020, which will address marine protected areas beyond national jurisdiction among other issues. “Why Wait? Marine Protected Areas Now!” has become one of the most popular rallying cries for the protesters.

The Government of Corona, extremely concerned about both the decline in fish stocks and the political unrest that has erupted as a result, has decided that it must take action. It plans to announce the establishment of the Pando-Aguirre Marine Protected Area (PAMPA), encompassing an area both within and outside its exclusive economic zone. Coronian fishing will be drastically curtailed within the 200 nautical mile zone, and will cease entirely beyond the 200 nautical mile limit. Spinolian vessels will not be able to fish in the Area for at least the next 10 years. Corona is willing to revisit the situation after that time, which is the absolute minimum amount of time identified by fisheries experts as required for recovery within the Pando-Aguirre Zone.

You have been asked to draft a concise legal memorandum to assist the Government of Corona in preparing a diplomatic note to Spinola addressing the following issues. Corona would like to argue that it has the right under international law to apply and enforce conservation measures within 200 nautical miles of its coast, including eliminating fishing by Spinolian vessels (first issue). Furthermore, international law is moving towards the recognition of the right of coastal states to establish marine protected areas beyond 200 nautical miles, and Corona will help drive that development in the law through its decision to establish the PAMPA (second issue). Finally, Corona’s actions to protect the Pando-Aguirre Zone are in accordance with international law given the fragility of the Zone and the situation as a whole (third issue). **Your instructions are to focus on these issues only, since Corona is seeking advice elsewhere regarding other matters, including the possibility of suspending or terminating the Agreement on Friendly Fisheries Relations and the application of principles of international environmental law. Should you require further information in order to complete your analysis, please indicate what type of information is required, and why it would be relevant.**

In undertaking your analysis, you may take the following information into account. Corona and Spinola are both members of the United Nations and parties to the Vienna Convention on the Law of Treaties in addition to being parties to the UN Convention on the Law of the Sea. Article 62(2) of the UN Convention on the Law of the Sea, along with other provisions that may be relevant to your analysis, is reproduced below.

Article 61: Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation....
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities...
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened....

Article 62: Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.
2. **The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch...**
3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests... and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.
4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:...

- (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period...
5. Coastal States shall give due notice of conservation and management laws and regulations.

PART B

Provide concise answers to two of the following questions.

MARKS

- 20
1. Explain the significance of reciprocity in Article 36(2) of the Statute of the International Court of Justice.
 2. Explain the role that the “object and purpose” of a treaty plays in the context of the Vienna Convention on the Law of Treaties.
 3. Explain the distinction between “internal self-determination” and “external self-determination.” What circumstances are likely to support a claim to external self-determination?
 4. Explain (and qualify if necessary) the following statement: “International law’s approach to jurisdiction over persons is permissive rather than restrictive.”

PART C

Answer ONE of the following questions.

MARKS

- 40
1. In a recent article on the “unwilling or unable” doctrine, one scholar argued:

[T]he “unwilling or unable” doctrine is qualitatively different from other expansive interpretations of Article 51 because it attempts to (re)introduce a classification of states that differentiates the degree of their sovereignty based on the way that they are internally organized and on the antiterrorist policies that they have chosen to implement. It singles out states that are weak or pursue policies that are considered by the attacking state to be friendly or tolerant toward terrorism for different treatment under Articles 2(4) and 51 of the

Charter.... [I]n virtually all cases the state deemed “unwilling or unable” is a state of the Global South, confirming the argument that the doctrine is not even nominally neutral but targets certain forms of statehood and specific counterterrorism policies. Admittedly, there are certain cases in which the state invoking the argument belongs to the Global South as well, but even in these cases a weaker peripheral state is targeted.

Do you agree with the author’s critique of the “unable or unwilling” doctrine, specifically as articulated in the Bethlehem Principles? To what extent does this critique represent a broader indictment of international law’s inability to come to terms with the gulf that exists between the ideal of sovereign equality and the reality of the international system? In addressing the latter question, please go beyond the material on the use of force, and discuss one or two examples from the other material we covered this term.

2. In the early 1990s, a symposium on “International Law After the Cold War” contained the following two statements, expressing opposing views on the role of the sovereign state in the international legal system:

No matter how dramatic might be the changes in world order effected by other phenomena, including the end of the Cold War and the war in the Gulf, nothing catalyzes the transformation of international law more substantially than the decline of the sovereign state. As the world's transactions—be they economic, environmental, cultural, military, political or social—increasingly transcend national boundaries, so the utility of the concept of the sovereign state diminishes.

The most universally acclaimed principles of international law continue to be those of sovereignty, self-determination, territorial integrity, non-intervention, and consent, each of which is a reaffirmation of statehood as the law's creative center....
[I]nternationalism reaffirms statehood...

Almost thirty years later, which of these statements would you consider to be a more accurate assessment of the significance of the sovereign state in international law? Discuss with reference to two or three examples dealt with in the course of the term.

END OF EXAMINATION